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SPECIAL ISSUE: AN INTERVIEW WITH MAINA KIAI, THE NEW UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION

Letter from the Editor

On September 30, 2010, the United Nations Human Rights Council (UNHRC) passed a *Resolution on the Rights of Freedom of Peaceful Assembly and of Association A/HRC/RES/15/21*. The resolution was co-sponsored by 63 countries and passed by consensus. A cross-regional group co-tabled the resolution, supported by ICNL and other civil society organizations.¹ The resolution reaffirms that “everyone has the rights to freedom of peaceful assembly and of association,” and that “civil society makes a valuable contribution to the achievement of the aims and principles of the United Nations.”² The resolution also calls upon States to ensure these rights by taking “all necessary measures” to abide by obligations under international human rights law. Most importantly, the resolution creates the first-ever UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.

In April 2011, Maina Kiai was appointed by the UNHCR as the first Special Rapporteur on the rights to freedom of peaceful assembly and of association. Maina Kiai is a well known Kenyan lawyer, human rights defender, and film-maker. For over twenty years, he has worked to defend human rights and campaign for constitutional reform in Kenya. He is the founder of the unofficial Kenyan Human Rights Commission, and served as Chairman of Kenya’s National Human Rights Commission. Mr. Kiai has also served as Director of Amnesty International’s Africa Program, and as Africa Director of the International Human Rights Law Group (Global Rights). Most recently he has employed television and film to inform and educate citizens about their rights.

The International Center for Not for Profit Law (ICNL) is proud to bring this interview with Mr. Kiai.

¹ For a discussion of the process leading up to the passage of this resolution, please see <http://www.icnl.org/knowledge/news/2010/10-07.htm>

² United Nations Human Rights Council Resolution A/HRC/RES/15/21, available here: <http://www.icnl.org/knowledge/themes/dcs/UNHRCResolution.pdf>.

ICNL: Since the mandate is new, could you describe your understanding of the main role of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association?

Mr. Kiai: The mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association was established through the United Nations Human Rights Council resolution. The resolution determines what I can do and what I can't do.³ As you mentioned, the position is new so I will have to define how this role will exist between the other existing UN mechanisms such as the Special Rapporteurs on the situation of human rights defenders, on the promotion and protection of the right to freedom of opinion and expression, and religion or belief. In terms of how I'll do it, to some extent, well, that's up to me, to be honest.

But there are a number of things that are a given. There is a complaint mechanism. There is an urgent action mechanism, and there is an allegations mechanism. These will certainly be included. I think the rest of it is dependent upon having adequate funding to be able to do all that should be done or could be done. There are limited funds from the United Nations to carry out this mandate, and, as you know, this is a volunteer position. So there are limitations in that sense. Also, the position is for a three year term. So you want to be able to look at it from a three year perspective and achieve what can be achieved.

ICNL: What interested you about the position? Why did you want to be nominated?

Mr. Kiai: I think one of the most influential roles that any human rights defender can play is being a UN Special Rapporteur. The Special Rapporteur is a unique position in that it has the United Nations behind its mandate but is independent, and that's a wonderful combination. So you are independent, but you're also a part of the United Nations - you've got the membership buy in as well, yet you retain the freedom to think and to perceive things independently, and do something to the best of your ability.

And I believe, over and over it's been clear that the Special Rapporteur's role is one of the most influential in terms of advancing the cause of human rights across the world, and I think that is something that anybody who's worked in human rights around the world values. But also I think in terms of freedom of association and assembly, specifically -- this is an important area in which I have worked - through my work with NGOs, national human rights institutions, and other organizations; and which has been part of my life as a human rights defender. I think this is a big role.

³ According to UNHRC RES/15/21, 5 a-h, the tasks of the Special Rapporteur on the rights to freedom of peaceful assembly and of association will include: Gathering relevant information, to study trends, developments and challenges in relation to the exercise of the rights to freedom of peaceful assembly and of association; reporting on violations of these rights or the abuse of those exercising these rights; and making recommendations on how to ensure the promotion and protection of these rights, without duplicating the efforts of other mechanisms.

The position is very attractive because you have a chance to advance the cause by engaging governments and NGOs at a different level.

ICNL: How will you use your experience as a filmmaker to support freedom of association and assembly?

Mr. Kiai: It'll be interesting – I'm not quite sure yet how all my past experiences will influence this position. But of course one tries to use the benefit of all of his experiences in whatever he's doing. The work I've been doing making documentaries and working at the grassroots has really been about freedom of association and freedom of assembly. I'm encouraging non-violent peaceful action where there is a need and doing it properly and organizing. I think human rights are best protected from the ground, at the grassroots.

ICNL: What do you see as the major challenges to the advancement and protection of freedom of assembly and association?

Mr. Kiai: Well, I think, broadly speaking, there are two major challenges. One is that we have to understand that these are actually two very specific rights we're dealing with, rather than one. We often in the human rights community say it as though it's one, freedom of assembly, freedom of association. But I think the events, particularly over the last six months, have shown that these are actually two separate freedoms. Assembly is not the same as association.

And I think the first thing I will do, at least operationally, is to make that distinction very clear so that one does not suffer at the expense of the other. In terms of attention, I'll have to operationally devise a way in which I can work on both concurrently and put enough attention and enough resources, if I can raise independent resources, into both. I think that's very, very important.

Secondly, I think one has to say that in terms of freedom of assembly, a major challenge is how we operationalize peaceful protests and peaceful assembly? Because that's very, very important, it is a right guaranteed by international conventions and many local laws. The critical issue, of course, is the limitations imposed on the freedom of assembly, and how we evaluate those limitations within the context of international human rights law and international rights standards. That's an important one.

And the same thing with the freedom of association in terms of, again, are people allowed to form associations freely under reasonable conditions? There are a lot of arguments back and forth about whether there's adequate room for association in many places, and what it means to have limitations on association because the purpose of the association is a negative one. That's something that will be interesting at a very conceptual level to look at.

For example, should people have the right to form racist associations? People will provide many different answers to this question. Some people will say, "Yes. As long as you're not being violent and you're not inciting people to violence its fine." Others say, "No. There have to be limitations." I think it will be good to ask these types of questions. These are issues that will be interesting to explore through the mandate during my term. So it's going to be an interesting intellectual and conceptual discussion.

ICNL: What are your short term goals?

My approach at this point, first of all as mandated by the resolution but also I think in terms of good practice, is to engage in a consultative process at the very beginning with governments, with civil society organizations, at the grass roots and regional levels. During my first year in the position, I must prepare a report that provides details about how this mechanism will work. In order to do this, I will consult with key stakeholders. I want to hear from NGOs and from governments about their views. I will identify what are the best practices? What's a bad practice? What can we learn from a wide range of experiences?

So that's the first point of call. After that then I will take what I learn from those consultations and decide on a work plan to see what's best to do.

Of course, I'm expecting quite an avalanche of communications from various sources; especially from persons who believe their rights are being abused. These will be responded to and we'll see where they go. These communications will also help to determine where I go and how I do it, to a very large extent.

ICNL: What are your long term goals for the office?

Mr. Kiai: The long term goal is what the resolution says: to better promote and protect the rights to freedom of peaceful assembly and of association. That is the long term goal, and the development of frameworks and guidelines that can better realize this goal.

ICNL: Yes. The mandate has the broad goal of promoting the rights and supporting the rights, but realistically, considering the limitations on all resources, what are one or two things that you would like to achieve over the course of your term?

Mr. Kiai: I think it's very hard to answer that now. At this point, I've just been given the mandate, nothing has actually happened, and there are a lot of issues to be thought through and worked through.

I think these goals will reveal themselves after the consultations. I do not want to preempt the discussions and consultation I will have. That input for me is going to be critical and I really will value it very much. I want to hear what people have to say. And I think it will be different in different countries, and in different regions.

I think the issues may not be the same in Asia as the issues in North America. What the issues are in Europe may not be the same as they are in parts of Southern Africa. So it's hard to, to say a one size fits all approach. I think it may actually end up being quite regionally specific, if not country specific.

Also, I think establishing these goals will be a function of available time and other resources. I mean this is not a full time thing for me, and so I'll have to gauge what is available and what can realistically be done.

ICNL: You mentioned undertaking a consultative process that included seeking input from NGOs, are there other ways that you plan to involve civil society in your work?

Mr. Kiai: Absolutely. I would like their input into what I'm doing as I'm doing it, and this is open to everybody, whoever has an opinion, whoever has an issue. It could be a complaint. It could also be a report on recent events that have happened, please send them over to the Rapporteur; that would be wonderful. I hope to work closely with civil society to try and see how we can better protect and promote the rights of free assembly and association within the frameworks of international law.

ICNL: And how might the international community assist you?

Mr. Kiai: I think the first part of it, of course, has to be providing moral support and being open. Because this is a new mandate, it's going to be a bit tricky as we go along. There are no precedents in this particular mandate, although there are many precedents in other mandates; so just their support is going to be crucial.

Secondly, opening up doors and having open dialogue will be important. I intend to have a pretty open approach. I will not prejudge situations until I have studied them. It is my wish that the international community plays a role in assisting the facilitation of the mandate because I have a very strong sense that the demands and expectations will far exceed the resources available to the mandate at this point.

Perhaps most importantly, I will need the international community's support in encouraging states to allow me to visit. Because there's no other way my position will be effective without state cooperation.

ICNL: The Inter-American Commission may institute new mechanisms to protect and promote freedom of assembly and association. You mentioned the limited resources available to support the mandate as an issue that will influence your work. Have you thought of how you might work with regional mechanisms to provide additional support to your mandate?

Mr. Kiai: I think this is important. One of the important things to understand is that the UN mechanism can and should be replicated, if possible, at the regional levels. So, I certainly would encourage the Inter-American Commission to go ahead and create a

mandate. I think it would be a great opportunity, if they also create a Rapporteur; I would be happy to work together. I think both Rapporteurs could learn from each other and feed off each other and see where we could go, and I think that would be wonderful.

I am more than happy to support whatever is developed by the Inter-American Commission. I am happy to work with them and see if we can jointly expand and explore the freedom of assembly and association rights.

ICNL: Have you thought about how you may utilize new social media/networks in carrying out your mandate? Could these technologies make up for some of the limitations on your resources?

Mr. Kiai: Yes, but to be honest, virtual stuff often favors the rich countries. As a product of the global south, so to speak, I am happy to use new media; however, there are limitations to its usefulness in this context. And secondly, to be honest, often times the best way to understand someone is through face to face communications. So you can't always substitute virtual media for one on one communication. The impact of face to face and having boots on the ground should not be diminished.

I also believe that if you emphasize more of the virtual stuff then the global south may lose out. People don't have as much access to these technologies as people in the north. People don't have as much – and when they do have connectivity it is often very poor, not great. So it does not end up being as useful in the south as it is in the north.

I want to be very careful so that the material and the influence I receive is not just from one part of the world.

ICNL: Is there anything else you think that our readers should know about your role? Or is there anything that our readers might be able to do to help support you?

Mr. Kiai: Yes. Whatever the readers can do to encourage State cooperation, to open up and partake in a dialogue with me would be extremely helpful. Whatever the readers can do to provide assistance when I need it, as I'm certain I will, would be a wonderful help. There's a lot to be done. It's a wonder that the Special Rapporteur system is one of the most effective parts of the UN's human rights system, given it has so little resources. But it certainly will be interesting.

I go into this with my eyes wide open. I'm actually quite excited to be able to participate and to contribute whatever I can towards the better protection and promotion of the rights of freedom of peaceful assembly and association.

ICNL: Thank you very much. We appreciate you taking the time to speak with us, and wish you success in your work.