



Protecting civic space and the right to access resources

A Community of Democracies project funded by Sweden

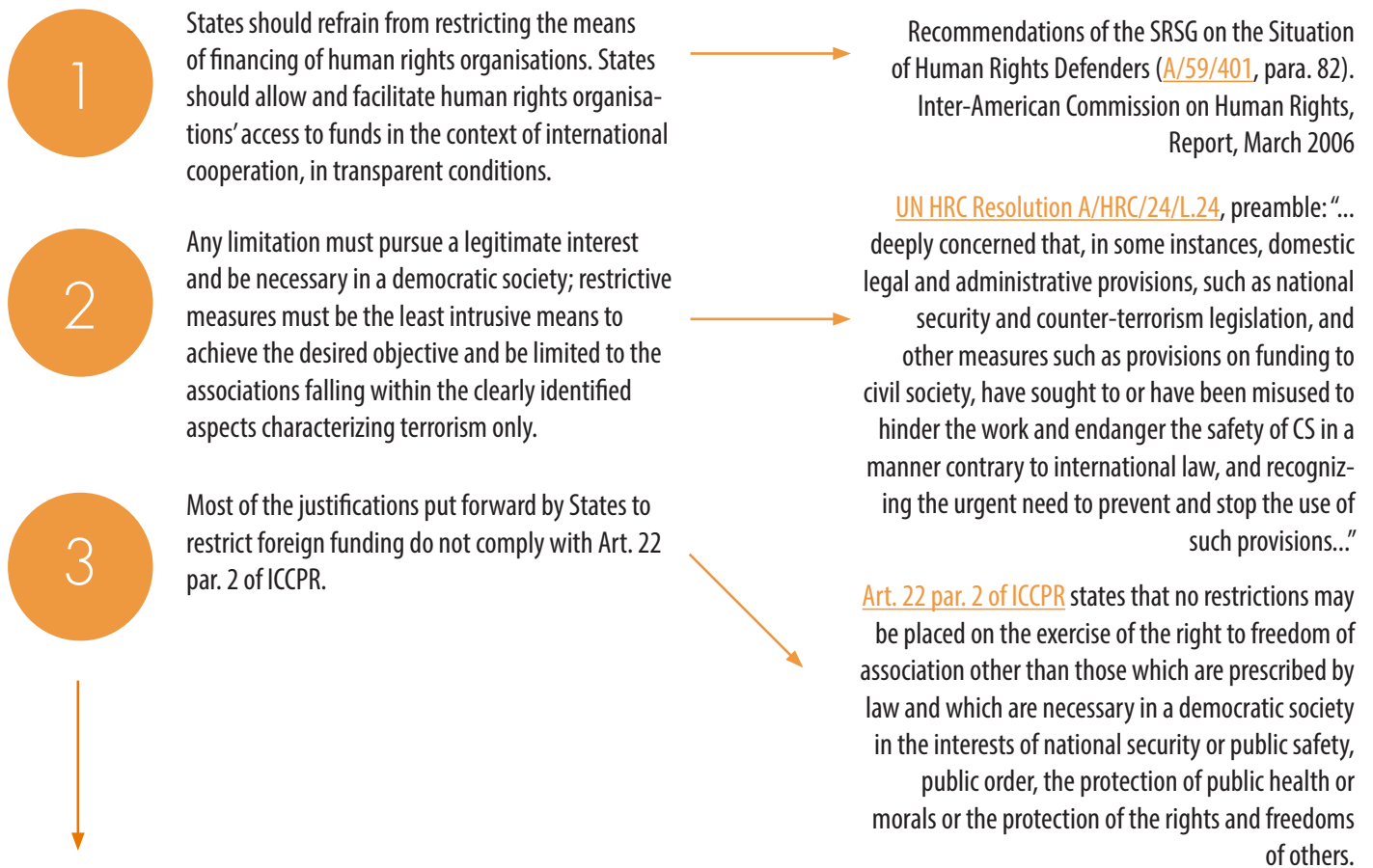
General Principles

This document summarizes three general principles under international human rights norms and standards regarding the ability of civil society to seek, receive and use resources. The left hand column provides arguments supporting specific aspects of each principle, while the right hand column provides the legal basis or background for the argument. Where relevant, hyperlinks are provided to original sources.

General Principle 1: The ability to seek, receive and use resources is inherent to the right to freedom of association and essential to the existence and effective operations of any association

- | | | | |
|---|--|---|--|
| 1 | Civil Society is an essential component for the promotion of human rights, democracy and the rule of law: therefore states should create and maintain a safe and enabling environment in which CSOs can operate free from hindrance and insecurity. | → | UN HRC Resolution A/HRC/24/L.24 |
| 2 | The exercise of the right to freedom of association is severely curtailed and rendered null if the access to resources is restricted as demonstrated by the decline in the number of associations, decrease of activities or extinction of other associations. | → | UNSR on Human Rights Defenders, Commentary to the Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms : in order for human rights organizations to be able to carry out their activities, it is indispensable that they are able to discharge their functions without any impediment, including funding restrictions |
| 3 | International human rights law and standards amply recognise access to resources as part of the right to freedom of association; article 22 of the ICCPR protect all activities of an association including fundraising activities. | → | Human Rights Committee, Communication n. 1274/2004 : funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with article 22 |
| 4 | The problem is not isolated but exists in all parts of the world, including the “global north”: it is used in many instances to silence the voices of dissent and critics. | → | Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27) |
| 5 | Access to resources is important not only to the existence of associations, but also to the enjoyment of other human rights and freedoms for those benefiting from the work of the association. | → | Art. 13 of the Declaration of Human Rights Defenders states that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means |

General Principle 2: States must allow associations to seek, receive and use foreign funding as a part of their obligation under international human rights law to mobilize resources available within the society as a whole and from the international community



Example 1

Terrorism and Money-Laundering: Governments usually invoke the protection against terrorism and prevention of money laundering as a ground to limit access to funding: however, while "national security or public safety" are legitimate grounds for restricting the freedom of association, there is also need for States to comply with international human rights law while countering terrorism. Additionally states should use alternative mechanisms to mitigate the risk, such as through banking laws and criminal laws.

Legal basis: UNSR on the promotion and the protection of human rights while countering terrorism: states shall not invoke national security as a justification for measures aimed at suppressing opposition or to justify repressive practices against its population (A/61/267, para. 20)

Example 2

State Sovereignty: Governments also invoke the "protection of State sovereignty" against external interference to restrict foreign funding, depicted as a new form of imperialism or neo-colonialism. However, the protection of State sovereignty is not listed as a legitimate ground in the Covenant. Further, some of the States stigmatizing foreign-funded associations are themselves receiving foreign funding, often in greater amounts. Other are the very same states providing funding to associations abroad.

Legal basis: Art. 22 par. 2 of ICCPR states that no restrictions may be placed on the exercise of the right to freedom of association other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Example 3

Aid effectiveness: Governments have invoked the principle of aid effectiveness (harmonisation of donor initiatives and accountability of partners) to dictate priorities and control the plans of CSO. However, this does not comply with the requirement of a "democratic society" listed in Art. 22 ICCPR: in fact, states that restrict funding in the name of aid effectiveness violate the key democratic principles of pluralism, tolerance and broadmindedness.

Legal basis: Same as Example 2

General Principle 3: The CSO and the corporate sectors should be governed by an equitable set of rules and regulations (sectoral equity)

