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Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Report of the Special Rapporteur on the rights to freedom of
peaceful assembly and of association*****Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the fifth thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to resolutions 15/21 and 24/5. In sections I and II of the report, the Special Rapporteur provides an overview of the activities he carried out between 1 March 2015 and 28 February 2016. In section III, he addresses the phenomenon of fundamentalism and its impact on the exercise of the rights to freedom of peaceful assembly and of association. In section IV, he examines the positive role that assembly and association rights can play in preventing the spread of extremism and radicalization. The Special Rapporteur outlines his conclusions and recommendations to various stakeholders in section V.

* The present report was submitted after the deadline in order to reflect the most recent developments.

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association

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I. Introduction

1. The present report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association is submitted to the Human Rights Council pursuant to Council resolutions 15/21 and 24/5. The first section of this report covers activities carried out between 1 March 2015 and 28 February 2016. The second section addresses the role of fundamentalism, in its broadest possible sense, in contributing to the violation of the rights to freedom of peaceful assembly and of association. In the third section, he examines the role that undue restrictions on the rights to freedom of peaceful assembly and of association play in contributing to the rise of fundamentalist belief systems and radicalization. The report ends with recommendations to various stakeholders with a view to better promoting and protecting the rights under his mandate.

2. To prepare the present report, the Special Rapporteur convened an expert consultation in Florence, Italy, on 10-11 December 2015, hosted by the Robert F. Kennedy Center for Human Rights. He also benefited from the submissions of civil society entities and others in response to a call for information on his website¹. He is grateful to all who contributed to his report. In accordance with Human Rights Council resolution 15/21, he also took into account relevant elements of work available within the Council and the United Nations system.²

II. Activities

A. Communications

3. The Special Rapporteur sent a total of 186 communications to 68 States between 1 March 2015 and 28 February 2016. His observations on communications addressed to States and on the replies received are contained in an addendum to the present report (A/HRC/32/36/Add.3).

B. Country visits

4. The Special Rapporteur visited Chile from 21 to 30 September 2015 (A/HRC/32/36/Add.1) and the Republic of Korea from 20 to 29 January 2016 (A/HRC/32/36/Add.2). He also conducted a brief visit to the United Kingdom from 18 to 21 April 2016 in follow-up to his visit to the country in 2013 (the report will be presented at the Council's 35th session). He thanks all three Governments for their excellent cooperation in the framework of these visits. During the reporting period, the Special Rapporteur renewed the pending requests to Ecuador, Guatemala, the Maldives and Sri Lanka. He also made additional requests to Honduras and Hungary.³ He is grateful to the United States and Turkey for accepting visits to be undertaken in July 2016 and January 2017 respectively. He hopes to visit Azerbaijan in September 2016.

¹ <http://freeassembly.net/discussions/fundamentalism/>

² Country situations mentioned in the present report include cases that have been the subject of previous communications sent to governments, as well as press releases and reports issued by special procedures mandate holders and high-level United Nations officials and reports from Member States, multilateral institutions and civil society organizations.

³ For more information on country visits, see www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/CountryVisits.aspx.

C. Participation in various events

5. The Special Rapporteur took part in the following events, among many others⁴:
- (a) International Center for Not-for-Profit Law Global Forum, Stockholm, 10-12 May 2015;
 - (b) Expert consultation on the Special Rapporteur's report to the sixty-ninth session of the General Assembly in Stockholm, organized by the World Movement for Democracy (13 and 14 May 2015);
 - (c) Meeting with the Secretary-General of the Organization of American States, the Chair of the Permanent Council, permanent representatives to the organization and the Inter-American Commission on Human Rights in Washington, D.C. (28 July 2015);
 - (d) Academic visit to Kazakhstan in follow up to the official visit undertaken in January 2015 (22-24 August 2015);
 - (e) World Movement for Democracy 8th Assembly, Seoul, 1-4 November 2015;
 - (f) Academic visit to Cambodia (7-9 November 2015);
 - (g) Regional dialogues with civil society and governments organized by the Community of Democracies from the Latin America and Caribbean region (Santiago, 27 and 28 April 2015) and the Asia-Pacific region (Seoul, 5 November 2015 and 20 January 2016);
 - (h) Consultations with civil society, governments and other stakeholders in Santiago (29 April 2015), Istanbul (27 August 2015) and Geneva (23-24 October 2015) to assist in preparing joint practical recommendations on the proper management of assemblies (A/HRC/31/66) with the Special Rapporteur on extrajudicial, summary or arbitrary executions;
 - (i) 17th European Union-NGO human rights forum in Brussels (3-4 December 2015).

III. Fundamentalism and its impact on the rights to freedom of peaceful assembly and of association

A. Introduction

6. Since the turn of the millennium, there has been a perceived rise in the expression of fundamentalism in many contexts across the world. Despite the frequent use of the term, "fundamentalism" remains a word that is rarely defined with any specificity. The origin of the term, and indeed most of its dictionary meanings, centre on strict adherence to a specific set of religious principles⁵. This definition – conjuring images of religiously motivated terrorists and sectarian warfare, among others – is perhaps the one that comes to mind first for most people.

7. Fundamentalism can encompass much more than religion, however, and in this report the Special Rapporteur takes a much broader view of the term. He believes that

⁴ More information on the Special Rapporteur's activities during calendar 2015 is available in his annual activity report: <http://freeassembly.net/reports/2015-year-in-review/>

⁵ <http://www.oxforddictionaries.com/definition/english/fundamentalism>

fundamentalism can and should be defined more expansively, to include *any* movements – not simply religious ones – that advocate strict and literal adherence to a set of basic beliefs or principles⁶. Adherence to the principles of free market capitalism, for example, has spawned what has been called “market fundamentalism.” And the unbending belief in the superiority of one ethnic group, race, tribe or nationality can lead to what might be called “nationalist fundamentalism.” Numerous other examples are detailed in this report. These non-religious forms of fundamentalism may not always be labelled as such, but the Special Rapporteur believes that they all share key similarities. Namely, they are based upon a set of strict, inflexible beliefs impervious to criticism or deviation.

8. This report is not concerned with fundamentalist viewpoints per se, but rather with fundamentalism in action: concrete, specific violations of the rights to freedom of peaceful assembly and of association that are motivated by these viewpoints. The mere voluntary adherence to a fundamentalist belief system is not a human rights violation in and of itself. The right to hold opinions and the right to freedom of thought, conscience and religion are protected by Articles 18 and 19 International Covenant on Civil and Political Rights (ICCPR).

9. The danger arises when holders of these beliefs seek to impose them in a way that controls, restricts or deters the exercise of the rights of others who may have different views or backgrounds, thereby threatening the values of pluralism and broadmindedness, which are central to democracy. The tipping point, for purposes of this report, is when fundamentalist views form the basis for violations of the rights to freedom of peaceful assembly and of association.

10. The present report can be viewed as a sequel to the Special Rapporteur’s 2014 report to the Council on threats against groups most at risk when exercising assembly and association rights (A/HRC/26/29). That report focused on the groups whose rights were being violated, including persons with disabilities; women; lesbian, gay, bisexual, transgender and intersex (LGBTI) people; members of minority groups; and many others. This report adds a focus on the other half of the equation: who are the perpetrators of these abuses, what are the ideologies that drive them, and what are the State’s obligations to respect, protect and fulfil the rights to freedom of peaceful assembly and of association in this context?

B. State and non-State actors: the interplay between fundamentalism and power

11. Fundamentalism can motivate violations of assembly and association rights by both State and non-State actors, though the distinction between each type of perpetrator is not always obvious. What is clear, however, is that fundamentalism – whether State- or non-State sponsored – poses the greatest threat to the rights to freedom of peaceful assembly and of association when it becomes closely allied with power. That is, when it is adopted or even tacitly approved by some entity with the authority or means to impose, directly or indirectly, involuntary adherence to fundamentalist values.

12. These institutions can take a number of forms: the State, smaller government and governance entities (including unofficial and/or traditional governance entities), militia groups, political parties, religious groups and structures, and more. Indeed, fundamentalist ideologies are often used as a tool of power by these institutions. The leaders of these

⁶ <http://www.merriam-webster.com/dictionary/fundamentalism>

groups may sometimes not even personally subscribe to the ideology at issue, but could see it as an effective way to cull the obedience and gain political, social or economic advantage.

13. Perhaps the most straightforward type of violation in this regard is unduly limiting assembly and association rights via the enforcement of State-sponsored fundamentalist policies. This can include, for example, authoritarian one-party States which ban opposing political parties or States that forbid certain religious faiths or beliefs. In other cases, however, government officials may use the apparatus of the State to push fundamental values and beliefs.

14. Non-State actors (including natural and legal persons and groups or associations) similarly may take advantage of a weak State apparatus or work together with State agents. Some may form associations, for example, whose sole purpose is to advance ideologies favoured by the State in order to crowd out space for independent organisations.

15. In other cases, violations may arise due to the inability or unwillingness of the State to respond to the actions of non-State actors. The State's failure to protect participants in a peaceful rally against violent, fundamentalist counter-protesters, for example, constitutes a violation of the right to freedom of peaceful assembly. It does not matter if the State does not officially promote the counter-protesters' ideology; it has a positive duty to protect those exercising their right to peaceful assembly, even if they are promoting unpopular positions (e.g., rights for LGBTI persons or those of a minority religion). Similarly, States may violate their duty to protect by failing to investigate allegations of rights violations and holding the perpetrators accountable; ignoring retaliation against victims of violations; and failing to legislate and enforce the protection of rights for certain groups.

16. In other cases still, abuses may come purely at the hands of non-State actors, with the role of State actors being less clear or obvious. This is seen, for example, when private parties publicise messages of ethnic or nationalist superiority or when community leaders impose their cultural values at the expense of those held by other groups.

C. Legal framework

17. The values of pluralism, tolerance and broadmindedness are at the core of any successful and stable democratic State. Indeed, the European Court of Human Rights has stated that there can be no democracy without pluralism⁷. The Special Rapporteur previously noted (A/HRC/26/29, paras 14, 32 and 41) that the rights to freedom of peaceful assembly and of association are so fundamental in part because of their crucial role in promoting pluralism. They provide a platform for all people – including those at the margins – of any society to mobilize, organize, and work towards change in a peaceful manner.

18. The values of pluralism and tolerance also lie at the heart of the ICCPR. Article 2(1) requires States “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 20(2) further prohibits advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

19. International human rights law places the primary obligation for the respect, protection and fulfilment of rights on the State. In the context of fundamentalism, this

⁷ European Court of Human Rights, *Handyside v. United Kingdom*, para. 49.

obligation may appear to be somewhat distorted owing to the fact that some human rights abuses come at the hands of non-State actors. But States' obligation to protect and facilitate peaceful assembly and association rights includes a duty to ensure that private individuals do not violate these rights. To discharge their duties in that respect, States should, among other things, enact robust national laws that stipulate clearly the rights and responsibilities of all, create independent and effective enforcement, oversight and adjudicatory mechanisms, ensure effective remedies for violations of rights and promote awareness of, and access to information about relevant policies and practices.

20. The obligation to protect is recognised in international human rights law instruments as well as by human rights bodies at the international and regional level. For example, State parties to the Convention on the Elimination of All Forms of Racial Discrimination are required to take action against all propaganda and all organisations that are based on ideas or theories of racial or ethnic superiority. Such measures include declaring illegal and prohibiting such organisations and the activities that promote and incite racial discrimination.⁸ This provision obligates States to take action directly against non-State actors, both individuals and entities promoting or inciting racial discrimination.

21. The Human Rights Committee has stated that the positive obligations of State parties "will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights"⁹. States' failure to take appropriate measures or exercise due diligence to prevent, punish, investigate or redress the harm caused by non-State actors may constitute a violation of the ICCPR.¹⁰ The Committee on the Elimination of All Forms of Discrimination Against Women has similarly affirmed that "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".¹¹ The Inter-American Court of Human Rights has found similarly, recognizing that States can incur responsibility for the lack of due diligence in preventing or responding to illegal acts carried out by private persons that violate rights.¹²

22. International human rights law is understood to act as a restraint to State power. Human rights law therefore does not directly address the responsibility of non-State actors, although international instruments address non-State actors' duty to promote and observe human rights.¹³ Nevertheless, the expanding power and influence of non-State actors is encouraging the exploration of ways to hold them legally accountable for actions that violate human rights.¹⁴ In the absence of consensus and institutions to hold non-State actors liable for human rights violations at the global level, the State remains the primary duty-bearer, capable of responding to (potential) abuses by non-State actors.

23. What does this mean for non-State actors who by reason of fundamentalism infringe on the rights to freedom of peaceful assembly and association of others? Despite the debates about the human rights obligations of non-State actors, the Special Rapporteur is firm in his belief that as a practical matter, the actions of non-State actors – whether natural or legal persons – may result in the violation of rights. This eventuality must be addressed.

⁸ ICERD art 4.

⁹ CCPR General Comment 31, para. 8.

¹⁰ Ibid.

¹¹ CEDAW General Recommendation 19, para 9. See also CAT General Comment 2 para 18.

¹² Velasquez Rodriguez, Judgment, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), para 172.

¹³ Preamble UDHR, ICCPR, ICESCR.

¹⁴ See A/HRC/29/25, paras 23-25.

24. A broad approach to understanding ‘fundamentalism’ is important so as to clarify possible violations and understand State responsibilities. For example, the designation and privileging of a state religion or ideology may serve to encourage intolerance for other religions by non-State actors. A one-party political system is virtually guaranteed to entrench intolerance – both State-sponsored and private – for other political ideologies. Extreme nationalist rhetoric that is echoed by political figures in leadership positions may result in attacks on migrant populations and civil society organisations working on migrant issues.

25. States’ positive duty to ‘protect’ by proactively taking measures to prevent violations includes refraining from acquiescing or enabling violations (for example through a failure to investigate and hold perpetrators accountable) and promoting an environment where all groups are guaranteed equal rights, regardless of the popularity of their views.

26. In the following sections, the Special Rapporteur provides examples of how fundamentalism can spur intolerance that leads to violations of assembly and association rights, and highlights the responsibilities of States and non-State actors to prevent and remedy the violations. For ease of reference, they have been classified into four overarching categories:

- (i) Market fundamentalism
- (ii) Political fundamentalism
- (iii) Religious fundamentalism
- (iv) Cultural and nationalist fundamentalisms

D. Market fundamentalism

27. Free market fundamentalism (also referred to in this report as simply “market fundamentalism”) can be described broadly as the belief that free market economic policies are infallible, and consequently are the best way to solve economic and social problems. It is tied closely with the belief that maximum production of economic wealth is inherently good for society and its members, and that the health of the economy should be paramount and prioritized over other societal interests. It therefore can lead to the imposition of a set of rules whereby side effects or alternative economic approaches are not taken into account¹⁵.

28. For market fundamentalists, interference with the market – particularly government intervention or regulation – is viewed as an inefficiency that reduces the economy’s ability to produce wealth, and should be avoided in pursuit of the freest markets. The belief that outside regulation is harmful to economies, and by extension to society as a whole, can be rigid, with the most extreme adherents advocating for little to no intervention at all.

29. Free market fundamentalism is rooted in academic economic theories, which are often cited as empirical evidence in favour of imposing laissez-faire economic policies. The

¹⁵ The Special Rapporteur acknowledges the existence of other and equally problematic types of economic fundamentalism, such the communist-style command economy structure – where production, prices and incomes are determined centrally by the government. Dramatic examples of the dangers of this type of fundamentalism can be seen in Cuba, Venezuela and the Democratic People’s Republic of Korea, among others, where exercising assembly and association rights in the context of economic issues is fraught with often insurmountable obstacles. The Special Rapporteur has chosen to focus on free market fundamentalism, however, because of its relative dominance in today’s world. The number of States adhering to a pure command economy structure has decreased drastically since the end of the Cold War.

reliability of these theories is a controversial subject – notably because economics is a social science that concerns itself with the messy and diverse subject of human behaviour and human-created systems – and studies demonstrating the opposite are equally available. The dominance of free market principles has become especially pronounced since the collapse of communism, which was seen by many as proof that liberal economies were more successful and sustainable. This has led to an era of limited questioning about the positive and negative impacts of the free market approach, a situation which has helped enable market fundamentalism.

30. This report does not examine the accuracy of these theories or of competing ideas. Rather, the Special Rapporteur is concerned about situations where adherents to free market principles become so dogmatic that they infringe upon the assembly and association rights of those who hold competing views.

31. Free markets have undoubtedly contributed to producing great amounts of monetary wealth and impressive technological advancements. Yet the pursuit of this wealth in some cases has also contributed to environmental destruction, growing income inequality, and the erosion of protections for workers. It is important that people on both sides of this argument are given equal freedom and facilitation to air their views in a peaceful manner. As the Special Rapporteur has repeatedly emphasized, States should also not favour businesses over civil society reflexively, but instead should adopt a policy of “sectoral equity” - a fair, transparent and impartial approach in which the regulation of each sector is grounded in international law, standards and norms (A/70/266).

32. Despite this, the Special Rapporteur has observed many instances where State laws and practices favour – whether through action or inaction – the free market fundamentalist approach.

33. Some countries, for example, have linked natural resource exploitation with national security interests, limiting assembly and association rights around such activities in the process. While governments may have a legitimate interest in protecting areas dedicated to natural resource exploitation, they must be extremely cautious that restrictions in these areas are necessary and proportionate in a democratic society in order to be justifiable under international human rights law. Peaceful opposition to natural resource exploitation projects – whether in the form of protests or community groups – may be economically “inefficient” and difficult for States and businesses to balance against profit motives. But States have a duty to allow and facilitate space for such opposition under international law. In addition, national, political, economic or government interest is not synonymous with national security or public order (A/HRC/31/66 para. 31).

34. Canada’s Anti-Terrorism Act of 2015 has been criticized for expanding the definition of national security to include “the economic or financial stability of Canada.”¹⁶ Under this definition, a peaceful protest by environmentalists blockading a logging road could potentially be labelled a threat to national security. While economic activity is certainly important, it is not one of the enumerated bases for the permissible restriction of the rights to peaceful assembly and of association in the ICCPR. States tread a dangerous path when they prioritize the freedom of the market over the freedom of human beings. The economic rights of investors should never trump fundamental human rights in the ICCPR.

35. Similarly, the Australian State of Tasmania has enacted the Workplaces (Protection from Protestors) Act 2014, which makes it a criminal offence to participate in a protest that may obstruct or prevent a business activity or access to a business premises (see also A/HRC/28/85, case AUS 3/2014). The State of Western Australia was considering similar

¹⁶ <https://bccla.org/2015/03/8-things-you-need-to-know-about-bill-c-51/> See also CAN 1/2015.

legislation at the time of this report's drafting. The Special Rapporteur has urged the state parliament to vote against the law.¹⁷

36. Free market fundamentalism in the United States has led to a systematic rollback of the right to freedom of association for workers in a number of jurisdictions, particularly in the 26 states which have enacted so-called "right to work" legislation. The laws forbid unions from negotiating contracts that require all workers represented by a union to pay dues. Proponents of the laws frame their purpose in free market terms, saying that employees should "decide for themselves whether or not to join or financially support a union."¹⁸ But at the same time, US law requires unions to represent all employees in a bargaining unit. Thus the effect of "right to work" laws is to give non-dues paying workers a free ride: They reap the benefits that the union has negotiated without having to pay the costs¹⁹. This can weaken unions over the long run, and the Special Rapporteur views these laws as legislative obstacles intentionally designed to discourage people from exercising their right to freedom of association in the workplace.

37. The free market fundamentalist ideology opposes the very existence of trade unions in general, with one author arguing that they are viewed as "monopolist agents manipulating the price of labour to the advantage of some (a minority), and to the disadvantage of others (the majority, including non-unionized workers and consumers)."²⁰ The Special Rapporteur views anti-unionism as an inherently troubling aspect of free market fundamentalism, as the right to organize in the workplace is protected by the ICCPR, International Covenant on Economic, Social and Cultural Rights, and through various conventions of the International Labour Organization (ILO).

38. Unfortunately, the free market fundamentalist approach has over time influenced government policy and practice in a way that has harmed workers' association rights. In the United States, for example, Tennessee state officials reportedly offered nearly \$300 million in incentives to Volkswagen if it added a new production line to a factory in Chattanooga, but made the investment contingent on the plant remaining non-unionized²¹. The governor and other state officials also made public statements against the effort to unionize²², and workers ultimately voted against organizing. This is contrary to the principle that human rights cannot be renounced. And on the international stage, a coalition of employers' associations embarked upon a multi-year campaign within the ILO – and publicly²³ – aiming to strike down jurisprudence upholding the right to strike²⁴.

39. Free market fundamentalist views also lie at the heart of most international trade treaties, such as the Trans-Pacific Partnership (TPP), which was signed by 12 Pacific Rim States in February 2016. Certain provisions of the TPP – which is not yet in force – show a clear bias towards favouring the economic interest of businesses over the assembly and association rights of non-investors. The TPP's Investor-State Dispute Settlement mechanism, for example, gives corporations the right to challenge State laws and policies

¹⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17047&LangID=E>

¹⁸ <http://www.nrtw.org/rtws.htm>

¹⁹ <http://workrights.us/?products=right-to-work-laws>

²⁰ Steve Hughes and Nigel Haworth, International Labour Organization (ILO): Coming in from the Cold, available at:

https://books.google.co.ke/books/about/International_Labour_Organization_ILO.html?id=Jkbk4W-GFfUC&redir_esc=y

²¹ <http://uaw.org/uaw-withdraws-volkswagen-election-objections/>

²² <http://thinkprogress.org/economy/2014/02/24/3321591/uaw-nlr-Interference/>

²³ <http://www.phnompenhpost.com/national/groups-tell-ilo-retract-%E2%80%98right-strike%E2%80%99-claim>

²⁴ http://www.ituc-csi.org/IMG/html/newsletter_ilo.html

that harm their investments²⁵. These challenges would take place before a panel of arbitrators, outside the country's ordinary court system²⁶, and could be used to attack laws protecting worker's rights, the environment, and the rights to peacefully assemble or associate. The TPP has no equivalent mechanism for individuals or civil society organizations to directly challenge corporations or States for human rights abuses.²⁷

40. The Special Rapporteur is dismayed at the lack of genuine civil society participation surrounding trade agreements and economic issues in general. He and others²⁸ have noted previously that the right to freedom of association should be viewed as "an essential adjunct" to the related fundamental right to participate in public affairs²⁹. Thus it is not enough for States to simply allow associations to exist; they must seek to actively engage with civil society, and to create conditions in which the sector can flourish and play a significant role in public life. The Special Rapporteur views the right to freedom of peaceful assembly as playing a similar role as a vehicle to enjoying the right to participate in public affairs.

41. Taking a more inclusive approach to civil society engagement is not just about States abiding by their international human rights obligations. It also brings practical benefits to society by providing an outlet for people to constructively and peacefully contribute on issues that affect their lives.

E. Political fundamentalism

42. This report uses the term "political fundamentalism" to refer to the elevation of a particular political ideology, party or State leader above all others, to the extent that those holding competing ideas are limited in their ability to express competing views. He sees this phenomenon as most common in formal or de facto one-party States, where the dominance of one political grouping is either enshrined in law or in practice. These groupings may be based on a political philosophy, or rooted in alliances of individuals who collaborate to co-opt the State apparatus for their own personal benefit. Others may manifest themselves as absolute monarchies, autocracies or similar structures, where power is formally concentrated in the hands of one individual or a small group.

43. The Special Rapporteur considers such political systems to be a type of fundamentalism because they require dogmatic adherence to official party platforms or allegiance to a particular leader. The expression of peaceful dissent or competing ideas in such systems can be severely punished, demanding obedience to the dominant political dogma. The exercise of the rights to freedom of peaceful assembly and of association – which typically function as democratic vehicles to express peaceful dissent and constructive government criticism – are often severely limited. Regrettably, the membership of the United Nations includes a long list of States plagued by varying degrees of political fundamentalism. This report does not draw a comprehensive list of these States, but rather provides examples which highlight how this type of fundamentalism affects assembly and association rights.

44. One of the world's most extreme examples of political fundamentalism can be found in the Democratic People's Republic of Korea (DPRK). The Workers' Party of Korea –

²⁵ <https://ustr.gov/sites/default/files/TPP-Final-Text-Dispute-Settlement.pdf>

²⁶ <http://aftinet.org.au/cms/isds-sue-governments-tpp-2013>

²⁷ For a detailed assessment of TPP, see

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17005&LangID=E>

²⁸ Human Rights Committee, General Comment No. 26 (1996), para 26; A/HRC/20/27, para 73.

²⁹ ICCPR, article 25.

founded by Kim-Il-sung and since presided over by his direct descendants – has ruled for nearly 70 years. Opposition political parties are not permitted to exist, and challenges to the ruling party are not tolerated. According to the commission of inquiry on human rights in the DPRK, “[t]he police and security forces of the [country] systematically employ violence and punishments that amount to gross human rights violations in order to create a climate of fear that pre-empts any challenge to the current system of government and to the ideology underpinning it. The institutions and officials involved are not held accountable. Impunity reigns... [B]etween 80,000 and 120,000 political prisoners are believed to be currently detained in four large political prison camps”.³⁰ The Human Rights Council expressed its grave concern “at the detailed findings made by the commission of inquiry in its report, including the denial of the right to freedom of thought, conscience and religion, and of the rights to freedom of opinion, expression and association”.³¹

45. The Constitution of Cuba states that the Communist Party “is the superior leading force of the society and the State, organizing and guiding common efforts,”³² effectively eliminating the ability of those with competing ideologies to seriously engage in public life. The rights to freedom of peaceful assembly and of association are guaranteed by the Cuban constitution, but in practice these rights cannot be used to peacefully criticize the ruling party or its policies. For instance, in 2012 a group of protestors were reportedly arrested and physically assaulted by the police when they were peacefully demonstrating in Havana against hunger and poverty in the country.³³ The existence of other political parties was technically legalized in 1992, but none of these groups perform the function of a true opposition party due to the constitutional dominance of the Communist Party and restrictions on campaigning and the conduct of political activities.

46. The enforcement of one-party political structures in Eritrea³⁴, Vietnam³⁵ and Laos³⁶ also pose grave challenges to the enjoyment of assembly and association rights.

47. Similar repression of the rights to freedom of peaceful assembly and of association has taken place in autocracies where all political power is concentrated in the hands of a single person or family, and often passed hereditarily. Saudi Arabia, for example, bans political parties³⁷, criminalizes acts such as “breaking allegiance to the ruler” and “attempting to discredit the Kingdom of Saudi Arabia,” and has frequently detained, imprisoned and otherwise harassed activists and organizations critical of the government³⁸.

48. The Special Rapporteur has previously noted that in Oman – an absolute monarchy – right to freedom to form associations is “virtually non-existent,” with the law requiring government consent, cooperation and control in order to establish a lawful association (A/HRC/29/25/Add.1, para 37). Political parties are banned, participants in peaceful assemblies and/or unregistered associations³⁹ are regularly targeted for harassment by the

³⁰ A/HRC/25/63, para. 56 and 61.

³¹ A/HRC/RES/31/18, OP1(a).

³² <http://www.constitutionnet.org/files/Cuba%20Constitution.pdf>

³³ CUB 5/2011.

³⁴ See A/HRC/29/42, para 34.

³⁵ http://www.constitutionnet.org/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf; VNM 5/2014 and VNM 4/2014.

³⁶ LAO 1/2013, LAO 2/2013.

³⁷ <https://freedomhouse.org/report/freedom-world/2015/saudi-arabia>

³⁸ SAU 14/2014, SAU 11/2014, SAU 7/2014, SAU 6/2014, SAU 5/2014.

³⁹ OMN 5/2014, OMN 1/2015.

State, and at least one advocate for democratic reforms – Said Jadad – was imprisoned after he met with the Special Rapporteur during his official visit to the country in 2014⁴⁰.

49. Bahrain – formally organized as a constitutional monarchy – has embarked on an extensive crackdown on dissent since a large protest movement began calling for greater political freedom, among other things, in 2011. The Special Rapporteur remains particularly concerned about the imprisonment of opposition leader Sheikh Ali Salman⁴¹ and the harassment and detention of human rights defenders involved in organizations defending human rights, including Nabeel Rajab⁴², Abdulhadi Al-Khawaja⁴³, Zainab Al-Khawaja⁴⁴, Dr. Abduljalil al-Singace⁴⁵, and others.⁴⁶

50. The Constitution of the People’s Republic of China formally establishes a multi-party State, but stipulates that the system must be “led by the Communist Party of China.”⁴⁷ Dissent against party orthodoxy is nonetheless severely punished, as starkly illustrated by the crackdown on peaceful pro-democracy protests in February 2011 in several parts of the country, inspired by the Tunisian ‘Jasmine Revolution’. The protestors were calling on the authorities to end the one-party regime. Many of them were arrested and charged with “inciting subversion of State power”.⁴⁸

51. The Special Rapporteur also takes note of multi-party States in which governments impose excessive restrictions, in law and practice, over the assembly and association rights of those not aligned with the ruling parties, who oppose these parties’ policies or who advocate for fundamental social changes. Many of these States have been governed by the same party or individual for decades, including Cambodia⁴⁹, Kazakhstan⁵⁰, Rwanda⁵¹, Zimbabwe⁵². Even in more robust multi-party democracies, dominant parties may sometimes leverage their law-making or executive authority to restrict the assembly and association rights of those who oppose their policies. The Special Rapporteur has observed examples of this in the United Kingdom⁵³, Malaysia⁵⁴ and Canada⁵⁵.

52. The Special Rapporteur emphasizes that the right to freedom of association includes the right to form political parties vying for power and other associations with goals that may be perceived as “political.” Likewise, the right to freedom of peaceful assembly includes the right to engage in political demonstrations. Indeed, one of the core purposes of these rights is to preserve people’s ability to peacefully express their grievances with political leaders. He abhors the increasingly common trend of conflating the interests of the State with the interests of the ruling political party, and believes that this approach to governance is incompatible with the principles of democracy, international human rights law and the spirit of the United Nations.

⁴⁰ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15525&LangID=E>

⁴¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15541&LangID=E>

⁴² BHR 13/2014.

⁴³ BHR 18/2011.

⁴⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15460&LangID=E>

⁴⁵ BHR 4/2011.

⁴⁶ BHR 10/2014, BHR 12/2014.

⁴⁷ http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372962.htm

⁴⁸ CHN 5/2011.

⁴⁹ KHM 2/2014, KHM 1/2014.

⁵⁰ A/HRC/29/25/Add.2.

⁵¹ A/HRC/26/29/Add.2.

⁵² ZWE 3/2013 and ZWE 1/2014.

⁵³ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19854&LangID=E>

⁵⁴ MYS 1/2015, MYS 8/2014 and MYS 6/2014.

⁵⁵ A/70/266, para. 59.

F. Religious fundamentalism

53. There is no shortage of attention given to religious fundamentalism today, with the issue of religiously motivated terrorism in particular receiving near-constant coverage from media, governments and civil society. The Special Rapporteur is extremely alarmed by the rise of extremism and terrorism by groups which mobilize religious ideologies, such as the so-called Islamic State, Boko Haram and others, and views this as among the most troubling problems facing the world today.

54. As an initial matter, however, the Special Rapporteur emphasizes that no single religious group has a monopoly on fundamentalism. In 2015, a Christian fundamentalist in Colorado, the United States of America, attacked a family planning clinic run by the not-for-profit association Planned Parenthood; three people were killed⁵⁶. In recent years, Hindu fundamentalists in India have been responsible for a wave of violence against Muslims and Christians, some of which were motivated by the fact that the latter eat beef⁵⁷ (cows are considered sacred in Hinduism). Meanwhile, in Israel and Occupied Palestinian Territories, Jewish fundamentalists have carried out repeated attacks against Muslims, frequently targeting mosques.⁵⁸ Instances of Buddhist and Islamic fundamentalism are discussed below.

55. These examples of violence are deeply troubling illustrations of how religious fundamentalism of all types can harm the rights to freedom of peaceful assembly and of association. But for purposes of this report, the Special Rapporteur takes a much broader view of religious fundamentalism, and considers it to encompass more than violent, extremist actions or terrorism. Violations connected to terrorism or other extremist acts are relatively rare when compared to less dramatic, everyday abuses. Moreover, the effects and causes of terrorism have been extensively covered in other contexts; as such, they are not the Special Rapporteur's focus in this section.

56. The Special Rapporteur is gravely concerned about States which place excessive restrictions on people's ability to practice the religion of their choice, or impose pressure to abstain from practicing a religion altogether. Such restrictions of course implicate Article 18 of the ICCPR, which protects the right to freedom of thought, conscience and religion. But restrictions on the ability to form religious associations and/or to join religious gatherings also directly implicate the rights to freedom of peaceful assembly and of association. In the Special Rapporteur's view, States cannot claim to uphold assembly and association rights when they criminalize freedom of religious (or irreligious) expression and thought. The right to believe and express thoughts freely is a predicate for the exercise of the rights to freedom of peaceful assembly and of association; the latter rights simply allow likeminded people to collectively express themselves together.

57. Saudi Arabia places severe restrictions on the practice of religions other than the Wahabi variation of Sunni Islam. According to one civil society report, "public non-Muslim places of worship are not allowed, and the right of non-Muslims to practice their religion in private is not fully protected"⁵⁹. Blasphemy (deviation from the State's form of Islam) and apostasy (renunciation of Islam) are criminalized, with the latter carrying the

⁵⁶ <http://thinkprogress.org/justice/2015/12/01/3727084/yes-the-planned-parenthood-shooter-was-a-christian-terrorist/>

⁵⁷ <http://www.dalitcry.org/dalits/Hindu-American-Perspective-On-Beef.htm#.V0hN22YmXgf>

⁵⁸ ISR 7/2013; <http://www.adl.org/israel-international/israel-middle-east/content/backgroundersarticles/price-tag-attacks.html>

⁵⁹ International Humanist and Ethical Union, *The Freedom of Thought Report 2015*, pp. 367-72, <http://freethoughtreport.com/download-the-report/>

death penalty; these crimes and others have been used against activists who criticize State policy⁶⁰. It is also a criminal act of terrorism for an individual or association to call for “atheist thought in any form, or calling into question the fundamentals of the Islamic religion.”⁶¹ It is worth noting in this context that a 2012 Gallup Poll found that 5% of Saudi Arabia’s population identifies as atheist, while another 19% identify as “not religious.”⁶²

58. The Constitution of Iran recognizes only four religious categories: Muslims, Zoroastrians, Jews and Christians⁶³. Those of other faiths are effectively denied the rights to freedom of peaceful assembly and of association in a religious context. Discrimination against those of the Baha’i faith is particularly significant, and members of the community are regularly prohibited from engaging in peaceful assemblies⁶⁴. The Special Rapporteur has received reports of the harassment of officially recognized Christian denominations as well⁶⁵.

59. The list of countries with similar discrimination against minority religions and atheists is too long to recount in this report. According to a 2015 civil society report⁶⁶, atheism is effectively illegal in 19 countries, and punishable by death in 13 of those. “Blasphemy” and similar criticisms against religion are a criminal offense in 55 countries. The Special Rapporteur has grave concerns about the implications of such laws on the rights to freedom of peaceful assembly and of association.

60. A relatively large number of Member States declare an official State religion, though this in itself does not necessarily lead to fundamentalism or undue restrictions on assembly and association rights. In countries where official State religions do exist, the Special Rapporteur believes that strong legal protections for minority faiths are critical, and that no special privileges should be granted to followers of the State religion. Unfortunately, this is not always the case.

61. In Malaysia, for example, Islam is the official religion, and the Constitution protects the right of non-Muslims “to profess and practice” his or her religion.⁶⁷ However, the Special Rapporteur has received complaints that organizations which promote more liberal interpretations of Islam have been harassed by the government, notably by the Wilayah Persekutuan Religious Council (a religious policing institute administered within the Prime Minister’s department)⁶⁸.

62. Religious fundamentalism often has a disproportionate impact upon the assembly and association rights of women. In Latin America, for instance, associations fighting for reproductive rights have faced a strong resistance from the Catholic Church and evangelical Christians who strictly oppose abortion and family planning⁶⁹. The Special Rapporteur in the field of cultural rights has also extensively documented the negative impact that Islamic

⁶⁰ SAU 11/2015.

⁶¹ <https://www.hrw.org/news/2014/03/20/saudi-arabia-new-terrorism-regulations-assault-rights>

⁶² <http://www.winmr.com/web/files/news/14/file/14.pdf>

⁶³ http://www.servat.unibe.ch/icl/ir00000_.html

⁶⁴ International Humanist and Ethical Union, The Freedom of Thought Report 2015, p. 304, <http://freethoughtreport.com/download-the-report/>

⁶⁵ IRN 8/2013.

⁶⁶ International Humanist and Ethical Union, The Freedom of Thought Report 2015, <http://freethoughtreport.com/download-the-report/>

⁶⁷ <http://confinder.richmond.edu/admin/docs/malaysia.pdf>

⁶⁸ See, e.g., submission from Komuniti Muslim Universal (Malaysia) and Muslims for Progressive Values (USA).

⁶⁹ http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/IAD9794%20Repro%20Rights_web.pdf

fundamentalism can have on women's enjoyment of assembly and association rights in a number of countries⁷⁰.

63. The Special Rapporteur is also concerned when ostensibly secular States leverage fundamentalist religious teachings to restrict the assembly and association rights of certain groups. Nigeria⁷¹ and Uganda⁷², for example, have seized upon majority Christian opposition to homosexuality to impose draconian laws that severely restrict the assembly and association rights of LGBTI groups and individuals⁷³.

64. Religious fundamentalism by non-State actors – and the State's active or tacit encouragement of this – frequently results in violations of the rights to freedom of peaceful assembly and of association. Some prominent Buddhist monks⁷⁴ in Myanmar, a Buddhist majority country, have stirred vicious anger and violence against the Rohingya people, a Muslim minority group that is not recognized as a distinct ethnic group by the Government. The Government has reportedly done little in response, leading to repeated outbreaks of violence targeting Rohingya. Moreover, following riots between Rohingya and Buddhists in Rakhine state, the Government imposed Emergency Act 144 in June 2012, which prevented groups of five or more people from gathering in public areas. The ban has reportedly only been enforced against Rohingya. The Special Rapporteur welcomes reports that the state of emergency was lifted in March 2016, but underscores that such blanket bans, especially when enforced against a specific group only, violate the right to freedom of peaceful assembly.

65. The Special Rapporteur emphasizes that States have a responsibility to protect the peaceful assembly and association rights of all people, even if they hold unpopular views or practice a minority faith. This responsibility includes the duty to protect individuals and groups from attacks by non-State actors, and to ensure accountability when such attacks occur.

66. Finally, the Special Rapporteur notes that anti-religious fundamentalism can also be harmful to assembly and association rights as religious fundamentalism. For example, freedom of religion is nominally protected by the constitution of Vietnam, but the Special Rapporteur has received reports that the State harasses unofficial groups which do not submit to regulations imposing intrusive government control over their operations⁷⁵. The Special Rapporteur on the freedom of religion or belief observed after a 2014 visit to the country that “tight control” over official religious communities, and “constant surveillance, intimidation, harassment and persecution” of unrecognized communities (A/HRC/28/66/Add.2). In the Russian Federation, authorities closed down the Local Religious Organizations of Jehovah's Witnesses on the ground that it was an “extremist organization”.⁷⁶

67. The Special Rapporteur believes that anti-religious fundamentalism is often the result of authoritarian tendencies, i.e. a manifestation of a Government's fear that people will look to alternative sources of authority other than the State. He notes that governments which ally themselves with dominant religions may do so for similar reasons: such pairings allow leaders to leverage the authority of the faith for their own political interest, even if

⁷⁰ Bennoune, Karima, *Your Fatwa Does Not Apply Here*, (2013)

⁷¹ NGA 1/2014.

⁷² UGA 1/2014.

⁷³ See, e.g., NGA 5/2011, NGA 4/2013 and UGA 5/2012.

⁷⁴ <http://www.burmapartnership.org/2014/07/burma-must-find-a-path-to-a-more-tolerant-society/>

⁷⁵ VNM 7/2014 and VNM 2/2014.

⁷⁶ RUS 6/2015.

they are not religious in private. In this sense, fundamentalism is often merely a smokescreen – at bottom, it is a vehicle for power.

G. Cultural and nationalist fundamentalisms

68. Cultural fundamentalism has been described as the belief that certain cultures, languages or traditions are ‘better’ than others.⁷⁷ Cultural and national identities are often conflated in notions of cultural and nationalist fundamentalism, for example in the context of immigration. As such, this section covers both cultural and nationalist fundamentalisms as largely overlapping concepts.

69. Cultural and nationalist fundamentalisms are sometimes distinguished from racism and xenophobia, conceptually (because the characteristic in focus is culture or nationality rather than race or skin colour) and rhetorically (to avoid violation of international human rights law). The elevation of a particular (national) culture as superior may not of itself constitute discrimination in the same way that differentiation on the basis of race does. Nevertheless, the Special Rapporteur stresses the dangers that cultural and nationalist fundamentalisms pose to the enjoyment of the rights to freedom of peaceful assembly and of association.

70. Anti-immigration sentiments, often based on cultural and nationalist ideologies, have strengthened the popularity of many right wing political parties, especially in Europe. Nationalist parties in countries like Austria, Switzerland, Hungary and Denmark among others have attracted significant support in recent elections.⁷⁸ The Special Rapporteur is extremely concerned that the acceptance and adoption by political actors of attitudes of cultural or national superiority triggers a process of gradually legitimising racism and xenophobia. This can have devastating consequences, as history has proven time and again. He stresses that States are obliged to take measures to guard against such an eventuality.

71. Political support for cultural or nationalist fundamentalism is not always overt. The discrimination of Rohingya in Myanmar described above, although apparently based on religious differences, also carries political nationalist overtones which have led to, among other things, denial of citizenship for many of the Rohingya population in Rakhine State.⁷⁹ The Special Rapporteur on the situation of human rights in Myanmar has observed with concern calls made by religious leaders and politicians to incitement and hatred against minorities. This includes for example, the involvement of nationalist groups in inciting discrimination and exclusion of the Rohingya, a video on the Internet of a party leader calling for the killing of the Rohingya, the lack of Government condemnation of these discriminatory statements, and the imprisonment of an individual for speech discouraging the use of Buddhism as a tool for nationalist extremism.⁸⁰

72. Cultural fundamentalist and nationalist groups may express these ideologies through protests and rallies. One example is the group Patriotic Europeans against the Islamisation of the West (PEGIDA) in Germany, which believes that State immigration policies are enabling the erosion of Germany’s culture. Rallies by such nationalist groups often attract counter-demonstrators who assemble in support of tolerance and diversity, and the

⁷⁷ UNESCO, NIER ‘Message to the children of the twenty-first century...’ An International Symposium Commemorating the 50th Anniversary of Japan’s Participation in UNESCO p.64. (<http://unesdoc.unesco.org/images/0012/001260/126048e.pdf>)

⁷⁸ <http://www.bbc.com/news/world-europe-36150807>

⁷⁹ Individuals in other categories such as persons of Indian origin as well as children born of Burmese descent outside of Burma also lack Burmese citizenship effectively making them stateless.

⁸⁰ A/HRC/31/77 para. 38, A/70/412 paras 30-31.

management of such assemblies and counter assemblies is of concern. Opposing assemblies are likely to provoke tensions that increase the potential for violence and therefore the need for even-handed management and facilitation by law enforcement officials. In relation to assemblies by the English Defence League (EDL) in the United Kingdom, which opposes perceived Islamism, police have been criticised for employing tactics that dissuaded would-be counter-demonstrators from participating in assemblies. This has led to a perception of bias against Muslim community members, because EDL members were not subject to similar restrictions.⁸¹ The Special Rapporteur stresses that State handling of demonstrations and counter-demonstrations in these contexts should ensure that each group can exercise its rights without undue interference by authorities or opposing rally participants.⁸²

73. Whereas cultural and nationalist fundamentalisms in some countries manifest through exclusion of individuals who do not conform to the ‘national culture’, countries including China and Indonesia seek to assimilate by imposing the dominant or national culture on minority ethnic groups.

74. The Special Rapporteur is concerned about reports of restrictions in the free exercise of religion as a part of cultural life, the use and teaching of minority languages, history and culture and the mandatory use of Chinese in the Tibet and Uighur Autonomous Regions. Further, peaceful demonstrations in the Tibet Autonomous Region against these measures are met with excessive force and arbitrary arrests of demonstrators. Gatherings of individuals, including for religious activities, are frequently impeded by authorities.⁸³

75. In relation to Indonesia, the Special Rapporteur received reports that authorities’ enforcement of the nationalist ‘Unitary State’ ideology extends to the repression of demonstrations by ethnic West Papuans.⁸⁴ He stresses that the State has the responsibility to protect and facilitate protests that advocate for political and cultural views that differ from, and even oppose, those espoused by the Government.

76. Caste-based systems found in some countries in South Asia, the Middle East, Africa, and the Asia-Pacific region are considered to be discrimination on the basis of descent,⁸⁵ but are also illustrative of cultural fundamentalism that violates the rights of those considered to be of inferior status. Caste-based systems are hereditary in nature and determine labour and occupation status, which is confined to menial and so called ‘polluting’ jobs. Caste systems also include untouchability practices based on the belief that contact with individuals from lower castes is ‘polluting’ and discourage or prohibit inter-caste interactions such as marriages, eating together and sharing goods and services.⁸⁶

77. In India, discrimination against individuals of lower caste – Dalits – manifests in various ways including a lack of access to justice, threats to life, sexual and gender violence against women and girls, among others. Protests by Dalits are often met with violence and excessive use of force by upper-caste individuals and law enforcement officials. Dalit

⁸¹ NETPOL Report on the policing of the English Defence League and Counter Protests in Leicester on 4th February 2012, <https://netpol.org/wp-content/uploads/2012/12/Report-on-the-Policing-of-the-EDL-and-Counter-Protests-in-Leicester2012.pdf>

⁸² A/HRC/31/66, para. 24.

⁸³ A/HRC/22/67, p. 68; A/HRC/22/47/Add.4, paras. 90-95.

⁸⁴ Submission by International Coalition for Papua (ICP), Tapol and Franciscans International.

⁸⁵ Caste systems are found in various countries including India, Nepal, Sri Lanka, Japan, Yemen, Mauritania, Madagascar, and Senegal (A/HRC/31/56 paras. 31-45); CERD general recommendation no. 29

⁸⁶ A/HRC/31/56 para 28.

activists are also detained and prosecuted on serious charges such as terrorism.⁸⁷ At the multilateral level, India has placed impediments to the accreditation before the UN Committee on NGOs of the Economic and Social Council, of the International Dalit Solidarity Network, an international non-governmental organisation focusing on caste-based discrimination and other forms of discrimination based on work and descent.⁸⁸

78. In Mauritania, the Haratine community is considered the ‘slave caste’ and a large proportion are victims of slavery and slavery-like practices.⁸⁹ Anti-slavery activists and organizations reportedly face repression for their activities from the Government, including harassment, intimidation and arbitrary arrests.⁹⁰ In particular, members of the Initiative for the Resurgence of the Abolitionist Movement – Mauritania (IRA-Mauritania) and the NGO l’Education et Travail pour le Progrès des Droits de l’Homme (KAWTAL) were arrested in November 2014 while participating in a campaign against slavery that included rallies, public meetings and lectures. Several activists were imprisoned in 2015 following conviction on charges that included taking part in an unauthorized assembly, rebellion and failing to comply with police orders and resisting arrest.⁹¹

79. As with the other expressions of fundamentalism described above, the Special Rapporteur considers that individuals, groups or authorities that employ or acquiesce to the use of cultural and national superiority arguments often seek to exercise power over minority populations. He urges the promotion and protection of diversity and tolerance as a means to ensuring the effective exercise of the rights to freedom of peaceful assembly and of association, strengthening social cohesion and democratic governance and preventing conflict.

IV. The role of assembly and association rights in the context of rising extremism and radicalization

80. As detailed above, the Special Rapporteur interprets fundamentalism as a broad phenomenon that can just as often express a majority view as a minority one. He frames extremism as something different for purposes of this report: The advocacy of extreme or radical measures, such as violent overthrow of a government, violence and terrorism. Extremists frequently hold fundamentalist views and act in the name of those views, but the two phenomena are not always linked. The Special Rapporteur is deeply concerned about the growth of extremism in the world today and believes that it is a major contributing factor is the on-going global crackdown on democratic freedoms, including the rights to freedom of peaceful assembly and of association⁹².

81. People have an instinctive need to take part in the societies in which they live – to have some control over their destinies, to voice their discontents and to improve their lives. This need has only been magnified in our age of abundant information, where people are even more acutely aware of the injustices that plague our world. People today are more connected, more informed of their rights, and probably more emboldened to seize those

⁸⁷ Human Rights Watch, Center for Human Rights and Global Justice, *Hidden Apartheid* pp 78-79, https://www.hrw.org/sites/default/files/reports/india0207webwcover_0.pdf

⁸⁸ A/69/365, para. 74.

⁸⁹ A/HRC/31/56, para 39.

⁹⁰ Submission by Freedom Now.

⁹¹ A/HRC/29/25/Add.3 p. 97.

⁹² The Secretary-General’s recent report on countering violent extremism discusses, concurs, citing “poor governance, violations of human rights and the rule of law” as a driver of extremism. See A/70/674 paras 24-31.

rights than at any time in history. They have a vision for the world that they live in, and they want to take part in it. The Special Rapporteur believes that this desire to engage and improve is fundamentally positive, and is one of the important driving factors in human progress. But in order for this desire to be productive and peaceful, people must be given the right tools.

82. The rights to freedom of peaceful assembly and of association are precisely these tools. They allow people to come together to share their experiences, to challenge the status quo, and to identify and solve problems. They allow us to build stable, peaceful, inclusive and prosperous societies sustainably. Assembly and association rights are also platforms for the exercise and promotion of other civil, cultural, economic, political and social rights (A/HRC/23/39). Shutting down a humanitarian NGO, for example, is not only an affront to those who operate the NGO; it also hurts those who benefit from the NGO's work.

83. Unfortunately, the tools of peaceful assembly and association are being taken away at an unprecedented rate across the world today. Data from one civil society organization indicates that between 2004-2010, more than 50 countries considered or adopted measures for restricting civil society⁹³. Another study found that 96 countries have recently taken steps to inhibit NGOs from operating at full capacity⁹⁴. States across the globe, meanwhile, are using the fight against extremism as an excuse to restrict fundamental human rights, when they should be expanding them.

84. The Special Rapporteur himself has extensively documented the trend, looking at growing restrictions on civil society's ability to access resources (A/HRC/23/39), restrictions on assembly and association rights in the context of elections (A/68/299), States propensity to favor businesses over non-profits (A/70/266), restrictions on people's ability to engage over natural resource exploitation (A/HRC/29/25) and more. The effect of this growing wave of restrictions is that people now have less space to peacefully engage in decisions that profoundly affect their lives.

85. Denying people space for peaceful, legal and constructive engagement does not make their feelings of anger, despair and dissatisfaction go away. To the contrary, it simply pushes these feelings underground, where they can fester and turn violent. Extremism thrives in such environments, because it is the only option left.

86. This is what happened in Syria, Libya and elsewhere. Opposition and dissent were long repressed, impeding the growth and maturity of peaceful, constructive civil society organizations. Instead, when the governments of these countries were overthrown, extremist groups – including from outside the country – were best prepared to step in and fill the power vacuum. They are the product of a system that gave no space for peaceful civic engagement. In Tunisia, by contrast, civil society was more developed than in most other places in the Arab world. It has been indispensable to the relative, albeit uneasy, stability, and won a Nobel Peace Prize for its contributions⁹⁵.

87. States which claim to be fighting terrorism yet at the same time restrict civil society are playing with fire. The existence of a robust civil society and respect for human rights in general is critical in combatting extremism, and in channelling dissent and frustrations in a legitimate way through the system. In a democratic environment, civil society gives States a legitimate and open partner that it can work with, and it expresses people's views in an open and transparent way. The exercise of peaceful assembly and association rights encourage freer discussion between ordinary people, which can build relationships, increase

⁹³ <http://www.icnl.org/research/journal/vol17ss1/Rutzen.pdf>

⁹⁴ <http://www.civicus.org/index.php/en/media-centre-129/reports-and-publications/socs2015>

⁹⁵ https://www.nobelprize.org/nobel_prizes/peace/laureates/2015/press.html

social cohesion and encourage tolerance. All of this helps foster moderation and counter extremist tendencies and will yield more sustainable results than short-term suppression.

88. The Special Rapporteur agrees with the High Commissioner for Human Rights that Member States must move away from a “hard security” approach, focusing instead on human rights and “promoting resilience” in communities, so that people “feel they have space to freely express themselves and fully participate in political life and public affairs.”⁹⁶

89. He is disturbed by the apparent consensus among some States that assembly and association rights are dangerous, that they cause chaos or even foster extremism and terrorism⁹⁷. He categorically rejects this view and underscores that limiting these rights will not contain the spread of extremism (A/HRC/31/65 para 49). It is the suppression of peaceful assembly and association rights that is dangerous, especially in the mid- and long-term. He urges Member States not to propagate the rhetoric of fear in the fight against extremism. The rights to peaceful assembly and of association do not inherently encourage extremism, chaos, or violence. They are, in fact, the best antidotes we have against all of these ills.

V. Conclusion and recommendations

90. **Fundamentalism is one of the overriding preoccupations of our time, but the Special Rapporteur believes our understanding of this phenomenon remains clouded. Fundamentalism is not simply about terrorism, extremism or even religion. It is, at bottom, a mind-set based on intolerance of difference – whether religious, secular, political, cultural, economic or otherwise. Such mind-sets do not, in and of themselves, constitute violations of the rights to freedom of peaceful assembly and of association or other rights. But they can form the ideological basis for such violations. In the worst cases, they can also motivate extremist actions.**

91. **The Special Rapporteur emphasizes that the rights to freedom of peaceful assembly and of association are due to everyone without distinction. This includes both those who hold fundamentalist views and those who hold differing views. The rights to freedom of peaceful assembly and of association play a key role in promoting tolerance, broadmindedness, diversity and pluralism. States must walk a fine line balancing the rights of various groups, and ensuring that one group is not favoured, either in policy or practice. Such rights must therefore not only be protected, but also facilitated.**

92. **In this regard, the Special Rapporteur reiterates recommendations made in previous reports to the extent applicable in this context, and makes the following recommendations to States:**

(a) Ratify all relevant international human rights instruments that protect the rights to freedom of peaceful assembly and of association;

(b) Take all necessary measures to ensure that discrimination on prohibited grounds under international human rights law is eliminated, including in legislation or in practice, whether perpetrated by the State or by non-State actors;

⁹⁶ <http://www.ohchr.org/EN/NewsEvents/Pages/ViolentExtremism.aspx?platform=hootsuite>

⁹⁷ ETH 2/2015;

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16966&LangID=E>;

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16709&LangID=E>;

<https://www.cambodiadaily.com/news/government-releases-video-warning-excessive-rights-use-113193/>

(c) Take positive measures, including affirmative measures, to ensure that all individuals belonging to groups at risk of being targeted by fundamentalists have the ability to exercise effectively their rights, including to freedom of peaceful assembly and of association;

(d) Ensure that no individual is criminalized for exercising his/her rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals;

(e) Ensure that administrative and law enforcement officials are adequately trained to respect and protect the rights of individuals who may be at risk of being targeted by fundamentalist groups while exercising their rights to freedom of peaceful assembly and of association, in particular in relation to their specific protection needs;

(f) Ensure that law enforcement authorities who violate the rights of individuals belonging to groups at risk of being targeted by fundamentalist groups are held personally and fully accountable by an independent and democratic oversight body and by the courts of law;

(g) Establish or strengthen oversight mechanisms, for example through parliament or human rights institutions, to identify and deal with practices of fundamentalism restricting assembly and association rights by State and non-State actors;

(h) That States use ordinary provisions of the Criminal Code to prosecute extremist or terrorist acts, and refrain from enacting legislation that specifically targets religious activities, religious organizations, civil society, human rights defenders and activists;

(i) States should become less restrictive in their approach to regulating civil society and the rights to freedom of peaceful assembly and of association, and recall that democracy, tolerance and inclusiveness are among the most reliable indicators for long-term security, prosperity and moderation.

93. The Special Rapporteur again encourages the Human Rights Committee to consider adopting general comments on articles 21 and 22 of the International Covenant on Civil and Political Rights, with a particular focus on the related challenges posed by fundamentalism and groups at risk of being targeted by fundamentalists.

94. The Special Rapporteur encourages States and civil society groups to create and expand initiatives to educate people, particularly the youth, on the importance of pluralism, tolerance and diversity in democratic societies.

95. He further recommends that civil society strengthen research, monitoring and documentation of violations of peaceful assembly and association rights in the context of fundamentalism.

96. Religious leaders in particular must make greater efforts to foster dialogue and tolerance between their followers, other religious communities, and non-religious communities. They should unequivocally condemn the use of violence and make it clear that those who use or advocate violence are not legitimately acting in the name of their faith.

97. Finally, the Special Rapporteur recommends that States, civil society organizations, multilateral institutions and other donors increase funding for the promotion of democracy, particularly for local organizations and activists. The Special Rapporteur views the strengthening of democracy as the best long-term

strategy for countering extremism, as people are less likely to act upon extreme or violent views when they feel that they have a stake in their society.
