‘Labor Rights Are Human Rights’: An Interview with Maina Kiai, UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association

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Abstract

Although the 1948 Universal Declaration of Human Rights includes the right to freedom of peaceful assembly and association among its thirty articles, more than sixty years elapsed before working people’s rights to form unions and assemble was accorded attention by the United Nations Human Rights Council (UNHRC). The omission of worker rights’ issues reflects a global international perspective that historically has not embraced workplace rights within the larger human rights framework. The UNHRC’s appointment of a Special Rapporteur on the rights to freedom of peaceful assembly and of association in 2011 marked a noteworthy step in broadening the dialogue. Special Rapporteur Maina Kiai has strongly argued that a first step toward addressing the harsh effects of globalization on millions of workers around the world begins with the eradication of the artificial distinction between labor rights and human rights. As Special Rapporteur, Kiai has underscored the centrality of the global working class, and argued that the ability of the working class to exercise fundamental workplace rights is a prerequisite for a broad range of other rights, whether economic, social, cultural or political.

Keywords

Globalization; workers’ rights; human rights

Editors’ notes

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In May 2011, Kenyan lawyer and human rights advocate Maina Kiai was named the first-ever United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. As unpaid, independent experts appointed by the UN Human Rights Council (UNHRC), special rapporteurs are charged with a time-limited mandate to examine and report back on a country situation or a specific human rights theme. Although the 1948 Universal Declaration of Human Rights includes the right to freedom of peaceful assembly and association

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among its thirty articles, more than sixty years elapsed before working people’s right to form unions and assemble rose to the level of attention accorded by UN independent human rights experts. This special rapporteur process—the ‘crown jewel’ of the international human rights system, in the words of former UN Secretary-General Kofi Annan—was created in 1967 with a Special Rapporteur on Apartheid. Some forty-one thematic and fourteen country mandates operate now, and cover such areas as cultural rights and independence of judges and lawyers.

The UNHRC’s long delay in privileging worker rights’ issues reflects a global international perspective that historically has not embraced workplace rights within the larger human rights framework. In his role as special rapporteur, Kiai has strongly argued that a first step toward addressing the harsh effects of globalization on millions of workers around the world begins with the eradication of the artificial distinction between labor rights and human rights. Asserting that the ‘global attack’ on labor rights makes it ‘disturbingly clear that the old ways of defending workers’ rights are no longer working,’ Kiai told the UN General Assembly last fall that ‘it is time for states and the human rights community to place labor rights at the core of their work. The ability to exercise these rights in the workplace is a prerequisite for workers to enjoy a broad range of other rights, whether economic, social, cultural, political or otherwise.’

Kiai’s statement came as he presented a landmark report to the General Assembly that bluntly describes the state of worker rights in the world, and highlights how trends in the global economic order especially negatively affect women workers, migrant workers, informal economy workers and domestic workers. The ‘Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association’ forcefully conveys how the vast majority of the world’s workers are disenfranchised from their rights to assembly and association—rights that are fundamental to all other human rights—either by exclusion or outright oppression. ‘Without assembly and association rights,’ the report states, ‘workers have little leverage to change the conditions that entrench poverty, fuel inequality and limit democracy.’ Further, ‘states generally prioritize economic and corporate interests at the expense of workers’ rights, a counterproductive approach that exacerbates poverty and inequality. This situation must be urgently addressed, both to allow people to exercise their rights and to ensure the viability of the world’s economic system.’

The report’s uncompromising language recognizes the detrimental outcome of unchecked corporate power on the ability of the working class to be accorded an equitable share of its labor, reflecting Kiai’s lifelong pursuit of justice. After attending Nairobi and Harvard universities, Kiai founded the nonprofit Kenya Human Rights Commission in 1992, where he served as executive

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director, championing constitutional law reform and documenting and publicizing rights violations in Kenya. Between 2003 and 2008, Kiai chaired Kenya’s National Human Rights Commission, becoming nationally known for his effective advocacy against official corruption and support of political reform, and for standing against impunity for the perpetrators of the country’s 2008–2009 election-related violence in which thousands were killed.

Kiai has held other key positions, including executive director of the International Council on Human Rights Policy, director of Amnesty International’s Africa Program, and the Africa Director of the International Human Rights Law Group (now Global Rights, 2001–2003), and has held numerous fellowships, including at the Woodrow Wilson Center and TransAfrica. His many honors include the 2016 AFL-CIO George Meany-Lane Kirkland Human Rights Award.

As special rapporteur, Kiai was charged with ‘reporting on violations of the rights to freedom of peaceful assembly and of association, as well as discrimination, threats or use of violence, harassment, persecution, intimidation or reprisals directed at persons exercising these rights,’ and making recommendations on ways and means to ensure the promotion and protection of the rights to freedom of peaceful assembly and of association.’

In his six-year term, which ended April 30, Kiai humanized the UN’s often brittle bureaucratese with heartfelt descriptions of worker rights abuses and the struggles of the working people he talked with during multiple fact-finding missions around the world. In 2015, he found restrictions on freedom of assembly in Kazakhstan, an environment that has since worsened with government attacks on unions and the imprisoning of union leader Larisa Kharkova, impelling him in March of that year to condemn the crackdown on workers’ rights. In Rwanda, a country struggling to return to normalcy after genocidal war, Kiai encountered citizens arrested for exercising their rights to freedom of peaceful assembly and of association, and ‘an opposition to vigorous debate and free expression of opinions that makes the current social reconciliation process unstable.’

And in the United States, following a seventeen-day, ten-city fact-finding mission last July, Kiai issued a scathing statement on the country’s racial, social and economic inequality. Kiai met with Baton Rouge, Louisiana area residents and members of advocacy groups in the wake of the fatal

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7 The mandate of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association originally expired in 2014, but the UNHRC extended it to 2017. The term of Kiai’s successor, international law professor Annalisa Ciampi, ends in 2020. Special rapporteurs serve for a three-year period, renewable once.


shooting of Alton Sterling; talked with carwash workers from the Retail, Wholesale and Department Store Union (RWDSU) in New York City; and visited Nissan workers in Canton, Mississippi, where he expressed shock that the lack of unionization and ability to exploit workers is touted as a great benefit for employers.  

‘Racism and the exclusion, persecution and marginalization that come with it, affect the enabling environment for the exercise of association and assembly rights,’ Kiai stated, citing the gravity of the situation in the context of 400 years of slavery and Jim Crow. In the U.S., racial inequality is not the only inequality inhibiting the enabling environment for association and assembly rights, Kiai asserted. ‘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 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.’  

A final report on the visit will be presented to the Human Rights Council in June.  

Since then, Kiai has joined with another UN special rapporteur in calling on lawmakers in the United States to stop the ‘alarming’ trend of ‘undemocratic’ anti-protest bills designed to criminalize or impede the rights to freedom of peaceful assembly and expression. Noting that no fewer than nineteen states introduced legislation restricting assembly rights since the November elections, Kiai and David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, issued a report documenting the proposed restrictions and warning that if enacted, the bills ‘would severely infringe upon the exercise of the rights to freedom of expression and freedom of peaceful assembly in ways that are incompatible with U.S. obligations under international human rights law and with First Amendment protections’ while threatening to jeopardize ‘one of the United States’ constitutional pillars: free speech.’  

Kiai, who currently works as co-director of InformAction, a community organizing nonprofit in Kenya, leaves a strong legacy as champion of labor rights as human rights, the notion that the ability to exercise workplace rights is fundamental for workers to engage in a broad range of other rights, whether economic, social, cultural or political. In his report on assembly and association, Kiai radically shifted the lens through which rights-based organizations, the development community and public at large view human rights: Freedom of peaceful assembly and association are foundational rights precisely because they are essential to human dignity, economic

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empowerment, sustainable development and democracy. They are the gateway to all other rights; without them, all other human and civil rights are in jeopardy.

Now wrapping up his work as special rapporteur, Kiai reflected on the evolution of worker rights and popular protest since 2011, the role of the working class in challenging racism and xenophobia, and examples of successful strategies for worker rights’ advocates going forward.  

CONNELL: You took on the role of Special Rapporteur in 2011, a particularly hopeful time for democratic movements, with popular uprisings across the Arab Middle East, anti-austerity demonstrations throughout Europe, and the Occupy Wall Street movement sweeping the world. Since then, not only have many of the Arab revolutions suffered severe setbacks—with Tunisia a clear exception—but these generally progressive-leaning global revolts against the elites have now been overtaken by illiberal anti-elite uprisings, and the accession to governments by the far right. Your position as special rapporteur affords you a unique vantage to assess for us some of the reasons behind this dramatic political and economic shift and its impact on the working class.

KIAI: There a number of reasons. The first one partly is the fact that the retroactive, reactionary forces in society and across the world have become better at positioning themselves, at articulating what issues that they want, they have become louder, and they also have done quite a bit of damage by making what was previously unacceptable, normal. Now we’ve got a new normal, which is where people can express racist, misogynistic things and get away with it.

It’s also the fact that they learned how to control, how to organize better—and from the grassroots. The Tea Party coming in from the grassroots and changing the Republican party for example, or the British nationalist party organizing and managing to convince people that the enemy of the people was Europe. They have become better at organizing and articulating the issues.

The other side of it, I think, is that the positive, progressive side has become mainstream. And I think it became a wee bit lazy in doing things the way they’ve always been done. So the world is changing, but instead of us … also changing our approaches and our strategies and the way we do things, we’ve kept doing them, and thinking that, if we do more of the same, we will actually succeed. But it doesn’t work that way. So the other part of it for me has been the utter ‘projectization’ of the democracy project and the pro-people project. So instead of us looking at us defeating poverty, or [thinking of] democracy or human rights as struggles, they became projects and we have these silos and we don’t work together when we should.

It bugs me a lot that in so many parts of the world, there’s a fraught or very ad hoc and uneven relationship between the powerless—between the workers, between the peasants, between the indigenous people. The powerless should be working together and seeing their commonalities as opposed to their differences. So I think in part we did it to ourselves. We became a bit cocky in our successes. For example, these 99 percent campaigns. If you ask yourself how many human rights organizations enter into that fully as partners, as opposed to being commentators on it, and

16 Kiai, Maina (2017) interview with the author, 21 May, via Skype.
researching it—you find there are not many. We’ve managed, in a sense, to isolate our professional work from our personal life.

Also, the rise of terrorism, and how it has been manipulated by George Bush the Second, after 2001, and how everybody became scared … the fact that almost all of us in the world are prepared to sacrifice our liberties for security, even though that is a fake choice. You can’t have liberty and security at the same time. I think when we saw the West also losing its values, or its charade of values, it also hurt around the world. And when torture became justified in the U.S., when Guantanamo Bay becomes ok, when you can arrest people and can disobey the rule of law…

But I also think the over-legalisticness of these struggles, of human rights, of workers’ rights, has not necessarily helped because we have lost the ability now to communicate with people at a level that is understandable. Donald Trump can communicate in less than 140 characters on Twitter. And if you ask someone else from the progressive forces, they’ll give you a long thing, and a PowerPoint discussion which doesn’t necessarily appeal. So, we’ve got so much information flowing, with the internet and social media and we’ve not been able to use it sufficiently well.

I do think that we have to start thinking about doing things differently, and doing things in a more collaborative manner. And doing things that bolster all the weak organizations or sectors that are suffering within this new world order.

CONNELL: Worker rights increasingly are under attack around the world. The number of countries where workers were exposed to violence for trade union activity increased from 36 in 2015 to 52 in 2016, according to the International Trade Union Confederation Global Rights Index. Also in 2016, demonstrations were halted and workers suffered retaliation for expressing their views in 50 countries, nine more than in 2015. These data do not include outright legislative bans on union activity or government closure of unions, as recently occurred in Kazakhstan. What are some of the reasons underlying this widespread assault on freedom of association and assembly?

KIAI: I think we are in a world where market fundamentalism is certainly on top. Market fundamentalism meaning that those who have capital can make as much money as possible, it doesn’t matter how. And one of the ways to do that is to reduce what goes to workers. It’s all that pressure to make as much money as possible. The utter greed of people in business.

The fact is that the world has increased its productivity dramatically in the last 40 years, but you see a reduction in wages at the same time. So the gap is growing bigger. It is now seen as ok to have a big gap between rich and poor as though there are no security concerns, as though there are no social concerns when that happens, when the gap becomes intolerable. And it’s just the way it’s been sold. Part of the problem is the end of the Cold War, businesses saw that as a vindication of the capitalistic model, and they moved very quickly to remove regulations and restrictions. In the absence of any other political ideological option, then they felt they could do anything they wanted.
So the conflation of democracy and market fundamentalism has been a huge, huge, blunder. Because you can’t be in a social democratic state, you can’t have democracy and laissez-faire capitalism. You can’t. We’ve seen as well the rise of China which calls itself a communist country but also has a strong market fundamentalist edge to it, isn’t helping—and the whole gap between the rich and the poor therefore weakening trade unions. So it’s more and more the elimination of voices—freedom of assembly is under assault because those in power want to eliminate voices that are dissenting and are of a different opinion.

CONNELL: Your ‘Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association’ points to economic globalization as putting migrant workers, women workers, and domestic workers as particularly at risk for discrimination, abuse, and relegation to low-wage, insecure jobs. Most of these workers toil in the informal economy, which is growing exponentially around the world. In Zimbabwe, for instance, more than 90 percent of workers labor in informal economy jobs. What is the impact of the informalization of work in shaping current political and economic trends?

KIAI: It’s massive. It’s massive. Because there’s a sense that when people do informal work, then they don’t fit squarely into the organized sectors of society. They don’t fit squarely into trade unions and trade unions don’t think about how to deal with the informal sector and the workers there. They’ve come up with this idea that people are independent contractors even though they just are eking out a living.

The migrant worker issue is the perfect issue where you should be having social movements, human rights organizations, trade unions working together. It’s a huge body of people. But if people cannot be organized or are not organized, then they are at the mercy of the powerful. The achievements of society have always come about when people get organized and fight back and reach a compromise against people who are powerful. Or, the people who are powerful are overturned, and we have a better system that comes through. But power does not give in just like that, does not give in with a smile. It has to be confronted. And it has to be confronted by organized people organizing.

So when you see trade unions are under attack, when you see civil society is under attack, it is all about making sure there is no organization to challenge the orthodoxy of opposing power. It’s something we have got to keep confronting. And of course there’s this [idea] that’s also part of these nationalistic dialogues that are going on—the idea that if you are a migrant, you have no rights. The Universal Declaration of Human Rights gives us all rights. We don’t park those rights at the border when we’re crossing borders. We go with them. There are limits to what we can do as noncitizens in a country. But we shouldn’t deny people their rights. That’s fundamental.

So when the progressive forces in the receiving country do not organize and welcome these people and help them organize as well, then they are in deeper and deeper shit. You just have to change the way you do things. You just have to think more broadly. Sometimes people see [migrants] as taking jobs of the nationals of a country, but often those jobs are not being taken
anyway—that’s why there’s a market for these workers. Migrant workers do not go to places where there are no jobs. We have to think about broadening our alliances, broadening the work we do, seeing people as potential members of organized society and working with them so they can stand up. We’ve seen how domestic workers now have organized themselves around the world. We have to come up with creative ways to organize migrant workers as well. And that’s got to be done by all of us who call ourselves progressive.

CONNELL: Your response feeds very well into the next question, which is that the issue of immigrant worker rights is fiercely divisive for many members of the working class, and significant numbers of working people have been part of the opposition to immigration, fueling right-wing candidates and policies like ‘Brexit.’ What strategies have you seen that work to successfully bridge this divide within the working class?

KIAI: I think a lot of it is education, a lot of it is lifting up. The strategy that speaks to me the most is one I found in New Orleans. A very small non-profit organization is working with migrant workers from Mexico and Honduras and El Salvador and they’re working with black workers in New Orleans and trying to bring them together and understand that their fights and their antagonisms are only benefiting the employer who is cutting corners against all of them. And they are better off when they come together and say, ‘Yes, there is space for all of us.’ And often, there is space for all of them.

But once you create this antagonism, then you find that Latinos are fighting the African Americans and the African Americans are angry at the Latinos and they are all poor. So at the end of the day, the one smiling all the way to the bank is the employer with a federal grant who’s cut costs so much he’s laughing it off. So in a sense, it’s us going back to the basics, it’s us going back to organizing, it’s us going back to the grassroots, person by person, door to door, home to home, bringing us all together, finding this is where we can gather socially as well. So we can understand that our similarities are actually much, much more than our differences, and at the end of the day, all we want is the same thing. All we want is a better life for ourselves and our children and our grandchildren. And there is space for all of us. There is.

CONNELL: Assaults on the rights of women also have fed the recent surge of global revolts against the elite. As your ‘Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association’ details, women are among groups of workers ‘disenfranchised from the start by their status, making it more difficult to assert rights.’ What, if any, connections can be drawn between such issues as lack of pay equity, gender-based job restrictions and gender-based violence at work and this broader political environment that we have been discussing?

KIAI: I think the lesson around women, especially, also has to come back home, to the homes and how we bring up kids and how that happens because most people are brought up in a very patriarchal society where men are in control, men have to call the shots and women are in the periphery. We got to start bringing them in.
As Obama said, ‘A society that ignores or discriminates against half its population is a silly society.’ It’s really silly, it doesn’t make sense. So, how do we then change ourselves? We have not yet found ways in which we can incorporate from the home the issue of gender equality. And going into jobs, we don’t have environments yet that understand that women are critical players. And when they are, [for instance, in garment factories] the workforce is women, but the supervisors and managers are all men. So that just creates that whole dichotomy of harassment that goes on.

Sometimes I think it’s a deliberate structure that’s created, to try and keep women down consistently and to make sure they are always on the defensive. Because you’re working somewhere with a male supervisor, you’re always on guard. What will he want? How do I keep my job for tomorrow? Then there’s sexual abuse, sexual harassment … We’ve done a lot of work globally and things have changed dramatically. But I think we have too many log frames and too many PowerPoints and forgot the human nature of what we should be doing, the human aspect of it.

**Connell:** You touched on this a bit before in terms of your discussion on organizing and going back to the grassroots, but is there a role for working-class activism in resisting xenophobia, nationalism and authoritarianism?

**Kiai:** It is not just a role. It is an indispensable responsibility. Because once we fight xenophobia, once we fight racism, it brings us all together and we have the byproduct of each of us fighting for each other all the time. And there is nothing stronger than when we all work together. When we bring this horizontal plane of all the marginalized and abused people and all the disenfranchised, bring them together, each of us fighting for each, we are much stronger. So absolutely, the working class activists have a fundamental role. Because the dignity of others is their dignity. But when we accept the role that is thrust on us that the only way to move ahead is if somebody else has been [beaten], then we are caught up in a trap. They have done very well in making us our own worst enemies instead of our own best friends.

**Connell:** As you reflect on the past six years in which you interacted closely with working people, human rights advocates as well as business and government leaders in diverse countries and environments around the world, what examples have you seen or insights you have reached that give you hope?

**Kiai:** Oh, there is a lot of hope. All the student activists I have met around the world and especially in Chile, who refuse to be intimidated, and who are so good at reaching out to trade unions and workers and indigenous people. It’s the people in South Korea who have got the model right. The progressives working together, from the human rights people, environmentalists, trade unions and all of them. They have internalized the culture of protesting as part of who they are and part of what defines them. The people in Oman who protest … activists, knowing that it is so hard and so difficult, and so are trying to use the internet to get [their message] out there. Despite the gloominess of the current political environment, I’m actually quite enthused by how determined, how determined, how resilient [people] are.
But it can only work, it will only work, if we are able—which is the hardest thing for most of us—to internalize the need for us to work differently, and then we start working differently. Change is very difficult. Even when people are in a bad situation. We’re afraid that change might mean that we are left out. We have to just retool ourselves, knowing that the only constant in life is change. That’s the only constant. Change will happen, so we might as well go with it and engineer it, rather than be changed by it.

But I recognize how hard it is in progressive circles for people to say, ‘Ok we’ve been working like this, let’s try a different way to work.’ It’s a lot of trial and error. But that’s fine. We’re going to make mistakes, we’re going to fail sometimes, but we keep trying. Which is what I like about all the activists I have met. Whether it is the Occupy people, whether it is Black Lives Matter, whether it is the Hong Kong umbrella revolution—people trying different things to get there. And that’s what’s inspiring.

There is a lot of hope. The migrant workers I met in Phoenix, Arizona, who have no papers and they go out and their chant is ‘Sin papeles y sin miedo.’ That’s what I call courage. That’s what I call inspiring. And despite the odds against them and despite the fact that employers also use immigration to defeat the working class, people are still coming together and still fighting.

The world is majority working class in one form or another. Surely we can find a better way to be able to get away from all these divisions between us, whether it is nationality, whether it is religion, whether it is race differences, whether it is gender differences—we have to simply understand that this world order will finish us if we don’t come together properly.

Bio

Tula Connell is an historian of the United States focusing on 20th century labor and social movements. An independent scholar, Connell has worked in labor communications for more than 25 years and currently is Senior Communications Officer at the Solidarity Center, an international labor rights organization. Her book, Conservative Counterrevolution: Challenging Liberalism in 1950s Milwaukee, was published in April 2016 by the University of Illinois Press. Conservative Counterrevolution is a volume in the series, “The Working Class in American History” edited by Nelson Lichtenstein et al. Connell received her Ph.D. in American History from Georgetown University in 2011, and holds an M.A. in European History from Yale University and a B.A. in Journalism from Marquette University.