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Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Summary of the Human Rights Council panel discussion on the promotion and protection of human rights in the context of peaceful protests prepared by the Office of the United Nations High Commissioner for Human Rights

Summary

The present summary was prepared in accordance with decision 17/120 of the Human Rights Council, in which the Council decided to convene at its eighteenth session a panel discussion on the promotion and protection of human rights in the context of peaceful protests, with a particular focus on the ways and means to improve the protection of these rights in such contexts in line with international human rights law. The panel discussion, organized by the Office of the United Nations High Commissioner for Human Rights, took place on 13 September 2011.

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I. Introduction

1. On 13 September 2011, during its eighteenth session, the Human Rights Council held a panel discussion on the promotion and protection of human rights in the context of peaceful protests, with a particular focus on the ways and means to improve the protection of these rights in such contexts in line with international human rights law, pursuant to its decision 17/120. The Council further requested “the Office of the United Nations High Commissioner for Human Rights to liaise with relevant special procedures, States and other stakeholders, including relevant United Nations bodies and agencies, with a view to ensuring their participation in the panel discussion”. The Office was also requested to prepare the present summary.

2. The panel discussion aimed to: (a) reaffirm the importance of the right of each individual to express his or her grievances and/or aspirations through peaceful protests; (b) draw the attention to the obligations of States, in the context of peaceful protests, bearing in mind that States have the primary responsibility for the promotion and protection of human rights; (c) identify ways and means, including best practices, to improve the protection of human rights in the context of peaceful protests in line with international law; and (d) formulate recommendations on how to improve the promotion and protection of human rights in the context of peaceful protests at all levels, including by the Human Rights Council.

3. The panel discussion was moderated by the President of the Human Rights Council, Laura Dupuy Lasserre (Uruguay), and opened by the Deputy High Commissioner for Human Rights, Kyung-wha Kang. Mohamed Nasheed, President of Maldives, delivered a high-level keynote speech. The panellists were: Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association; Santiago Canton, Executive Secretary, Inter-American Commission on Human Rights; Michael Hamilton, Secretary to the Panel of Experts on the Freedom of Assembly, Organization for Security and Co-operation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR); Lake Tee Khaw, Vice-Chair of, the Human Rights Commission of Malaysia, SUHAKAM; and Bahey el-din Hassan, General Director, Cairo Institute for Human Rights Studies.

II. Statement by the Deputy High Commissioner for Human Rights, the President of Maldives and contributions of panellists

A. Deputy High Commissioner for Human Rights

4. The Deputy High Commissioner for Human Rights, in her opening remarks, commended the Council for placing the important issue of the promotion and protection of human rights in the context of peaceful protests high on its agenda. She noted that the panel took place against the backdrop of a historical turn of events during the last ten months, which had seen brave women and men young and old peacefully taking to the streets in several countries in the Middle East and North Africa, and in other regions, prompted by a profound desire for increased respect for their fundamental human rights. However, their peaceful protests in far too many instances were met with brutal repression, through summary, extrajudicial or arbitrary executions; arbitrary detention; enforced disappearances; and torture and other cruel, inhuman or degrading treatment or punishment. The Deputy High Commissioner highlighted that such human rights violations were

denounced by the High Commissioner in her reports and statements on the situations in a number of countries, including in Bahrain, Belarus, Cote d'Ivoire, the Islamic Republic of Iran, Egypt, the then Libyan Arab Jamahiriya, Malawi, the Syrian Arab Republic, Tunisia and Yemen. She stressed that when peaceful protests occur, States have the responsibility to respond in a manner that promotes and protects human rights, and prevent human rights violations. The authorities should not view peaceful protests as a threat, but rather engage in an open, inclusive and meaningful national dialogue to address protestors' legitimate demands.

5. The Deputy High Commissioner reminded the Council that it had addressed the issue of the promotion and protection of human rights in the context of peaceful protests on repeated occasions through its examination of country-specific situations, including in respect of Belarus, Cote d'Ivoire, the then Libyan Arab Jamahiriya and the Syrian Arab Republic, as well as through the adoption of resolution 15/21 on the rights to freedom of peaceful assembly and association.

6. The Deputy High Commissioner noted that she was sure that the panel's views and approaches to the issue would strengthen the resolve of the Council to reaffirm the importance of the right of each individual to express his or her grievances and/or aspirations through peaceful protests, and contribute to the development of an appropriate response by this Council, and by the international community as a whole.

B. Mohamed Nasheed

7. President Mohamed Nasheed of Maldives, stated that he had been invited to the panel discussion as a President, but stood before the Council as a peaceful protester, someone who had spent much of his adult life speaking out against leaders who place their own interests over those of their people, leaders who sought power for power's sake. He stressed that the recent events across North Africa and the Middle East represented a defining geopolitical moment, a time of awakening when Muslims across the world were standing up as one to demand equality, human rights, democracy and the rule of law. Those developments provided a fitting rebuttal to those, inside and outside of Islam, who claim that such a religion was not compatible with democracy.

8. Mr. Nasheed further stated that 2011 would come to be seen as a tipping point for peaceful protests, with the democratization of information: the use of the Internet, social networking sites and mobile phones to break the State's stranglehold on the news media. The use of modern communication technology had allowed those with grievances to mobilize and spread their message. Crucially, modern media also provided a lens through which the outside world could witness events unfold and learn the truth. The year's protests showed that the power of Governments to control information had been broken forever. Today, the only viable option for States was to listen to the grievances of protesters and to try to address them.

9. Mr. Nasheed expressed his regret that the Governments of first the then Libyan Arab Jamahiriya and now the Syrian Arab Republic had chosen to deny that new reality. They had responded to the upwelling of popular protest, not with dialogue and reform, but with intimidation and violence. The international community had read with concern the conclusions of the commission of inquiry on the then Libyan Arab Jamahiriya and the fact-finding mission on the Syrian Arab Republic that human rights violations committed in both countries might amount to crimes against humanity. As soon as any Government chose to rule by the gun rather than by consent, it lost its legitimacy and its right to govern.

10. Mr. Nasheed added that peaceful protests were an important part of a wider process of reform and transition. Presenting the example of his own country where a protest

movement had started eight years previously, against an autocratic system of Government, and for a better, fairer system of Government, for equality and for justice, he stated that Maldives, like Tunisia, Egypt and others, was in a process of transition. It was the long-term outcome of that process – not the short-term toppling of a regime – that would determine whether the aspirations of the protesters were successfully met.

11. Mr. Nasheed then identified certain challenges shared by countries in transition, including by the Maldives. One challenge was to establish and strengthen independent institutions, to ensure that democracy and human rights were guaranteed regardless of who was in power. A second challenge related to transitional justice and reconciliation: to move forward, the search for truth and justice must be placed within an overall framework of national reconciliation. A third challenge was to rebuild the economic fabric of the country: people could not properly enjoy democratic freedoms if their basic needs were left unfulfilled.

12. Mr. Nasheed concluded by hoping that the panel discussion would send out a clear message to Governments everywhere that peaceful protest should not be viewed as a threat, but as an opportunity to connect with the people, understand their concerns and work together to improve society. If Governments did not adopt that enlightened approach, if they chose aggression over discussion and entrenchment over reform, then in today's globalized world, it was increasingly clear that they would fail and, most likely, they would fall.

C. Maina Kiai

13. Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association, stated that in his 25 years of experience as a human rights defender in Kenya and at the international level, the right for everyone to express their grievances and/or aspirations for change, including civil, political, economic, social and cultural, through peaceful protests and other non-violent ways, had been central. That right was indeed at the heart of any democratic society, for that was how ordinary citizens could peacefully influence and alert their Governments on their issues. Importantly, participating in peaceful protests was an alternative to violence and armed force as a means of expression and change, which should be supported. Peaceful protest must thus be protected, and protected robustly.

14. Mr. Kiai emphasized that protesting in a peaceful manner entailed the enjoyment and exercise of the rights to freedom of peaceful assembly, expression and association, among others. These rights are guaranteed under international and regional human rights law, and facilitate the enjoyment of economic, social and cultural rights. Essentially, States had three obligations: (a) to refrain from committing violations, including through the use of excessive force, against individuals exercising their rights to peaceful assembly, expression and association; (b) to protect individuals exercising these rights from abuses committed by non-State actors; and (c) to fulfil these rights by taking positive measures to prevent any violations from occurring, and to ensure that everyone could freely and effectively exercise such rights. When violations occurred, States had an obligation to thoroughly investigate such acts and provide effective remedy to victims. These obligations under international human rights law continued to apply during times of armed conflict, together with international humanitarian law. They were similarly applicable in situations of internal disturbances and tension which did not meet the threshold of armed conflict.

15. Mr. Kiai noted that the rights to freedom of peaceful assembly, expression and association could be limited, however on very restricted grounds in accordance with international law, and such restrictions must be proportionate to the aim pursued. In addition, these rights may be derogated from during a state of emergency. Nevertheless,

other rights pertinent in the context of peaceful protests, such as the right to life and the right to be free from torture or cruel, inhuman or degrading treatment or punishment, must be guaranteed by States to all individuals under all circumstances. Mr. Kiai added that the use of force by law enforcement officials during peaceful protests was governed by international law and it was in that area that most violations and difficulties arose. Soft law provisions, i.e. the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, aimed at guiding law enforcement officials when policing peaceful protests.

16. Mr. Kiai further noted the increased use of the Internet, and other information and communication technology, including mobile phones, as tools that citizens could use in order to organize effective and peaceful protests and assemblies. However, he expressed concern that, at the same time, some States attempted to clamp down on these tools to deter peaceful assembly.

17. Mr. Kiai observed that, in spite of those clear and unambiguous provisions of international law, peaceful protests across the world continued to be brutally repressed in many countries. This was deliberate, and many States lacked the political will to respect the dignity of their citizens who peacefully sought to implement their economic, social, cultural, political and civil rights. He added that, although everyone might not like what peaceful protesters were asking for, everyone must defend their right to demand it peacefully.

18. Mr. Kiai encouraged the Council to continue its deliberation on this pressing issue, and made the following recommendation for the consideration of the international community, including the Council: (a) following the positive example of the OSCE Guidelines on Freedom of Peaceful Assembly, a similar tool guiding Member States of the United Nations in addressing peaceful protests, including spontaneous ones, should be designed, in consultation with all relevant stakeholders; (b) Member States should ensure that policing of protests was done in a manner that respected human rights. Capacity-building and technical support should be made available to those Member States that needed it; (c) law enforcement authorities should be held personally and fully accountable for human rights violations related to the exercise of the rights to freedom of peaceful assembly, expression and association. That accountability should be ensured both internally, within the individual organization, as well as externally, by an independent and democratic oversight body, as well as by the courts of law; (d) Member States should facilitate Internet access to all individuals, with the least restrictions; and (e) Member States should foster an open society in their countries, including allowing expression of dissent and providing through free and fair elections ways in which citizens could change their Government if they so wished.

D. Santiago Canton

19. Santiago Canton, Executive Secretary, Inter-American Commission on Human Rights (IACHR), stated that IACHR had identified that the lack of compliance with the obligation of respect for, and guarantee of, the right of assembly and freedom of expression by the States of the region resulted in acts of generalized violence that had also seriously affected the right to life, physical integrity, freedom and personal security of the persons participating in public protests. The Commission considered that States had the duty to allow the exercise of that right from the moment the administrative authorities received notice of the intention of persons to undertake a public and peaceful protest. However, States also had to investigate and prosecute those persons that perpetrated violent acts against the life or integrity of the protesters, including acts by State agents. In that regard,

the competent institutions of the State had a duty to design operating plans and procedures that would facilitate the exercise of the right of assembly.

20. Mr. Canton pointed out that IACHR considered that the purpose of regulating the right to peaceful assembly could not be to create the basis for prohibiting the meeting or the demonstration. On the contrary, regulations requiring, for example, advance notice, existed for the purpose of informing the authorities so that they could take measures to facilitate the exercise of the right without significantly disturbing the normal activities of the rest of the community.

21. Mr. Canton stressed that public protests could only be limited in order to prevent serious and imminent risks for the safety of the persons involved or third persons and only after attempting to prevent the supposed risk by changing the original condition of the protest; for example, by changing the time at and date on which it would take place. In order to prevent an inadequate intervention in a public protest by State forces – which could result in violation of human rights – the State had the duty to guarantee that police forces were aware of their rules of conduct and had the professional training needed to perform in situations involving mass concentrations of people, so as to create the conditions that would enable those events to unfold in accordance with the established regulations and without infringing upon other human rights.

22. IACHR had highlighted that if it became necessary to intervene in a protest because violence had occurred, it should be the exclusive competence of the police forces, duly trained, to control the situation and never of the armed forces; and if it became necessary to resort to physical means to face disturbances of public order, the members of the State's armed forces and security bodies would use only those means that were indispensable to controlling the situation in a rational and proportional manner, and respecting the rights to life and to humane treatment. In its report on the situation of human rights defenders in the Americas,¹ IACHR listed a series of administrative controls that should be established by States to ensure only exceptional use of force in public demonstrations, in cases where it was necessary, through measures for planning, prevention and the investigation of cases in which an abuse of force might have occurred.

23. IACHR considered that when it became necessary to impose restrictions on that form of expression, the State should conduct a rigorous analysis of the interests it intended to protect by way of the restriction, taking into account the high level of protection merited by the right to assembly and the freedom of expression as rights that gave form to citizen participation and the oversight of State actions in public matters. Although on certain occasions the exercise of the right of assembly might affect the routine of a place or other rights that deserved protection from the State, such as freedom of movement, the Commission considered that those alterations were part of the mechanics of a pluralistic society, where diverse interest coexisted, which could sometimes contradict each other, but that had to be able to find the spaces and channel to express themselves. Lastly, the Commission was aware of the increasing use of criminal law against those who participated in public protests and who were accused of perturbing the public order or even of perpetrating other crimes, when in reality they were asserting their rights in a peaceful manner.

¹ IACHR, document OEA/Ser.L/V/II.124, Doc. 5 rev.1, para. 68. Available from www.cidh.oas.org/countryrep/Defenders/defenderstoc.htm.

E. Michael Hamilton

24. Michael Hamilton, Secretary to the OSCE/ODIHR Panel of Experts on the Freedom of Assembly, stated that the impetus to establish the Panel of Experts on Freedom of Peaceful Assembly had arisen from a debate at the 2003 OSCE/ODIHR Human Dimension Implementation Meeting, which had noted deteriorating conditions for, or a complete failure to protect, the enjoyment of freedom of assembly in several OSCE participating States. Among the concerns which placed freedom of assembly high on ODIHR agenda were instances of harassment of assembly organizers, the arbitrary arrest of participants in demonstrations, the excessive use of force by police to disperse peaceful protests and the detrimental impact on freedom of assembly of measures introduced to fight extremism and terrorism. Such concerns continued to arise in many OSCE participating States. More subtly, it was often the legislative framework providing for the regulation of freedom of assembly that led to inadequate protection of the right. Laws in many countries conferred broad discretionary powers on local officials and law enforcement personnel (leading to arbitrary, discriminatory and disproportionate restrictions); placed onerous bureaucratic and sometimes financial burdens on assembly organizers; unduly prohibited assemblies in particular (often central) locations or at particular times (for example, at elections); or failed to provide effective and timely remedies for those who sought to challenge any restrictions imposed.

25. Mr. Hamilton reported that the Expert Panel had been formed in 2004, and was composed of 10 academics and practitioners, providing regional representation across the OSCE space, appointed for four-year terms by the Director of ODIHR. One of the primary roles of the Panel had been to assist participating States in ensuring that their legislation and practices were consistent with their OSCE commitments and other international standards. To that end, in March 2007, ODIHR published the first edition of the Guidelines on Freedom of Peaceful Assembly, developed by the Panel of Experts, in consultation with the Council of Europe's European Commission for Democracy through Law (Venice Commission), which subsequently officially endorsed the Guidelines in June 2008. ODIHR and the Venice Commission issued a second, updated edition of the Guidelines in 2010.² The Guidelines were informed by the relevant jurisprudence – particularly that of the European Court of Human Rights and national constitutional courts. The Guidelines also incorporated examples of good practice where States had demonstrated workable solutions to freedom of assembly dilemmas.

26. The Guidelines set out seven “guiding principles”: (a) the presumption in favour of holding assemblies whereby the right should, insofar as was possible, be enjoyed without regulation; (b) the State's positive duty to protect peaceful assembly; (c) legality, and the imperative that any restrictions imposed had a formal basis in law (which itself should be compatible with human rights standards); (d) proportionality and the need to ensure that any restrictions were the least intrusive needed to achieve the legitimate aim being pursued; (e) non-discrimination, emphasizing that the freedom to assemble should be enjoyed equally by all individuals and groups; (f) good administration, including the accessibility of the regulatory authority and transparency of the process; and (g) liability/accountability for the authorities should they fail to uphold their legal obligations.

27. The Guidelines had spurred legislative reform initiatives in several countries in transition, and had also had traction in more established democracies. Essentially, they were a soft law tool that provides: (a) a reference point for domestic authorities tasked with

² OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2nd ed. (Warsaw, 2010). Available from www.osce.org/node/73405?download=false.

regulating freedom of assembly (including drafters of legislation and law enforcement agencies); (b) an interpretative aid for the Courts; (c) an advocacy platform for those seeking to challenge restrictive practices and hold municipal authorities to account; and (d) a basis for a range of related review, monitoring and training activities. The Guidelines had provided useful assistance to legislators and been cited by both lawyers and judges in legal cases.

28. In relation to the need to have a specific law to regulate freedom of assembly, the Panel of Experts had argued that the greatest utility of such legislation was the detail, clarity and predictability it could bring to the entire regulatory process – defining precisely which assemblies were subject to particular legal obligations, setting out the legitimate grounds for restriction, and specifying the overall process and time frame. In that light, the purpose of any specific legislation must be to facilitate the enjoyment of the right to assemble and States must avoid the creation of an excessively regulatory, bureaucratic system that sought to prescribe for all matters and that could thus infringe fundamental rights.

29. The Panel of Experts had emphasized, *inter alia*: (a) the desirability of having a notification (rather than authorization) procedure; (b) the need to make provision for the holding of spontaneous assemblies, where compliance with the requisite notification requirements was impracticable; (c) the importance of the authorities providing assembly organizers with timely notice of the reasons for imposing any restrictions, and the possibility of an expedited appeal procedure; and (d) the need to resist arguments that made freedom of assembly subservient to the free flow of traffic; and (e) the need to build capacity with non-governmental organizations and human rights defenders working on the ground to systematically monitor assemblies and their policing.

30. Mr. Hamilton, in his circulated written statement, proposed the following recommendations for the Council's consideration: (a) taking steps to establish and promote a network of international and regional partners (including Africa, the Americas, ASEAN, and the OSCE), to meet periodically to discuss challenges, share best practices in relation to, and further promote the protection of freedom of peaceful assembly; (b) coordinating the maintenance of a database of freedom of assembly issues which arose in the context of universal periodic review and other treaty monitoring mechanisms; (c) supporting and facilitating regional training sessions for NGOs, civil society actors and human rights defenders, as well as local municipal authorities and law enforcement officials, on the human rights framework governing freedom of assembly and the monitoring of assemblies; (d) supporting a study of the use of accountability mechanisms (and their impact) in situations where the use of force against demonstrators either constituted a crime against humanity or results in death or serious injury; and (e) given the emphasis placed upon negotiated management of demonstrations (rather than the use of force), consulting upon and drafting a handbook on the negotiation of protest (given, in particular, the power differentials often involved and the importance of not relinquishing core human rights protections).

F. Lake Tee Khaw

31. Lake Tee Khaw, Vice-Chair of the Human Rights Commission of Malaysia, SUHAKAM, shared information on the work of the Commission prior to, during and after the public rally by the Coalition for Clean and Fair Elections (also known by its Malay acronym BERSIH, meaning “clean”), in Kuala Lumpur, on 9 July 2011, to call for the conduct of clean and fair elections in the country.

32. On 28 June 2011, following various statements by the Government and the police stating that the rally would not be permitted ostensibly in order to maintain peace, security and prevent traffic chaos, SUHAKAM had issued a press statement urging the authorities to

allow the planned peaceful assembly and to remind the organizers to exercise their rights in a peaceful and responsible manner. On 29 June, SUHAKAM had sent a formal letter to the Inspector-General of Police, requesting him to allow the peaceful assembly to proceed as planned. On 4 July, representatives from the BERSIH coalition requested SUHAKAM to intervene as a mediator between the police and BERSIH, which request SUHAKAM had accepted, subject to confirmation by the Chair of BERSIH. On 7 July, the Chair of BERSIH had requested SUHAKAM intervention as a mediator, whereupon the Chair of SUHAKAM had spoken to the Inspector-General of Police, offering the Commission's assistance in mediating between the two parties. The Inspector-General of Police had been, however, of the view that it was still too premature for the involvement of SUHAKAM. On the eve of the rally, SUHAKAM had again released a press statement urging the parties to hold further discussions as proposed by the King of Malaysia. It had also informed the public that it would monitor the public rally, if held.

33. On 9 July, the BERSIH rally had taken place in several parts of the city centre of Kuala Lumpur. At 5.00 p.m. that day, it was reported that 1,667 persons were arrested by the police. The SUHAKAM monitoring team of two commissioners and 32 staff, moving in small groups, had observed the rally at various spots. Some of the team members had been present at detention centres and conducted interview sessions with those detained during the rally. They had stayed until late that night to witness the release of the detainees. The observations of the monitoring team had all been recorded in the forms of photographs and videos, as well as written notes and reports. On 12 July 2011, SUHAKAM had received the first memorandum from the political party Pemuda Pas on inter alia the use of excessive force by the police during the rally. At the handing over of the memorandum, individual complaints alleging violations of their human rights had also been received. On 14 July, SUHAKAM had received a joint memorandum from BERSIH and the human rights organization Suara Rakyat Malaysia on, inter alia, the use of excessive force by the police and the firing of tear gas into the compound of a hospital. Again, SUHAKAM had received individual complaints alleging violations of human rights. On the same day, based on the memoranda and the number of complaints submitted, SUHAKAM had announced the decision to hold a public inquiry into the allegations received. On 16 July, a memorandum had been submitted by Pemuda Pas, urging SUHAKAM to call upon the police to respect the people's freedom of expression and assembly as provided for by the Federal Constitution. On 22 July 2011, SUHAKAM had announced its panel members and the terms of reference for the public inquiry. It had also called for public submission of statements and evidence on alleged violations of human rights prior to and during the rally.

34. Ms. Khaw highlighted that, at the time of the presentation, SUHAKAM had held three public inquiries into the allegations of use of excessive force by the authorities during public rallies: in 2001 (Keses Highway), 2006 (Kuala Lumpur Convention Centre) and 2008 (Bandar Mahkota Cheras). A number of the significant recommendations derived from the Commission's public inquiries in relation to peaceful assembly could be summarized as: (a) the police should be notified in writing of the proposed assembly or procession; (b) both the police and civil society should cooperate to work out details with regard to a suitable time frame for the notification and the contents of the notice; (c) in order to ensure minimal disruption of traffic, inconvenience to the general public, damage to property and prevention of injury to persons, a notification should be followed by meetings between the organizers of the assembly and the relevant police officers so as to confirm the practical arrangements for the assembly or procession; (d) any person whose rights could be affected by the assembly or any arrangement relating to the assembly should be allowed to make an urgent application to the court for intervention; and (e) the organizers should also make arrangements with regard to crowd control.

G. Bahey el-din Hassan

35. Bahey el-din Hassan, General Director, Cairo Institute for Human Rights Studies, stated that his presentation would be dedicated to the millions of citizens within the Arab region and beyond who had sacrificed and continued to sacrifice their lives and their safety in peaceful protests and acts of civil disobedience in order to demand a dignified life. Mr. Hassan saluted the courage and consistency that the High Commissioner had demonstrated in the promotion and protection of human rights in relation to the pro-democracy protests that have been occurring throughout the Arab world over the previous 10 months, and were continuing.

36. Mr. Hassan argued that the current peaceful protests that had swept through the Arab region had done more to defeat Al-Qaida and their philosophy of political violence, than the assassination of Osama Bin Laden or the vast amount of money and resources spent on counter-terrorism activities between various Governments.

37. Mr. Hassan further stated that, since December 2010, an absence of serious, constructive and comprehensive dialogue with groups organizing protests and the consistent refusal to respond to their legitimate political, economic and social demands had led to the current political and human rights crises' unfolding throughout the Arab region. He declared that almost all Arab Governments had resorted to violence, including the use of live ammunition, extrajudicial killings, mass arrests, torture and ill-treatment and the use of forced disappearances in response to such protests. Laws had been passed that attempted to give authorities legal cover to use methods of intimidation and repression, including the use of states of emergency in illegitimate ways. Government media sources, often the only regular news source available due to severe restrictions on the freedom of the media, had been used to incite violence, hatred and defame the character and aims of reformists, protest movements and civil society actors.

38. Mr. Hassan noted that the primary responsibility for ensuring the respect for human rights in the context of protests fell squarely on the Government of the country experiencing such protests. However, within the international realm, the unreliability of politics to provide swift and consistent protection should be guarded against. To that end, the international community should begin to put in place a holistic framework to guide Governments and the international actors on how to provide human rights protection and promotion in responding to protests.

39. Mr. Hassan advocated the creation by the Council, to be adopted by the General Assembly, of a declaration on the guidelines and principles for the promotion and protection of human rights in the context of peaceful protests. He referred to the following list of examples of guidelines and principles that had arisen from lessons learned within the Arab region, as provided in his circulated written statement: (a) the right to life and the right to be free from torture or cruel, inhuman or degrading treatment or punishment, must be guaranteed by States to all individuals under all circumstances; (b) Government leaders and the head of State of a country experiencing large-scale protests should, without undue delay, clearly and publicly express the Government's intention to ensure the fundamental rights of those protesting were respected and that any Government security forces that unduly committed acts of violence or cause harm to peaceful protesters could be held criminally responsible; (c) as provided by international law, the use of foreign nationals and mercenaries to respond to public demonstrations and protests, as well as the use of non-regulatory forces, should be prohibited; (d) the use of military forces and irregular militia to respond to peaceful public demonstrations should be prohibited; (e) anti-riot police and police responding to protests should not be representative of a particular ethnic, racial, religious or political group within a country; (f) protests, sit-ins, demonstrations of a peaceful nature, and other forms of social mobilization associated with peaceful political

activities, should be decriminalized; (g) a sub-section of security forces within a country should be trained specifically on how to respond to protests and perform crowd management in a peaceful manner that was in conformity with international human rights standards; (h) any detention of those involved in activities associated with peaceful protests and other forms of public demonstration should only be performed by civil security forces for the purposes of personal and public safety and only for a duration required in order to guarantee such safety, and no more than 24 hours. In all instances in which those participating in protests or demonstrations were detained for criminal offences, they should be granted access to a qualified lawyer and full due process guarantees before a representative of the judiciary of the civil authority; (i) the terms public safety, public order and public health should be clearly and unambiguously defined within the laws of a country and should be in accordance with international standards of human rights; (j) in instances where riot gear and military hardware were used by Government security forces to systematically commit human rights violations against individuals participating in public demonstrations and protests, other States and private companies that provided such equipment should immediately cease providing that equipment to a violating Government, and any contractual obligations to that effect should be suspended; (k) bilateral and multilateral aid and assistance between States should be specifically conditional on the full respect for freedom of assembly and association, and strong safeguards should be put in place to ensure such aid was in no way used by recipient Governments to supplement their ability to carry out large-scale repression of these rights, especially during times of large-scale peaceful protests; (l) the widespread blocking of basic systems of communication and commerce, including the Internet, mobile and landline phone services, satellite channels and other media should be prohibited. The criminal liability of companies that were involved in such practices should be made clear in national penal systems; and (m) all instances of incitement to violence, hate, xenophobia and discrimination within the media should be combated. Instances of incitement to violence should be prohibited on State-run media sources.

III. Summary of the discussion

40. Most delegations thanked OHCHR, Switzerland and the co-sponsors³ of decision 17/120 for convening this panel discussion. The delegations further thanked the President of Maldives, the Deputy High Commissioner and the panellists for their presentations. Several delegations stressed the timeliness of the panel discussion, mentioning the recent and unfolding events in the Arab region, but also in the rest of the world.

A. Issues raised by stakeholders

41. Several delegations emphasized the cross-cutting dimension of the issue of peaceful protests, which was intricately connected to the exercise of the rights to freedom of peaceful assembly, freedom of expression, freedom of association, freedom of thought/conscience and religion, and the right to participate in the affairs of the State. Peaceful protests were further linked to the promotion of good governance and the rule of

³ Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Costa Rica, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Jordan, Kenya, Latvia, Liechtenstein, Lithuania, Maldives, Montenegro, Netherlands, Norway, Palestine, Poland, Portugal, Republic of Korea, Serbia, Slovakia, Slovenia, Somalia, Spain, Sweden, Timor-Leste, Turkey, United Kingdom of Great Britain and Northern Ireland and the United States of America.

law, and the improvement of democracy. Fundamentally, human beings aspired to the same, i.e. a better life, through the recognition of their inherent dignity and their equal and inalienable rights, and better conditions for their social and material development.

42. It was further stressed that the issue of peaceful protests was not confined to major political demonstrations that expressed fundamental discontent with the Government in power. At the local level, the peaceful protests of the poorest who were victims of land evictions and large development projects which harmed their health or who denounced officials' corruption did not attract the same attention.

43. Many delegations also mentioned that peaceful protests were an opportunity for Governments to enter into an open and constructive national dialogue with a view to preserving democracy, peace and security, highlighting the responsibility of Member States to earnestly listen to and address peoples' legitimate concerns and aspirations. In that regard, the importance of improving dialogue was widely acknowledged. Peaceful protests were an opportunity to tackle root causes such as inequalities, discrimination, corruption and obstacles to effective participation in political debate. In that context, the importance of promoting a culture of non-violence and peace was mentioned.

44. One delegation, however, noted that it should not be taken for granted that a protest always reflected the opinion of society as a whole (*vox populi*) as protestors were sometimes guided by personal political goals.

45. The majority of delegations stressed the primary responsibility of States to promote and protect human rights and fundamental freedoms of individuals, including women and the youth, taking part in peaceful assemblies. Guaranteeing human rights in the context of peaceful protests was at the essence of democratic participation and violence against peaceful protestors was an attempt against democracy which could threaten international peace and security.

46. Some delegations stated that Member States must strike a balance between the promotion and protection of human rights in the context of peaceful protests and the necessity to maintain public order and safety. In that context, delegations recalled that Member States had duties to take necessary measures to maintain public security, public order and social stability, in accordance with domestic law and international law obligations by which they were bound. To that end, the rights to freedom of expression and of peaceful assembly could be subjected to certain restrictions imposed in conformity with the law and which were necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Furthermore, exercising human rights and fundamental freedoms could not be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of human rights. For some delegations, one of the main challenges lay in the capacity of demonstrators and law enforcement officials to refrain from committing any violent act detrimental to the effective enjoyment of human rights. In that connection, the infiltration into peaceful protests of subversive elements was mentioned as requiring greater vigilance. To that end, the need for Member States and international organizations to be precise when collecting information on peaceful protests was pointed out.

47. Other delegations, while acknowledging the existence of restrictions to the right to freedom of peaceful assembly, stressed that they must pass the proportionality test and be reduced to a strict minimum, and recalled the existence of non-derogable rights in that context: the right to life and the right to be free from torture and other forms of cruel, inhuman or degrading treatment or punishment. The loss of life in the context of peaceful protest was unjustifiable, and the State's duty to guarantee the right to life in that context was greater than its duty to maintain order. Fundamentally, the use of discretionary powers

by security forces in an unaccountable and discriminatory way could never be justifiable. Nor could State sovereignty be a justification for violating human rights. Stifling peaceful protests with brutal force in the alleged interest of restoring peace, order and security could not be a successful solution in the long term.

48. Likewise, it was recalled that peaceful demonstrators had the responsibility to guarantee that the legitimate expression of their opinion would not jeopardize the safety of others and of their own. To that end, it was suggested that channels of communication between the authorities and civic leaders should be developed. The positive obligation of States to facilitate peaceful protest was also raised, notably the importance of maintaining proper structures to ensure that legitimate protesters could make themselves heard. Furthermore, a call was made that domestic legislation that unduly and significantly restricted the exercise of the right to freedom of peaceful assembly must be immediately repealed. When legislation was in accordance with international law instruments, it should be properly implemented.

49. Some delegations raised the issue of accountability for human rights violations committed in the context of peaceful protests and the need to conduct thorough and independent investigations to combat impunity and dissuade the recurrence of such acts. The issue of access to and the effectiveness of public complaints mechanisms for any violent acts was raised and illustrated by some States' experience.

50. Some delegations stressed the need to enhance the capacity of law enforcement authorities, which could lead to preventing human rights violations by minimizing the use of force. The necessity for Member States to incorporate into their national legislation soft law provisions on policing peaceful protests for law enforcement officials was raised. The need to provide human rights training to law enforcement authorities in charge of handling peaceful protests, which should be consistent with the protection of human rights and fundamental freedoms, was also raised. To that end, support from the international community in preparing a State to appropriately handle a situation of peaceful protests was mentioned and relevant Human Rights Council mechanisms, treaty bodies, and relevant United Nations bodies and agencies were urged to provide advice and technical assistance upon request of States on how to enhance national capacity in dealing with specific situations of protests.

51. A number of references were made to the Special Rapporteur on extrajudicial, summary or arbitrary executions, who, in his report on protecting the right to life in the context of policing assemblies (A/HRC/17/28), notably recommended that an international process be undertaken to work towards a more comprehensive codification of assembly law, including the use of force during demonstrations.

52. Some delegations also highlighted the important role played by social media in the context of peaceful protests. It was stated that all basic systems of communications, including the Internet, mobile phones, satellite channels and others should be recognized as basic vehicles through which freedom of assembly and association took place. The free flow of information or the effective use of social media to organize should not be stopped, notably through resorting to blanket restrictions on speech or on the use of the Internet or social media such as Facebook, Twitter or Blackberry. In that connection, the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression presented to the Council's seventeenth session on key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kind through the Internet (A/HRC/17/27) was found highly pertinent during the panel discussion. However, some delegations warned against the misuse of social media, which in recent social turmoil could become problematic. They believed that the issue of addressing the negative impact of social media while making the best use of it was a common problem faced and considered by all countries.

53. The targeting of journalists and bloggers in the context of peaceful protests; the role of objective observers documenting violations, who contributed to providing de facto protection to peaceful protestors; and the invaluable contribution to the promotion and protection made by national human rights institutions in the context of peaceful protests were also mentioned.

B. Responses of panellists and concluding remarks by the President of the Human Rights Council

54. The panellists were provided an opportunity to respond to a first set of questions raised by Member States and non-governmental organizations.

55. Mr. Kiai, responding to a question regarding lessons learned, said the issue of the equality of responses by States when dealing with peaceful protests and assemblies was of critical importance. Protests about issues on which State authorities agree were always allowed without problem. It was only when protests were about issues with which authorities disagreed that problems arose. People must be given the right to gather and express themselves, whether States liked or disliked what they were saying, and the space to organize and carry out their protests peacefully. Mr. Kiai, responding to a question on peaceful protests becoming non-peaceful, stressed that the fundamental duty lay with the State to provide security and make sure that a protest did not turn violent. Such a paramount duty must, however, not be turned around towards the protestors. Violent elements should be arrested and dealt with in accordance with criminal law.

56. Mr. Canton, responding to a question on activities that the Council could conduct on the present issue, said that the Inter-American Commission had contributed to establishing clear guidelines and tools for Governments to comply with their commitments and obligations, both positive and negative, in the context of protests. Those included legislation, policing strategies and tools. Similarly, the Inter-American Commission had granted protective measures in certain cases, calling on Member States to take specific action to protect the demonstrators. It had also sent requests for information to Member States. Those guidelines were very useful for the work of national and international civil society, particularly when engaging with Governments on human rights issues.

57. Mr. Hamilton said that the discussion had underscored the importance of international and regional cooperation to promote international standards, examples and good practices. In relation to the distinction between peaceful and non-peaceful assemblies, individuals did not forfeit their right to freedom of peaceful assembly simply because others in the same demonstration might choose to engage in violent activities. It became the role of the law enforcement forces to distinguish between those behaving peacefully and those engaging in violence. The legal regulation of freedom of peaceful assembly must reflect the principles of tolerance and pluralism. This implied in due course that where peaceful assemblies took place, they should be facilitated even when they questioned the authorities. Mr. Hamilton reiterated the suggestion of carrying out a study on the use of accountability mechanisms and their impact on situations where the use of force against demonstrators constituted a crime against humanity, or result to death or serious injuries. He emphasized the importance of dialogue and maintaining channels of communication between protestors and the authorities. Dialogue was good if its purpose was to facilitate to the greatest possible degree the exercise of freedom of peaceful assembly. However, the right to freedom of peaceful assembly should never be made conditional on the successful outcome of negotiation processes, particularly where vulnerable groups were concerned. It might be useful to draft guidance concerning the negotiation of the practical exercise of freedom of assembly.

58. Ms. Khaw, noted the obligation of Member States to maintain public security and order, but was concerned by inconsistent State practices in not allowing peaceful protests. Often there was a lack of transparency in issuing permits (where required) for peaceful assembly. It was essential that authorities acted in good faith, in a timely, non-selective and reasonable manner when there was request to peacefully assemble. There was also a need for the authorities to use reasonable, non-violent and proportionate methods in dealing with violence if it occurred during peaceful assemblies. In that respect, there should be guidelines on the exercise of measures to contain any violence which might occur. She added that there was a role for national human rights institutions to mediate, monitor and deal with any violations during and in the aftermath of demonstrations. Lastly, there should be guidelines on how recommendations by national human rights institutions should be acted upon by the relevant authorities.

59. Mr. Hassan, stated that the discussion had confirmed the need for the Human Rights Council to establish an overall framework that would regulate the work of the United Nations human rights system in dealing with the issue of peaceful protests. He stressed that, although all Arab countries which had undergone recent uprisings had ratified the International Covenant on Civil and Political Rights, brutal and widespread repression had taken place; and that the relevant national human rights laws in the Arab region for dealing with public protests were not derived from human rights law. The Council should have a single standard to deal with human rights in the context of peaceful protests to avoid politicization or double standards. Concerning the issue of how to promote national dialogue between the State and protestors, in some countries non-governmental organizations and political parties existed only on paper and therefore no dialogue could take place, notably in the six countries where the uprisings had taken place.

60. The President of the Human Rights Council concluded by stating that the discussion had been very fruitful, of extreme interest and greatly topical.
