

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

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Dear Messrs. Shin and Lewis,

I have the honour to address you in my capacity as Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to Human Rights Council resolution 24/5.

I welcome the Financial Action Task Force's (FATF) comprehensive revision of the Best Practices Paper and current efforts to update the Recommendation 8 Interpretative Note.

I am, however, concerned that the revisions made to these documents will be less than effective without a corresponding amendment to Recommendation 8's characterization of non-profit organizations (NPOs) as "particularly vulnerable", a notion that has sometimes been used by States to justify restrictive measures or overregulation applied to the civil society sector. I am therefore writing to urge the FATF to consider launching a consultative revision process of Recommendation 8 so that it better reflects approaches to anti-money laundering and counter-terrorism that comply with international human rights standards.

My most recent report to the United Nations General Assembly presented in October 2015 (A/70/266) introduces the notion of sectoral equity, a concept that implies a fair, transparent and impartial approach to regulating the for-profit and non-profit sectors grounded in domestic and international law, standards and norms. Identifying non-profits as "particularly vulnerable" to financing terrorism violates the principle of sectoral equity as there is no evidence to support this proposition. In fact, a recent investigation from the international non-governmental organization Global Witness suggests that the for-profit sector may pose a greater risk in this regard.¹ Removing from Recommendation 8 the explicit language identifying NPOs as "particularly vulnerable" and emphasizing the importance of following a proportional and targeted approach would comply with the principle of sectoral equity. It will reduce the possibility for overregulation and

¹ The report 'Lowering the Bar: How American lawyers told us how to funnel suspect funds in the United States' (January 2016) is available at: <https://www.globalwitness.org/shadyinc/>

restrictions and will send a strong signal to States that non-profits should not be identified for intervention simply for belonging to the sector.

In my report to the United Nations Human Rights Council in June 2013 (A/HRC/23/39), I unequivocally stated that the right to freedom of association includes the ability of individuals or legal entities to form and join an association and to seek, receive and use resources – including financial resources – from domestic, foreign and international sources. However, as you know, States justify and impose restrictions on the civil society sector, particularly in relation to foreign funding, on the need for protection against terrorism and the prevention of money-laundering. The over-regulation of the sector is not only unjustifiable – since there is no evidence that non-profits are any more likely than other entities to engage in terrorist financing – it is unnecessary because States have other means, including financial surveillance and police cooperation, of effectively addressing the terrorism financing threat.

Opening up Recommendation 8 to revision will go a long way in supporting efforts by various stakeholders to safeguard enabling environments for civil society. I encourage the FATF to undertake this revision through an open consultative and participatory process with inclusion of a wide range of NPOs.

I remain at your disposal to provide any assistance within the purview of my mandate to address the concerns raised. I would be happy to meet with you at a mutually convenient occasion for further dialogue on these issues.

This letter and your response, if any, will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Messrs. Shin and Lewis, the assurances of my highest consideration.

Maina Kiai

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