

**GUARANTEEING
THE CORNERSTONES
OF DEMOCRATIC SYSTEMS**

Briefing paper #58



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working to advance social justice in Europe and worldwide.

SOLIDAR lobbies the EU and international institutions in
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EXECUTIVE SUMMARY

Freedom of peaceful assembly and association are fundamental human rights that can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies – “**everyone is entitled to these rights**”. These rights can be an important strand in the maintenance and development of culture, and are crucial to creating a tolerant, inclusive and pluralistic society in which groups with different beliefs, practices or policies can exist peacefully together.

Moreover, freedom of peaceful assembly and association must be recognised as an *enabling right* that underpins inclusive development, in which decent work and social protection and the progressive realisation of social, economic and cultural rights are key. As such freedom of peaceful assembly and association is a precondition for the defence of collective rights as well the only way to protect the freedom of minorities. An approach that – when implemented in dialogue and coordination – can provide sustainable pathways out of the current economic and social crisis.

In recent years, however, human rights organizations, women’s advocates, independent trade unions, organizations that seek legal reform or groups that champion minority rights have come under growing pressure from regimes that are determined to marginalise or eliminate all perceived sources of opposition and dissent. The result has been a notable reversal for freedom of peaceful assembly and association in much of the world.

Ensuring the freedom of peaceful assembly and association is of paramount importance as:

- 1. It enables CSOs, social and grassroots’ movements to play a vital role in contributing to the progressive realisation of economic, social and cultural rights.**
- 2. It is anchored in international labour conventions to enable trade unions and workers’ movements to promote decent work and social protection for all workers.**
- 3. It enables, in addition to the above, Women’s movements to play a key role in shaping society by creating new norms and by making legal systems work for women.**

In September 2012, the UN Human Rights Council adopted a resolution that reminds states of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and association are in accordance with their obligations under international human rights law. This resolution along with the UN Universal Declaration of Human Rights (Articles 19 and 20) shall be the starting point of SOLIDAR’s global policy campaign entitled “**Mobilising for Freedom of Association**”.

FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION AT RISK

The right to assemble peacefully, together with freedom of expression and freedom of association, rests at the core of any functioning democratic system. Moreover, freedom of peaceful assembly and association is a fundamental human right that can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and even corporate bodies. Assemblies and associations may serve many purposes, including the expression of diverse, unpopular (or minority) opinions. These rights can be an important strand in the maintenance and development of culture, such as in the preservation of respective minority identities. The protection of the **freedom to peacefully assemble and associate is crucial to creating a tolerant and pluralistic society in which groups with different beliefs, practices or policies can exist peacefully together**¹.

Unfortunately, these rights were for too long neglected in international human rights law. However, the events that have occurred in numerous Arab countries, and elsewhere, since December 2010 have proved how these rights are important for people to express their aspirations and to influence policy decision makers².

The central element of the rights to freedom of peaceful assembly and association is that **“everyone is entitled to these rights”**. This means that all individuals, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, shall enjoy these rights. This applies inter alia equally to women and men, youth, persons with disabilities, persons belonging to minority groups or holding ‘unpopular or controversial’ opinions or other groups at risk, including those victims of discrimination because of their sexual orientation and gender identity, as well as non-nationals. As a result, no one must be criminalized for the sole exercise of the rights to freedom of peaceful assembly and of association, nor should he or she be subject to any discrimination, threats or use of violence, harassment, persecution, intimidation or reprisals³.

International human rights law allows for restrictions of these rights under strict provisions, as enshrined in the International Covenant on Civil and Political Rights (ICCPR, Articles 20 and 21). These provisions state that “the exercise of the rights to freedom of peaceful assembly and association can be subject to certain restrictions, which are prescribed by 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”. This clearly means that freedom is to be considered the rule and limitations the exception. So any limitation must be necessary in a democratic society and respect the principles of pluralism, tolerance and broadmindedness⁴.

Besides within the ICCPR, the freedom of assembly is also enshrined in many other international human rights instruments including: [Universal Declaration of Human Rights](#), [European Convention on Human Rights](#) and [International Labour Organization Convention C87](#) and [Convention C98](#). The Charter of fundamental right of the European Union (Article 12) writes that *“Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests”*.

¹ Guidelines on Freedom of Peaceful Assembly OSCE / ODIHR 2010

² Statement by Maina Kiai Special Rapporteur on the rights to freedom of peaceful assembly and of association at the 20th

² Statement by Maina Kiai Special Rapporteur on the rights to freedom of peaceful assembly and of association at the 20th session of the UN Human Rights Council 20 June 2012 Geneva

³ Statement by Maina Kiai Special Rapporteur on the rights to freedom of peaceful assembly and of association at the 20th session of the UN Human Rights Council 20 June 2012 Geneva

⁴ Statement by Maina Kiai Special Rapporteur on the rights to freedom of peaceful assembly and of association at the 20th session of the UN Human Rights Council 20 June 2012 Geneva

Unfortunately too many infringements of these fundamental human rights can be witnessed today all over the world. Freedom House has in July 2012 identified 10 Absurd Violations of Freedom of Association⁵, to name a few:

- *Watching the news is punishable in Zimbabwe:* Activists who gathered in Harare to watch television coverage of the Arab Spring uprisings last year were convicted of planning to foment a similar revolt in Zimbabwe. While the judge conceded that watching videos of the protests wasn't a crime, he argued that the group aimed to stir up antigovernment sentiment by playing them.
- *Walking to work is punishable in Uganda:* Activists for Change (A4C), a non-profit group, organized a "walk to work" campaign to protest rising food and fuel prices. The government called the walks a form of illegal assembly, and deployed security forces to break up the actions.
- *Complaining when your land is stolen is punishable in Cambodia:* Objecting when commercial logging or development projects force you off your land is now cause for arrest in Cambodia. Individuals who dared to protest against recent government-backed land grab face punishment. Land disputes have reportedly affected at least 400,000 Cambodians.
- *Women wearing white is punishable in Cuba:* Nineteen members of the Ladies in White, a prominent dissident group formed by the wives and mothers of political prisoners, were detained on March 17 [2012] as they had been preparing to march toward the city centre. Three were released without facing charges. The next day, 36 members were stopped by police as they walked to church. After the service, another 22 were held in police custody.
- *Just standing around is punishable in Belarus:* Although Belarusian authorities banned demonstrations following the contested re-election of President Alyaksandr Lukashenka in December 2010, protesters have used increasingly creative means to express their dissent in public. Nevertheless, they have faced prison time for a series of ludicrous offences. Five hundred were sentenced to as many as 15 days in jail after holding nonverbal clapping protests over the course of several months. One activist was sentenced this year to 10 days in jail for arranging a protest by teddy bears.

Despite the character of these above stated examples, unfortunately, Freedom House has identified that a new wave of authoritarianism has emerged in the last several years. Among its principal targets is civil society. **Democratic political parties, human rights organizations, women's advocates, independent trade unions, groups that investigate corruption or monitor abuse by security services, organizations that seek legal reform, groups that champion minority rights or religious freedom have come under growing pressure from regimes that are determined to marginalize or eliminate all perceived sources of opposition and dissent.** The result has been a notable reversal for freedom of peaceful assembly and of association in much of the world⁶.

Against this backdrop SOLIDAR launches the global policy campaign "Mobilising for Freedom of Association" that has the objective to advocate that European Institutions and (Member) States incorporate in their external action frameworks conditionality clauses that include the freedom of peaceful assembly and of association. And that European Institutions and (Member) States, within their existing human rights strategies and cooperation instruments, prioritise initiatives that promote the freedom of peaceful assembly and association

⁵ Freedom House 10 Absurd Violations of Freedom of Association July 2012

⁶ Freedom House Freedom of Association Under Threat: The New Authoritarians' Offensive Against Civil Society

EXISTING INTERNATIONAL OPERATIONAL GUIDELINES

Within the *Guidelines on Freedom of Peaceful Assembly (second edition)*, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) has developed on the bases of international and regional treaties and other documents related to the protection of human rights, a baseline that sets out a clear minimum that must be met by national authorities in their regulation of freedom of peaceful assembly and of association⁷. Aspects of these guidelines include:

- **Freedom of peaceful assembly and association are fundamental human rights** that can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies. Assemblies may serve many purposes, including the expression of diverse, unpopular (or minority) opinions. The right can be an important strand in the maintenance and development of culture, such as in the preservation of minority identities. The protection of the freedom to peacefully assemble and of association is crucial to creating a tolerant, inclusive and pluralistic society in which groups with different beliefs, practices or policies can exist peacefully together.
- The **state's positive obligation to facilitate and protect the freedom of peaceful assembly and of association**. It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedoms are practically enjoyed and not subject to undue bureaucratic regulation. In particular, the state should always seek to facilitate and protect public assemblies at the organizers' preferred location and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded.
- **Non-discrimination**. Freedom of peaceful assembly and association is to be enjoyed equally by everyone. In regulating these freedoms relevant authorities must not discriminate against any individual or group on any grounds. The freedom to organize and participate in public assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities and trade unions; to members of minority ethnic, national, sexual orientation and religious groups; to nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists); to children, women and men; to law-enforcement personnel; and to persons without full legal capacity, including persons with mental illnesses.
- Restrictions on freedom of peaceful assembly [and of association]:
 - o **Legitimate grounds for restriction**. The legitimate grounds for restriction are prescribed in international and regional human rights instruments; these should not be supplemented by additional grounds in domestic legislation.
 - o **Public space**. Assemblies are legitimate uses of public space, the same as commercial activity or the movement of vehicular and pedestrian traffic. This must be acknowledged when considering the necessity of any restrictions.
 - o **Content-based restrictions**. Assemblies are held [and associations are setup] for a common expressive purpose and, thus, aim to convey a message. Restrictions on the visual or audible content of any message should face a high threshold and should only be imposed if there is an imminent threat of violence.
 - o **Time, place and manner restrictions**. A wide spectrum of possible restrictions that do not interfere with the message communicated is available to the

⁷ Guidelines on Freedom of Peaceful Assembly OSCE / ODIHR 2010

regulatory authority. Reasonable alternatives should be offered if any restrictions are imposed on the time, place or manner of an assembly.

- **Sight and sound.** Public assemblies are held to convey a message to a particular target person, group or organization. Therefore, as a general rule, assemblies should be facilitated within “sight and sound” of their target audience.
- **A human rights approach to policing assemblies [and associations].** The policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality and non-discrimination and must adhere to applicable human rights standards. In particular, the state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence. Law-enforcement officials must also protect participants of a peaceful assembly from any person or group (including agents provocateurs and counter-demonstrators) that attempts to disrupt or inhibit the assembly in any way.

Following the above indicated principles; the freedom of peaceful assembly and association is closely connected to the *freedom of thought, conscience and religion* and to the *freedom of expression*. The latter rights would be of very limited scope if they were not accompanied by a guarantee of being able to share one’s beliefs or ideas in community with others, particularly through associations of individuals having the same beliefs, ideas or interests⁸. In addition, the freedom of association is also linked to *the right to a fair trial*, *the right to life and to be free of torture*, *rule of law* and evidently the *right not to join an association*.

Last but not least, **individuals have the right to associate without forming a legal entity**. For associations to attain the status of a legal entity there is a distinction (within international human rights instruments) between what is generally called a ‘prior authorization procedure’ and a ‘notification procedure’. The second, that does not require associations to obtain any authorization from the authorities, is in force in a number of countries and respects international human rights law⁹, but not in others where authorization is commonplace and often provides a ‘legal’ bases for violations of the freedom of peaceful assembly and of association.

⁸ Eur. Ct. H.R. (GC), *Hasan & Chaush v. Bulgaria* (Appl. No. 30985/96), judgment of 26 October 2000, para. 62.

⁹ Statement by Maina Kiai Special Rapporteur on the rights to freedom of peaceful assembly and of association at the 20th session of the UN Human Rights Council 20 June 2012 Geneva

FREEDOM OF ASSOCIATION AS AN ENABLING RIGHT

In addition to its status as a basic human right, and as the cornerstone of any democratic system outlined in previous chapters, **freedom of peaceful assembly and association must be recognised as an *enabling right* that underpins inclusive development, in which decent work and social protection and the progressive realisation of social, economic and cultural rights are key.** As such freedom of peaceful assembly and association is a precondition for the defence of collective rights as well the only way to protect the freedom of minorities. Furthermore, freedom of peaceful assembly and association is not just a desired outcome of democratic transition processes, but an integral part of the broader process of inclusive development. Without it, there can be no genuine or effective dialogue or cooperation between all actors within society and with governments needed to achieve economic and inclusive growth that can contribute to the wellbeing of the greatest number of people, particular poor segments of society¹⁰.

Social, economic and cultural rights (ESCR)

60 years ago, the [Universal Declaration of Human Rights](#) proclaimed a wide spectrum of human rights that every human being has – without discrimination. These include rights to education, to adequate housing and other economic, social and cultural rights. In fact, economic, social and cultural rights are a broad category of human rights guaranteed in the [International Covenant on Economic, Social and Cultural Rights](#) and other legally binding international and regional human rights treaties¹¹.

Economic, social and cultural rights, amongst others, include:

- *Right to education*, including ensuring that primary education is free and compulsory, that education is sufficiently available, accessible, acceptable and adapted to the individual;
- *Cultural rights* of minorities and Indigenous Peoples;
- *Right to the highest attainable standard of physical and mental health*, including the right to healthy living conditions and available, accessible, acceptable and quality health services;
- *Right to adequate housing*, including security of tenure, protection from forced eviction and access to affordable, habitable, well located and culturally adequate housing;
- *Right to food*, including the right to freedom from hunger and access at all times to adequate nutritious food or the means to obtain it;
- *Right to water* – the right to sufficient water and sanitation that is available, accessible (both physically and economically) and safe.

Access to land is important for development and poverty reduction and also often necessary to access to numerous economic, social and cultural rights and can serve as a gateway for many civil and political rights such as the freedom of peaceful assembly and association. However, there is no specific right to land in international human rights law¹². And yet, rights are established in international legal frameworks that relate to land access. This includes rights for particular groups as the ILO convention 196 on Indigenous and Tribal Peoples in Independent Countries), but also include numerous rights are affected by the access to land such as the ones mentioned

¹⁰ ILO, Guide to Freedom of Association and Development, July 2011

¹¹ Amnesty International, Economic, social and cultural rights, Campaign to ensure access to justice for all

¹² Land Rights Issues in International Human Rights Law E. Wickeri and A. Kalhan, more [here](#)

above (i.e. housing, food, water). Last but not least, general principles in international law provide protections that relate to access to land and include equality and non-discrimination in ownership and inheritance.

Failing to protect ESCR can have very serious consequences. For instance forced displacement or eviction can result in homelessness, the loss of livelihood and the destruction of social networks, and can have devastating psychological effects. Furthermore, denying ESCR can affect large numbers of people. For example; diarrhoeal dehydration caused by a lack of safe drinking water claims the lives of nearly 2 million children every year. Gross violations of ESCR have been among the root causes of conflicts, and failure to address systematic discrimination and inequities in the enjoyment of these rights can undermine the recovery from conflict. The denial of ESCR can lead to violations of other human rights. For example, it is often harder for individuals who cannot read and write to find work, to take part in political activity or to exercise their freedom of expression. Failing to protect a woman's right to adequate housing (such as lack of secure tenure) can make her more vulnerable to domestic violence, as she might have to choose between remaining in an abusive relationship or becoming homeless¹³.

Due to "progressive realization"¹⁴ a strong link exists between ESCR and freedom of peaceful assembly and association as an *enabling right*. In other words, the International Covenant on Economic, Social and Cultural Rights requires governments "to take necessary steps" [in dialogue and cooperation with other stakeholders] to the maximum of available capacities and resources to achieve progressively the full realization of ESCR¹⁵. In that respect, a violation of ESCR occurs either when a government has omitted to act to overcome deprivation or, alternatively, *when it has actively impeded, or allowed others to impede, the realization of a right* as a result of unwillingness, negligence or discrimination¹⁶. However, **CSOs, social and grassroots' movements can play a vital role through the freedom of peaceful assembly and association to contribute to the progressive realisation of economic, social and cultural rights.**

Decent work and social protection

Despite that decent work and social protection are also included in ESCR, labour rights are different from other ESCR because they are at the same time civil and political rights recognised by the [International Covenant on Civil and Political Rights](#) as is the freedom of peaceful assembly and of association¹⁷. These rights are furthermore imbedded in ILO Conventions: (87, 1948) Freedom of Association and Protection of the Right to Organise Convention; (98, 1949) Right to Organise and Collective Bargaining Convention; (141, 1975) Right to Organise and Collective Bargaining Convention; and (135, 1971) Workers' Representatives Convention¹⁸.

International labour standards conventions, amongst others, describe:

- *Freedom of association, collective bargaining* and industrial relations – Workers and employers, without distinction whatsoever, have the right to establish and, subject only to

¹³ UNHCR Factsheet 33 Frequently Asked Questions on Economic, Social and Cultural Rights

¹⁴ Progressive realization of ESCR does not mean that governments do not have obligations in terms of these rights until a certain level of economic development is reached but rather that there will be continual progress on the status of these rights and therefore states should take deliberate steps immediately and in the future towards the full realization of ESCR. Governments, no matter what level of resources they have at their disposal, must take immediate steps within their means towards the fulfilment of these rights. Dias, Clarence J. "Towards Effective Monitoring of Compliance with Obligations and Progressive Realization of ESCR" 2000.

¹⁵ UNHCR Factsheet 33 Frequently Asked Questions on Economic, Social and Cultural Rights

¹⁶ Amnesty International, A primer on economic, social and cultural rights, 2005

¹⁷ A Violations Approach to the Right to Work, V. Leary, SIM special 20

¹⁸ ILO, Guide to International Labour Standards, 2008

- the rules of the organization concerned, to join organizations of their own choosing for furthering and defending their interests without previous authorization¹⁹.
- *Social protection* – Set of public measures that a society provides to protect its members against the economic and social distress that would be caused by the absence of or reduced income from work (...), the provision of health care, and the provision of benefits for families with children²⁰.
 - *Decent work* – Work is central to people's wellbeing. In addition to providing income, work can pave the way for broader social and economic advancement, strengthening individuals, their families and communities. Such progress, however, hinges on work that is decent. Decent work sums up the aspirations of people in their working lives. The ILO Decent work agenda includes²¹:
 - a. **Guaranteeing rights at work** – to obtain recognition and respect for the rights of workers. All workers, and in particular disadvantaged or poor workers, need representation, participation, and laws that work for their interests.
 - b. **Extending social protection** – to promote both inclusion and productivity by ensuring that women and men enjoy working conditions that are safe, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of lost or reduced income and permit access to adequate healthcare.
 - c. **Promoting social dialogue** – Involving strong and independent workers' and employers' organizations is central to increasing productivity, avoiding disputes at work, and building cohesive societies.
 - d. **Creating Jobs** – an economy that generates opportunities for investment, entrepreneurship, skills development, job creation and sustainable livelihoods.

Freedom of peaceful assembly and association is a cornerstone to development; namely, ensuring that all men and women have the ability to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Freedom of association refers to the right of workers and employers to create and join organisations of their choice freely and without fear of reprisal or interference. This includes the right to establish and affiliate to confederations and international organisations. Linked to freedom of association is the right to collective bargaining, which allows workers to negotiate their working conditions freely with their employers. These rights are universal and apply irrespective of race, creed, religion, gender, occupation, nationality or political opinion. They apply to all workers and employers, including those in the informal economy who don't usually have formal contracts of employment²². In that lights, **the freedom of association is anchored in international labour conventions and enables trade unions and workers' movements to promote decent work and social protection for all workers.**

Enforcing women's rights and gender equality

Women's rights are key within the above mentioned fields and are essential preconditions for women to access justice. Without education, awareness of rights and decision-making power, women are often unable to claim their rights, obtain legal aid or go to court. Currently, grave

¹⁹ ILO, Guide to International Labour Standards, 2008

²⁰ ILO, Guide to Freedom of Association and Development, July 2011

²¹ More information here: <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>

²² ILO, Guide to Freedom of Association and Development, July 2011

violations of women's human rights continue to occur worldwide with terrifying regularity. Women throughout the world face systematic gender-based discrimination and are regularly denied the right to life and security of person, full legal capacity, health care, education, employment, inheritance, and freedom of movement. Women still do not have full access to economic and political decision-making processes in their families, nations, or international institutions. Too often, governments allow crimes against women to go unpunished, continuing a culture of impunity for family members, state agents, and others who discriminate or commit violence against women²³.

Numerous international covenants are dedicated to women rights, and it is particularly worth to mention the Universal Declaration of Human Rights (Article 16), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 and the UN General Assembly Declaration on the Elimination of Violence against Women 1993. By these internationally recognised documents, especially CEDAW, governments have pledged to actively bridge three gaps of legal provisions that should put an end to discrimination against women, in relation to property, the family, employment and citizenship²⁴:

- **Ending explicit legal discrimination** - The most common examples of this remain within family laws, on issues related to marriage and divorce, where women are accorded fewer rights than men. In addition, in many countries women are not allowed to pass their citizenship to their children or foreign-born spouses.
- **Extending the protection of the rule of law** - Historically, legal jurisdiction has been divided between public and private matters, leaving the private sphere of the family 'outside justice'. As a result, violence against women, much of which occurs within the private domain, has not been widely legislated against, until recently.
- **Taking responsibility for the law's impact** - Governments are responsible not only for passing laws, but for ensuring they are implemented. Taking responsibility for the law's impact also means paying attention to the unintended consequences of legislation and policy. Drafting laws to drive effective implementation, with clear mandates and procedures for service providers, in-built accountability mechanisms, and adequate funding is essential.

Despite that almost 35 years have passed, only 173 countries guarantee paid maternity leave; 125 countries have outlawed domestic violence; 117 countries outlaw sexual harassment in the workplace; 117 countries have equal pay laws; 115 countries guarantee women's equal property rights; and 2.6 billion women live in countries where marital rape is *not* criminalised. Considering these statistics it is of paramount importance, in addition to emphasising the role of women in ESCR, Decent work and social protection, that women are enabled to access justice and ensure that legal and constitutional frameworks guarantee women's rights. **Women's movements through freedom of peaceful assembly and association are enabled to play a key role in shaping society by creating new norms, helping to bring about social change and by making justice systems work for women.**

²³ Global Rights, Women's Rights and Gender Equality, Fact Sheet 2012

²⁴ More information: <http://progress.unwomen.org/legal-frameworks/>

MECHANISMS OF VIOLATIONS

As was underlined before, freedom of peaceful assembly and association is the foundation of a strong civil society and an essential component of pluralistic democracy and has played a significant role in a number of the democratic transformations that took place during the past several decades, including in the Philippines, Ukraine, Serbia, and South Africa²⁵.

Despite these achievements, in recent years associational rights have declined in practically every region of the world, particular in the Middle East and North Africa, countries of the former Soviet Union, Asia-Pacific region and Latin America. In some instances, the declines are modest and may not pose a threat to a country's long-term democratic prospects. In a disturbing number of cases, however, the study conducted by Freedom House, entitled *Freedom of Association Under Threat: The New Authoritarians' Offensive Against Civil Society*, points to setbacks that stem from deliberate policies of the state [against the mentioned guiding principles] and therefore present serious challenges to the development of free institutions. This study also finds that the rights of trade unions, historically a bulwark for associational rights, are faring poorly in authoritarian settings and in some democracies as well²⁶.

CSOs, social and grassroots movements can play a vital role through the freedom of peaceful assembly and association to contribute to the progressive realisation of economic, social and cultural rights.

The methods used to limit and violate the freedom of peaceful assembly and association are various, they resemble in so far that they are driven by a common attitude of suspicion towards the nongovernmental sector and CSOs that are involved in human rights defence or monitoring the policies and performance of governments are regarded as potentially dangerous adversaries.

Governments seldom, if ever, wage 'all-out war' against the nongovernmental sector as a whole. Hence, the tactics used to control CSOs, social and grassroots' movements do not necessarily involve assassinations or mass arrests [although some are recorded] as can be witnessed amongst trade unions and workers' movements, but could rather entail [non-conclusive list]:

- Subjecting civil society groups to an intense regimen of bureaucratic scrutiny and harassment. Including constant pressure to register or enforced limitations to operate freely with unduly complicated obligations such as financing regulations that undermine citizenship's demands and needs.
- Differentiation between civil society groups, giving preference towards certain groups whose democratic credentials or ambitions are limited, while cracking down on reformist CSOs, and those movements that directly might challenge the leadership's grip on power.
- The threat of instability and terrorism provides a ready justification for crackdowns on CSOs. And in some countries, security forces administer oversight of CSOs.
- In other cases legislation has been withdrawn or limitations have been enforced without justification, but with the clear intention to undermine democracy – sometimes in the name of national security.

²⁵ This chapter is based on extracts from *Freedom of Association Under Threat: The New Authoritarians' Offensive Against Civil Society* A. Puddington

²⁶ The analysis is based on data drawn from *Freedom in the World*, the annual report of Freedom House on political rights and civil liberties

- Some governments tolerate NGO activity in non-controversial areas while restricting it in other sectors, such as human rights, corruption monitoring, police abuse, election monitoring, etc.
- Actions taken coincide often with the restriction of other civil and political rights as the right to peaceful demonstration.

The freedom of association is anchored in international labour conventions and enables trade unions and workers' movements to promote decent work and social protection for all workers.

Trade unions and workers' movements have endured an increasingly difficult time in the last decades, and conditions have worsened dramatically in a number of countries in the past several years. In fact, organized labour is facing intense pressures throughout the world, including in countries where freedom of association is widely respected.

In their policies towards unions, authoritarian leaders are motivated in part by concerns that a labour movement functioning outside the control of the state (or dominant party) might complicate their economic objectives, while they also fear the role of unions as an instrument of democratization. As evidence of the latter; independent unions have played significant parts in the freedom struggles of countries like Zimbabwe.

Tactics used to prevent adherence to fundamental labour rights as enshrined in international human rights instruments and ILO conventions, can be witnessed by the following examples [non-conclusive list]:

- In Colombia, the labour situation conforms to an all-too-familiar historical pattern for the region, whereby union activists are the targets of violent campaigns.
- Establishing parallel (yellow) unions is another tactic in the effort to bring the labour movement under political control. In some countries, the culture of dominant-party control over the labour movement remains strongly anchored.
- Interference in the internal affairs of trade unions and employer organizations. This includes infringements on the right to freely draw up constitutions and rules, elect representatives, organize and control internal and financial administration.
- In a number of countries, the right to strike is severely circumscribed through various laws and regulations; and certain groups of workers (i.e. in the informal economy) face practical and legal barriers to achieving collective representation and organization.
- The right to freedom of association is also violated by acts of anti-union discrimination. This may include prejudice or discrimination in relations to hiring, employment and dismissal. In recent years, the ILO has registered a surge in complaints concerning acts of anti-union discrimination.
- Some governments have adopted laws making it illegal for local unions to accept foreign financial assistance, undermining solidarity support for workers' struggles in developing countries and authoritarian settings.

Women's movements through freedom of peaceful assembly and association are enabled to play a key role in shaping society by creating new norms, helping to bring about social change and by making justice systems work for women.

Although the examples that limit and violate the freedom of peaceful assembly and association for Women's movements resemble the ones mentioned above, when it regards "making justice systems work for women" several specific additional encroachments can be identified. In fact, countries around the world have a variety of laws discriminating against women, ranging from age of marriage, nationality, freedom of movement to the right to divorce, work and retire under the same conditions as men. It is worth noting two examples that relate directly to the freedom of peaceful assembly and of association²⁷:

- In many states, women face restrictions in their freedom of movement. These discriminations usually refer to women not being allowed to move or travel without male company²⁸. In Iraq, a woman wishing to obtain a passport has to ask her father's, brother's or uncle's written permission. Similar laws exist in Malaysia, Qatar and Libya. In Egypt and Iran, woman needs her husband's agreement to obtain a passport.
- There are a range of 'obedience laws' which affect a women's freedom in relation to their husbands and limit a woman's autonomy.
 - o In the DRC a wife is placed under the authority of her husband and has to agree to his choice of residence.
 - o In Cameroon, a husband can decide whether his wife may study or work and he can choose the kind of study or work.
 - o Niger makes the husband head of the household resulting in the curtailment of the civil rights of a married woman, including freedom of speech.

The fact that after more than 60 years since the foundation of the UN and the adoption of its Charter "*reaffirming faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women*", half of the population – women – continues to experience State sanctioned and discrimination indicates the lacking commitment of States to women's rights. Furthermore, it is clear that the conditions of oppression and the lack of 'voice and opportunity' are as much a part of the discrimination that women experience as the laws²⁹.

²⁷ Discrimination enforced by law: women's struggle around the world, UN Campaign NO to violence against women 2011

²⁸ OHCHR example case of Sara Longwe v. Inter-Continental hotels, where "a Zambian woman took on the hotel chain after it had refused her entry to its bar to wait for her children who had been swimming at the hotel, because the hotel had a policy of not permitting women unaccompanied by men to enter its premises. The same rule did not apply to men. Longwe successfully challenged the hotel policy which was held to constitute a violation of her freedom of movement and her right to be free from discrimination in light of international obligations entered into by the Zambian state."

²⁹ Project on a mechanism to address laws that discriminate against women, Office of the High Commissioner for Human Rights 2008

CONSIDERATIONS

This briefing paper points out that the freedom of peaceful assembly and association are fundamental human rights that can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies – **“everyone is entitled to these rights”**.

These rights manifest the foundation of a strong civil society and an essential component of pluralistic democracy. Ensuring the freedom of peaceful assembly and association is of paramount importance as:

1. **It enables CSOs, social and grassroots’ movements to play a vital role in contributing to the progressive realisation of economic, social and cultural rights.**
2. **It is anchored in international labour conventions to enable trade unions and workers’ movements to promote decent work and social protection for all workers.**
3. **It enables, in addition to the above, Women’s movements to play a key role in shaping society by creating new norms and by making legal systems work for women.**

In recent years, however, these rights have come under growing pressure from regimes that are determined to marginalise or eliminate all perceived sources of opposition and dissent. The result has been a notable reversal for freedom of peaceful assembly and association in much of the world. Against this backdrop the UN has appointed the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on since 1 May 2011.

According to the UN Special Rapporteur *The rights to freedom of peaceful assembly and association play a decisive role in the emergence and existence of effective democratic systems, as they are conducive to dialogue, pluralism, tolerance and broadmindedness, where minority or dissenting views or beliefs are respected*, stated during the 20th session of the UN Human Rights Council 20 June 2012 Geneva.

In September 2012, the UN Human Rights Council within the agenda-item *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development* have adopted a resolution that includes some of the recommendations of the Special and recognizes *the importance of the freedoms of peaceful assembly and of association, as well as the importance of civil society, to good governance, including through transparency and accountability, which is indispensable for building peaceful, prosperous and democratic societies*³⁰.

The same resolution also reminds states *of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and association are in accordance with their obligations under international human rights law.*

This reminder along with the UN Universal Declaration of Human Rights (Articles 19 and 20) shall be the starting point of SOLIDAR’s global policy campaign entitled **“Mobilising for Freedom of Association”**.

³⁰ UN Human Rights Council, Resolution 21/16. The rights to freedom of peaceful assembly and of association, October 2012.