



SUPPLEMENTARY HUMAN DIMENSION MEETING

Freedom of Assembly and Association

**8 – 9 November 2012
VIENNA**

FINAL REPORT

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I. EXECUTIVE SUMMARY

The second Supplementary Human Dimension Meeting (SHDM) in 2012 was dedicated to freedom of peaceful assembly and association and the role of new technologies in respect of these two fundamental rights. It brought together 246 participants, including 105 delegates from 45 OSCE participating States, 6 representatives from 3 OSCE Partners for Co-operation States, 119 representatives of 102 non-governmental organizations, 10 representatives of 8 OSCE Field Operations, 3 participants from 1 OSCE Institution, and 3 representatives of 3 international organizations.

The meeting was organized into three sessions:

- Freedom of Association: obstacles to the full realization of this right and ways to overcome them;
- Freedom of Peaceful Assembly: new challenges and opportunities for dialogue;
- Freedom of Peaceful Assembly and Association: the role of new technologies.

II. SYNOPSIS OF THE SESSIONS AND RECOMMENDATIONS

This section summarizes the discussions which took place during the opening session and the three thematic sessions and presents recommendations made by participants. The recommendations were directed towards a variety of actors, in particular: OSCE participating States, OSCE institutions and field operations, civil society actors and representatives of international organizations. These recommendations have no official status and are not based on consensus. The inclusion of a recommendation in this report does not suggest that it reflects the views or policies of the OSCE. Nevertheless, these recommendations serve as useful indicators for the OSCE to reflect on how participating States are meeting their freedom of peaceful assembly and association-related commitments and their views on OSCE/ODIHR freedom of peaceful assembly and association-related follow-up.

OPENING SESSION

Opening remarks were delivered by Ms. Martina Feeney, Deputy Head of the Permanent Mission of Ireland to the OSCE – on behalf of Ambassador Eoin O’Leary, Head of the Permanent Mission of Ireland to the OSCE – and by Ambassador Janez Lenarčič, Director of the OSCE/ODIHR, followed by the keynote speech of Mr. Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.¹

Ms. Martina Feeney explained that the Irish Chairmanship of the OSCE had decided early on that they wanted to focus on freedom of assembly and association during their

¹ The texts of the opening session remarks and keynote speech can be found in Annexes 2 and 3.

term-in-office because these rights underpin the implementation of so many other civil and political rights of all individuals. She underlined that the approach adopted by an OSCE participating State towards peaceful assemblies can also serve as a litmus test of the overall commitment of authorities to human rights on a wider scale. Similarly, the denial of the right to associate can amount to denial of participation in a democratic society. Noting that new technologies are increasingly being used as a platform for the exercise of human rights and fundamental freedoms, Ms. Feeney emphasized that the Internet is also misused to limit, hinder, control, monitor and manipulate the exercise of freedom of assembly and association. In conclusion, Ms. Feeney welcomed the opportunity presented by this SHDM to address important issues concerning the promotion and protection of the aforementioned freedoms by State authorities.

Ambassador Lenarčič noted that ODIHR and the Irish Chairmanship facilitated the organization of a Civil Society Forum on 7 November in Vienna, where a large number of civil society representatives from across the OSCE region and the OSCE Mediterranean Partners for Co-operation engaged in lively and fruitful debates on freedom of peaceful assembly and of association and new technologies. He noted that their recommendations and conclusions would be most helpful, given that civil society representatives are in a unique position to best describe the challenges they face related to the exercise of the two fundamental freedoms.

Ambassador Lenarčič recalled that OSCE participating States have detailed commitments relating to freedom of peaceful assembly and association, also covering such aspects of association as the freedom to found and join trade unions or political parties. However, he noted that the real challenge is how to implement OSCE commitments to ensure that such rights are respected in practice, how to achieve the right balance between human rights of the individual and the State's obligation to maintain public order and national security. OSCE participating States' laws must reflect OSCE commitments, and must be clear and foreseeable enough to leave no space for arbitrary interpretation and application.

Ambassador Lenarčič recalled that for many years now, ODIHR has reviewed draft and existing legislation of OSCE participating States regulating assemblies and different types of associations. ODIHR is also involved in monitoring the respect of freedom of peaceful assembly on the ground, by conducting its own monitoring of assemblies and by building the capacity of civil society organizations and OSCE field operations to monitor assemblies. ODIHR has created associationline.org, a web-based interactive guide to freedom of association for government authorities and civil society, containing key principles and international standards related to freedom of association. Ambassador Lenarčič pointed out that for the first time, the agenda of this SHDM includes the issue of how new technologies affect these key human rights.

The keynote speaker, Mr. Maina Kiai, stated that, in every part of the world, States are increasingly repressing the enjoyment of freedom of assembly and association by enacting restrictive legislation or by implementing similarly restrictive practices. Regarding freedom of association, Mr. Kiai pointed out that the issue of restricting access to funding, particularly foreign funding, needs to be unpacked as it is fast becoming

one of the favoured tools to control, limit and weaken civil society, across the world. Regarding freedom of assembly, Mr. Kiai recalled that a variety of gatherings should be allowed, including spontaneous demonstrations, simultaneous assemblies and counter-demonstrations; that protestors should be able to get their message across to their target audience expediently and peacefully; and that law enforcement agencies should approach the policing of gatherings in a facilitative manner. Mr Kiai noted that more and more organizations and people are using Internet and social media to receive, disseminate and share news and information, to associate with online groupings, and to hold meetings and discussion groups. However, he described a worrying trend in the use of technology by States to control or manipulate the flow of information and communications, notably by unjustifiably blocking websites and by using surveillance tools to track online activities.

Mr. Kiai noted that meetings like this SHDM that bring together States and civil society to deliberate on ways of addressing challenges to the full enjoyment of rights are essential to foster a common understanding of what the standards are, to exchange best practices and to develop effective strategies. Finally, Mr. Kiai recommended that the OSCE/ODIHR establish a tool on the policing of assemblies that would look at training of police, their monitoring and how they are held accountable for breaches, as a further progression of the excellent work ODIHR has been doing on monitoring of assemblies.

SESSION I: FREEDOM OF ASSOCIATION: OBSTACLES TO THE FULL REALIZATION OF THIS RIGHT AND WAYS TO OVERCOME THEM

Moderator: Ms. Emel Kurma, Executive Coordinator, Helsinki Citizen's Assembly, Turkey

Introducer: Mr. Serghei Ostaf, Member of ODIHR Panel of Experts on Freedom of Peaceful Assembly, Director of the Resource Centre for Human Rights (CReDO), Moldova

The first session provided participants with the opportunity to discuss freedom of association and challenges faced by various types of associations, including non-governmental organizations and political parties, throughout the OSCE region.

Mr. Serghei Ostaf recalled that, according to international standards, the registration of a Civil Society Organization (CSO) was not necessary for it to become operational and active. However, in some participating States, there is a strict requirement (or *de facto* strict enforcement) to register the organization in order to organize public events, or rent spaces for holding events; and in some others, there is no recognition of the role of the representation of the interests of citizens by non-registered groups.

Should an association decide to register, Mr. Ostaf recalled that registration requirements and procedures in place in OSCE participating States should be nondiscriminatory, clear and accessible and the procedure straightforward and non-burdensome. Requirements on citizenship, an excessive number of founding members, territorial limitation, non-

exhaustive list of documents, lengthy and costly registration procedures, unjustified and long periods of time for the processing of documents, excessive specific linguistic requirements can be very inhibitive and discriminatory to register a CSO. However, Mr. Ostaf noted that issues of concern remain regarding, among others, the refusal of registration by authorities on the grounds that the scope of the organization is not opportune, or because the procedural requirements are unclear and thus left to the interpretation of responsible public servants.

Regarding the refusal of registration, Mr. Ostaf recalled that its grounds should generally not relate to the intentions or content and objectives of the group but rather to actions that raise substantial concern of constitutionality or, in the presence of imminent and conclusive evidence, are in violation of the Constitution.

The last point made by Mr. Ostaf concerned income generation activities and financial support. He noted that CSOs with legal personality must be able to carry out economic activities, with the profits being used to finance their objectives, without being obliged to obtain a special authorization. Eligibility for public assistance, including tax concessions, must be set out on the basis of clear and objective criteria, such as the CSO's public interest function, and must be transparent.

The subsequent discussion showed that the registration of associations was a major issue of concern for civil society participants. Many of them noted that burdensome and sometimes mandatory registration procedures were particularly worrying. A participant mentioned that some NGOs were now registering as companies to avoid the restrictions imposed on the registration of NGOs. Some specified that restrictions on registration in several participating States were particularly targeting minorities, including sexual, religious and regional minorities. In these cases and others, the name, activities or purpose of the NGO were at stake; registration of NGOs was rejected due to the use of names of organizations banned by relevant legislation. The obligation of registration of associations that have a certain number of members was also criticized by some participants. A participant noted that NGOs should be more active in their solidarity to protect the exercise of freedom of association of other NGOs in the OSCE region.

Particular emphasis was also placed on activities of foreign NGOs and foreign funding. Participants pointed out that new legislation in some participating States restricting the allocation of foreign funding to NGOs was particularly harmful for the sustainability of civil society associations. A participant proposed that there be common standards in OSCE participating States regarding donor assistance in support of NGOs. The need for authorization for foreign non-governmental organizations to operate in a country was also pointed out as an issue of concern in some participating States. Generally, it was noted that recently States appeared to be sharing "bad practices" rather than good ones.

Recommendations from discussions at the Civil Society Forum that took place prior to the SHDM on 7 November 2012 were presented by the moderator of the first session at that Forum. They focused on the need to facilitate the technical nature of the registration process, which should be non-discriminatory and protect the data of the respective

organizations and members. At the same time, the sustainability of non-governmental organizations was considered paramount, and it was recommended not to limit the modalities and manner of fundraising for this purpose.

A number of speakers encouraged participating States not to impose liability and sanctions that would specifically target associations or human rights defenders, even in the absence of unlawful behaviour. Targeting members and holding them liable was described by some participants as a means used by some governments to weaken associations.

Numerous participants commented on the international standards on freedom of association, asserting that they were too general and leaving too much room for interpretation by State authorities. Many participants thus expressed a need for further precision and clarification of these international standards.

Finally, civil society participants expressed the willingness to be more involved in legal reform efforts pertaining to freedom of association. Some pointed out that draft bills should be public and transparent and accessible by NGOs.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association Maina Kiai concluded by adding that the global community needs to move away from double standards; with regard to freedom of assembly, there is no country where pro-government gatherings have ever been stopped. If the assembly is peaceful, he added, then the content or slogan should not matter, and the same rules should apply to everyone, those protesting against as well as those expressing support for the government.

The following specific recommendations were made in Session 1:

Recommendations to OSCE participating States:

- OSCE participating States are invited to adopt the 8 EU Principles on Freedom of Association in a Ministerial Council Decision;
- OSCE participating States should deliver on their commitments and take measures, in particular by agreeing to decisions to defend freedom of peaceful assembly and association at the upcoming Ministerial Council meeting, and reiterate that fundamental freedoms should not be restricted for minorities, be they sexual, ethnic, or other;
- OSCE participating States should take new steps to address homophobia and transphobia, and should ensure that LGBT associations are equally represented in decision-making processes related to the field of human rights;
- Governments of OSCE participating States should repeal restrictive legislation affecting the freedom of association, and ensure that freedom of association standards are properly implemented;
- OSCE participating States should not prevent civil society organizations from obtaining funds, be it from national, international or foreign sources;

- OSCE participating States should have an environment and legislation allowing all people to associate without discrimination, and in accordance with OSCE commitments and standards;
- OSCE participating states should endorse the Istanbul principles and international framework for the effectiveness of civil society organizations;
- OSCE participating States should refrain from creating possibilities for the arbitrary dissolution and refusal of registration of associations, and should also refrain from the presumption of liability of NGOs, and instead rely on criminal laws for individual liability, if necessary;
- OSCE participating States should ensure that funding for NGOs is transparent, and information on it accessible also via social networks and social media;
- OSCE participating States should develop legal instruments protecting and allowing proper funding for minorities to associate, including transparent, prompt, non-bureaucratic and inexpensive registration procedures, to ensure that the legal status of minority groups is not suspended or withdrawn, and that such groups may only be dissolved by court decisions;
- OSCE participating States should ensure that NGOs have rights, not only obligations, and that registration is not necessarily compulsory; laws should not limit rights unduly and disproportionately, and should in any case provide for the possibility of appeals;
- Bills prepared in OSCE participating States in relation to legislation on associations should be public and transparent and accessible to NGOs;
- OSCE participating States should set up a voluntary fund for the protection of human rights defenders;
- OSCE participating States are called upon to officially invite the UN Special Rapporteur on the Right to Peaceful Assembly and Association to visit their countries;
- OSCE participating States should capitalize on the idea to prepare guidelines on freedom of association, and expand on existing ODIHR good practices;
- EU Guiding Principles, and also recommendations from the SHDM and the Civil Society Forum in general, should be distributed to OSCE Mediterranean Partners for Co-operation.

Recommendations to OSCE institutions and field operations:

- ODIHR should establish a Panel of Experts on Freedom of Association, and develop a framework for the implementation of commitments and standards;
- ODIHR, with the Council of Europe's Venice Commission and Department for the Execution of Judgments, should prepare Guidelines on Freedom of Association, similar to those existing for Freedom of Assembly, also based on expert and NGO recommendations;
- OSCE (ODIHR) should endorse the Istanbul Principles and international framework for the effectiveness of civil society organizations;
- OSCE (ODIHR) should facilitate bilateral and multilateral meetings on freedom of association and work closely with the Council of Europe, to remind member-States of their obligations;

- The Guidelines on Freedom of Association (when drafted by ODIHR) should contain a reasonable balance between the freedom of association and eventual limitations via registration;
- OSCE (ODIHR) should help participating States develop legal instruments protecting the rights of minorities to associate, and to allow for proper funding, transparent, prompt, non-bureaucratic and inexpensive registration procedures and ensure that only court decisions may lead to the dissolution of associations;
- OSCE (ODIHR) should provide feedback to participating States on their ways of collaborating with associations;
- OSCE (ODIHR) should activate the work of human rights defenders, namely by developing Guidelines on human rights defenders, and by creating a Panel of Experts to review existing OSCE documents relating to freedom of association and freedom of expression and fair trial rights, in order to create explicit OSCE commitments relating to the protection of human rights defenders;
- The OSCE in general should have a Special Representative to protect human rights defenders, and should help create a voluntary fund for human rights defenders.

Recommendations to civil society:

- NGOs should be transparent with regard to their finances;
- NGOs should use modern technology when expressing themselves.

SESSION II: FREEDOM OF PEACEFUL ASSEMBLY: NEW CHALLENGES AND OPPORTUNITIES

Moderator: Mr. Dmitry Makarov, Member of the Coordinating Council of the International Youth Human Rights Movement, Program Coordinator for Moscow Helsinki Group, Russian Federation

Introducer: Mr. Neil Jarman, Director of the Institute on Conflict Research, Belfast, Chairman of the OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly, United Kingdom

The second session allowed the participants to focus their discussions on newly emerging trends and challenges with respect to the exercise of the right to freedom of peaceful assembly across the OSCE region.

The introducer, Mr. Neil Jarman, opened the session by highlighting that the rise of global movements and the widespread use of new social media transformed the style and form of many assemblies. Technological advancement enabled individuals to plan events, share ideas and organize activities in ways that would have been impossible only a few years ago. Mr. Jarman noted that such changes posed challenges to State authorities which - when faced with innovation - often struggled to adapt to the new situation. State

responses were frequently not in congruity with international human rights standards and entailed greater restrictions.

In this context, Mr. Jarman pointed out that the European Convention on Human Rights should be considered as a 'living instrument'. The European Court of Human Rights should take the changing situation into account and assess cases against the backdrop of the variety of local dynamics, rather than simply applying generalized precedents.

The introducer also drew attention to the fact that the OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly was commencing its work on the 3rd edition of the *Guidelines on Freedom of Peaceful Assembly*. In this regard, he highlighted a number of emerging issues affecting the right to freedom of peaceful assembly which should be taken into consideration in the process of the revision of the Guidelines.

The first issue which Mr. Jarman highlighted was the emergence of semi-permanent assemblies, most notably exemplified by the Occupy Movement. The duration of such semi-permanent protests gave rise to a need for a new interpretation of the notion of 'temporary presence'. It was notable that certain states invoked 'public health' to disperse such assemblies.

The second matter which Mr. Jarman recalled was the issue of restricting assemblies on privately owned property that is generally accessible to the public. Places such as parks, streets and shopping areas have been increasingly privatized in recent times and there exists a certain ambiguity as to the extent to which restrictions could be imposed on assemblies in such spaces.

The third topic concerned the role of the social media. Mr. Jarman stated that the use of new technologies challenged a number of established norms relating to assemblies. In particular, difficulties might occur when trying to identify the organizers or observe the notification process requirements.

Mr. Jarman also highlighted emerging concerns relating to responses of the authorities. He pointed out the 'preventive detention' of potential participants, which was used in order to stop them from taking part in an assembly. He also drew attention to 'kettling' - a newly developed technique to contain large crowds. Mr. Jarman concluded his statement by indicating that the Panel was increasingly identifying cases of restrictions on the right to freedom of peaceful assembly in the entire OSCE region.

The subsequent discussions focused on legislative developments pertaining to the right to freedom of peaceful assembly, and State practice with respect to policing assemblies. Many civil society representatives highlighted the restrictive nature of laws which were currently being adopted in certain States. Many interlocutors voiced their concern that provisions contained in these laws were not in line with international standards and OSCE commitments. Areas of concern included, *inter alia*, blanket prohibitions, content-based restrictions, as well as excessive sanctions providing for criminal liability of the participants.

Recommendations summarizing the discussions of the Civil Society Forum which took place on 7 November 2012 were also presented. It was stressed that negotiations between assembly organisers and the relevant authorities may be useful but it was also noted that prior negotiation processes could potentially exert a ‘chilling effect’ on the enjoyment of freedom of assembly: assembly organizers should not be obliged to accept suggestions made by authorities if these might undermine the essence of this freedom; and a lack of consensus between assembly organisers and the authorities should not be used as a justification for banning a peaceful assembly.

Numerous participants also commented on authorities’ excessive use of force against peaceful demonstrators. In this context, particular emphasis was placed on the role of adequate police training. Certain interventions also concerned the role of *agent provocateurs*.

Finally, many interlocutors underscored the paramount importance of monitoring and called on States to facilitate the work of independent observers. ODIHR’s work in the area of monitoring was also praised.

The following specific recommendations were made in Session II:

Recommendations to OSCE participating States:

- OSCE participating States should not seek to legitimize restrictive or repressive practices by referring to what are bad practices in other jurisdictions, but rather aspire to good practices that are in full compliance with international human rights law and the OSCE/ODIHR-Venice Commission *Guidelines on Freedom of Peaceful Assembly*;
- OSCE participating States should implement in full the judgments of the European Court of Human Rights;
- OSCE participating States should widely disseminate the OSCE-ODIHR [Assembly] Monitoring Report and the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly to their State and local officials, to increase awareness of and respect for international human rights standards;
- OSCE participating States should engage in constructive dialogue with the OSCE/ODIHR during and after its freedom of assembly monitoring work, in particular on the recommendations that are reflected in the ODIHR monitoring reports;
- OSCE participating States should expressly recognize and guarantee the right of civil society actors to monitor, record and document the policing of protest activities;
- OSCE participating States should not provide for blanket prohibition of using recording devices or any other technical means, preventing civil society and human rights defenders from monitoring activities of the law enforcement agencies;
- OSCE participating States should review procedural and evidential rules in domestic law to ensure that any relevant footage gathered by civil society and human rights defenders is admissible in any administrative, criminal and civil proceedings relating

- to protest and freedom of assembly;
- OSCE participating States should not employ preventive policing strategies that serve to deter the free enjoyment of the exercise of freedom of peaceful assembly;
 - OSCE participating States should ensure that peaceful spontaneous assemblies are facilitated;
 - OSCE participating States should ensure that the principle of facilitating assemblies within sight and sound of their intended audience is fully respected;
 - OSCE participating States should ensure that the reasons and grounds for any restrictions are fully explained and communicated to the organizer of an assembly prior to the assembly, so as to provide an opportunity for appeal in advance of the notified date of the assembly;
 - OSCE participating States should work to ensure that national courts undertake more probing factual inquiry into the declared aim and purpose of any restriction, rather than merely deferring to the opinion of law enforcement or public safety officials;
 - OSCE participating States should facilitate the work of the OSCE in monitoring freedom of peaceful assembly;
 - OSCE participating States should seek ways to protect and facilitate new types and forms of protest, and create an enabling environment for the exercise of the right to peacefully assemble;
 - OSCE participating States should not introduce laws that criminalize protest and freedom of peaceful assembly and expression, that contain vague and broadly defined offences, or which confer excessive discretion upon law enforcement officials;
 - OSCE participating States should ensure that liability for any violence that occurs is not imposed on those who participate in assemblies by reason of their mere participation unless there is demonstrable and concrete evidence of their individual involvement in violent activity;
 - OSCE participating States should ensure that any prior requirements imposed on those who seek to exercise their right to freedom of peaceful assembly are neither onerous nor bureaucratic;
 - OSCE participating States should ensure that those exercising their right to assemble are not coerced into negotiating with the authorities; that their participation in any such process is entirely optional and voluntary; and that failure to co-operate with the authorities is not in itself relied upon as a ground for imposing restrictions on freedom of peaceful assembly;
 - OSCE participating States should ensure that regulation of peaceful assemblies includes a notification rather than a registration regime;
 - OSCE participating States should ensure that the notification period is not unnecessarily lengthy but allows adequate time to make the necessary arrangements; there should be an exception for spontaneous assemblies where timely notification is not possible; any sanctions imposed for failure to comply with the requisite procedures should be proportionate;
 - OSCE participating States should ensure that any restriction on assemblies should be communicated promptly in writing to the organizers; there should exist a timely and effective judicial remedy for any undue restrictions;
 - OSCE participating States should ensure that any restrictions are prescribed by law and are consistent with international standards;

- OSCE participating States should ensure that dispersal of assemblies is a measure of last resort;
- OSCE participating States should ensure that organizers are not held responsible for the conduct of other violent individuals; authorities should adopt and implement rules and regulations on the use of force and firearms by law enforcement officials, keep the ethical issues associated with the use of force and firearms constantly under review, and shall ensure that the use of force strictly adheres to the principles of necessity and proportionality;
- OSCE participating States shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence;
- OSCE participating States should ensure that no unnecessary limitations are imposed on peaceful assemblies in law or in practice;
- OSCE participating States should ensure that no blanket restrictions on time or location are imposed; any limitations must be proportionate and non-discriminatory;
- OSCE participating States should ensure that any message of an assembly is not, in itself, a basis for restrictions;
- OSCE participating States should improve the training of law enforcement officers in charge of managing and facilitating assemblies;
- Law enforcement authorities should ensure the protection of the participants of peaceful assemblies;
- OSCE participating States should ensure that freedom of peaceful assembly is not used to violate other fundamental rights;
- OSCE participating States should equally protect members of assemblies of all different groups, including members of demonstrations and counter-demonstrations;

Recommendations to OSCE institutions and field operations:

- The work of the Legislative Support Unit of the OSCE/ODIHR should focus not only on laws explicitly governing freedom of peaceful assembly, but also on the wider legal framework to ensure that other laws and regulations do not cumulatively impose excessive burdens on those exercising their right to assemble;
- OSCE should consider ways in which it might respond to requests from civil society and other domestic institutions, not only to requests from participating States;
- OSCE should work with the Committee of Ministers and participating States to encourage and support the full implementation of the judgments of the European Court of Human Rights;
- The OSCE should develop a tool on the policing of assemblies;
- The OSCE/ODIHR Panel on Freedom of Peaceful Assembly should co-ordinate and work with the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
- The OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly should further consider the issue of leaderless, non-hierarchical, anonymous assemblies, as well as how to approach encampments, semi-permanent and permanent assemblies (and the understanding of ‘temporariness’);

- The OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly should consider the practices within OSCE participating States regarding notification and the negotiation of the conditions for exercising the right to freedom of peaceful assembly;
- OSCE should exert pressure on participating States to ensure that international freedom of peaceful assembly standards are adhered to;
- OSCE institutions should increase their activities in the area of monitoring public assemblies.

Recommendations to civil society:

- The members of the Civil Society Forum should consider ways of improving coordination between NGOs, potentially with a view to establishing *ad hoc* expert groups to monitor and respond to particular events and violations of human rights.

SESSION III: FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION: THE ROLE OF NEW TECHNOLOGIES

Moderator: Ms. Oleksandra Matviychuk, Chairwoman of the Board of Non-Governmental Organization “Center for Civil Liberties”, Ukraine

Introducer: Mr. David Moore, Vice-President – Legal Affairs, International Center for Not-for-Profit Law (ICNL)

Session three offered an opportunity for participants to discuss the profound effects of new information and communication technologies on the realization of the freedoms of association and assembly.

The introducer of the session, Mr. David Moore, highlighted that governments’ concerns with information and communication technologies are directly related to the power of these new technologies to inform and mobilize. Considerable attention has been given to the link between Internet freedom and the right to freedom of expression. However, Internet freedom is also integrally linked to the rights of association and assembly. Mr. Moore explained that the criteria under international law to recognize a group as an association – namely that it pursues a defined aim, that it possesses some “stability of duration” and that it has a formal/informal institutional structure that provides members with a sense of belonging – are also met by numerous online groups. Indeed, physical proximity is not a requirement for an individual to exercise the right to associate and the Internet has thus allowed for associations to mobilize individuals in associations, groups, social networks, online communities, in the absence of in-person meetings.

Mr. Moore then recalled that the recognition that online associations are protected under international law means that government interference with Internet and social media must meet the strict test defined in the ICCPR and the European Convention for Human Rights, which excludes restrictions that are not prescribed by law, necessary in a democratic society, in the interests of national security or public safety, public order,

protection of public health or morals, or protection of rights and freedoms of others. Consequently, participating States should refrain from blanket restrictions on access to Facebook or other networking sites, targeted harassment of online human rights organizations and dissident groups, and obligations to supply confidential data (such as membership lists), which may constitute violations of international law.

Some participants reiterated the points made in the previous session regarding the responsibility of participating States to guarantee the rights to freedom of assembly and association, whatever the means used to exert these rights, including online communications. Participating States should also keep in mind that restrictions on Internet freedom can reduce space for individuals to participate in democratic societies, and that these should not be used to censor freedoms.

Participants noted that one of the advancements created by new technologies was the great contribution that Internet has made to pluralism and free speech. Regarding freedom of peaceful assembly, participants also testified that Facebook is extensively used today, to call for meetings and assemblies and make them public on the Internet. New technologies were also described by participants as having a positive influence on the number of people that attend meetings, flash mobs etc.

However, some interventions highlighted concern about some governments' attempts to shut down the Internet or specific websites to prevent assemblies from being organized or associations from forming. It was advised that participating States should create standards and economic incentives to control the conduct of Internet service providers.

There appeared to be general agreement that citizens need to be informed, to deal responsibly with the services offered by the Internet. This includes the importance of privacy rights and personal data issues. In particular, some interventions demonstrated concern over the gathering of personal information on individuals present at assemblies and the storing and compilation of information.

A number of participants expressed their conviction of the need for a comprehensive approach to the Internet that would balance its positive and negative effects – including the potential threat to health, safety and security. However, others recalled that, when referring to the ICCPR, the ECHR and the UN Human Rights Committee, there is a clear understanding that limitations need to be necessary in a democratic society, should be very strictly limited, and can only be applied in specific situations, as the imposition of limitations needs to be justified.

Participants identified that new technologies imply higher requirements in terms of developing legislation to cover the situations they entail. In the case of spontaneous gatherings for instance, because of the organization online, there may be no notification, and no conformity with legal requirements. In the case of leaderless spontaneous gatherings, the organization of an assembly on the Internet might make it difficult to pin down who is the organizer. At the same time, new technologies also enable the identification of organizers and participants for future events.

The following specific recommendations were made in Session III:

Recommendations to OSCE participating States:

- OSCE participating States should ensure the protection of human rights online and offline;
- OSCE participating States should use new technologies for the registration of new religious groups;
- OSCE participating States should encourage online registration of NGOs;
- OSCE participating States should promote transparency of political parties' fundraising and campaign contributions also through the use of Internet and new technologies as to ensure their transparency (accounts should be accessible online), to prevent corruption and enhance transparency and public control of the use of the funds raised;
- OSCE participating States need to maintain the right balance in relation to new technologies by not shutting them down, but monitoring security threats and adopting requisite measures; no websites should be shut down without judicial authorization;
- OSCE participating States should approach the important role of new technologies as a single set of issues and consider it comprehensively and not focus only on some disaggregated aspects;
- OSCE participating States should ensure unimpeded access to Internet and mobile technologies and ensure that any limitations on such communication technologies are both narrowly tailored in domestic law and in full compliance with international human rights law;
- OSCE participating States should prohibit interferences in the use of cell phones or cell phone cameras in public places and refrain from deploying blocking technologies interfering with the ability of civil society actors and human rights defenders to monitor, record and document police activity;
- OSCE participating States should improve the legislative framework in the field of Internet-based communications to enhance the security of personal data of the Internet users;
- OSCE participating States, instead of shutting down Internet sites, should themselves try to find means of communication with society and common points for discussion;
- OSCE participating States should improve the legal framework for Internet communications to ensure privacy of Internet users and prevent automatic collection of information by special services to take evidence *de bene esse*; all such information gathering, including collection of information accessible online on human rights defenders and obtaining access to existing databases shall be conducted only upon relevant judicial authorization; any evidence collected without such authorization shall be considered as inadmissible;
- OSCE participating States should use Internet with the ultimate goal to enhance dialogue between authorities and protesters and not to intensify adversarial positions between them with regard to the exercise of key human rights;
- OSCE participating States should acknowledge the positive impact of new

technologies on the exercise of human rights, while addressing potential risks and seeking to minimize these risks in a proportionate manner, without blanket bans on the access to Internet;

- OSCE participating States should ensure that clear and distinctive roles are maintained between police, intelligence agencies and security services while approaching the issues related to freedom of peaceful assembly, and refrain from deploying agents provocateurs and from disseminating false information through social media;
- OSCE participating States should be reminded of the need to adhere fully and consistently to legal procedures when monitoring civil activists; databases that could be used by law enforcement bodies to control individuals need to be administered in line with data and privacy protection legislation;
- OSCE participating States should ensure that use of Internet complies with the respective standards set by international human rights instruments;
- OSCE participating States should avail themselves of the legal and policy means available to them and look into the recent shutting down of mobile telephone services in certain OSCE participating States;
- OSCE participating States should ensure that the Ministerial Council adopt a decision on the promotion and protection of human rights and fundamental freedoms in the digital age;
- OSCE participating States should invite and accept missions to monitor protests and associations in line with guidelines and standards; this invitation should also include competent UN bodies and the OSCE;
- OSCE participating States should encourage law enforcement agencies to publish their policies on the surveillance of protest activities, also in relation to retention, disclosure and destruction of any data and intelligence gathered, ensuring that these policies fully respect the right to private and family life;
- OSCE participating States should continue to work co-operatively to ensure an open, safe and accessible Internet;
- OSCE participating States and Mediterranean Partners for Co-operation should consolidate free circulation of information, defend activities of bloggers and human rights defenders, who run into difficulties and obstructive legal procedures. Monitoring and supervisory bodies should ensure free circulation of information;
- OSCE participating States should establish standards for the conduct of Internet providers, given that they are maintaining a public forum, and as such can be considered as serving a public good and fulfilling some kind of quasi-governmental role.
- OSCE participating States should ensure that use of Internet is in line with the ICCPR and with human rights, including children's rights;
- OSCE participating States should be keen on respecting their human rights commitments also in the light of inappropriate restrictions on the freedom of the Internet as such restrictions would reduce space for individuals to participate in a democratic society and can be used to censor other freedoms;
- OSCE participating States should provide for a narrow interpretation of restrictions on freedoms, taking into consideration the jurisprudence of the ECtHR and UN Human Rights Committee and ensuring that the restrictions imposed are proportional,

- legitimate and necessary in a democratic society;
- OSCE participating States should consider standardizing international telephony and Internet access, to allow persons temporarily staying in certain countries to access these services, without needing citizenship of or an address in the country, and at a normal cost;
 - OSCE participating States should ensure that information collected and stored is not used for the unintended or unlawful purposes, and should refrain from using Internet to discredit civil society organizations.

Recommendations to OSCE institutions and field operations:

- The OSCE (Ministerial Council) should adopt a Declaration on Fundamental Freedoms in the Digital Age, as initiated by the organization Article 19;
- The OSCE (ODIHR) should develop an index for free access to the Internet;
- The OSCE (ODIHR) should create a monitoring body to supervise freedom of Internet and unimpeded flow information, also used by the bloggers;
- The OSCE (ODIHR) should give thought to the effect of new means of communication and technologies, and not be swayed by special interest groups; in particular, the manner in which security concerns may or may not limit freedom of assembly should be explored;
- The OSCE (ODIHR) should encourage Internet service providers to establish standards for their conduct in their efforts to ensure that they serve as a public forum as well as public interests as they can be pressured by both economic and technological challenges;
- The OSCE (ODIHR) should host training for civil society on how to use new technologies and media for freedom of assembly monitoring and reporting;
- The OSCE (ODIHR) should continue independent monitoring of protests across the OSCE region, and should conduct follow-up monitoring on the right to peaceful assembly;
- The OSCE (ODIHR) should expand its monitoring activities; monitoring should also cover the use of new technologies in the exercise or limitation of the right to peaceful assembly and association;
- The OSCE (ODIHR) should use its mandate of public human rights education to also inform about the existing threats in cyber space, and how new technologies may challenge privacy rights, including how possible violations of privacy can be avoided;
- The OSCE (ODIHR) should draw upon expertise in relation to new and developing technologies and social media to create a mechanism to monitor limitations imposed by States on their use;
- The OSCE (ODIHR) should provide further independent monitoring of and reporting on freedom of peaceful assembly and freedom of association, as well as monitor freedom of expression and new media rights in relation to these two freedoms;
- The OSCE (ODIHR) should facilitate the development of standards of conduct for Internet providers' activities in the public interest, not just in the interests of the State;
- The OSCE (ODIHR) should consider the role of new technologies in its entirety, and not focus exclusively on certain aspects;

- The OSCE should further elaborate on standards and principles governing police surveillance and intelligence collection of information;
- Appeal to the OSCE to use the means available to it and look into recent state actions against mobile telephone services;
- The OSCE (ODIHR) should raise concerns regarding the arbitrary shutting down of Internet sites in some participating States;
- The OSCE (ODIHR) should state which human rights principles apply when defining peaceful assemblies and new technologies and which issues are priorities in this context.

III. ANNEXES

ANNEX 1: Agenda



Supplementary Human Dimension Meeting

FREEDOM OF ASSEMBLY AND ASSOCIATION

8-9 November 2012

Hofburg, Vienna

AGENDA

Day 1

8 November 2012

15:00 – 16:00

OPENING SESSION

Opening remarks:

Ambassador Eoin O’Leary, Chairperson of the OSCE Permanent Council, Permanent Representative of Ireland to the OSCE

Ambassador Janez Lenarčič, Director, OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

Keynote speech:

Mr. Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association

Technical information by **Mr. Thomas Vennen**, Head of the OSCE/ODIHR Democratization Department

16:00 – 18:00

SESSION I: Freedom of Association: obstacles to the full realization of this right and ways to overcome them

Moderator:

Ms. Emel Kurma, Executive Coordinator, Helsinki Citizen's Assembly, Turkey

Introducer:

Mr. Serghei Ostaf, Member of ODIHR Panel of Experts on Freedom of Peaceful Assembly, Director of the Resource Centre for Human Rights (CReDO), Moldova

18:00 – 19:00 Reception hosted by the Irish Chairmanship

Day 2 **9 November 2012**

10:00 – 12:00 **SESSION II: Freedom of Peaceful Assembly: new challenges and opportunities for dialogue**

Moderator:

Mr. Dmitry Makarov, Member of the Coordinating Council of the International Youth Human Rights Movement / Program Coordinator for Moscow Helsinki Group, Russian Federation

Introducer:

Mr. Neil Jarman, Chairperson of ODIHR Panel of Experts on Freedom of Peaceful Assembly, Director of the Institute for Conflict Research in Belfast, United Kingdom

12:00 – 14:00 Lunch

14:00 – 16:00 **SESSION III: Freedom of Peaceful Assembly and Association: the role of new technologies**

Moderator:

Ms. Oleksandra Matviychuk, Chairwoman of the Board of Non-Governmental Organization “Center for Civil Liberties”, Ukraine

Introducer:

Mr. David Moore, Vice-President – Legal Affairs, International Center for Not-for-Profit Law (ICNL)

16:00 – 16:30 Break

16:30 – 17:30 CLOSING SESSION
Reports by the Moderators of the Working Sessions
Comments from the floor

Closing remarks

Ambassador Janez Lenarčič, Director of the OSCE/ODIHR

17:30 Closing of the meeting

ANNEX 2: Opening Remarks

**Opening remarks by Ms. Martina Feeney,
Deputy Head of Mission of Ireland
on behalf of Ambassador Eoin O’Leary
at the OSCE Supplementary Human Dimension Meeting
on Freedom of Assembly and Association
Hofburg, Vienna, 8 November 2012**

On behalf of the Irish Chairmanship of the OSCE, I would like to welcome you to this third and final Supplementary Human Dimension Meeting of 2012, dealing with Freedom of Assembly and Freedom of Association.

We are particularly delighted to welcome here today Mr. Maina Kiai, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association. Mr Kiai has been a courageous and effective advocate for political reform, beginning in his native country Kenya.

I am very pleased to note the high-level of interest in this meeting, which is indicative of the importance attached to the issue by OSCE participating States and civil society. From a very early stage, when we started planning for the Irish Chairmanship, we decided that we wanted to focus on freedom of assembly and association during our term-in-office. The right to freedom of peaceful assembly, together with freedom of association, underpins the implementation of so many other civil and political rights of all individuals. These two freedoms constitute a fundamental element in securing and maintaining a healthy democracy.

Freedom of assembly guarantees us the opportunity to convey a message in public. It can help authorities to identify pressing challenges facing a society. The approach adopted by an OSCE participating State towards peaceful assemblies can also serve as a litmus test of the overall commitment of authorities to human rights on a wider scale.

Freedom of association provides for the right to join with others to express, promote and protect common interests and ideas. It forms one of the basic pillars for participation in a democratic society and presents a way to address challenges in an inclusive and constructive manner. The denial of the right to associate can amount to denial of participation in a democratic society.

Both rights may, of course, be subject to some restrictions. However, any such permissible limitations are required to meet three tests, namely: they should be prescribed by law, be proportionate, and be necessary in a democratic society. We are engaged in a constant search for appropriate safeguards for these freedoms, and must uphold the right to pursue legitimate objectives.

In common with trends worldwide, people in the OSCE region are increasingly using the Internet and other new technologies as a platform for the exercise of their human rights and fundamental freedoms. Last June, at the *Dublin Conference on Internet Freedom*, a Chairmanship event, we heard first-hand evidence of how these technologies were being used to facilitate and enhance freedom of assembly and association, as well as other freedoms. New technologies assist people in creating and maintaining networks and associations, organising assemblies, as well as in planning and conducting other activities. However, we also heard in Dublin of uses of the Internet to limit, hinder, control, monitor and manipulate the exercise of these rights and freedoms.

Yesterday, a Civil Society Forum, organised by ODIHR and the Chairmanship, provided a further opportunity for participants to discuss the current challenges regarding freedom of assembly and association faced by civil society from the OSCE region and the Mediterranean Partner Countries and how OSCE participating States can respond to them.

Throughout the upcoming two days, we will have the opportunity to discuss the rights to freedoms of assembly and association as well as the role of new technologies. We will also be able to explore how new communication technologies can further promote the enjoyment of these rights on the one hand, and negatively affect their effective exercise on the other.

We are witnessing a rapidly and dynamically changing world. We ourselves change along with it. This meeting provides an opportunity for OSCE participating States and civil society to address important issues concerning the promotion and protection of the aforementioned freedoms by State authorities, and how new challenges can be dealt with, taking into account the responsibilities of mainstream society, which is the ultimate beneficiary of these freedoms.

**Opening Remarks by Ambassador Janez Lenarčič
Director of the OSCE Office for Democratic Institutions and Human Rights
at the OSCE Supplementary Human Dimension Meeting
on Freedom of Assembly and Association
Hofburg, Vienna, 8 November 2012**

Excellencies, Distinguished Colleagues, Ladies and Gentlemen,

It is an honour to welcome you to this Supplementary Human Dimension Meeting on Freedom of Assembly and Association, which is part of the framework of human dimension meetings organized every year, and follows up on the 2007 SHDM on Freedom of Assembly, Association and Expression. I wish to commend the efforts of the Irish OSCE Chairmanship that have led to convening this meeting on such an important issue. I would also like to welcome Mr. Maina Kiai, the UN Special Rapporteur on

Freedom of Assembly and Association. We are very thankful for his participation in this event, and look forward to hearing more about his work and his experiences as UN Rapporteur.

The main topics that this Meeting will focus on are freedom of peaceful assembly, freedom of association, and the role of new technologies. The first working session today will focus on freedom of association, in particular on obstacles that OSCE participating States face in ensuring the full realization of this right, and ways to overcome these obstacles. Tomorrow morning, the second working session will focus on freedom of peaceful assembly, including new challenges and opportunities for dialogue, and tomorrow afternoon, the last session will discuss the role of new technologies and how these impact on the freedom of peaceful assembly and association.

In conjunction with this SHDM, ODIHR and the Irish Chairmanship yesterday facilitated the organization of a Civil Society Forum, which touched on the same topics. I am pleased to say that a large number of civil society representatives from across the OSCE region and the OSCE Mediterranean Partners for Co-operation attended this event, and that it was marked by lively and fruitful debates. We look forward to hearing their recommendations emanated from this meeting.

I will now return to the rights of freedom of peaceful assembly and association, which many call a cornerstone of today's democratic societies. However, more than a century and a half ago, the former US President Abraham Lincoln called "*the right of the people peaceably to assemble*" part of "*the Constitutional substitute for revolution.*" I believe that his statement applies equally to freedom of association. Thus, more than 100 years before the Conference for Security and Co-operation in Europe drafted the Helsinki Final Act in 1975, Lincoln had already recognized the linkage between guaranteeing human rights and the security and stability of a State and the people living in it.

In the Helsinki Final Act, the participating States committed to respect human rights and fundamental freedoms, and, for the first time, also recognized "*the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.*" In ensuing OSCE commitments, the freedom of peaceful assembly and association were outlined in greater detail, also covering such aspects of association as the freedom to found and join trade unions or political parties.

Today the debate is no longer whether such rights exist or not – in this day and age, many States in the world have adopted some form of democratic system of governance. Thus it follows, at least theoretically, that if countries are ruled by representatives of the people, then the people should also be able to assemble to protest peacefully against the actions of their representatives, or for other purposes, e.g. to express opinions about matters of current interest, or to mark significant historical events, expressing joy or mourning. People should also be able to organize themselves for a variety of purposes to voice their opinions and pursue objectives jointly on issues ranging from political, to ecological, cultural, or social matters.

However, agreement about the existence of such fundamental rights is merely a starting point. The real challenge is how to implement OSCE commitments to ensure that such rights are respected in practice, how to achieve the right balance between human rights of the individual and the State's obligation to maintain public order and national security. How can OSCE participating States draft legislation that contains sufficient human rights safeguards, while ensuring that the State's public administration has the information it needs to take all actions to protect and facilitate the exercise of human rights, and to intervene when the limits of these rights are crossed - in other words, when assemblies turn violent, or when associations break the law or threaten a state's constitution?

Finding the right balance is not always easy – indeed, vague or no legislation regulating assemblies or associations may have negative and unforeseen consequences. At the same time, unduly restrictive legislation may breed clandestine movements, mass dissatisfaction, and possibly, in the end, violence, because people will feel ignored and powerless to be heard, and may not have any other means to voice their dissent towards a government that abuses their rights. Such legislation may also not be in line with international human rights standards and OSCE commitments.

OSCE participating States should therefore enact legislation that includes clear rules on consequences in case these rights are abused: for instance on how to deal with violent demonstrations, or with associations that engage in criminal activities, or that threaten a State's constitutional order.

There are cases where certain OSCE participating States seek solutions to such challenges by enacting blanket prohibitions of assemblies or associations. Such prohibitions can, however, not be the answer to this dilemma. Prohibiting all assemblies for a certain time frame or at a certain location is similarly counter-productive, as are creating excessive administrative hurdles to confound efforts to associate or banning any association that did not or was not able to register with public administration authorities. These fundamental human rights, like any other human rights, cannot be limited to such an extent that their very core is affected – how can people adequately express publicly their dissatisfaction with government actions, if they are prevented from gathering in the vicinity of government buildings? And how can people create organizations to challenge government policies and actions, if these organizations are obliged, by law, to remain under close government scrutiny? Human rights, including the right to assemble peacefully, and the right to associate, cannot remain on paper only. All people must be able to exercise them in practice, to ensure a proper system of checks and balances, which is the basis for democracy, and for good and accountable governance. In addition, these rights must belong to all individuals residing in a certain State equally.

OSCE participating States' laws must reflect these principles, and OSCE commitments, and must be clear and foreseeable enough to leave no space for arbitrary interpretation and implementation. In addition to proper legislation, State officials responsible for implementing legislation need to be educated to understand basic human rights principles, and trained so that they see the exercise of the freedoms of peaceful assembly and association not as a threat or a nuisance, but as entitlement of the people, which the

State and its officials are obliged to protect and facilitate. In relation to assemblies, police units need to be specially trained to engage in negotiations with demonstrators, decrease tensions, and where possible, remove violent elements from an assembly so that they do not affect an assembly that is otherwise peaceful. Police officers need to be trained in crowd control, and should be allowed to resort to violence only in cases where the crowd itself has turned violent, and as a last resort, once all other means have been exhausted.

Likewise, public officials need to be aware of freedom of association standards, namely of the fact that State interference with this right should be kept to a minimum. The registration of associations should merely be a means of keeping public administration informed, not a means of restricting the fundamental freedom to associate. Associations that have not registered should not be subjected to excessive sanctions such as dissolution, or disproportionate fines.

In general, limitations to both rights, following international human rights standards and commitments, should only be imposed if necessary in a democratic society, and in a proportionate manner. The dispersal of a peaceful assembly or the dissolution of an association should always be a measure of last resort.

ODIHR, as part of its human rights and democratization mandate, has been assisting OSCE participating States in their efforts to bring their legislation and practice pertaining to freedom of peaceful assembly and association in line with international human rights standards and OSCE commitments.

For many years we have reviewed draft and existing legislation of OSCE participating States regulating assemblies and different types of associations, including NGOs and political parties. For this purpose, ODIHR has, in co-operation with the Council of Europe's Venice Commission, prepared the Joint ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, as well as on Political Party Regulation. Both sets of guidelines draw on examples of good practices from national legislation in OSCE participating States and international standards and commitments to illustrate existing legislative options. In 2006, ODIHR also established a Panel of Experts on Freedom of Peaceful Assembly that acts as an advisory and consultative body to ODIHR on the promotion of freedom of peaceful assembly in the OSCE area. In 2011, a similar consultative body for all matters pertaining to political parties' regulation was established: namely the Core Group of Experts on Political Parties. I take this opportunity to welcome the Panel and Expert Group Members present at this event, and thank them for their excellent work and co-operation with ODIHR to the benefit of OSCE participating States.

Alongside our legislative work, ODIHR is also involved in monitoring the respect of freedom of peaceful assembly on the ground. It does so by building the capacity of civil society organizations and OSCE field operations to monitor assemblies. Last year, ODIHR published a Handbook on Monitoring Peaceful Assemblies, which is a practical tool to help NGOs collect reliable first-hand information through the monitoring of public gatherings. Since 2011, ODIHR has also conducted its own monitoring of assemblies, sending independent monitors to a number of OSCE participating States. A

comprehensive report on this monitoring cycle presenting observed good practices and challenges to the full respect of freedom of peaceful assembly will be launched at a side event to this SHDM at noon tomorrow.

To support OSCE participating States and civil society we have also created a website called www.associationline.org, a web-based interactive guide to freedom of association for government authorities and civil society, containing key principles and international standards related to freedom of association.

The agenda for this SHDM touches on key challenges for the implementation of OSCE commitments on freedom of assembly and association. In addition to this, and for the first time, we have an agenda that includes the issue of how new technologies affect these key human rights.

New information and communication technologies in organizing assemblies and running associations have opened many new opportunities to enjoy the benefits of a democratic society, share opinions and ideas without limitations. Many protests today are organized via social networks, while associations are taking more and more of their work online, with members and boards residing in different countries, and taking decisions via virtual meetings and online voting procedures. These new methods of communication should be welcomed as they are important means for facilitating, protecting and promoting the fundamental right to peaceful assembly and the right to association. However, the effects that they have and will continue to have on the exercise of these fundamental freedoms needs to be further explored.

At the same time, these modern technologies may also appear as a threat. In some instances, they have been used as a means for undue surveillance, monitoring and profiling of citizens with the purpose of limiting their human rights. Therefore it is essential that this new-found openness and transparency brought to us by the Internet and by other modern information and communication technologies will not be used to further restrict the freedom to peacefully assemble, and the freedom to create and join associations in the OSCE region. As far as possible, these new technologies should be used to enhance the existing rights, and not to unduly limit them.

In this spirit, I wish you fruitful and interesting discussions.

Thank you for your attention.

ANNEX 3: Keynote Speech by Mr. Maina Kiai

Your Excellencies, Ambassadors here today, distinguished participants, Ladies and gentlemen,

It gives me great pleasure to present this keynote address today, and I am delighted to be here with you as we discuss issues related to the rights to peaceful assembly and association.

I have now held the mandate of Special Rapporteur for about a year and a half, during which I had carried out a country mission to Georgia, and visited and held consultations across the world with civil societies and government representatives. In June this year, I submitted my first report to the Human Rights Council, highlighting best practices that promote and protect the rights to freedom of peaceful assembly and of association.

I have been inspired and enriched through all the interactions I have had through this mandate, and I certainly have a better understanding about the challenges and opportunities for the enjoyment of assembly and association rights. These interactions have driven home to me the facts that there can be no democracy without the enjoyment of the rights of peaceful assembly and association, and that my mandate has a special duty to focus on the space available for civil societies across the world.

In addition, it has become clear to me that there is no part of the world where we can rest on our laurels and proclaim that the rights under this mandate are safe, for in every part of the world there are machinations—in law and practice—to undermine these rights. It is thus critical that we remain vigilant all the time, in all countries of the world.

In September this year, the Human Rights Council adopted a resolution on the freedom of peaceful assembly and of association that received the support of several of the OSCE participating states. The resolution expressed concern about the violations of the rights and stressed the importance of respect for these rights in many areas. The Council recognized the important role of new information and communication technologies in enhancing the enjoyment of the rights, and highlighted the responsibilities that states have to facilitate access to the Internet. These important issues are the central themes around which discussions today and tomorrow will revolve.

Ladies and Gentlemen,

The importance of the rights to freedom of peaceful assembly and of association cannot be overemphasized, particularly when people across the world are demanding democratic reforms as a way to participate more fully in decision and policy making. These rights provide a vehicle through which women and men can “express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities,

engage in religious observances of other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable.”²

However, states are increasingly repressing the enjoyment of these rights by enacting restrictive legislation or by implementing similarly restrictive practices.

Currently, over 25 states are contemplating or have started drafting legislation that in one way or another affects the formation and operation of associations, including the funding of such organizations. Many of these laws contain provisions that would adversely affect the enjoyment of the freedom of association.

Typical restrictions include limiting the rights to citizens only; outlawing unregistered associations; imposing burdensome requirements for the formation of associations; providing authorities with broad discretion to accept or deny registration of associations; labeling NGOs as extreme or terrorist; and restricting access to funding, particularly foreign funding for example in Bangladesh and Ethiopia. In Malaysia, the receipt of foreign funding has been used by the government as an excuse to harass civil society activists engaged in investigating allegedly corrupt dealings within the government.

This issue of foreign funding needs to be unpackaged as it is fast becoming one of the favored tools to control, limit and weaken civil society, across the world. It is baffling that states which receive foreign funding as investments, loans and other ways should turn around and label civil society as “foreign agents” simply for similarly receiving foreign funding. These sorts of double standards are dangerous and do not bode well for human rights, human development or security in our globalized, interconnected world.

As I identified in my report on best practices, the right to freedom of association necessarily entails the right to form and join associations. The implication of this is that states should not unduly restrict the right by imposing restrictions on whom or how many persons may form an association. Associations are entitled to protection whether they choose to register or not. Registration processes, for those that opt for them, should be simple, non-burdensome and efficient.

States have also actively restricted the exercise of the right to freedom of peaceful assembly. In countries like Bahrain and Kuwait, general bans have been imposed on protests ostensibly because of violence, as citizens seek more participation, transparency and accountability in public affairs. A disturbing trend in some states including Azerbaijan and Geneva Canton Switzerland is the imposition of huge penalties for imposed on organizers and participants, including for damages caused during the assembly. Laws that criminalize sedition and treason are applied broadly to harass and intimidate activists in countries such as India.

The right to freedom of peaceful assembly entails a presumption in favor of allowing gatherings. States have obligations to refrain from interfering with the right while at the same time ensuring that those who want to use this means of expression are enabled to do

² Human Rights Council resolution 15/21

so with as few obstacles as possible. A variety of gatherings should be allowed including spontaneous demonstrations, simultaneous and counterdemonstrations; protestors should be able to get their message across to their target audience expediently and peacefully; and law enforcement agencies should approach the policing of gatherings in a facilitative manner (and in this regard Estonia's Police Rapid Response Unit charged with protecting peaceful demonstrators from attacks by provocateurs is a good practice).

In countries like Belarus, Cuba, Egypt, Libya, Syria, Tunisia, or Uzbekistan, activists, human rights defenders and ordinary people have challenged their governments by peaceful means; often putting their lives at risk as well as those of their families and other loved ones. Many continue to be severely punished for the sole fact of exercising a legitimate right to assemble peacefully.

In my view, Governments should embrace the exercise of these rights as means to gauge public sentiment and as an indication for the need for deeper dialogue and debate. It is in their interests, for peaceful protests are a means of expressing discontent, and should be understood as a release valve for pressures in society that could otherwise manifest in violent confrontations. The current situation in Syria is a vivid example of how far a state can deteriorate when the ruling elite refuse to listen to, and constructively engage with, the voices of opposition and dissent.

Ladies and gentlemen,

With the increasing use of new technologies, the exercise of freedom of peaceful assembly and of association transcends the physical, and into the virtual, world. The 'Arab Spring' was particularly instructive of the tremendous power that social media holds as a tool to mobilize people around a common purpose both online and on the streets.

More and more organizations and people are using internet and social media to receive, disseminate and share news and information, to associate with online groupings, and to hold meetings and discussion groups. The Internet plays an increasingly important role in connecting people across vast distances in a cost effective way, but it also brings new challenges of maintaining security and privacy.

States have not been slow in adopting new and often sophisticated technologies, to counter the emergence of the internet as an effective tool for organizing and communicating. Indeed, there is a worrying trend in the use of technology by states to control or manipulate the flow of information and communications. This is done in a number of ways including:

- i. by unjustifiably blocking websites in (such as in Libya, Ethiopia, Vietnam);
- ii. by using surveillance tools to track online activities of bloggers, journalists and other users considered of interest, often subjecting them to harassment, intimidation, physical attacks and imprisonment (Bahrain, Vietnam); and
- iii. by attacking the credibility of information or personalities critical of the government in order to confuse internet users (Russia, China)

These restrictions violate the rights to freedom of peaceful assembly and of association.

Let me be clear: Online associations and assemblies are entitled to the same protections as those organised and held offline. States should accept and facilitate the use of the internet as a medium of constructive interaction with and among the public, both local and global, as they are obligated to by international human rights law, offline.

Of course, rights are not absolute; but it is important to stress that limitations to rights should be the exception and not the rule. International law has a number of provisions that limit the applicability of the rights to freedom of peaceful assembly and of association. The interpretation of these limits has been carefully dealt with here in Europe, for instance, by the Council of Europe's Venice Commission, the Office for Democratic Institutions and Human Rights and by the large and extensive body of jurisprudence from the European Court of Human Rights.

At the universal level, it has also been considered by the remarkable work of several of my fellow Special Rapporteurs and the UN Human Rights Committee. I would like to emphasise a number of principles to be taken into account in the context of limiting peaceful protests.

Firstly, restrictions must be proportional to the aim that is sought. States have to demonstrate how their alleged necessity to ban or restrict protests is in line with the pursuance of the legitimate aims. And in this context, the aims of 'national security', 'public order', 'public morals' and the 'rights and responsibilities of others' should be interpreted quite narrowly as necessary in a democratic society. General Comment 31 reminds us all that restrictions may not be applied or invoked "in a manner that would impair the essence of a Covenant right".³

Secondly, States should not invoke national law to justify failure to abide by its international obligations. And by "invoking" I mean resorting to the alleged supremacy of their national legislation irrespective of whether those laws are in accordance with international standards.

And thirdly, States should not seek shelter in emergency situations to limit peaceful assemblies. Some States derogate freedom of assembly within the context of states of emergency for plain political reasons. I must second the opinion of the Committee: considering that the Covenant already prescribes limits, there is no derogation of freedom of peaceful assembly that can be justified under the exigencies of such situations.

Ladies and gentlemen,

The resolutions adopted by States on freedom of peaceful assembly and association are evidence that political will to protect and promote these rights is not entirely lacking. Similarly, meetings like these that bring together states and civil society to deliberate on

³ HRC General Comment 31, para. 6.

ways of addressing challenges to the full enjoyment of rights are essential in order to foster a common understanding of what the standards are, to exchange best practices and to develop effective strategies. In this regard, I would like to note with appreciation that recommendations from the civil society forum will feed into the discussions at this meeting.

Political will should extend beyond the adoption of recommendations and resolutions to implementation. Following up with action is paramount. Participating states have a legal obligation to comply with international standards and a moral obligation to encourage compliance amongst their peers within the OSCE.

And in this regard, I would like to recommend that the OSCE/ODHIR establish a tool on the policing of assemblies that would look at training of police, monitoring them and how they are held accountable for breaches, as a further progression of the excellent work they have been doing on monitoring of assemblies. I would also add that coming up with a protocol to protect internet privacy and data collection as it relates to freedom of association and assembly would be of immense importance to these rights across the world.

Finally, I wish to commend civil society participants here on your tireless efforts on behalf of society, often amplifying the voices of the voiceless, often at great costs to yourselves, your families and loved ones. That dedication is inspiring and I urge you to take heart, not to despair and maintain your focus on the human rights goals that you profess.

I wish you fruitful deliberations and thank you for your attention.

ANNEX 4: Biographical Information on Introducers and Moderators

FREEDOM OF ASSEMBLY AND ASSOCIATION

8-9 November 2012

Hofburg, Vienna

Biographical Information: Speakers and Moderators

Keynote Speaker:

Maina Kiai

Mr. Maina Kiai is the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. A lawyer trained at Nairobi and Harvard Universities, Mr. Kiai has spent the last twenty years campaigning for human rights and constitutional reform in Kenya – notably as founder and Executive Director of the unofficial Kenya Human Rights Commission, and then as Chairman of Kenya’s National Human Rights Commission (2003-2008). From July 2010 to April 2011, Mr. Kiai was the Executive Director of the International Council on Human Rights Policy (Geneva). Mr. Kiai was also the Director of Amnesty International’s Africa Programme (1999-2001), and the Africa Director of the International Human Rights Law Group (now Global Rights, 2001-2003). He held research fellowships at the Danish Institute for Human Rights (Copenhagen), the Woodrow Wilson International Center for Scholars (Washington), and the TransAfrica Forum (Washington).

SESSION I: **Freedom of Association: obstacles to the full realization of this right and ways to overcome them**

Serghei Ostaf (Introducer)

Serghei Ostaf is a member of the OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly. He is Director of the Resource Center for Human Rights (CReDO) – a nonprofit organization that advocates for democratic change in Moldova. He is involved in human rights advocacy work in Moldova, as well as advocacy activities with the Council of Europe, UN human rights bodies and OSCE/ODIHR, through presenting research and shadow reports, and bringing human rights cases to national courts and the European Court of Human Rights. Mr. Ostaf’s current activities include advocating for the adoption of democratic public policies by the government of Moldova, and consulting on the effective implementation of such policies through legal and institutional mechanisms.

Emel Kurma (Moderator)

Emel Kurma has been working as the Executive Coordinator of the Helsinki Citizens' Assembly (Turkey) since 2000. Ms. Kurma studied political science at Boğaziçi University and pursued graduate work at Middle East Technical University on urban studies, and later at Istanbul Bilgi University on cultural studies. She was among the founders of Amnesty International in Turkey and the Civic Network Initiative in the 90s. She has delivered seminars and training on civil society, civic initiative/agency and NGO practices at many places, such as the Istanbul Bilgi University, at EDAM, a non-profit consultancy center for NGOs.

SESSION II: Freedom of Peaceful Assembly: new challenges and opportunities for dialogue

Neil Jarman (Introducer)

Neil Jarman is the Chairman of the OSCE/ODIHR Panel of Experts on Freedom of Assembly. He is the Director of the Institute for Conflict Research in Belfast, United Kingdom. His academic interest is primarily in peace-building activities and conflict mitigation, with a specific focus on public assemblies and their policing, and community-based responses to violence and public disorder. He is the author of numerous publications on issues such as policing public order, human rights and conflict resolution, and combating hate crime.

Dmitry Makarov (Moderator)

Dmitry Makarov is one of the leaders of the Coordinating Council of the International Network - Youth Human Rights Movement - and a Program Coordinator for Moscow Helsinki Group. He co-ordinates joint activities of these organizations for promoting freedoms of assembly and association as well as protecting human rights defenders. Mr. Makarov has a degree in law and specializes in administrative cases. He has been one of the initiators of the Legal Team for activists, a legal support group for grass root activist groups, as well as of a team of public observers at mass rallies. Mr. Makarov is part of the organizing team of the International School of Human Rights and Democracy in Russia. He is currently coordinating the programme entitled "Defending Civil Society in the Newly Independent States" and actively works at both regional and international levels.

SESSION III: Freedom of Peaceful Assembly and Association: the role of new technologies

David Moore (Introducer)

David Moore is the Vice President for Legal Affairs of the International Center for Not-for-Profit Law (ICNL). On behalf of ICNL, Mr. Moore has conducted legal assessments

of civil society laws and/or provided technical assistance on law reform projects in a diverse range of contexts, including Afghanistan, Bulgaria, Croatia, Hungary, Laos, Mauritius, Moldova, Russia, Sierra Leone, Turkey and Vietnam, among others. Mr. Moore has published extensively on issues of civil society law, and has served as a trainer on civil society legal issues for government officials, civil society representatives, and UN civil society staff. Mr. Moore also serves as a professor at the Central European University in Budapest, where he teaches Civil Society Law.

Oleksandra Matviychuk (Moderator)

Oleksandra Matviychuk is the Chairwoman of the Board of the Center for Civil Liberties, a non-governmental organization aimed at promoting democratic development and human rights. She has provided training on a number of human rights-related issues. She participates in several working groups involved in drafting legislation, including draft laws aimed at bringing the Ukrainian legislation in line with international human rights obligations. Ms. Matviychuk is the Member of the Advisory Council under the Ukrainian Parliament's Commissioner for Human Rights. She has authored several publications on different human rights-related topics, as well as the Monitoring Report on "Political Persecutions of Civil Society in Ukraine in 2011", one chapter of which is dedicated to the persecution of participants and organizers of peaceful assemblies.

ANNEX 5: Participants

The final list of participants is available at: <http://www.osce.org/odihr/97831>