



# The Rights to Freedom of Peaceful Assembly and Association and the Internet:

*Submission to the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association by Association for Progressive Communication (APC).*

## Introduction

1. APC welcomed the establishment of a Special Rapporteur on the rights to freedom of peaceful assembly and association in 2010<sup>1</sup> and the subsequent appointment of Maina Kiai as Special Rapporteur. We are pleased that, pursuant to his mandate, the Special Rapporteur now seeks to gather information from all stakeholders regarding the situation of the rights to freedom of peaceful assembly and association around the world, by way of the questionnaire distributed in December 2011. APC is an international network and non-profit organisation that believes the internet is a global public good. We advocate for everyone to have access to a free and open internet to improve our lives and create a more just world.
2. The rights to freedom of peaceful assembly and association are, together with the right to freedom of expression, at the core of a democratic and open society. The rights are clearly stated in most human rights instruments, including the UN Declaration on Human rights (art 21, 22) and the ICCPR, as well as in many regional rights instruments and national constitutions.
3. Yet in 2008 Freedom House<sup>2</sup> reported that the state of rights to freedom of peaceful assembly and association was declining, that repressive governments were increasing restrictions on these rights, and that, in doing so such governments were violating international human rights standards. These government restrictions were seen as a response to movements elsewhere in the world, which had been triggered through the establishment of (political) associations.

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<sup>1</sup> UN Document A/HRC/RES/15/21, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>

<sup>2</sup> Freedom of Association Under Threat: The New Authoritarians' Offensive Against Civil Society, Freedom House, 2008, <http://freedomhouse.org/template.cfm?page=384&key=145&parent=13&report=74>



4. Just a few years later, the world has seen the 2011 Arab and Middle East uprisings, strongly leveraged by online digital tools for gathering and information sharing<sup>3</sup> Parallel to the strength which people have gained through these movements and these enabling tools, there has been a number of totalitarian crackdowns on both the movements and the tools used. It is therefore of critical importance that the rights to freedom of peaceful assembly and association are understood in the light of how they are exercised on the internet and through the use of information communication technologies (ICTs). While the internet and ICTs offer new opportunities to exercise rights, these also offer repressors new possibilities.
5. This submission has three parts: (a) the conceptualisation of freedom of peaceful assembly and freedom of association on the internet, (b) country specific cases and (c) recommendations.

#### **A - THE CONCEPT OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION ONLINE**

6. The internet as a communication technology is not new and telecommunications as a means to exercise the rights to freedom of peaceful assembly and association has been available for a long time. The last few years, however, we have seen an unprecedented development of possibilities to communicate and interact online. With almost 2.5 billion internet users<sup>4</sup>, of which 800 million interact on Facebook<sup>5</sup>, the UN Special Rapporteur on Freedom of Expression recently stated that “the Internet is one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information, and for facilitating active citizen participation in building democratic societies”<sup>6</sup>.
7. Originating from developed world technology, the internet and its many communication tools are now increasingly becoming available in the developing part of the world, including in countries with repressive regimes where democratic rights are urgently needed. Internet users per 100 inhabitants in developing countries have more than doubled since 2007<sup>7</sup> and are now increasing more rapidly than in developed countries.
8. The rights to freedom of peaceful assembly and association, as stated in the ICCPR, as well as in other human rights instruments, gives protection to a wide variety of

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<sup>3</sup> *Global Information Society Watch 2011: Internet Rights and Democratisation focus on Freedom of Expression and Freedom of Association Online* (APC and Hivos, 2011).

<sup>4</sup> ITU Statistics (2012), <http://www.itu.int/ITU-D/ict/statistics/> (estimate for 2011)

<sup>5</sup> Facebook statistics (2012), <https://www.facebook.com/press/info.php?statistics>

<sup>6</sup> United Nations document A/HRC/17/27, (2011) para 2

<sup>7</sup> ITU Statistics (2012), <http://www.itu.int/ITU-D/ict/statistics/> (12% of population in 2007 to 26.3% in 2011)



ways to associate and assembly, and the protection given is not limited to the traditional notion of public spaces (such as public highways or roads of other tangible spaces). The rights to freedom of peaceful assembly and association should be construed to include any space where people can meet, including online spaces.

9. Art 21 and 22 of the ICCPR provide that any limitations on the rights must be provided for by law, and only those absolutely necessary for national security, public order, or the protection of other rights. But in APC's experience, limitations on the rights to freedom of peaceful assembly and association on the internet take various forms, and often do not comply with international human rights standards.
10. Such limitations or restrictions include technical measures in the form of filtering or blocking certain websites or online tools, or even blocking of users of the internet. These technical measures are often provided for by law, many times in the name of protecting intellectual property or child pornography prevention. In that sense those restrictions are lawful, but only if such restrictions are absolutely necessary for national security, public order, or the protection of other rights can they be deemed complying with international human rights standards.
11. Filtering and blocking mechanisms will always affect a far larger group of people than the sought-after offenders. It is, in fact, impossible to target specific content/users without scanning everything/everyone. Filtering and blocking should therefore only be used in the most severe cases, and never as an arbitrary preventive measure against intellectual property infringement or child pornography.
12. By enabling the user instant and global communication while keeping relative anonymity, the internet plays an important role in facilitating traditional ways of association and peaceful assembly, through enabling effective and quick planning of assemblies and associations. However, the internet it also enables the exercise of the assemblies and associations in ways never seen before. The massive global protest against the SOPA and PIPA legislations showed that important movements no longer necessarily need representation in the physical world.

### **The right to freedom of peaceful assembly**

13. Only peaceful assemblies are protected, according to art 22 of the ICCPR. This limitation does, however, not mean that an assembly, whether online or offline, may be limited or prevented only because it is inconvenient or offensive to someone. OSCE includes "conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties"<sup>8</sup> in its interpretation of the term peaceful.

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<sup>8</sup> OSCE Guidelines on freedom of peaceful assembly (2007), <http://www.osce.org/odihr/24523>, p.13



14. The right to freedom of peaceful assembly in an internet context has two dimensions. First, it means that a state is obliged to respect the right to organise and plan an assembly through online interaction. Second, the right must be interpreted as also protecting peaceful assemblies that occur online, through different web based tools such as Facebook, Twitter, discussion forums or online campaign activities.
15. Today, any political protest is planned and organised through communication over the internet. The internet enables gathering of large groups of people in a short notice which may be critical to be able to respond to a certain event, such as an election, or a counter-demonstration. It is therefore critical that blocking of sites are never conducted arbitrarily as even a short down-time can make the organising of a protest assembly impossible. Such just-in-time blocking have been the case in middle east and elsewhere and are conducted either through blocking or through DDOS attacks on certain websites.
16. Furthermore, it is widely interpreted that states, under international human rights standards, may require prior notice for a planned assembly while also providing for spontaneous assemblies to occur<sup>9</sup>. As the internet enables far quicker organising of assemblies it is important that restrictions that may have been considered proportionate when organising assemblies took longer time are updated and shortened to allow for quickly organised assemblies.
17. In a world where citizens are increasingly connected to the internet, assemblies are not only planned and organised online, assemblies can occur entirely online. Causes and protests does not always include people meeting physically anymore, they can effectively occur online only, with as much impact as regular assemblies. It is our understanding that the right to freedom of peaceful assembly already protects such assemblies. There may, however, be a need to develop the understanding of the scope and implications of the right in the context of assemblies online.

### **The right to freedom of association**

18. Whereas online assemblies might be more complex to construe, it is more obvious that the internet plays a critical role in exercising the right to freedom of association. Nevertheless, it is important to understand the full implications of exercising the right to freedom of association on the internet or in relation to the internet.
19. The right to freedom of association is often associated with the right to form political parties and the right to organise collectively at the workplace. While these two examples might be the most commonly threatened associations, it is important to recognize that associations are formed everywhere in society, and that many societal functions rely on the free formation of associations. Not only has the internet helped

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<sup>9</sup> OSCE Guidelines on freedom of peaceful assembly (2007), <http://www.osce.org/odihr/24523>, p. 48



these associations reach out further and become more effective, many such associations only exist online.

20. As mentioned above, the relative anonymity that the internet offers enables people or minority groups to associate on sensitive matters such as sexual orientation or religion. At the same time, the internet offers the state (or any other technically strong actor) to implement surveillance measures, which may expose an online association publicly with severe negative effects.
21. It is therefore important that states not only refrains from blocking and filtering measures, as in the case of freedom of assembly, but also refrains from any surveillance measures that are not conducted in accordance with international human rights standards.

#### **Relation to other rights**

22. As mentioned above, the rights to freedom of peaceful assembly and association are closely related to a number of other human rights, civil and political as well as economic, social and cultural. While freedom of expression often is seen as an enabler of the rights to freedom of peaceful assembly and association, it may also be the opposite, as the formation of an association may be needed to effectively develop and reach out with a message. Furthermore, and in particular in an internet context, the right to privacy is important for the realisation of the rights to freedom of peaceful assembly and association. As activities online leaves tracks, the discussion on a possible right to anonymity as well as a possible right to be forgotten are relevant to exercising the rights to freedom of peaceful assembly and association online.

#### **New forms of violations and states' positive obligation to provide protection**

23. Most focus of states' obligation to respect and protect the rights to freedom of peaceful assembly and association tend to focus on respect the freedom to assemble or associate through refrain from any hindering activities. It is, however, widely accepted that that, for example in relation to policing measures, it is the positive obligation of authorities to protect protesters from violence.
24. In an internet context the states' possibilities to positively ensure citizens freedom to assembly or associate increases dramatically. As noted above the privacy and anonymity of citizens associating online is critical, and the rights to freedom of peaceful assembly and association must be understood as to encompass active measures from the state as to ensure citizens privacy and anonymity online.
25. The increase of online attacks against independent media and human rights groups has proven to be an effective way of silencing certain voices and groups at certain



times<sup>10</sup>. It is therefore appropriate to consider the states' positive obligation include reasonable measures of protection for peaceful assemblies or and associations from attacks.

26. Furthermore, considering the importance of internet for the realisation of the rights to freedom of peaceful assembly and association, it is reasonable to require states to employ policies on universal access to the internet.

### **New remedies**

27. New forms of ways to associate and assemble have lead to new forms of violations of the rights to freedom of peaceful assembly and association. This development has created a need to address new forms of remedies and accountability against human rights violators. To effectively address such new remedies and accountability there is an urgent need for capacity building amongst human rights defenders about technical possibilities and threats as well as the application of human rights in an online environment.<sup>11</sup>

### **Specific issues in relation to specific groups**

28. The impact of internet on the situation of women cannot be over emphasized. The internet can be a powerful tool for ending gender-based violence, by allowing access to resources and support. It helps to publicise abuses, which can bring pressure to bear on the authorities to take action. However, the anonymity of the web, and its ability to shrink distances, also mean that perpetrators can use it to harass, stalk and find victims. Technology also heightens problems of privacy, evidence and recompense evident in traditional gender-based violence.<sup>12</sup>
29. In a recent mapping study, Take back the Tech and GenderIT.org showed that ICT and online spaces have become a significant component and extension of the reality of violence against women, and thus far, insufficient attention has been paid to it by state, non-state and civil society actors<sup>13</sup>. These online forms of violence against women must be understood also as a violation of the rights to freedom of peaceful

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<sup>10</sup> Ethan Zuckerman, Hal Roberts, Ryan McGrady, Jillian York, John Palfrey, *Distributed Denial of Service Attacks Against Independent Media and Human Rights Sites*, The Berkman Center for Internet & Society at Harvard University (2010), <http://cyber.law.harvard.edu/node/6521>

<sup>11</sup> Please find more information on remedies and accountability in the APC IGF workshop report: [http://www.apc.org/en/system/files/IGF%20Workshop%20155\\_report.pdf](http://www.apc.org/en/system/files/IGF%20Workshop%20155_report.pdf), and in the APC issue paper Human Rights Online - New issues and threats, [http://www.apc.org/en/system/files/IRHRPolicyBrief\\_EN.pdf](http://www.apc.org/en/system/files/IRHRPolicyBrief_EN.pdf)

<sup>12</sup> Read more about online violence such as cyberstalking at <http://www.takebackthetech.net/be-safe/2-cyberstalking-and-how-prevent-it>

<sup>13</sup> GenderIT.org, <http://www.genderit.org/articles/mapping-intersection-technology-and-gender-based-violence>



assembly and association as women are targeted as a group and are not free to exercise their rights through the internet if not protected from violence and harassment.

30. The 1998 UN Declaration on Human Rights Defenders acknowledges the importance of the ability of individuals to promote and protect human rights<sup>14</sup>. Since then, the internet has become an essential tool in the work of human rights defenders, enabling them to put pressure on governments to live up to international human rights standards. However, in the exercise of this important role through the internet, human rights defenders tend to become even more exposed as a group, and deserve particular protection in an online environment. In reference to para. 28 and 29 above, the protection of human rights defenders in an internet environment needs to address the particular challenges women human rights defenders face<sup>15</sup>.

## **B - COUNTRY SPECIFIC CASES**

31. **BULGARIA:** Bulgaria is a good example of how the right to freedom of peaceful assembly needs to be actively protected online. As discussed in the Bulgaria GISwatch report, online forums and social networks are becoming dominated by extremist groups through hate speech. Other social groups are pushed away as they are not protected enough from such hate speech.<sup>16</sup> As in any policing of assemblies, there is a delicate balance between protecting an assembly and allowing free speech of others. Policing online does, however, need a specific approach and understanding of both the right to freedom of peaceful assembly and the right to freedom of expression.
32. **BELARUS:** The human rights situation in Belarus has been heavily reported on, unfortunately including exaggerations<sup>17</sup>. Notwithstanding exaggerations, the situation in Belarus is alarming in relation to many human rights, including the rights to freedom of peaceful assembly and association. Legislation restricting public assemblies does not only violate the right to freedom of peaceful assembly in its traditional way, it also

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<sup>14</sup> A/RES/53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.En)

<sup>15</sup> In addition to the gender perspective explained in para. 28 and 29, the particular needs of protection for women human rights defenders are outlined in the commentary to the Declaration on Human Rights Defenders, <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>, p.7

<sup>16</sup> Vera Staevska, Is freedom of expression and association on the net working on the street?, GISWatch 2011, <http://giswatch.org/en/country-report/freedom-expression/bulgaria>

<sup>17</sup> A more nuanced article on Belarus' claimed online iron curtain, <http://www.dw-world.de/dw/article/0,,15648186,00.html>



targets any planning activity, which means that already discussing political protest online may be criminalised<sup>18</sup>.

33. MALAYSIA: 2011 was a very turbulent year for Malaysian human rights activists. The violent reactions to the peaceful Bersih 2.0 protests displayed a cold disrespect for the rights to freedom of peaceful assembly and association<sup>19</sup>. The Bersih 2.0 demonstrations were largely coordinated over sms and twitter, and these tools not only play a critical role in planning and setting up the event, they are also important in keeping an organisation peaceful. When the police uses unprovoked violence against protesters such tools play a critical role in reorganising and avoiding further clashes with the police.
34. The result of the turmoil around Bersih 2.0 are proposed further restrictions on the right to freedom of assembly as well as worrying just-in-time online attacks such as the DDOS attack on a top news paper during the regional elections in Sarawak<sup>20</sup>.
35. SOUTH KOREA: The “candlelight protests” in South Korea is another good example of how peaceful protests can be kept running over the internet despite violent police clampdown of the physical protests. In 2008, when the peaceful protests against importation of US meat were met with violence from the police, protesters video streamed police brutality and kept the protests and discussions going in online media, then the only way to exercise their right to peaceful assembly. As if violent policing was not enough, the continued online protest was responded to by the Korean state with criminal prosecution of protesters for “false communication”. Recently, a real name system has been established in the country, requiring everyone to display their real name when posting on the internet, something that has a severe chilling effect of the political opposition.<sup>21</sup>
36. USA: Violations of the right to freedom of peaceful assembly and association does not only occur in developing countries. The action of forcing payment companies to not forward payments to the organisation wikileaks was a clear limitation to the right to freedom of association. Since the actions of putting pressure on these companies to block payments were not provided for by law it should be deemed a limitation not

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<sup>18</sup> Human Rights Watch World report 2012, <http://www.hrw.org/sites/default/files/reports/wr2012.pdf>, p. 427.

<sup>19</sup> Human Rights Watch World report 2012, <http://www.hrw.org/sites/default/files/reports/wr2012.pdf>, p. 342

<sup>20</sup> Softpedia, <http://news.softpedia.com/news/Malaysia-s-Top-News-Website-Hit-by-DDoS-Attack-194680.shtml>. See also the official announcement from the newspaper on Facebook, [https://www.facebook.com/note.php?note\\_id=10150145076186486](https://www.facebook.com/note.php?note_id=10150145076186486).

<sup>21</sup> South Korea's 2008 candlelight demonstrations and digital rights, Global Information Society Watch, 2011, <http://giswatch.org/en/country-report/social-mobilisation/republic-korea>



acceptable under international human rights standards.<sup>22</sup>

## C - RECOMMENDATIONS

37. In reference to the above, APC recommends

- *states to incorporate the online perspective of any legislation or other measure in relation to the rights to freedom of peaceful assembly and association .*
- *states to live up to their obligation to protect online associations as well as online peaceful assemblies online from attacks.*
- *states to develop clear guidelines to companies as well as labor movement on what shall be considered lawful dismissals due to worker's expressing themselves online*
- *the Special Rapporteur of the right to freedom of peaceful assembly and association, as well as other relevant United Nations bodies, to further develop the concept of the rights to freedom of peaceful assembly and association online, including a definition of an online assembly and such a definition's consequences for states' obligations to protect such assemblies.*
- *the Special Rapporteur of the right to freedom of peaceful assembly to actively seek opportunities for collaboration with other special mandate holders on issues in relation to the internet. In particular, the mandate holders on the right to freedom of expression, on violence against women, on the situation of human rights defenders, on the right to health and on the right to education, should all take into account the importance of addressing the internet aspect of their collaboratively.*
- *the Special Rapporteur of the right to freedom of peaceful assembly and association, as well as other relevant United Nations bodies, to discuss the need for a right to anonymity online and a right to be forgotten online, in relation to the rights to freedom of peaceful assembly and association.*
- *states, as well as UN bodies, to acknowledge states' obligation to ensure universal access to the internet as a means to realise universal human rights such as the right to freedom of peaceful assembly and association.*
- *states to acknowledge that restrictions (whether due to state, family or cultural reasons) to women's use of the internet and communication technologies adversely affect women and girls rights to fully participate in cultural life and the full exercise of their citizenship within the evolving information society.*

-- Henrik Almstrom & Joy Liddicoat --

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<sup>22</sup> Cablegate: Visa and MasterCard face legal problems over WikiLeaks blockade, <http://www.thetechherald.com/articles/Cablegate-Visa-and-MasterCard-face-legal-problems-over-WikiLeaks-blockade>