



Call for inputs from the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Contribution of the Portuguese Ombudsman/NHRI

July 2018

- **How would the exercise of the rights to freedom of peaceful assembly and of association contribute to the realization of the 2030 Agenda for Sustainable Development?**

1. *In general.* The rights to freedom of peaceful assembly and of association play a key role in every State where respect for human rights, democracy and the rule of law are to be meaningful. Both rights embody the possibility of establishing communicational relationships between people, favouring forms of solidarity in various realms as well as public opinion-forming processes. Accordingly, beyond their personal dimension, the rights concerned are strongly attached to democratic exercise and values, which are of paramount importance in view of the realisation of the 2030 Agenda for Sustainable Development (henceforth referred as “the Agenda”).

Undeniably, the exercise of the rights to freedom of peaceful assembly and of association fosters participation, inclusion, empowerment and citizenry, paving the way for strong civil society and public debate, with plurality of voices and presentation of alternative perspectives within the processes of decision-making. A strong civil society is a decisive contribution to enhance democracy and thereby sustainable development, the ultimate goal of the Agenda. Within associations, in particular, the operation of the democratic rule in their own functioning facilitates the democratic exercise, advancing, at a closer proximity level, a culture of transparency, responsive governance, openness to debate and participation.

States where the law provide for the freedoms of peaceful assembly and association, and these rights are respected, in addition to open public powers that are willing to take into account peoples’ views and concerns, are better positioned for the effective implementation of the Agenda, as it requires public awareness, civil society mobilisation and political commitment. This is even more important because, as stated in the outcome document, «[i]t is an Agenda of the people, by the people and for the people» (§ 52.)

Moreover, these rights ensure that people have a voice and organise themselves collectively for shared interests, namely in the social sector, domain which is of

major importance for tackling the barriers faced by the most vulnerable and whose situation is particularly targeted by the Agenda's goals, with a view to inflect it.

Furthermore, the rights to freedom of peaceful assembly and of association are instrumental to the full enjoyment of other human rights (civil, political, economic, social and cultural rights), and, precisely, the Sustainable Development Goals set out in the Agenda, following an integrated and interdependent approach, seek to realize the human rights of all, recognising that the dignity of the human person is fundamental.

2. Brief note on the recognition of the rights to freedom of assembly and of association in the Portuguese legal order. Both rights are enshrined in the Portuguese Constitution as fundamental rights (articles 45 and 46, respectively)¹. As for the right to freedom of association, one should highlight that armed associations, military, militarised or paramilitary-type associations and organisations that are racist or share a fascist ideology are expressly prohibited (article 46(4)). The Constitution further reaffirms this right in the specific sphere of political associations and parties (article 51), as well as consecrates trade union fundamental rights (article 56). Moreover, the Constitution acknowledges the role of private institutions for social solidarity and other non-profit institutions of recognised public interest in the pursuit of social solidarity objectives (article 63(5)).

Decree-law No. 406/74, of 29 August 1974, regulates the right to freedom of peaceful assembly and demonstration, the exercise of which is not dependent of prior authorization by the public authorities.

As far as the right to freedom of association is concerned, all the people have the right to form associations freely, without the prerequisite of any authorisation, on condition that such associations are not intended to promote violence and their purposes are not contrary to the law. Associations shall pursue their purposes freely and without interference from the public authorities, and may not be dissolved by the state or have their activities suspended other than in cases provided for by law and then only by judicial decision.

Whereas the Constitution and the law also ensure citizens information and participation in the formation of public decisions that affect them, one should also highlight, within the present context, the special rights of participation recognised as fundamental rights to associations, namely to: trade unions with regard to drawing up labour legislation and socioeconomic plans (article 56(2)(a) and (c) of the Constitution); consumer associations, as for consumer protection (article 60(3) of

¹ An English version of the Portuguese Constitution is available at <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>



the Constitution); trade unions and other representative organisations, regarding the organisation of the social security system (article 63(2) of the Constitution); family representative associations as for the definition of a global and integrated family policy (article 67(2)(g) of the Constitution); associations of teachers, students, parents, communities and institutions of scientific nature with regard to the definition of the education policy, as laid down by law (article 77(2) of the Constitution).

In recognition of the role they can play and with a view to establish the corresponding rights, there is specific legislation on sectoral associations, representative of women, migrants, youth, persons with disabilities and involved in environmental protection. This recognition is particularly evident in the relevance given to these associations in the establishment of national action plans and strategies that provide concrete measures to fulfil State's responsibilities under the Constitution, international obligations and the law. As for NGDOs, their legal framework is also provided by the law, recognising their role in the design and implementation of social, cultural, environmental, civic and economic support programs relative to humanitarian assistance, emergency aid and protection and promotion of human rights.

Portuguese civil society actors, including associations, other NGOs and NGDOs, have been participating in the process of the implementation of the Agenda 2030. Besides “vertical” and “horizontal” participation (for further details, please see below), there are already examples of national action plans and strategies as well as legislative reforms that considerably rely on their participation and the work they developed, including in the field, in order to accomplish objectives which are in line with the goals laid down in the Agenda.

- **How might restrictions to the enjoyment of the rights to freedom of peaceful assembly and of association affect the implementation of Agenda 2030? Which particular goals?**

Restrictions to the enjoyment of the rights to freedom of peaceful assembly and of association require demanding justification (see Articles 21 and 22 (2) of the ICCPR). Arbitrary restrictions or bans to these rights weaken collective organisation of people and social movements, damaging active and participatory citizenry, either in the private or the public sphere. This in turn hinders the mobilisation of the required partnership to implement the new universal Agenda and thus the economic, social and environmental dimensions of sustainable development upon which it stands.

These detrimental effects on community are critical where unjustified restrictions are particularly targeted at political parties, bearing in mind their role in a representative and pluralistic democracy, anchored in the sovereignty of the people. Moreover, particular attention should be given to restrictions within the framework of states of emergency and/or situations requiring increased security measures (such those taken in the fight against terrorism), so as to prevent that, under the pretext of situations of exception, the enjoyment of the rights to freedom of peaceful assembly and of association are illegitimately curtailed².

Measures aimed at restricting or silencing the assembly and association space undermine empowerment of people, their rights to express themselves and to engage in collective activities (political, economic, social, cultural, environmental) that are at the core of all the Agenda commitments. In any case, within the present context, goals potentially more seriously affected would be: no poverty (Goal 1), good health and well-being (Goal 3), quality education (Goal 4), gender equality (Goal 5), decent work and economic growth (Goal 8), reduced inequalities (Goal 10), sustainable cities and communities (Goal 11), climate action (Goal 13), peace, justice and strong institutions (Goal 16) and partnerships for goals (Goal 17).

- **How is the respect, protection and promotion of the rights to freedom of peaceful assembly and of association taken into account the implementation of Goal 16?**

Goal 16 (peace, justice and strong institutions) encompasses several targets intrinsically intertwined with the respect, protection and promotion of the rights to freedom of peaceful assembly and of association, with highlight to the following:

- Develop effective, accountable and transparent institutions at all levels (16.5);
- Ensure responsive, inclusive, participatory and representative decision-making at all levels (16.6);
- Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements (16.10);
- Promote and enforce non-discriminatory laws and policies for sustainable development (16.b).

Densification of Goal 16 – which concerns the promotion of peaceful and inclusive societies for sustainable development, access to justice for all and building

² Under the Portuguese legislation on the state of siege and the state of emergency (Law no. 44/86, of 30 September 1986), meetings of the statutory bodies of political parties, trade unions and professional associations may in no circumstances be prohibited, dissolved or subjected to prior authorisation.

of effective, accountable and inclusive institutions at all levels – embraces the principles of inclusion, transparency and active citizenship, as encouragement of democratic participation of people, without discrimination, is vital for the implementation of the targets laid down in the Agenda.

Therefore, respect, protection and promotion of the rights to freedom of peaceful assembly and of association cannot be neglected within the multifaceted web of human rights that lie at the core of the process of building peace, inclusion, transparency, active citizenship and sustainable development. Those are human rights fundamental for the empowerment and engagement of people, including in support of implementation of Goal 16.

- **How do the SDGs indicators contribute to measure the exercise of the rights to freedom of peaceful assembly and of association? Indicate the goal and target as well as the indicator.**

SDGs indicators do contribute to measure the exercise of the rights to freedom of peaceful assembly and of association. On the basis of the SGD Indicators Metadata Repository (as of June 2018, available at <https://unstats.un.org/sdgs/metadata/>), one should indicate, as paradigmatic:

- “Goal 5. Achieve gender equality and empower all women and girls” – “Target 5.5: Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life” – “*Indicator 5.5.1*: Proportion of seats held by women in (a) national parliaments and (b) local governments”;

- “Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all” – “Target 8.8: Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment” – “*Indicator 8.8.2*: Level of national compliance of labour rights (freedom of association and collective bargaining) based on International Labour Organization (ILO) textual sources and national legislation, by sex and migrant status”;

- “Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels” – “Target 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements” – “*Indicator 16.10.1*: Number of verified



cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months”;

- “Goal 17. Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development Target” – 17.8: Fully operationalize the technology bank and science, technology and innovation capacity-building mechanism for least developed countries by 2017 and enhance the use of enabling technology, in particular information and communications technology” – “Indicator 17.8.1: Proportion of individuals using the Internet”.

- **How are governments empowering people and promoting civil society participation in the process of the implementation of Agenda 2030? What has been role of the UN system in promoting civil society engagement in the implementation process at the national, regional and global level?**

Within the framework of the process of the implementation of the Agenda and as far as Portugal is concerned, in order to ensure a “whole-of-society” approach, as stated by the Portuguese State Secretary for Foreign Affairs and Cooperation at the *5th High-Level Political Forum* (New York, July 18th 2017)³, the Government is promoting dialogue and consultation between all ministries and stakeholders, including civil society. This includes: “vertical” contribution of civil society to the design of the pertinent public policies; “horizontal” cooperation, paving the way for the Executive, through multi-stakeholder seminars and work groups, to take stock of the recommendations of the civil society representatives on the work in progress at governmental level; civil society initiatives, such as a public consultation held in 2016 and led by NGDO Platform, targeted at collecting input on the implementation of the Agenda, namely for the purpose of preparing sectorial “shadow reports”. Moreover the UN Global Compact Network Portugal (<http://globalcompact.pt/>) not only coordinates the multi-stakeholder platform SDG Portugal (<http://globalcompact.pt/alianca-ods>) but also promotes contribution by the private sector and other civil society partners.

Portugal volunteered to present national efforts with regard to the implementation of the 2030 Agenda for Sustainable Development in the 5th High-Level Political Forum (Voluntary National Review 2017). For more information on

³ See Statement by the Portuguese State Secretary for Foreign Affairs and Cooperation at the *5th High-Level Political Forum* (New York, July 18th 2017), available at: <https://sustainabledevelopment.un.org/content/documents/25763vnr8portugal.pdf>

this initiative, including the National report⁴ presented on that occasion and reference to concrete examples, namely, of promotion of citizenship and empowerment through the establishment of associations, please refer to: <https://sustainabledevelopment.un.org/memberstates/portugal> .

- **SDG Target 17.7 encourages the establishment of public, public-private and civil society partnerships as part of the Global Partnership for Sustainable Development. What is the effect that these partnerships have had on the exercise of the rights of freedom of peaceful assembly and of association?**

Partnerships as envisaged by the SDG Target abovementioned demand a meaningful dialogue between multi-stakeholders. This implies measures to be taken by the States to ensure that all persons are able to participate effectively in the debate and design of the policies envisioned and to support the development of platforms, aimed at encouraging and facilitating their involvement and their exercise of the rights of freedom of peaceful assembly and association. This kind of partnerships in action increases peoples' capacity for democratic citizenship and willingness to participate and engage, either individually and/or collectively, bringing visible benefits for the rights at stake.

By other words, partnerships as advocated as part of the Global Partnership for Sustainable Development undeniably have an effect on the exercise of the rights of freedom of peaceful assembly and of association, leading to a new and growing tendency towards greater participatory and deliberative democracy. People demand to be more directly and more closely involved in policy making, including through new innovations (such as forums, social media and block chain technology) to influence the policy agenda and mobilise action on the ground. In sum, partnerships as envisaged in the Agenda certainly lead to increasing calls for people participation and involvement.

Also, as for the Portuguese Ombudsman, considering the very nature of this NHRI (as it empowers people and performs as catalyst for participation in modern societies), the institution also acknowledges that the exercise of the rights of freedom of peaceful assembly and of association is deeply linked to an active and responsible citizenship.

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https://sustainabledevelopment.un.org/content/documents/15766Portugal2017_EN_REV_FINAL_29_06_2017.pdf



The development of the rule of law in Portugal has contributed to greater civic participation and the Ombudsman is attentive to this dynamism, also by receiving complaints that reflect greater interest in citizen participation and, where applicable, to take necessary action with a view to ensuring full exercise of the corresponding rights, entitling people to civic and social action.

Accordingly, the Portuguese Ombudsman is deeply committed to serve as bridge between citizens and public entities therefore contributing, in an independent and autonomous way, for the development of civic participation, deeply associated with a culture of human rights and, in turn, also embedded in sustainable development. Moreover, the role of the Ombudsman in motivating citizen participation and action is strongly related to its mandate to promote human rights, including through awareness raising and human rights education initiatives.