

# Factsheet: Civil society's ability to access resources

## Special Rapporteur Maina Kiai's report to the Human Rights Council, June 2013 (A/HRC/23/39)



### Is the ability to access resources distinct from the right to freedom of association?

No

The ability of civil society organizations to access funding and other resources from domestic, foreign and international sources is an integral part of the right to freedom of association, not a separate right (A/HRC/23/39, para 20). This is because of the central importance of resources in effectively exercising the right to freedom of association. Laws which restrict access to resources can subjugate associations to a dependent and weak position; those which encourage access to resources can strengthen the effectiveness and facilitate the sustainability of associations (*Id.*, para 9). If a State imposes undue restrictions on funding, it is a violation the right to freedom of association under Art. 22 of the [International Covenant on Civil and Political Rights](#) (ICCPR) (*Id.*, para 20).

### Does international law explicitly recognize the importance of resources?

Yes

Art. 22 of the [ICCPR](#) (hereafter the Covenant) affirms that "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." The Human Rights Committee – the UN body charged with authoritative interpretation of the ICCPR – observed in [communication No. 1274/2004](#) that this right "relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association [...]." Accordingly, fundraising activities are protected under article 22 of the Covenant (A/HRC/23/39, para 16). A more direct statement can be found in Art. 13 of the [Declaration on Human Rights Defenders](#): "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."

### Does it make a difference if the resources are from foreign or international sources?

No

Restrictions on the ability to access resources often target foreign funding, but international law makes no distinction between the sources of funding or resources, whether domestic, foreign or international (A/HRC/23/39, para 17). The ability to access resources from all of these sources is equally protected under the [ICCPR](#). Moreover, many justifications which Governments use to impose restrictions on foreign funding – for example protection of state sovereignty or aid effectiveness – are not one of the limited legitimate bases for limiting the right to freedom of association under Art. 22 of the ICCPR (*Id.*, paras 32 & 41).

### Can only registered associations access resources?

No

Art. 13 of the [Declaration on Human Rights Defenders](#) makes clear that the right to access resources applies "individually and in association with others." Although the Declaration is not a binding instrument, it was adopted by consensus by the UN General Assembly and contains a series of principles and rights that are based on human rights standards enshrined in other international instruments which are legally binding (A/HRC/23/39, para 17). Moreover, the [ICCPR itself](#) makes no distinction between registered and unregistered associations; the right to freedom of association equally protects associations that are registered and unregistered (A/HRC/20/27, para 56).

### Are some restrictions on funding permissible?

Yes

It is possible for States to limit to the right to freedom of association (and by extension associations' ability to access resources), but only under very specific and limited circumstances. Under [Art. 22, para 2 of ICCPR](#), such limitations must be "prescribed by law and . . . 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." These conditions are cumulative, meaning that restrictions must be (1) motivated by one of the above limited interests, (2) have a legal basis and (3) conform to the strict tests of necessity and proportionality (A/HRC/23/39, para 19; [Human Rights Committee Comment No. 31](#), para 6).

### Are there any particular restrictions on funding that the Special Rapporteur warns against?

Yes

Problematic constraints include outright prohibitions to access funding; requiring CSOs to obtain Government approval prior to receiving funding; requiring the transfer of funds to a centralized Government fund; banning or restricting foreign-funded CSOs from engaging in human rights or advocacy activities; stigmatizing or delegitimizing the work of foreign-funded CSOs by requiring them to be labeled as "foreign agents" or other pejorative terms; initiating audit or inspection campaigns to harass CSOs; and imposing criminal penalties on CSOs for failure to comply with the foregoing constraints on funding (A/HRC/23/39, para 20).

### What are resources in this context?

"Resources" are defined broadly, and can include financial transfers (e.g., donations, grants, contracts, sponsorships, social investments, etc.); loan guarantees and other forms of financial assistance from natural and legal persons; in-kind donations (e.g., contributions of goods, services, software and other forms of intellectual property, real property, etc.); material resources (e.g. office supplies, IT equipment, etc.); human resources (e.g. paid staff, volunteers, etc.); access to international assistance, solidarity; ability to travel and communicate without undue interference and the right to benefit from the protection of the State (A/HRC/23/39, para 10). Resources can come from domestic, foreign or international sources.

### Why is civil society's ability to access resources so important?

The ability to seek, secure and use resources is essential to the existence and effective operations of any association, no matter how small (A/HRC/23/39, para 8). Associations need resources to survive and to function; without the ability to access them, the right to freedom of association can be rendered meaningless. Moreover, access to resources is important not only to the existence of the association itself, but also to the enjoyment of other human rights by those benefiting from the work of the association. Undue restrictions on resources thus impact not only the right to freedom of association, but other human rights as well (*Id.*, para 9).

### Check out the full report

The report (A/HRC/23/39) is available at the following link: <http://freemassembly.net/rapporteurreports/funding-report/> and via [ohchr.org](http://www.ohchr.org)



## The ability to access resources: Selected international law

- [International Covenant on Civil and Political Rights, Art. 22](#)
- [Human Rights Committee, communication No. 1274/2004](#) (“the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities.”)
- [Declaration on Human Rights Defenders, Art. 13](#): “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.”
- [Human Rights Council resolution 22/6](#): States shall ensure that reporting requirements for civil society “do not inhibit functional autonomy [of associations]” and “do not discriminatorily impose restrictions on potential sources of funding.”
- [Human Rights Council resolution 27/31](#): Calls upon States to ensure that they do not hinder the work of civil society, and “underlines the importance of the ability to solicit, receive and utilize resources for their work.”
- [Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Art. 6](#): explicitly refers to the freedom to access funding, stating that the right to freedom of thought, conscience, religion or belief shall include, inter alia, the freedom “to solicit and receive voluntary financial and other contributions from individuals and institutions.”

“It is paradoxical that some of the States stigmatizing foreign-funded associations in their own countries are receiving foreign funding themselves (in the form of loans, financing or development assistance), often in substantially greater amounts than that flowing to CSOs in their country.”

A/HRC/23/39, para 29

## What does the Special Rapporteur recommend?

- Adopt a regime of notification for the formation of associations, and to allow for the existence of unregistered associations;
- Ensure that associations – registered and unregistered – can seek, receive and use funding and other resources, whether domestic, foreign or international, including from individuals; associations, foundations, civil society organizations; foreign Governments; the private sector; the UN and others, without prior authorization or other undue impediments;
- Recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association and of other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights;
- Recognize that regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding;
- Adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to funding they allegedly received

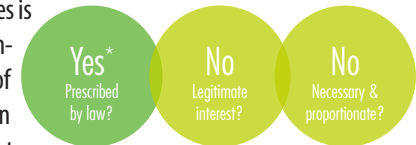
For the full list of recommendations, see [paras 79-83](#).

## Restrictions on the right: What is legitimate under the ICCPR?

The [ICCPR](#) requires that restrictions to the right to freedom of association be “prescribed by law and . . . 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.” This means that restrictions must (1) have a legal basis, (2) be motivated by one of Art. 22’s limited interests, and (3) be necessary and proportionate ([A/HRC/23/39](#), para 19; [Human Rights Committee Comment No. 31](#), para 6). Some common justifications for restrictions on funding are analyzed against these conditions below.

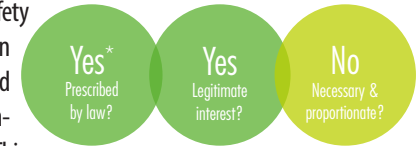
### Example 1: Protection of ‘state sovereignty’

This rationale for restricting access to resources is increasingly common, with some States claiming foreign funding to civil society is a form of imperialism or neocolonialism. The protection of State sovereignty is not listed as a legitimate interest in the Covenant; thus it is not a proper basis for restricting the right to freedom of association ([A/HRC/23/39](#), paras 27-34).



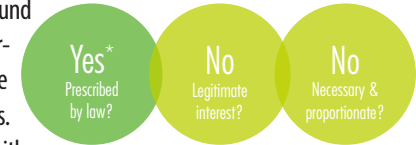
### Example 2: National security (e.g., preventing terrorism financing)

Protection of national security and public safety are legitimate grounds for restricting association rights. But to meet the proportionality and necessity test, the measures must be the least intrusive means to achieve the desired objective. This means that they may not target all civil society associations indiscriminately or arbitrarily. Laws drafted in general terms limiting, or even banning funding under the justification of national security are not proportionate and necessary in a democratic society ([Id.](#), paras 22-26).



### Example 3: Aid effectiveness and funding control

Aid coordination is not listed as a legitimate ground for restrictions under the ICCPR, and erecting barriers in the name of aid effectiveness have little in common with these enumerated restrictions. Even if it were legitimate, it would not comply with the requirements of “a democratic society,” as requiring alignment with Government aid priorities contradicts one of the most important aspects of freedom of association, namely that individuals can freely associate for any legal purpose ([Id.](#), paras 39-42).



\* Prescription by law is presumed for the purposes of this analysis, but this may not always be the case. Restrictions on funding can be imposed through non-legal means such as stigmatization/verbal attacks, intimidation, property damage, physical assaults and other types of harassment.