



International Service for Human Rights
(ISHR)

RIGHT TO ACCESS FUNDING
HUMAN RIGHTS DEFENDERS BRIEFING PAPERS SERIES

May 2009

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PREFACE

This briefing paper examines the scope of the right to freedom of association, with particular emphasis on human rights defenders and their work. This paper draws together the various international standards for the protection of this right, in addition to examining the different challenges to this right for human rights defenders.

The primary audience of this paper are *human rights defenders* working at the international, regional and national levels. This paper seeks to present relevant information in a simple and accessible manner to defenders, and act as a practical tool to support them in their work. It can be used as a resource or background reading for specific trainings for defenders on this topic, in addition to assisting in national advocacy or awareness-raising efforts on the right to freedom of association.

This paper may also be of use to *national human rights institutions* (NHRIs) when dealing specifically with defenders' issues. In addition, it can be used as resource material for NHRIs when providing advice to States in formulating or reviewing legislation relating to the right to freedom of association.

This briefing paper also collates and references the work of the UN treaty bodies and the UN Special Rapporteur on human rights defenders on the right to freedom of association in relation to defenders. *Academics, students and a wider audience* may therefore also find this paper of use as a guide to the international standards for the protection of the right to freedom of association for defenders.

INTRODUCTION

Human rights defenders face a range of obstacles in carrying out their work, one of which is restrictions on their ability to access funding and financial resources in order to sustain their activities. Legislation and court actions are increasingly being used to hinder the ability of human rights defenders to access financial resources to fund their organisations, specific projects or other activities. In many countries, for example, authorities place restrictions on foreign sources of funding.¹ In countries with scarce domestic resources, where human rights organisations are often only able to operate using foreign grants, legal or administrative obstacles can result in the organisations being unable to operate.

The right to access funding is therefore a right central to the work of human rights defenders. While the right to access funding does not formally exist under international human rights law, several international instruments do explicitly provide for this right. Additionally, several international instruments support the view that access to funding forms an integral part of the right to freedom of association, which is firmly enshrined in international human rights law.

This paper examines the standards of protection of the right to access funding under international human rights law. **Section I** examines the right to access funding within the context of freedom of association. **Section II** examines the UN *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (Declaration on human rights defenders), which codifies access to funding as an autonomous right. **Section III** provides some examples of violations of the right to access funding.

¹ General Assembly, SRSG HRC Report (2004), UN Doc. A/59/401, Para.75.

I. FUNDING AND THE RIGHT TO FREEDOM OF ASSOCIATION

As funding is critical for non-governmental organisations (NGOs) to carry out their human rights activities in a sustainable way, the right to seek and receive funds can be considered to be encompassed by the right to freedom of association based on the following argument. Human rights associations and organisations generally function on the ‘not-for-profit’ principle, and therefore depend heavily on external sources of funding in order to carry out their work. Restrictions and barriers to funding, therefore, severely undermine the right to freedom of association. If freedom of association is formally recognised and protected, but individuals and organisations are denied the means and resources to pursue their legitimate objectives as an association, then the right cannot be considered to be effectively protected in concrete terms. The interpretation of several international human rights treaties through the concluding observations issued by the UN treaty monitoring bodies, have strongly supported this interpretation of the right to access funding.

The first international instrument to refer explicitly to the right to access funding is the 1981 UN *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*.² According to Article 6, the right to freedom of religion and belief includes freedom ‘to solicit and receive voluntary financial and other contributions from individuals and institutions’. In this case, access to funding is understood as being necessary for carrying out religious practices,³ and is therefore intrinsically linked to the right to freedom of religion. This provision reflects the view that access to funding may be an important component for the realisation of other rights, such as in this case, the right to freedom of religion. In a similar manner, the full and free exercise of the right to freedom of association can be seen to be contingent on the right to access funding, and restrictions and barriers to funding potentially impair the right to freedom of association.

Authoritative support to this approach comes from the UN treaty monitoring bodies, established under the core UN human rights treaties. On several occasions the Human Rights Committee (HRC) has expressed concern at limitations placed by domestic legislation on the ability of NGOs to seek foreign funding, stating its inconsistency with Article 22 of the *International Covenant on Civil and Political Rights* (ICCPR), which protects the right to freedom of association. In the case of Egypt, for example, the HRC expressed its concern:

(...) at the restrictions placed by Egyptian legislation and practice on the foundation of non-governmental organizations and the activities of such organizations such as efforts to secure foreign funding, which require prior approval from the authorities on pain of criminal penalties ([A]rticle 22 of the Covenant).

The Committee recommended that the State party:

(...) review its legislation and practice in order to enable non-governmental organizations to discharge their functions without impediments which are

² General Assembly *Resolution 36/55* of 25 November 1981.

³ M. Nowak, *CCPR Commentary* (N.P.Engel, 2005), 420, Para.25.

inconsistent with the provisions of [A]rticle 22 of the Covenant, such as prior authorisation, funding controls and administrative dissolution.⁴

A similar position has been taken by the Committee on Economic, Social and Cultural Rights (CESCR), which has observed that government control over the right of NGOs to seek external funding is incompatible with Article 8 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).⁵ In addition, the same position has also been adopted by the International Labour Organisation (ILO), which has held that laws requiring official approval of funds from abroad may be incompatible with Convention No. 87 on Freedom of Association and Protection of the Right to Organise.⁶

⁴ Human Rights Committee, Concluding Observations on Egypt, CCPR/CO/76/EGY, 28 November 2002, Para.21.

⁵ See, for example, E/2001/22 (2000) 38, Paras 161 and 176 (Egypt).

⁶ Human Rights First, *The Neglected Right: Freedom of Association in International Human Rights Law* (1997).

II. ACCESS TO FUNDING AS A SELF-STANDING RIGHT

In 1998, the General Assembly adopted the Declaration on human rights defenders,⁷ which elaborates on the application of established human rights principles and protections for human rights defenders, and to the specific circumstances in which they work. While the Declaration on human rights defenders is not a legally binding text, its adoption by consensus represents a strong political commitment by all UN member States to respect the principles enshrined in the Declaration on human rights defenders. Additionally, as the Declaration on human rights defenders consolidates existing human rights norms that are enshrined in other legally binding human rights instruments such as the ICCPR, it effectively provides a normative framework for the protection of human rights defenders.

As the Declaration on human rights defenders elaborates upon the application of existing human rights norms to the particular situation of human rights defenders, it codifies access to funding for human rights activities as a self-standing right. Article 13 of the Declaration on human rights defenders states:

Everyone has the right, individually and in association with others, to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with [A]rticle 3 of the present Declaration.

The inclusion of this provision has been controversial and was the object of intense negotiations during the 13 years of the drafting of the Declaration on human rights defenders.⁸ The 1997 draft of the Declaration on human rights defenders did not include the right to access funding in the text as consensus had not as yet been achieved on this issue.⁹ However, despite fears that this issue may have had to eventually be dropped in order to reach consensus, the revised text presented the following year included the right to receive funding, and was adopted.

States are under an obligation to permit individuals and their organisations ‘to solicit, receive and utilise resources’. The wording used covers all the phases connected to the cycle of funding: seeking funds from all appropriate sources, both nationally and internationally, receiving funds, and using them for legitimate purposes. Restrictions on this right may affect any of these three phases. However, while defenders are usually able to solicit funds (which often simply involves submitting an application or proposal for funding), restrictions most often affect the ability of defenders to receive the funds or to use them once received. An example is an absolute prohibition on receiving funds from foreign sources. In such cases, if funds are received, they are seized and the persons involved may face criminal charges. Another example is a regime of prior

⁷ *Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*, commonly known as Declaration on human rights defenders, General Assembly Resolution 53/144, 9 December 1998.

⁸ For an account of the establishment and activities of the Working Group on the draft declaration, see International Service for Human Rights (ISHR), *The United Nations Draft Declaration on Human Rights Defenders. Analysis and Prospects*, HR Dossier No.1, January 1998.

⁹ At the 1997 meeting of the working group in charge of drafting the Declaration, the ‘unsettled issues’ were: the right to attend and observe court proceedings; the role of national legislation and its relationship with international law; the duties and responsibilities of human rights defenders; and access to funding.

authorisation by a government authority, which in most cases allows the relevant authority the discretion to deny authorisation.

The right to access funding requires States to adopt a legislative and administrative framework facilitating, or at least *not* impeding, solicitation, receipt, and use of resources. The only limitation provided for in the Declaration on human rights defenders refers to the purpose and means for the use of funds, which have to be used ‘for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means’. Resources intended for purposes other than that, or advocating non-peaceful means, are excluded.

Article 13 of the Declaration protects access to funding ‘in accordance with [A]rticle 3 of the present Declaration’. Article 3 states:

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion and effective realisation of those rights and freedoms should be conducted.

States may attempt to justify legislation or practices restricting access to funding on the basis of the reference to domestic law referred to in Article 3. However, the Special Rapporteur on human rights defenders, mandated to monitor the implementation of the Declaration on human rights defenders, among other activities, clarified that that provision must be read together with Article 4.¹⁰ The Special Rapporteur has clarified that domestic legislation is the framework within which defenders carry out their activities and enjoy their rights *as long as* domestic law is consistent with international human rights law. Attempts by States to justify restrictions on access to funding on this basis must therefore be rejected.

The right can be exercised by ‘*everyone, individually* and in association with others’ (emphasis added). This means that the existence of an organisation is not a prerequisite for the exercise of the right to access funding. This implies that access to funding is not only an element of the right to freedom of association, but is protected as a substantive self-standing right. This means that an individual is entitled to solicit, receive, and use funding, even if he or she does not belong to an association. Any restriction justified on the basis that the individual concerned is seeking funds in his/her own name (and not as member of an NGO) must therefore also be rejected.

¹⁰ Article 4 of the Declaration reads: ‘Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.’

III. FUNDING AND THE IMPORTANT ROLE OF CIVIL SOCIETY

An important contribution of the treaty bodies to the protection of human rights defenders has been their view with regard to the role of civil society organisations. The treaty bodies have consistently underscored the importance of an active and functioning civil society for the full implementation of the treaties, and have highlighted that States should create an enabling environment for defenders to operate freely and without hindrance.¹¹ The HRC and CESCR have based their recommendations on the provisions protecting the right to freedom of expression, association and participation in public life, and the right to form and join trade unions. Other committees have viewed this general duty as arising from their respective treaties.

This duty has both a positive and a negative dimension. State parties should support civil society and refrain from any illegitimate restrictions of its rights. The duty of States to create an enabling environment for defenders thus also has direct implications on allowing access to funding. An example is provided by the Committee on the Rights of the Child (CRC):

The Committee is concerned that civil society is under-resourced, insufficiently well organized and consequently unable to contribute fully to the implementation of children's rights in the State party. (...). The State party should review the capacity and contribution of civil society in the implementation of the Convention. It is recommended that the State party make every effort to strengthen the role played by civil society, *inter alia*, through improvements in the registration of NGOs, *the provision of support to civil society in accessing resources* (emphasis added) and through facilitating the functioning of civil society programmes. (...).¹²

Similar wording has also been adopted by the Committee on the Elimination of Racial Discrimination (CERD)¹³ and the Committee on the Elimination of Discrimination Against Women (CEDAW).¹⁴ The latter, in particular, went beyond the recommendation to facilitate access to or provide support in accessing resources, and recommended that the State directly ensure financial support to NGOs and adopt awareness-raising initiatives to encourage individuals and corporations to donate funds:

The Committee notes with concern the insufficient funding of non-governmental organizations, including women's non-governmental organizations, which makes it difficult for them to build their capacities to fulfil their various roles and functions in supporting human rights of women. The Committee recommends that the Government develop clear criteria for rendering and ensuring governmental financial support on the national and local level for the work of women's non-governmental organizations. It also recommends that the Government increase awareness among individuals and corporations regarding possible donations to women's organizations.¹⁵

¹¹ See, for example, CERD/C/65/CO/3, Para.21 (Kazakhstan); CCPR/C/79/Add.76, Para.19 (Belarus); CRC/C/15/Add.260, Para.34 (Nepal).

¹² Committee on the Rights of the Child, Concluding Observations on the Central African Republic, CRC/C/15/Add.138, 18 October 2000, Paras 22 and 23.

¹³ See, for example, CERD/C/IRL/CO/2, 14 April 2005, Para.12 (Ireland).

¹⁴ See, for example, A/55/38, paras.118-165 (2000), Paras 80 and 81 (Albania).

¹⁵ A/55/38, Paras 118-165 (2000), Para.155 (Lithuania).

The treaty bodies have also identified specific types of conduct as violations of the right to access funding and have referred to the requirement to obtain prior governmental authorisation for receiving grants from donors as well as to restrictions on funding coming from abroad. An example is provided by the concluding observations of the CRC for Nepal:

The Committee expresses concern over the wide-ranging restrictions placed by the authorities on civil society organizations such as re-registration requirements, censorship, travel ban, *and requirement to obtain prior governmental authorisation for receiving grants from donors* (emphasis added). The Committee underlines the importance of the role of civil society in the full implementation of the Convention and recommends that the State party remove all legal, practical and administrative obstacles to the free functioning of civil society organizations in the State party.¹⁶

The right to access funding can thus be derived from various sources. Access to financial resources can be viewed as a corollary to the right to freedom of association, as we have seen above. In the case of human rights defenders in particular, access to funding is also viewed as a self-standing right, as stipulated in the Declaration on human rights defenders. Finally, this overview of the concluding observations of the treaty bodies demonstrates that this right may be derived from the general duty of State parties to the core human rights treaties to encourage and foster the activities of non-governmental and civil society organisations.

¹⁶ Committee on the Rights of the Child, Concluding Observations on Nepal, CRC/C/15/Add.260, 3 June 2005, Paras 33 and 34.

IV. RESTRICTIONS AND CASE STUDIES

The right to access funding may be restricted in a variety of ways, ranging from procedures aimed at limiting the ability of defenders to solicit grants or other sources of funding, to regulations that constrain the receipt and use of funding. In many cases, restrictions particularly target foreign funding and thus impair the ability of organisations to operate, especially when no alternative financial avenues are available. The most common types of restrictions are absolute prohibitions of grants from foreign donors and regimes of prior governmental authorisation.¹⁷ If there are no funds available domestically, as is often the case in many countries, human rights organisations are only able to operate using foreign grants. Legal or administrative obstacles upon their ability to secure funds result in the inability of these organisations to carry out specific activities, and sometimes, even to exist.

In addition to controlling access to funding as seen above, restrictions may also apply to the ways in which funds are used. There are numerous examples of NGOs not being permitted to use funds for certain activities, for example, to organise particular meetings or demonstrations, or to produce documents and reports on particular topics.¹⁸ Any limitations on the right to access funding can only be viewed as legitimate if there exist clear criteria and conditions justifying these restrictions, as most often, limitations on this right are purely aimed at constraining the human rights work of NGOs and infringing upon their independence and ability to operate freely.

It is important to note that the rights to freedom of expression, assembly and association as codified in the ICCPR can be permissibly restricted on the basis of a number of specified criteria. For example, these rights can be restricted if their exercise poses a threat to national security, public order, public health or public morals. For restrictions to be permissible, they must be codified by law, and must be proportional to the aim sought. In the case of the right to access funding, however, no such ‘permissible limitations’ are qualified in the Declaration on human rights defenders in the same way as in the ICCPR. While the Declaration on human rights defenders codifies the right to funding as a self-standing right that is of critical importance to defenders, in the context of the ICCPR, this right is considered a counterpart to the right to freedom of association. Therefore, the same criteria for assessing the permissibility of limitations on the right to freedom of association can be applied to the right to access funding.¹⁹

Another type of restriction on access to funding is reducing the amount of financial resources accessible to an organisation through taxation. For example, in a country where not-for-profit associations are in principle tax-exempted, a tax up to 25% was introduced on funds received by a human rights organisation.²⁰ Freedom of association does not require States to grant tax benefits to not-for-profit organisations. However, if an arbitrary distinction is made between not-for-profit organisations and not-for-profit

¹⁷ General Assembly, SRSG HRC Report (2004), UN Doc. A/59/401, Para.75.

¹⁸ General Assembly, SRSG HRC Report (2004), UN Doc. A/59/401, Para.76.

¹⁹ For more information on restrictions to freedom of association, please refer to ISHR, *Right to Freedom of Association* (January 2009).

²⁰ (Country not named in the report.) General Assembly, SRSG HRC Report (2004), UN Doc. A/59/401, Para.78.

organisations *working on human rights issues*, this would amount to discriminatory treatment and constitute a violation.

The following case studies offer some examples of illegitimate restrictions on access to funding.

1. Restriction on use of funding

In August 2003, the Belarusian Helsinki Committee (BHC), the Belarus branch of the International Helsinki Federation, received an official warning from the Ministry of Justice for omitting the quotation marks from the organisation's name on its official letterheads and organisational symbol. The charge provided the pretext for an investigation by the Department of Finance, following which criminal charges were brought against representatives of the BHC for 'omission to register foreign financial assistance'. The Department of Finance stated that the BHC owed the State 385 million Belarus roubles in unpaid taxes and fines for alleged unlawful use of project funds received under the European Union TACIS Programme. However, according to the Memorandum on Financing between Belarus and the European Union (10 May 1994) the TACIS programme was exempt from taxation. Representatives of the BHC faced criminal charges under Article 243 of the Criminal Code that could result in their arrest as well as the closure of the Committee's bank account and the confiscation of its property.²¹

As seen above, Article 13 of the Declaration on human rights defenders covers three 'phases' related to funding: solicitation, receipt, and utilisation of resources. In the example above, the organisation concerned had already solicited and received funds from the European Union. The conduct of the authorities, in violation of the agreement reached with the EU and concerning the status of the TACIS programme for tax purposes, thus concerned the *use* of the resources. Tax regulations were used – in violation of the agreement between Belarus and the EU – to stop BHC activities and harass their members. This constituted a violation of Articles 1 and 13 of the Declaration on human rights defenders and Article 22 of the ICCPR.

2. Restrictive legislation

In 2004, Zimbabwe drafted a new Non-Governmental Organisations (NGO) Bill, replacing the Private Voluntary Organisations (PVO) Act of 1967. The draft bill required that all NGOs and Church-based organisations in Zimbabwe register with a newly established Non-Governmental Organisations Council. Section 9 of the bill criminalised any organisation operating without registration and imposed criminal sanctions of up to five months imprisonment to the board member of such an NGO. NGOs already registered under the existing PVO Act were granted a one-year grace period before being required to re-register, whereas NGOs not required to register under the PVO Act were deemed illegal until their registration was accepted by the new NGO Council. Concerns were expressed with regard to the independence and wide-ranging powers of the registration body. In particular, the NGO Council was composed of five NGO representatives and nine government representatives, all appointed by the Minister of Public Service, Labour and Social Welfare. Section 4 of the draft bill granted the Council the authority to 'determine every application for registration (...),

²¹ Report of the Special Representative of the Secretary-General on Human Rights Defenders (2005), E/CN.4/2005/101/Add.1, Para.66.

conduct investigations into the administration and activities of NGOs (...), take disciplinary actions (...), [and] formulate a code of conduct for NGOs'. The law prohibited access to funding for local NGOs working on human rights and governance issues, which provided that 'No local NGO shall receive foreign funding or donation to carry out activities involving or including acts of governance'. Further concern was expressed with regard to the prohibition of international NGOs from carrying out human rights work. In particular, the bill stated that 'No foreign NGO may be registered if its sole or principal objects involve or include any issues of governance', with governance defined as including the 'protection and promotion of human rights'.²²

While in general States are entitled to regulate the establishment and functioning of NGOs, the example of the draft law from Zimbabwe described above appears to be so restrictive so as to entirely hinder the exercise of the right to freedom of association for human rights defenders. Measures that strictly limit NGO activities also include the criminalisation of non-registered NGOs and preventing newly established organisations from starting any kind of activity before registration is obtained. Additionally, also of concern in the above example of Zimbabwe, are the composition and powers of the NGO Council, which can investigate, take disciplinary actions and impose a code of conduct on NGOs. Further, the wide-ranging powers of a similar administrative body such as the NGO Council may easily be abused as it appears not to be subjected to judicial scrutiny. With specific regard to funding, limitations include preventing local NGOs from receiving any sort of financial support from abroad. Given the relative difficulty of obtaining local funding, this prohibition acts as a serious obstacle for local organisations. Coupled with this measure is the prohibition on 'foreign' human rights NGOs from obtaining registration in Zimbabwe, which results in a reduced number of human rights NGOs in the country.

It is noteworthy that Zimbabwe defended such restrictive legislation arguing that foreign-funded organisations and foreign organisations dealing with 'governance issues' had proven to be a threat to national security by funding 'instability and chaos' in the country and using the excuse of human rights to pursue the policies of foreign governments against Zimbabwe.²³

3. Poor implementation of legislation

In some cases, restrictions on access to funding may not be formally enshrined in the laws regulating the establishment and functioning of NGOs, but in administrative practices related to their application. In Azerbaijan, for example, while legislation presents many shortcomings and limitations, it is not as restrictive as the case of Zimbabwe above. In Azerbaijan, NGO activities are regulated by the 2000 Law on Non-Governmental Organisations and the 1996 Law on the State Registration of Legal Entities. Other relevant norms are included in the Law on Grants and in the Civil Code. The legislative framework leaves NGOs free to operate without acquiring formal status. The 2000 Law on NGOs was examined by the Council of Europe, and found to have many gaps, including provisions which are often vague and ambiguous, thus leaving room for their arbitrary interpretation.

²² *Report of the Special Representative of the Secretary-General on Human Rights Defenders* (2005), E/CN.4/2005/101/Add.1, Para.621. See also Amnesty International, *Zimbabwe: Human Rights Defenders under Siege* (2005) and FIDH / OMCT Observatory, *Human Rights defenders on the Frontline – Report 2004*, p.96 ff.

²³ Government of Zimbabwe's reply to a communication sent by the Special Representative on Human Rights Defenders, E/CN.4/2005/101/Add.1, Para.625.

However, the main problems did not arise from the legislation itself, but from the practical application of the relevant laws by the administrative authorities in Azerbaijan. Indeed, the administrative authorities responsible for the registration process often failed to inform the applicant organisation of the decision taken, even though the law prescribed that the competent Ministry reply within ten days. Delays in taking a decision on registration usually varied between 1-2 months to 1-2 years, and during this period, organisations could not fully operate. In many cases the authorities repeatedly requested new corrections to the documents submitted, or requested to submit extra documentation not required by law. In several cases, when refusing registration, the authorities failed to indicate the legal basis of the decision, or made incorrect reference to law, thus hindering the possibility of the applicant organisation appealing the decision. Finally, the law required the monthly publication of information on registered organisations, but authorities often failed to do so. Consequently, it was difficult for organisations applying for registration to know whether the name they chose had already been registered by another organisation, which often provides grounds for the denial of registration.²⁴

The issues highlighted above are not a direct consequence of provisions of the Azerbaijani NGO law, but the practice of the authorities which constituted a violation of the law, for example, when requesting documents not prescribed by law, or when failing to adopt a decision within the prescribed time limit. Other acts did not represent formal violations of the law, yet had the same negative impact upon NGO activities, such as when no indication was given, or when incorrect references were made to the grounds on which registration was refused.

Unfortunately, the case of Azerbaijan is not an isolated one. Very often the existence of a good legislative framework is used by the authorities to reject criticism, yet it does not provide a guarantee against abuses and problems, if not followed by the correct and fair application of the law.

²⁴ International Centre for Non-Profit Law, Problems of NGO Registration in Azerbaijan – a Survey.

V. CONCLUSION

The cases reported in the previous section only represent a few examples of how States may hinder the activities of human rights defenders. Restrictive legislation governing access to resources is often coupled with other forms of harassment and violence against human rights defenders, aimed at preventing them from pursuing their activities and goals. They include carrying out arbitrary searches on their premises, confiscation of documents, arrests, criminal prosecutions, and threats of, or actual de-registration or dissolution of the organisation.

Limitations concerning the right to receive funding may range from the existence of complex and burdensome procedures to solicit grants or other financial resources, to restrictive regulations on their receipt and use, particularly on foreign funds. This severely affects the ability of NGOs to carry out their activities in the many cases where foreign funding is the only available resource.

The increasing number of countries adopting restrictive laws governing NGOs and associations represents a disturbing trend towards the institutionalisation of restrictions on the work of human rights defenders. As underscored by the Special Rapporteur on human rights defenders, in addition to harassment or abuse of defenders by institutions such as the police or military, it is now often courts and administrative and legislative bodies that present serious challenges to the work of defenders through the adoption and application of restrictive laws and regulations.

ANNEX I: RELEVANT INTERNATIONAL PROVISIONS

I. RIGHT TO ACCESS TO FUNDING

Article 13, *Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*

Everyone has the right, individually and in association with others, to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with [A]rticle 3 of the present Declaration.

Article 6 (f), *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*

In accordance with [A]rticle 1 of the present Declaration, and subject to the provisions of [A]rticle 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms: (...)

To solicit and receive voluntary financial and other contributions from individuals and institutions.

II. RIGHT TO FREEDOM OF ASSOCIATION

Article 22, *International Covenant on Civil and Political Rights*

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interest of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights of freedoms others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. (...)

Article 8, *International Covenant on Economic, Social and Cultural Rights*

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. (...)

Article 5, *International Convention on the Elimination of All Forms of Racial Discrimination*,

In compliance with the fundamental obligations laid down in [A]rticle 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (...)

d) Other civil rights, in particular: (...)

(ix) The right to freedom of peaceful assembly and association; (...)

e) Economic, social and cultural rights, in particular: (...)

(ii) The right to form and join trade unions; (...).

Article 15, *Convention on the Rights of the Child*

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Other international and regional treaties protecting the right to freedom of association:

- *ILO Convention (No 87) concerning freedom of association and protection of the right to organise;*
- *ILO Convention on the Right to Organise and Collective Bargaining;*
- *ILO Convention on Workers' Representatives;*
- *Convention relating to the Status of Refugees;*
- *European Convention for the Protection of Human Rights and Fundamental Freedoms;*
- *European Social Charter;*
- *African Charter for Human and Peoples' Rights;*
- *African Charter on the Rights and Welfare of the Child;*
- *American Convention on Human Rights;*

- *Additional Protocol to the Inter-American Convention on Human Rights in the Area of Economic, Social and Cultural Rights;*
- *Inter-American Convention on Violence against Women;*

Other international and regional instruments protecting the right to freedom of association:

- *Universal Declaration on Human Rights;*
- *Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms;*
- *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities;*
- *American Declaration on the Rights and Duties of Man.*

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ABOUT THIS PUBLICATION

The *Human Rights Defenders Briefing Papers* are a series of six briefing papers providing simple and practical information on rights relevant to the work of human rights defenders. Other papers cover right to freedom of assembly, freedom of association, freedom of expression, access to information and access to international bodies.

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