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## **Violations of the right of NGOs to funding: from harassment to criminalisation**

*22nd session of the Human Rights Council*



# Panel speakers

***Chaired by Antoine Bernard, FIDH CEO***

- **Gerald Staberock**, OMCT Secretary General
- **Olga Sadvskaya**, CAT *-member of the OMCT GA-* **(Russia)**
- **Farida Makar**, CIHRS **(Egypt)**
- **Adilur Rahman Khan**, Odhikar *-member of the OMCT GA-* **(Bangladesh)**





## Violations of the right of NGOs to funding: from harassment to criminalization

*22th session of the Human Rights Council session*

- Introductory remarks: **Kyung-wha Kang**, Deputy High Commissioner for Human Rights and **Gerard Corr**, Permanent Representative of Ireland
- Video comments on the Observatory report by **Maina Kiai**, UN SR on the rights to freedom of peaceful assembly and of association and **Margaret Sekaggya**, Special Rapporteur on the Situation of Human Rights Defenders

*“I am particularly dismayed about laws or policies stigmatizing recipients due to their sources of funding, which have been adopted in the past months or are under consideration, in several countries across the world”*

**Maina Kiai**





# Overview of the report: main findings and way forward identified

Presentation by Gerald Staberock, OMCT Secretary General

Restrictions on human rights NGOs' access to funding, particularly foreign funding, have become common place in all parts of the world. Such impediments violate international law when they are designed to intimidate, curtail, and control NGOs and their activities. Smear campaigns have also become more frequent in an attempt to delegitimize the work of human rights defenders in the eyes of public opinion as well as to challenge the legitimacy of international cooperation in the human rights sector.

These obstacles seriously impact efforts by civil society to promote and protect human rights and ensure that the voice of victims of human rights violations is heard. Indeed, the right of NGOs to access funding is an integral part of the right to freedom of association. Access to funds and resources is essential and without it the daily work of NGOs is highly jeopardised.

The Observatory Annual Report 2013 provides a detailed picture of this as yet little studied problem, illustrated with around thirty country situations affecting human rights organisations.



## Violations of the right of NGOs to funding: from harassment to criminalisation

Foreword by Maina Kiai

ANNUAL REPORT 2013



fidh





## Interfering with the right to form and operate an association places restrictions on access to funding

### Chapter II

#### Questions to the panel:

- Is registration to operate an association mandatory?
- In your country, can anyone form an association?
- Do you face discrimination based on gender, sexual orientation, nationality or other?

**Keynote speakers:** Olga Sadovskaya (Russia) and Farida Makar (Egypt)

In several countries in the Gulf (such as the United Arab Emirates, Kuwait, Qatar) and Asia (for example Malaysia, Thailand), **only citizens** of the country may found an association. As a result, **migrant workers, refugees, and stateless persons** may not form authorized groups.





### Questions to the panel:

- Is registration to operate an association mandatory?
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- In February 2010, CEDAW urged the Netherlands ***“to reconsider the funding of organizations working in the field of women’s rights, including organizations of black and migrant women in order to contribute in an efficient manner to the continuing implementation of the convention”***.
- In January 2011, CEDAW called on the **Israeli** authorities to ***“ensure that civil society organizations and women NGOs are not restricted with respect to their establishment and operations and that they are able to function independently of the government”***.







# Laws and practices restricting access to funding, including foreign funding

## Chapter III

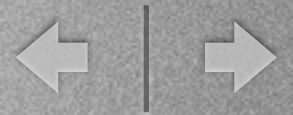
**Question to the panel :** What is the impact of such laws on your ability to conduct human rights work?

**Key note speakers:** Olga Sadovskaya (Russia) and Adilur Rahman Khan (Bangladesh), Farida Makar (Egypt).

In a large majority of countries, human rights NGOs survive through the support they receive from foreign donors. In this context, more and more States are resorting to an arsenal of measures to legitimize unjustified **restrictions** on NGO access to foreign funds :

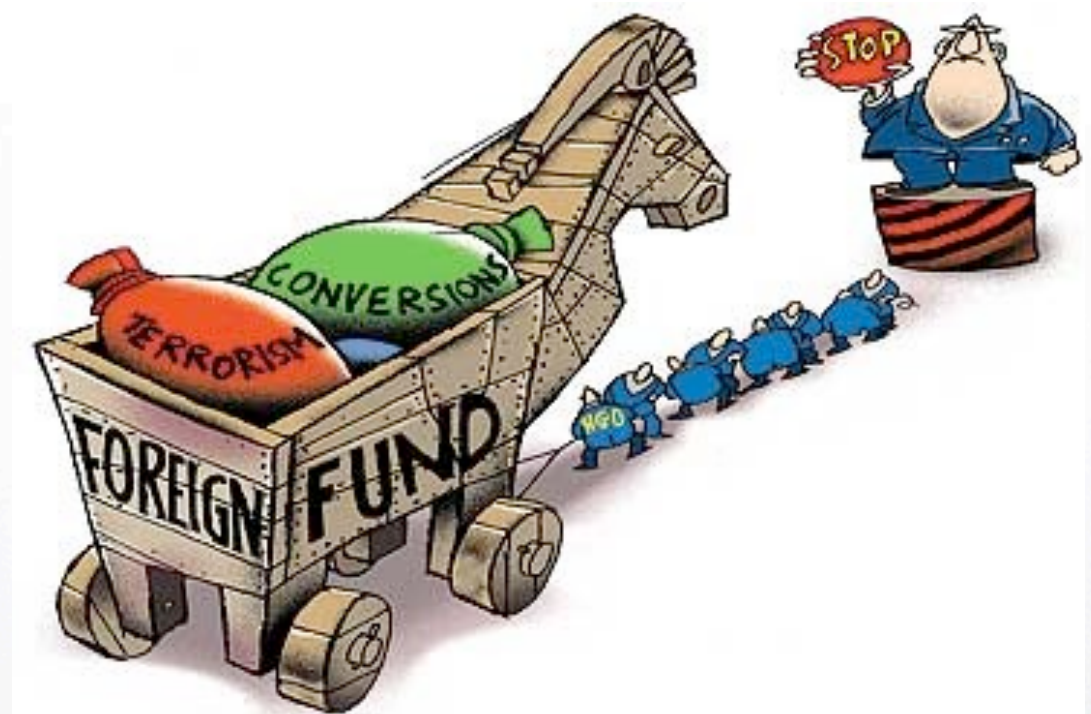
In **Belarus**, new provisions criminalizing any use of unauthorized foreign funds were adopted at a time when Mr **Ales Bialiatski**, President of the Human Rights Centre Viasna and FIDH Vice-President was sentenced to **four and a half years of imprisonment**.





**Question :** What is the impact of such laws on your ability to conduct human rights work?

- The Inter-American Commission on Human Rights (IACHR), which has ruled on several cases of restrictions on access to funding from abroad, considers that “**one of the State’s duties stemming from freedom of association is to refrain from restricting the means of financing of human rights organizations**”.
- In the case of **Ethiopia**, the Committee on Economic, Social and Cultural Rights (CESCR) expressed its concern regarding the freezing of assets of local organizations. CESCR recommended Ethiopia to “**lift the funding restrictions, and unblock all the assets of local human rights NGOs**”.







**Question to the panel :** What is the impact of such laws on your ability to conduct human rights work?

The Committee against Torture (CAT) recommended that **Belarus** acknowledge the “*crucial role*” played by NGOs and that it “*enable them to seek and receive adequate funding to carry out their peaceful human rights activities*”.

The WG on Arbitrary Detentions qualified the detention of Mr. Bialiatiski as **arbitrary**, and added that States parties to the ICCPR “*are not only under a negative obligation not to interfere with the founding of associations or their activities*” but are also under a “positive obligation” to facilitate “*the tasks of associations by public funding or allowing tax exemptions for funding received from outside the country*”.





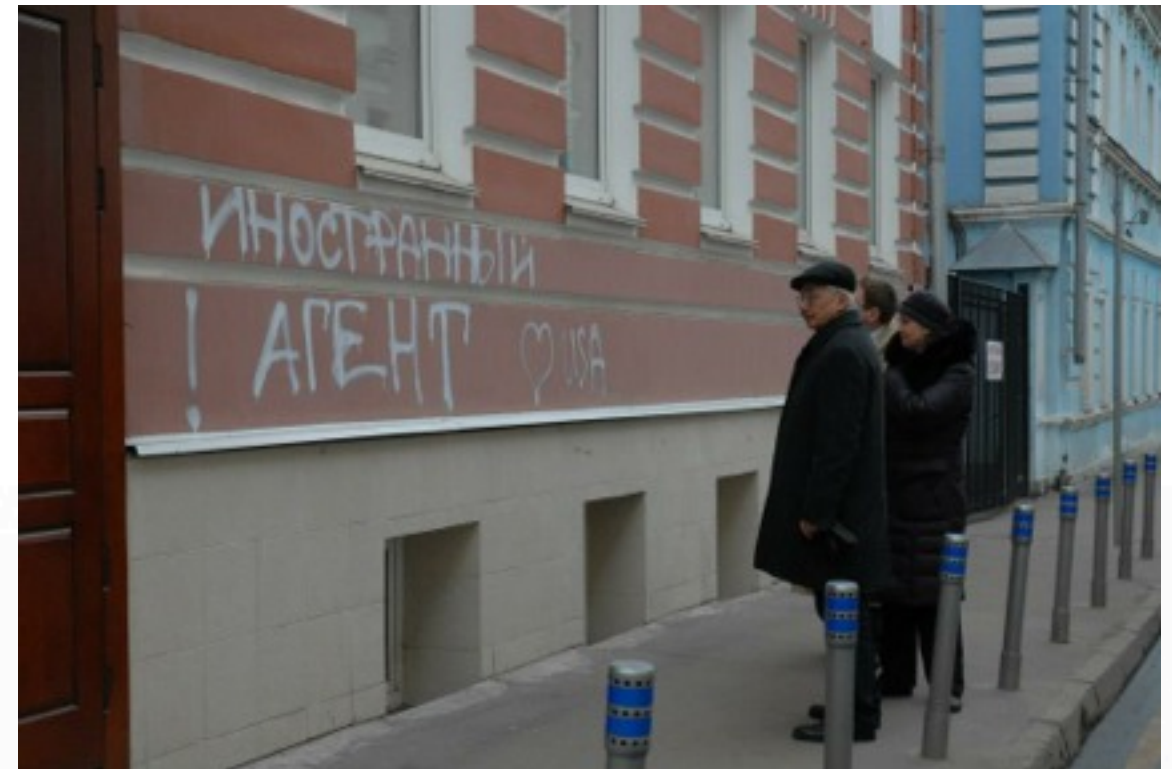


# Funding, a pretext to discredit NGOs

## Chapter IV

**Question :** Is there any stigmatization of NGOs receiving foreign fundings in your country? What is the impact of such smear campaigns on your daily work ?

**Key note speakers:** Olga Sadovskaya (Russia) and Adilur Rahman Khan (Bangladesh).



In Russia, the law does not explicitly prohibit foreign funding, but any NGO that receives funding from abroad to conduct what the authorities call “political activities” is now considered a “foreign agent” by the Russian authorities.





# The transparency of NGOs' funding sources

Concluding remarks by Antoine Bernard, FIDH CEO

- What are the responsibilities on the part of the NGOs in terms of transparency and good governance?
- In this regard, what are the recommendations to States and to NGOs?



***“Governments must allow access by NGOs to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as governments. The only legitimate requirements of such NGOs should be those in the interest of transparency”*** Hina Jilani  
(2004 Report as the Special Representative of the SG on the situation of Human Rights Defenders)





# HARASSMENT OF HUMAN RIGHTS DEFENDERS IN THE WORLD

2012



IN 2012, THE OBSERVATORY COVERED MORE THAN 50 COUNTRY SITUATIONS, NOTABLY THROUGH 336 URGENT AND FOLLOW-UP INTERVENTIONS CONCERNING OVER 500 HUMAN RIGHTS DEFENDERS.







# Recommendations to States

- Respect all components of the right to access funding - the right to solicit, receive and utilize funding - and take a public stand on the right of human rights defenders and NGOs to benefit from support and international networks;
- Respect the fundamental right to freedom of association, as guaranteed in particular under Article 22 of the ICCPR, without limitation or discrimination based on the identity of members or the nature of the rights defended
- Review legislation regulating the establishment, registration and operation of NGOs in order to create a straightforward and coherent legal and administrative framework favorable to the development of NGOs and their work
- Repeal any legislation which prohibits or criminalizes unregistered NGO activities, or which applies similar sanctions against NGOs merely on the grounds that they receive funding from abroad
- Ensure that any limitation on the right to freedom of association is consistent in its entirety with Article 22 of the ICCPR





# Recommendations to donors (States/ Organizations/Foundation)

- Maintain funding - planned or ongoing - for NGOs that may be victims of smear campaigns orchestrated by their government and domestic media as well as in cases where it is impossible to obtain legal recognition of the right of NGOs to access funding due to arbitrary government policy
- Ensure that the laws or other provisions against terrorism, including concepts such as “material support”, are not involved unduly in relation to financial support for NGOs working perfectly legally and pursuing goals consistent with the Universal Declaration of Human Rights
- Ensure that diplomatic representations in third countries effectively support local NGOs facing difficulties in accessing funding, including from abroad; and if necessary, intercede with the authorities concerned. This applies especially to the European Union, in accordance with its Guidelines on Human Rights Defenders
- Respect the autonomy of NGOs in relation to program priorities identified by them, and give preference to general financial support rather than funding that favors specific activities/programmes.





# Recommendations to NGOs affected by funding restrictions

- Alert the relevant United Nations mechanism, such as the Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights to freedom of peaceful assembly and association as well as treaty bodies and, as appropriate, regional mechanisms in order to raise awareness to this issue and the applicable body of caselaw
- Analyze restrictions on access to funding in light of the criteria defined by international law regarding limitations on the right to freedom of association (Article 22.2 of the ICCPR) and, in case of violation of these legal restrictions, alert the domestic courts and, where appropriate, regional and international jurisdictions
- Develop strategies to maximize opportunities to access funding sources at local level.

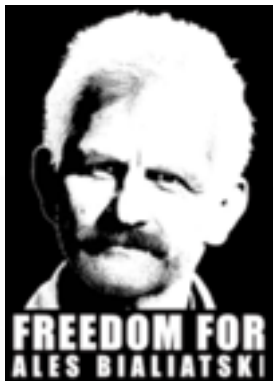




## Recommendations to the UN Human Rights Council and the Office of the High Commissioner for Human Rights

- Adopt a resolution reaffirming, inter alia, the right of NGOs to access funding, especially from foreign sources, and calling on States to respect the rights of NGOs to manage their resources - including funding - and to formulate their activity programs independently without interference from authorities;
- Denounce any violations of this right in resolutions on countries and in cases where defamation in relation to funding sources is perpetrated or tolerated by the authorities;
- Discuss and address this question during the review of reports during the Universal Periodic Review (UPR) sessions;
- Request Special Procedures mandate-holders to pay particular attention to this issue by addressing it in their thematic or country reports, and by inviting the countries concerned to meetings / roundtables to identify concrete solutions.





To support the release of Ales Bialiatski, FIDH Vice President and Chairman of the Human Rights Center Viasna, please visit:

<http://freeales.fidh.net>





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