



Statement by Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United States of America

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WASHINGTON, DC (27 July 2016) – First let me thank the Government of the United States of America for inviting me to undertake this official mission here from 11 to 27 July 2016.

I would also like to thank the Government for its cooperation in organizing the mission, which was extremely fruitful, illuminating and timely. I had productive exchanges at the federal, state and local levels and met with numerous officials. I appreciate their contributions and inputs which have greatly assisted me in better understanding the situation regarding the rights to freedom of peaceful assembly and of association in the United States today.

Let me also thank the US Government for the crucial role it played in establishing and renewing my mandate and its consistent support for it at the UN Human Rights Council. I also commend the US for the key role it has played at the Council in general, including in relation to the adoption of resolutions on peaceful protests, civic space, LGBT rights and many more issues.

During my visit, I have met with hundreds of activists and individuals representing a wide range of perspectives, observed a number of protests at the Republican and Democratic national conventions, and more. I want to thank everyone who took the time to meet with me and share their stories. The diversity, energy and dedication of America's civil society sector is one of greatest strengths of this country, and it is something that the United States and its people should be thankful for. I applaud each and every one of you for your work.

I especially want to thank all those who volunteered their assistance to link me with activists in the cities I visited, with special mention to Solidarity Center, ICNL, ACLU, and AFLCIO. During this mission I covered 10 cities in 17 days: Washington, New York, Baltimore, Ferguson, MO, Cleveland, Phoenix, New Orleans, Baton Rouge, Jackson, MS, and Philadelphia.

The United States is an impressive, complex and imposing nation in which to undertake a mission such as this. It is an economic powerhouse, a military superpower, a global engine of technological development, and one of the oldest democracies in the world.

It is also an extremely diverse nation, a nation of indigenous peoples, slaves and immigrants. It is a nation of diverse opinions and views, sometimes so strongly held that it once slid into Civil War. And it is a nation of struggle and resilience, home of one of the 20th Century's most inspiring moments encapsulated by the Civil Rights Movement.

The experiences with various forms of diversity and complexity have not always been smooth. The country was founded on land stolen from its indigenous Native Americans; its early economic strength was built on race-based slavery against people of African descent; and successive waves of immigrants have faced discrimination, harassment or worse.

Today, unfortunately, America seems to be at a moment where it is struggling to live up to its ideals on a number of important issues, the most critical being racial, social and economic inequality, which are often intertwined.

To be clear, the focus of my mission was not race or discrimination. My mandate concerns the enjoyment of the rights to freedom of peaceful assembly and of association. But it is impossible to discuss these rights without issues of racism pervading the discussions. Racism and the exclusion, persecution and marginalization that come with it, affect the enabling environment for the exercise of association and assembly rights.

This issue is particularly grave in the African-American community, and understanding its context means looking back at 400 years of slavery. It also means looking at the emergence of the Jim Crow laws that destroyed the achievements of the Reconstruction Era, which emerged at the end of slavery in 1865, and enforced segregation and marginalized the African-American community to a life of misery, poverty and persecution.

It means looking at what happened after Jim Crow laws were dismantled, when old philosophies of exclusion and discrimination were reborn, cloaked in new and euphemistic terms. These may have not been race-based on their face, but they have, intentionally or not, disproportionately targeted African-Americans and other minorities.

The so-called "War on Drugs" is a perfect example. From it, one out of every 15 black men is in currently jail. One out of every 13 African-Americans, meanwhile, has lost their right to vote due to a felony conviction. An aggressive emphasis on street-level "law and order" (or "broken windows" approach) policing combined with wide police discretion means that African-Americans are subjected to systematic police harassment – and sometimes much worse – often for doing nothing more than walking down the street or gathering in a group. Convictions and incarcerations dramatically increased once the "War on Drugs" was set in motion, without a corresponding increase in drug use.

Similarly the crime laws passed under the Bill Clinton administration (1993-2001), including the federal “three strikes” law, implemented aggressively against people of color have contributed to the huge rises in incarceration and exclusion of the black community further fueling discontent and anger.

The effects can often snowball: A minor criminal offense – or even an arrest without substantiated charges – can show up on a background check, making it difficult to find a job, secure a student loan or find a place to live. This marginalization in turn makes it more likely that a person will turn to crime, for lack of any other option, and the vicious cycle continues.

These discriminatory laws and practices need to be seen in the larger context. Wall Street bankers looted billions of dollars through crooked schemes, devastating the finances of millions of Americans and saddling taxpayers with a massive bailout bill. Yet during my mission I did not hear any suggestions of a “War on Wall Street theft.” Instead, criminal justice resources go towards enforcing a different type of law and order, targeting primarily African-Americans and other minorities.

There is justifiable and palpable anger in the black community over these injustices. It needs to be expressed. This is the context that gave birth to the non-violent Black Lives Matter protest movement and the context in which it must be understood.

In discussions with activists, it is clear that “Black Lives Matter” does not mean that other lives—green, purple, blue, white or other color—do not matter. The Black Lives Matter movement is simply a reaffirmation that black lives do in fact matter, in the face of a structure that systematically devalues and destroys them, stretching back hundreds of years. It is not about granting African-Americans special status or privilege. It is about a historically and continuously targeted community seeking to elevate itself to the same level that everyone else enjoys.

But racial inequality is not the only inequality inhibiting the enabling environment for association and assembly rights. Although the United States engineered an admirable recovery following the financial crisis of 2007-08, this rising tide did not lift all boats. Productivity and economic output has grown, but the benefits of these have gone primarily to the wealthiest, as the wages of average people have stagnated. This has exacerbated the problem of inequality across all demographic groups, created more resentment, and more tension; providing more reasons for people to become politically engaged – including by exercising their assembly and association rights.

This inequality has been accelerated by declining union membership in a context of laws and practices which make it difficult for workers to organize, increasing corporate power, and a free market fundamentalist culture that actively discourages unionization. A dysfunctional, polarized Congress that has seemingly lost its tradition of compromise has made things worse.

In short, people have good reason to be angry and frustrated at the moment. And it is at times like these when robust promotion of assembly and association rights are needed most. These rights give people a peaceful avenue to speak out, engage in dialogue with their fellow citizens and authorities, air their grievances and hopefully settle them. They are also a key vehicle for public participation for marginalized groups whose ability to participate in democracy may be otherwise limited by dint of being felons or migrants.

With these contextual observations in mind, I would like to address several specific areas of concern. My analysis is made through the lens of international law – including customary international law (which includes the International Covenant on Economic Social and Cultural Rights, the major treaties of the International Labor Organization and the Vienna Declaration of 1993) – governing the rights to freedom of peaceful assembly and of association. While the US is governed by a complex jurisdictional system, with multiple layers of government, the country is still a single State, where all levels of authority bear responsibility to comply with international law.

The following issues and more will be covered comprehensively in my report to the Human Rights Council in June 2017.

The Right to Freedom of Peaceful Assembly

Peaceful assembly and its management

The history of the USA demonstrates the pivotal role of peaceful assemblies in bringing about social progress and change, especially in periods of discontent. Peaceful assembly is one of the most critical democratic tools we have to express and channel grievances, especially between elections. This is all the more true for groups in society who are, for one reason or the other, excluded from the right to vote such as felons or migrants.

Legal framework for peaceful assemblies

The right to assemble peaceably is protected by the first amendment to the US constitution. The law, the US Supreme Court and US authorities rightly recognize the interconnection between the right to peaceful assembly and the right to freedom of expression; a right highly valued and protected in this country. Many protests are held throughout the nation and protests seldom seem to be forbidden.

However, the position taken by several Courts and authorities that many time, place and manner restrictions do not defeat the right to peaceful assembly as long as they are not content based, does not conform with international law. The right to peaceful assembly is a right on its own, distinct from the right to freedom of

expression which protects the content of the message. It guarantees that people may conduct assemblies, and restrictions to this right - be it on their time, place or manner - need to meet the standards under international law.

I was happy to learn that last week police in New Orleans facilitated and accommodated a spontaneous protest march in the streets. This indeed is a commendable practice conform to international norms and standards. Unfortunately almost all cities require permits for protests, contrary to international law and standards. In Philadelphia, as in some other locations, the requirement to obtain a permit is not always rigidly enforced, but this opens the process to arbitrariness and uncertainty.

When a right is subjected to a permit or authorization requirement, it becomes a privilege rather than a right. Notifications, meant to enable local authorities to facilitate and protect protests are in compliance with international law and standards. But such notifications may not turn into de facto authorizations, and I recommend that the US moves to a notification system. I also recommend ending the practice of charging fees for protest permits.

Policing of assemblies

I was pleased to observe that police in the states I visited have a good understanding of the best practices of managing assemblies, and that they have the capacity to implement them, which they often do. But they also sometimes ignore these best practices, preferring intimidatory and discriminative tactics.

It was disturbing to learn that assemblies organized by African-Americans are managed differently, with these protests often met with disproportionate force. Indeed, white and Muslim activists that I met acknowledged that black fellow protesters face harsher police encounters in the context of assemblies: police are more likely to be militarized and aggressive; black people are detained longer after arrests; they face more and heavier charges, more intimidation and more disrespect.

This blunt discrimination provides fodder for deeper resentment and frustration and widens the gap between law enforcement officers and the community that these officers have sworn to protect and serve. It was disconcerting to hear the many testimonies revealing that two years after the mismanagement of protests in Ferguson, and a year after the crisis in Baltimore following the shooting by police of Freddie Gray, similar practices were repeated in Baton Rouge in July this year to deal with protests after the police shooting of Alton Sterling.

It is manifestly unwise to respond to a largely peaceful, grieving crowd with riot gear, random arrests, flimsy charges, rough physical handling, verbal insults and so forth. This is not only a violation of the right to peaceful assembly, it also dangerous for participants, the general public and police officers.

Police officers I met in the different states were very knowledgeable about and provided practical examples of how they have used de-escalation techniques, and a light footprint, to defuse tensions during protests. Many underscored that a show of massive force, coupled with aggressive police approaches lead to escalation as seen in Ferguson, Baton Rouge, Baltimore and in Cleveland during the recent RNC.

The federal Government's "1033 Program" - has caused serious harm to the practice of and thinking around management of crowds. The program gives local and state police authorities' easy access to surplus military equipment, much of it designed for very different settings. Protesters are not war enemies and should never be treated as such. It is ill-advised to use military material to manage activities so fundamental to democratic societies. Protests naturally come with some disruptions, but police should target only the individuals responsible for violence.

Acts of violence by a few do not make an entire protest violent; nor do they strip other individuals of their right to continue the assembly. The Washington DC Metropolitan Police expressed an ability to take such individuals out of the crowd without disturbing the protest. The Jackson and New Orleans Police Departments also display a good understanding of the role and management of protests. These skills deserve to be shared with police nationwide. I am also pleased to note that the Obama administration has recently rolled back the scale of the 1033 Program.

Protesters also expressed concern about growing intimidation by law enforcement. Officers, allegedly from the FBI, have gone to the homes of Black Lives Matter activists and Amnesty International staff, amongst others seeking to warn them off impending protests. Alana Belle of Cleveland told how FBI officers visited her home days before the RNC to warn her against organizing protests. Active protesters, organizers and leaders in communities feel targeted and surveyed.

Marginalized groups such as migrant workers and homeless often suffer disproportionately from intimidation practices in Phoenix, Arizona, New Orleans, Philadelphia and DC. I heard testimony, for example, of presence of Immigration and Customs Enforcement (ICE) agents at assemblies in New Orleans; ICE has no role to play in managing assemblies and their presence only instills fear. And a number of cities have ordinances which prevent homeless people from gathering in certain public places, despite the fact that most have literally nowhere else to go.

Police surveillance of protests is also an issue. Just yesterday, I witnessed an incident at a Black Lives Matter protest in Philadelphia where protesters identified an undercover officer who was marching with demonstrators and filming them. Some of the protesters understandably became agitated, though thankfully, serious disturbance was avoided. But the decision to place an undercover officer with a camera in the middle of a protest against police violence is unfathomable. While police have a right to record protests, that right must not be used to intimidate, or provoke protesters. In fact the only time filming should be done at a protest by the police is to record an actual crime in progress.

Petty charges and high numbers of arrests further chill and undermine the right to peaceful assembly. Many protesters testified of being arrested and charged with offenses such as ‘obstructing traffic’, ‘failure to obey a police officer’ and ‘resisting arrest.’ These charges then appear on protesters’ criminal records, with devastating effects such as job losses, inability to get public housing, and more. Exercising a human right should not cause such domino effects into misery.

In addition, law enforcement officers have extremely wide and often unaccountable discretion to detain, arrest and formulate certain charges. I heard dozens of stories of protesters who said they were detained or cited for obstruction of traffic for simply stepping or stumbling off a sidewalk. In the recent events in Baton Rouge, protesters were allegedly ordered to clear the road at a point where the road had no sidewalks.

Observers and journalists are typically treated in the same manner as protesters: when the protest is managed well, so are they. But if the management of assemblies goes wrong, journalists and monitors are unable to play their legitimate oversight roles.

Testimonies in Ferguson and Baton Rouge about deleted video recordings from devices taken away by the police are worrisome. The recent news that Christopher LeDay, the man who videotaped Alton Sterling’s death, allegedly was handcuffed, jailed, taken in on false charges and is now not allowed back at work is an illustration of such intimidation, harassment and its far-reaching effects on people recording police officers.

Similarly, I am tremendously disturbed by the testimonies of many, mainly young black men in Baltimore, Baton Rouge, New Orleans and Philadelphia about similar practices. They reported being questioned and even charged with petty offences when gathering socially at street corners; even just with four people. In Philadelphia, I was informed, the practice of stopping and frisking primarily African-American people – often with no reasonable suspicion – has reached crisis levels. Such gatherings are not only protected as peaceful assemblies, but also contribute to weaving a stronger social fabric.

Oversight and accountability

I was struck by the vast and largely unchecked discretion that government authorities enjoy to arrest, to formulate (often petty) charges, to prosecute, to invite or deflect external scrutiny and support from the Department of Justice, and to organize internal complaints handling. This leads to an inconsistent picture of policing throughout the nation. Different authorities within a jurisdiction or in neighboring jurisdictions do not share a common view or policy about policing; a lot ends up depending upon personalities.

The police chief in Jackson was widely lauded by the African-American community there for his community-centered approach, but city authorities allegedly require protest organizers to pay considerable fees for permits and insurance, a practice that discourages marginalized communities assembling. And in the neighboring county, arrests and harassment of African-Americans are a daily occurrence.

The introduction of vaguely-defined crimes allows for even more discretion. Defining 'battery of a law enforcement officer' as a hate crime as was recently passed in Louisiana, raises particular concerns. Philadelphia has similar legislation with potential for disastrous effects. For example unintentional or accidental touching which may easily occur in a context of an assembly could be elevated to a hate crime. Again, such crime conceptions have chilling effects on the exercise of assemblies.

The Civil Rights Division of the Department of Justice has provided oversight and recommendations for improvement of police services in a number of cities with consent decrees. This is one of the most effective ways to reduce discrimination in law enforcement and it needs to be beefed up and increased to cover as many of the 18,000-plus local law enforcement jurisdictions.

The outcry for accountability for police shootings is deafening. Given the attention to this issue and its importance, it is incomprehensible that a modern society such as the United States lacks official records that accurately document the number of victims of such shootings, the precise circumstances and the follow-up actions taken. Such information would enable a deeper understanding of the situations in which lethal force is used and support adequate adjustments if proven necessary.

Freedom of assembly in a country where citizens carry guns

As a final point I wish to underscore the challenges of exercising the right to peaceful assembly when there is open or concealed carriage of guns. The presence of guns clearly has a dissuading effect on participating in an assembly, especially on controversial or emotional topics. In Ferguson, Black Lives Matter protesters testified about the intense fear they experienced when white people (Oath Keepers) with guns, at times directly pointed at them, stood on the roof of the police station while they protested down in the street.

Moreover, police told me how difficult, and scary, it is to police a protesting crowd armed with guns, and especially concealed weapons. Fear should not define the parameters of organizing or managing protests. Under international law, the peaceful character of a protest is largely determined by the intent of the organizers and participants. There is no need for peaceful protesters to carry intimidating guns.

The Right to Freedom of Association

The right to freedom of association includes the right of workers to form associations, including unions, and the right to strike.¹ During this mission, I met with a number of workers and organizations that represent workers who described the challenges they face in asserting their right to freedom of association. I also met with representatives from the Department of Labor and the National Labor Relations Board.

The overarching concern expressed by workers was the lack of robust protections of their labor rights. This was corroborated in discussions with State interlocutors who spoke to the neutrality that the State maintains in labor disputes between employers and employees; the limited resources provided for the monitoring and enforcement of labor standards; and a general lack of political will to strengthen these standards and penalties. International human rights law explicitly sets out the rights of workers, including the right to organize and the right to strike, and is equally clear about the State's duties not only to respect these rights but also to protect and actively facilitate their enjoyment.

I would like to touch on three issues that raised particular concerns in this context – the rights of migrant workers to organize, the ability to establish unions and the right to strike.

Migrant workers and freedom of association in the workplace

From my discussions with various groups, I learned that the situation of migrant workers throughout the United States is characterized by the precariousness and exploitation of their employment situation, retaliation for drawing attention to adverse working conditions and a fear of taking action to seek improvement of the violations.

A broad range of workers are affected - documented and undocumented, skilled and 'unskilled', seasonal and or long-term. Migrant workers, of whom I met many in Arizona and Louisiana, are routinely subjected to harassment, intimidation, physical, sexual and psychological abuse, with those attempting to form or belonging to unions and organizations such as the Congress of Day Laborers being targeted for reprisals. Compounding these challenges, many of these workers cannot return home voluntarily because of the debts they incur in order to cater for migration and settlement expenses, plus fees charged by recruitment agencies to find them work.

¹ I am conscious of the language in paragraph (g) of Human Rights Council Resolution 15/21 – which established my mandate – advising against the duplication of work already conducted by the International Labour Organization and its specialized supervisory mechanisms. The broader right to freedom of association, however, unequivocally applies in the workplace and there can be no serious, worthwhile discussion of association rights in the United States without at least touching upon the challenges surrounding this.

Migrant workers' rights are violated by multiple actors who are motivated by perverse incentives that often converge to the detriment of migrant workers, including private sector employers, recruitment agencies, union-busting firms, Immigration and Customs Enforcement Agency, local police forces and sheriffs' offices, and private detention facilities.

Undocumented migrants face tremendous challenges in exercising their right to freedom of association. I would like to emphasize that under international law all workers are entitled to their human rights, including the right to freedom of association. Crossing national borders – whether legally or otherwise – does not take away these rights. As such, the testimonies of undocumented workers subjected to raids, random stops and searches – especially based on racial profiling – and arrests were particularly troubling. In the context of my mandate, the harsh treatment in immigration detention centers, many of them run by private companies who slash services to boost profits, is also unacceptable. This is particularly concerning given that many employers threaten to (and do) report migrant workers to ICE if they attempt to organize. I heard incredibly disturbing reports about these detention centers, where migrants can face solitary confinement, physical abuse, and denial of medical attention.

Documented workers fare no better. I met teachers from the Philippines who were brought into the United States on H-1B visas by a recruitment agency in circumstances that a court determined amounted to human trafficking. The recruitment agency provided the teachers false information about the terms and conditions of work, financially exploited them, restricted their freedom of association and movement, and threatened them with deportation and loss of their jobs if they did not. It was however gratifying to hear that the teachers were able to organize themselves, join a union and together struggle for better working conditions with much success. Their achievements were necessarily because they were able – despite the odds facing them – to work in association rather than individually.

Seasonal or guest workers on H-2B visas experience similar vulnerabilities such as exploitation by recruitment agencies, isolation, unsafe working conditions, and appalling living arrangements provided by employers. Attempts to organize are met with threats and in some cases, job loss and deportation. Visas are typically tied to a specific employer who exercises immense control over the employee, can terminate the employment contract arbitrarily, call in immigration enforcement to initiate deportation proceedings and illegally withhold wages without severe penalty. This ensures that the balance of power favors the employer rather than the employee. This arrangement is unfortunately, not dissimilar to the Kafala system of bonded labor practiced in a number of countries in the Gulf region.

The role that ICE plays in enforcing immigration laws, often in collaboration with local police and in disregard of the labor disputes that may be the cause of

retaliation by the employer, has the effect of aggravating violations of migrants rights, including of assembly and association. Federal government interlocutors have taken measures to ensure that workers are not subjected to deportation proceedings while pursuing redress for workplace violations, but these only apply on a case-by-case basis rather than systematically across the board. They are also weak protections in the face of an enormous problem affecting thousands of workers. More needs to be done.

At the local level, I was informed that the New Orleans Police Department, following advocacy by civil society, recently issued a policy which makes a clear distinction between its criminal law enforcement role and ICE's civil immigration law enforcement. This policy measure enhances the confidence and cooperation of the community in police actions.

Labor unions

The right to establish unions is an important one through which workers collectively can level the playing field with employers. It was therefore disturbing to hear all the impediments facing workers who want to exercise this right.

In law, workers are not prevented from forming unions. However, in practice the ability to form and join unions is impeded by a number of factors: the inordinate deference given to employers to undermine union formation; a so-called "neutral" stance on unions by authorities, when in fact international law requires that they facilitate unions; weak remedies and penalties for intimidation, coercion and undue influence by employers; and political interference and overt support for industry at the expense of workers. While employers can hold captive audience meetings and one-on-one meetings with supervisors to dissuade employees from unionizing, workers have no right to distribute union literature in the workplace, conduct meetings without management being present or engage in protest activity on the employer's property. The pervasiveness of employer interference practices are vividly illustrated by the strength of the \$4 billion dollar 'union-busting' industry.

I was shocked to see that in states such as Mississippi, the lack of unionization and ability to exploit workers is touted as a great benefit for employers. The dangers of this are exemplified by the situation at the Nissan plant in Canton, MS, where the company has aggressively worked to prevent unions from organizing. Workers, meanwhile, have suffered greatly. The company no longer even hires new employees directly; they are all outsourced to a temp agency, which pays significantly lower wages and benefits. The figure that stands out for me is this: Nissan reportedly operates 44 major plants throughout the world; all of them are unionized, except for two of them in the US south. Why not Mississippi?

Even where unions are able to form, there are no requirements for an employer to engage in collective bargaining with the union with a view to concluding a contract; negotiations are often left intentionally open-ended and unproductive. The effect of

this long, drawn out process is to demoralize and frustrate union members, thus weakening their bargaining power. The case of AZARCO workers in Arizona exemplifies this problem.

In so called 'right to work' (a euphemism I find misleading) states such as Louisiana, Arizona among others, workers who do not wish to join unions are protected from forced membership in the union or from paying dues to the union. However, unions are required to represent all workers in the workplace whether – even if they do not pay dues. I find this to be a particularly insidious way of weakening unions, because it removes any incentive for workers to join. Coupled with the intense pressure by employers against unionization, it also gives enterprises a free pass to unilaterally set terms and conditions of employment to the detriment of workers.

The National Labor Relations Board, charged with the responsibility of protecting workers rights is unfortunately unable to issue penalties for employers' violations of rights. The remedies issued by the Board do not serve any deterrent purpose and underfunding severely limits the number of cases that the Board can investigate. The enforcement arms of the NLRB and the Department of Labor need to be strengthened dramatically in order to effectively address the challenges workers face in exercising their rights to freedom of association.

The right to strike

I was informed that in some situations, employers are permitted to replace striking workers permanently – which renders the action ineffective. The right to strike is one of the very few tools that workers can use to leverage their bargaining position with the employer. Where this right is infringed or altogether denied, workers are unable to effectively express their support or opposition to employers' policies.

Counter-terrorism issues in the context of assembly and association rights

Recent terrorist attacks in several parts of the world are painful reminders of how critical a resolute and coordinated response to the scourge of terrorism is needed. However, the fundamental rights of individuals, including the rights to freedom of peaceful assembly and of association, should not be forfeited in the name of this struggle.

I am concerned that US counter-terrorism legislation unduly curtails the right of associations to engage in humanitarian and peace building work abroad. The Antiterrorism and Effective Death Penalty Act (1996), amended by the USA Patriot Act of 2001, prohibits a wide range of support to terrorism but does so in a way that jeopardizes the right to freedom of association in the process. For example, the act imperils the work of associations providing critical peace trainings to actors

suspected to be related to terrorism. Similarly it complicates the work of humanitarian organizations in areas where terrorist actors are active. In the same manner grantmakers supporting this type of activities are put at risk of criminal liability.

I believe that these restrictions have disproportionate effects on legitimate civil society organizations, some which may even have been unintended by Congress. I therefore encourage the Government to urgently review the relevant legal stipulations, mindful that "restrictive measures must be the least intrusive means to achieve the desired objective and be limited to the associations falling within the clearly identified aspects characterizing terrorism only. They must not target all civil society associations" (A/HRC/23/39, para. 23).

Furthermore, the Department of Treasury has the authority to list organizations as Specially Designated Global Terrorists and freeze all of their US assets if it has a "reasonable suspicion" that they provide "financial, material or technological support for, or other services to a terrorist group or are "otherwise associate with one". An administrative procedure exists to challenge the Treasury's decision, but two federal courts have ruled that this procedure contravenes due process rights.

I note with satisfaction that since 2009, no association has reportedly been prosecuted or closed down under the counter-terrorism framework. However, this does not mean that a future Government will not resume prosecution. In practice, this legislation has had a severe chilling effect on associations willing to provide relief work to vulnerable populations. I therefore urge the authorities to amend this framework so it complies with international human rights norms and standards.

My attention was also drawn to the Partner Vetting System (PVS) and Risk Analysis and Management (RAM), developed by the US Agency for International Development (USAID) and the State Department, whose goal is to prevent terrorists, their supporters or their affiliates from benefitting from funds managed by domestic non-governmental organizations (NGOs). The PVS is currently being tested in five countries (Guatemala, Kenya, Lebanon, the Philippines and Ukraine). While the purpose of this initiative is sound, it is feared by many NGOs that such system will lead local partners to believe that they are used by the US authorities to gather intelligence, and as a consequence will compromise existing and future working relationships with such partners.

Domestic NGOs informed me that this vetting system is in fact not necessary as they already vet local partners by using lists provided by other Government agencies. I therefore call on the authorities to rethink this system, in consultation with domestic NGOs.

The Joint Strategy on Countering Violent Extremism, introduced by the Department of State and USAID in May 2016, aims at preventing the radicalization and recruitment of individuals by violent extremists. Although officially this strategy is

not directed towards a particular group of individuals, nor calibrated on the basis of race or religion, I heard repeated reports that this strategy is bound to target mainly members of the Muslim community. As a result, it has the potential to impact adversely on the enjoyment of their rights to freedom of peaceful assembly and of association.

I was also informed that the very effectiveness of the strategy is questionable, as no research has demonstrated that individuals who are more prone of becoming radicalized can be identified. Indeed, the strategy seems highly similar to the UK's Prevent Program, which has targeted Muslim youth in England and contributed to a sense of discontent by requiring that teachers and others report students who they may deem "at risk" using very broad indicators. It is imperative that any strategy to counter extremism is as narrow as possible, based on scientific research and involves a broad range of civil society organizations in its formulation, implementation and oversight.

Let me add that I salute the US Government for its efforts in working with civil society organizations towards the recent revision of Financial Action Task Force's Recommendation 8.

Of further concern is the reported surveillance and infiltration by the authorities of civil rights groups and movements such as the Occupy Movement and Black Lives Matter, as well as the Muslim community. I heard in a number of places I visited that federal agents undertake so called "fishing expeditions" whereby agents visit members of the Muslim and African-American communities at their homes or work places, enquiring about their activities, including planned protests. In fact, some cases of "entrapment" by the FBI were reported to me with regard to cases of alleged terrorism.

Such activities are counterproductive in the fight against terrorism, and use resources that could be better spent in fighting real terrorists. Targeting communities based upon racial or religious profiling with a view to allegedly gathering intelligence, creating disruption, seeking informants, and more worryingly, to inciting and enabling members to commit crimes, vilify the groups and movements as a whole, often under the banner of national security. Such pervasive practices inevitably erode the trust and cohesion within communities.

The Department of Justice has issued guidance for officials which prohibits racial profiling, but allows for two broad exceptions in the context of border control and national security. I find this practice troubling as it is discriminatory by nature and casts suspicion on groups of individuals within society.

There is also the issue of the Terrorist Screening Center Database, in which 1 million people are reportedly listed. I was informed by the authorities that religion is not a criteria used for deciding whether an individual should be in the database or not. However, most of the people on the list are reportedly Muslims, and it is allegedly a

particularly arduous process to have one's name removed from the list, sometimes taking years. It also generates mistrust within the Muslim community as individuals speculate about who is on the list.

There is considerable anti-Muslim sentiment in this country at the moment, and in many other places, which is all the more troubling in times of elections. I was heartened to learn that interfaith meetings have taken place in several parts of the country, such as in New Orleans, to build or consolidate understanding between religious communities. I applaud such initiatives which I hope will continue to flourish.

I call on the US Government to bring its counter-terrorism legislation and practices in compliance with international human rights law. In the absence of a national human rights institution tasked with monitoring the fulfillment of the State's obligations under international human rights law and standards, the Government should consider allowing embedded ombudspersons in all federal agencies to ensure that no human rights violations are committed.

In the alternative, the US could borrow from the UK which has created an independent Counter Terrorism Ombudsman whose role is to monitor compliance with domestic and international law and norms. This is all the more important given the role and influence of the US on other countries when it comes to designing measures to prevent terrorism.

In conclusion, I would like to reiterate my appreciation for the renewed excellent co-operation I received during this visit. I offer these observations and recommendations once again in a spirit of constructive dialogue. I look forward to a continued dialogue with the US Government, and I stand ready to offer technical assistance with a view to consolidating the exercise of the rights to freedom of peaceful assembly and of association in the country.