

# Factsheet: Comparing treatment of businesses & associations

## Special Rapporteur Maina Kiai's report to the General Assembly, October 2015 (A/70/266)



### Do States have a positive obligation to create the best possible enabling environment for associations?

Yes

Under the [International Covenant on Civil and Political Rights](#) (ICCPR), States have a positive obligation to both protect *and* promote the rights to freedom of peaceful assembly and of association (Articles 2, 21 & 22; [Human Rights Committee General Comment 31](#)). The Special Rapporteur views this obligation as including a duty to create the best possible enabling environment for the existence and operation of associations ([A/70/266](#), para 4). Ideally, this should include taking measures to actively encourage associations to flourish, for example by extending tax privileges ([Id.](#), paras 79 & 110).

### Do States often create better enabling environments for businesses than they do for associations?

Yes

Despite States' legal obligation to promote association and assembly rights, the Special Rapporteur found that many governments make greater efforts to help the business sector grow and succeed ([A/70/266](#), para 10). Meanwhile, associations' activity is often discouraged, if not unduly restricted and hampered. The report provides scores of examples of both good and bad practices from over 50 Member States, broken down into five areas which are essential to build an enabling environment for both sectors: (1) Entry procedures and dissolution processes, (2) regulation of operations, (3) Access to resources, (4) political influence and access to power, and (5) Conducting peaceful assemblies ([Id.](#), para 20). The Special Rapporteur believes that States would better promote and protect assembly and association rights if they elevated their treatment of associations to similar levels as businesses ([Id.](#), para 19).

### Is the Special Rapporteur arguing for identical treatment of each sector?

No

The Special Rapporteur does not necessarily advocate *identical* treatment for businesses and associations; there may be legitimate bases for different treatment in certain cases. He instead argues for "sectoral equity," which is a theme that he has referred to in his previous reports (e.g., [A/HRC/23/39](#), para 24). Equity between sectors implies a fair, transparent and impartial approach in which regulation of each sector is grounded in domestic and international law, standards and norms. Moreover, it implies regulations which are clearly set forth in law, with minimum discretion given to State officials ([A/70/266](#), para 17).

### Do States impose different rules for associations and businesses regarding access to foreign investment or funding?

Yes

Foreign funding or investment is frequently restricted by States, both for businesses or associations. But the trends for each sector are sharply divergent: undue restrictions on civil society's ability to access foreign funding have grown exponentially in the past decade, while restrictions on foreign business investment are dissipating ([A/70/266](#), para 68). India, for example, has undergone a massive liberalization to encourage foreign commercial investment, but still requires civil society organizations receiving funds from "foreign sources" to obtain government permission ([Id.](#), para 69). And since 2009, Ethiopia has prohibited domestic NGOs working in certain rights-based areas from receiving more than 10 percent of their funding from foreign sources. Meanwhile, over the same time period, the country has seen a 1,500 per cent increase in commercial foreign direct investment ([Id.](#), para 70).

### Can States impose stricter auditing and reporting requirements on associations?

No

There is no basis in international human rights law for imposing more burdensome auditing and reporting requirements upon associations than for businesses. Justifications such as protecting State sovereignty or ensuring aid effectiveness are not legitimate bases under the ICCPR ([A/70/266](#), para 53). Even legitimate interests, such as protecting national security, can't be used to justify excessive intrusion. Restrictions on association rights must be based on individualized and identifiable suspicion – not upon a pre-emptive suspicion of an entire sector ([Id.](#)). Most importantly, States can only impose restrictions that are prescribed by law, and necessary and proportionate to the aim pursued.

### Does differential treatment extend to the conduct of peaceful assemblies?

Yes

Despite the neutrality of most laws regarding assemblies, public and private gatherings by civil society organizations are more likely to be restricted in practice than those held by businesses ([A/70/266](#), para 99). In Cambodia, for example, attendees of the 2012 ASEAN Peoples' Forum reported being turned away from hotels en masse after State security agents pressured owners ([Id.](#), para 101). No similar problems were reported for the country's International Investment Conference in 2014, which the Prime Minister himself formally opened. States have an obligation under international law to facilitate peaceful assemblies, regardless of who organizes them ([Id.](#), para 96).

### What is this report about?

This report is a comparative study of "enabling environments" – defined as action or inaction taken by States and other actors to promote a particular non-State sector – for non-profit associations and for-profit businesses around the world. In surveying the law and practice in a range of Member States, the Special Rapporteur finds that businesses usually operate in much better environments, largely because States, multilateral organizations and others make great efforts to create such environments. They make comparatively little effort to improve the environment for associations, despite having an obligation to do so under international law ([A/70/266](#), para 19).

### Why compare businesses and associations?

Businesses and associations may have dissimilar profit motives, but beyond that, the two sectors share a broad range of similarities: Both are vehicles for the association of multiple people, employers, providers of goods and services, magnets for investment, and possible platforms for mobilizing people and influencing policies ([Id.](#), para 9). Businesses were also chosen as a point of comparison because they frequently occupy a place of privilege in today's world, and it is useful to highlight this privilege in relation to how associations are treated. One reason is that it provides a reference point for what is legally and technically feasible in a particular jurisdiction. If a business can register as a legal entity in a few hours without significant government interference or discretion, why should the procedure be significantly different for associations ([Id.](#), para 16)?

### Are businesses always treated better?

Not necessarily. There is considerable diversity among both businesses and associations, and the motivation for differential treatment can relate more to an entity's activities than its status as a for-profit or non-profit body. For-profit media companies, for example, can be targeted for strict regulation while a large humanitarian organization might receive more favorable treatment. Restrictions often boil down to an entity's perceived threats and benefits to power, but in general associations are more likely to face restrictions than businesses ([Id.](#), para 11-12).

### Where can I find the report?

The report ([A/70/266](#)) is available at the following link: <http://freemassembly.net/rapporteurreports/sectoral-equity/>

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“The presence of a robust, vocal and critical civil society sector, almost without exception, guarantees that a State also possesses a good business environment ... Rule of law is stronger, transparency is greater, and markets are less tainted by corruption. Indeed, the presence of critical civil society can be viewed as a barometer of a State's confidence and stability. ”

A/70/266, para 18

## By the numbers: Comparing States' treatment of businesses and associations

15

Approximate number of days it takes to establish a joint-stock company in Egypt (para 29)

60

Number of days it can take to register an association in Egypt, assuming the Government approves (Id.)

2

Number of people required to form a business entity in Honduras (para 31)

7

Number of people required as board members to found an association in Honduras (Id.)

208

Associations in Pakistan which lost licenses after a review to ensure they are not engaged in terrorist financing (para 77)

0

Number of for-profit companies in Pakistan that were subjected to the same review (Id.)

88

Number of NGOs in Russia who have been obliged to register as “foreign agents” because they receive foreign funding

3

Russia's ranking, in 2013, among the world's most successful countries in attracting foreign business investment (para 71)

Paragraph citations refer to the report: [A/70/266](#)

## What's the Special Rapporteur's assessment?

The Special Rapporteur has observed that States often go to great lengths to create the best possible environment for businesses, but rarely go so far for associations. These differences appear motivated more by politics than practicality. Economic interests are prized over what are perceived as non-economic activities, and the influence and opinions of industry take precedence over social justice and fundamental rights. Sectoral equity is not a difficult concept to adopt. It simply a matter of political will. The Special Rapporteur is optimistic that States can change their perception of sectoral equity, primarily because businesses and associations do have a strong convergence of interests. For both sectors, rule of law is preferable to rule of power. Predictability trumps disorder. Fairness is better than corruption. Stable, balanced environments are better for everyone, whether they are multinational corporations, grassroots activist groups, or major international NGOs ([A/70/266](#), paras 106-07).

## What does the Special Rapporteur recommend?

- States: Ensure that businesses and associations are treated equitably by laws and practices regulating registration, dissolution, taxes, political activity and contributions, auditing and reporting, access to resources, and peaceful assemblies;
- States: Treat the enjoyment of assembly and association rights, as a national strategic interest warranting broadly the same attention, efforts and financing as other strategic national interests such as national defense;
- Multilaterals: Consider the concept of “sectoral equity” as critical to the enjoyment of the rights to freedom of

peaceful assembly and of association, and enshrine this perspective in instruments on human rights;

- Donors: Use aid as leverage to encourage States to support assembly and association rights, and evaluate the health of these rights in part by examining whether civil society is treated equitably compared to businesses;
- Civil society: consider the principle of sectoral equity when analyzing and reporting on violations of the rights to freedom of peaceful assembly and of association.

Full recommendations available in the [report at paras 109-21](#)

## Examples of differential treatment

- Ecuador: Associations face higher registration fees and capital requirements for formation – up to five times as high as businesses. In addition, association registration filings must be overseen or performed by a licensed attorney. No similar requirement is in place for businesses entities ([para 30](#)). 

- Malaysia: Associations registered as “societies” must provide authorities annually with a detailed list of internal information, including accounts and a description of any money or property received from foreign entities. The audit and reporting requirements for businesses are comparatively light, requiring only basic annual reports, auditing, minutes of shareholders meetings ([para 55](#)). 

- United States: Since 2001, authorities have shut down nine charities for violating the Anti-Terrorism Act, which prohibits “knowingly provid[ing] material support,” including funding, to terrorist organizations. By comparison, in March 2007, Chiquita Brands International only received a fine after it knowingly made direct payments to terrorists for protection from violence in Colombia ([para 64](#)). 

- Canada: The Income Tax Act limits “political activities” by registered charities, requiring such activities to be “ancillary and incidental” to charitable activities. Political activity is defined broadly, including explicit calls to political action (such as encouraging the public to call on a public official to retain, oppose, or change law or policy at any level of government in Canada or a foreign country). Non-charitable entities, including businesses, face fewer restrictions ([para 49](#)). 