



Freedom of association: an essential right for human rights defenders

FRONT PAGE

A MANDATE IN ACTION

In December 2005, Mrs Reine Alapini-Gansou, a lawyer from Benin, was appointed Special Rapporteur for Human Rights Defenders at the African Commission on Human and Peoples' Rights (ACHPR).

In 1998, the United Nations General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally-recognised Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders). In August 2000, Mrs Hina Jilani, from Pakistan, was appointed the first Special Representative of the Secretary-General on the situation of human rights defenders.

As concerns Africa, the Grand Bay (1999) and Kigali (2003) Declarations reaffirmed the commitment of the African Union to take measures for the implementation of the UN Declaration on Human Rights Defenders and to recognise the important part played by human rights defenders in the promotion and protection of democracy and human rights. In June 2004, Mrs Jainaba Johm was nominated first Special Rapporteur on Human Rights Defenders in Africa. In December 2005, Mrs Reine Alapini-Gansou was appointed as new Special Rapporteur.

EDITORIAL



A promise is a promise!

In November 2007, at the time of the launching of the first issue of this newsletter, I promised to keep in close contact with all actors, and one of the strategic tools I suggested was *The Rapporteur's Newsletter*.

The topic we have chosen to explore in this issue is the right to freedom of association. For some, it is just a topic among many, a right protected by the Universal Declaration on Human Rights in his article 20, the UN Declaration on Human Rights Defenders in his article 5 as well as by the International Covenant on Civil and Political Rights in his article 22. The reason behind this choice is that human rights defenders are facing more and more challenges in the exercise of their right to freedom of association. However, *there is no effective protection of human rights defenders without the full and effective respect of the right to freedom of association.*

At all times must one respect the law and nobody should wish or choose to place him or herself outside the precinct the law. However, we observe that in many countries the law does not provide effective recognition and protection of freedom of association. By focusing on this topic, we would like to draw the attention of all actors on the need to adopt appropriate and progressive measures, including legislative, to give effect and fully implement the provisions of our Charter, namely its article 10. The African Commission on Human and Peoples' Rights has a significant and well-consolidated jurisprudence on this right. Nonetheless, we hope that this *Newsletter* may raise some questions and ideas for new much-needed lobbying and advocacy initiatives, with a view to contribute to the full and effective protection of freedom of association.

Good reading to all!
Reine Alapini-Gansou

The mandate of the Special Rapporteur can be summarised as follows:

- to seek out, receive, examine and act upon information concerning the situation of human rights defenders in Africa;
- to present a report, at each ordinary session of the African Commission on Human and Peoples' Rights (ACHPR), on the situation of human rights defenders in Africa;
- to establish cooperation and dialogue with member States, national human rights institutions, intergovernmental organisations, international and regional mechanisms, human rights defenders and other partners;
- to formulate and recommend strategies to further the protection of human rights defenders and ensure follow-up on these recommendations;
- to promote and raise awareness of the implementation of the UN Declaration on Human Rights Defenders in Africa.

The Special Rapporteur's key mission is to ensure the protection of human rights defenders in Africa. Her job is to protect defenders themselves, the organisations they work for, and the right to defend human rights.

Her responsibilities are numerous. She is at the disposal of human rights defenders to receive information about violations they suffer. She publishes urgent appeals and puts out press releases on cases brought to her. She conducts official missions to evaluate the situation of human rights defenders in a particular country. She makes recommendations on how States can implement the UN Declaration on Human Rights Defenders and takes part in meetings and conferences on issues relating to the defence of human rights.

The Special Rapporteur encourages non-governmental organisations (NGOs) and human rights defenders across Africa – who could be in danger due to the nature of their work – to take ownership of this mandate which was created for their protection and in recognition of their work.

SPECIAL FEATURE

FREEDOM OF ASSOCIATION IN THE AFRICAN HUMAN RIGHTS SYSTEM

By Marcel Wetsh'okonda Koso Senga, Global Rights Partners for Justice

The contribution of associations to the promotion and protection of human rights in Africa

Even though everyone can engage in the defence of human rights on his or her own, it is only when individual efforts are coordinated in the form of an association, coalition or network that this defence is more effective.¹ The experience of the African Commission on Human and Peoples' Rights (the Commission) provides a good example. Indeed, human rights organisations have played a major role in the development of the African Charter on Human and Peoples' Rights (the Charter), which established the Commission. It is in 1961 during a congress of African lawyers, held in Lagos (Nigeria) on the initiative of the International Commission of Jurists, an organisation based in Geneva, that the idea to create an African regional human rights instrument and a monitoring mechanism was discussed for the first time. About ten years later, an Amnesty International report on the human rights violations committed in Uganda, where the session of the conference of Heads of State of the Organisation of African Unity (OAU)

was to be held, prompted for the first time the OAU to reconsider its position on the principle of non-intervention in the internal affairs of States and to start an inquiry into the violations. Before that, African States had always refused to discuss the human rights situation in their respective countries in the name of the principle of non-intervention, the only exceptions having been made for South Africa under the apartheid regime and for a few other States under foreign domination, in particular Namibia. It was at that time that, at least at the African level, human rights ceased to be exclusively considered as a domestic matter and become an issue of international concern. Such conceptual evolution contributed to the development of the Charter. These two examples well illustrate the role of human rights organisations to the development of the African system.

These associations have continued their fight in favour of human rights in Africa, notably through their substantial contribution to the development of other legal instruments which reinforced the African human rights protection system. It is the case, for example, of the African Charter on the rights and welfare of the child, the Ouagadougou Protocol creating the African Court on Human and

¹ The UN Declaration on Human Rights Defenders expressly sets these two modalities (individual and collective) for promoting and protecting human rights.

Peoples' Rights, the Maputo Protocol on women's rights, and the recent African Charter on democracy, elections and governance, and many other non-binding instruments including the resolution creating the mandate of the Special Rapporteur on human rights defenders in Africa.

The effectiveness of the Commission at the operational level also depends on the work and contribution of human rights organisations. For example, it is through their alternative reports that the Commission is able to have a clear and comprehensive picture of the human rights situation in the countries it periodically examines. These reports allow the commission to formulate observations and recommendations contributing to the improvement of the human rights situation. These same organisations also contribute to the success of the communication procedure of the Commission, while communications have been initiated by States once only, in the case of the Democratic Republic of Congo against Burundi, Rwanda and Uganda.

Recognition of the role of associations in the African human rights system

The Grand Bay² and Kigali³ Declaration and Plan of Action, adopted respectively at the first ministerial Conference of the Organisation of African Unity and at the first ministerial Conference of the African Union, recognised the importance of the role played by human rights organisations. It is on the basis of the Grand Bay Declaration and Plan of Action that the Commission in 1999 adopted the resolution on the Criteria for Granting and Maintaining Observer Status for non-governmental Organisations, in order to reinforce the cooperation and partnership between these organisations and the Commission.

Several years ago, with the aim to coordinate their activities around the Commission, human rights organisations adopted two important initiatives: the organisation, at the margins of the Commission, of a Forum of non-governmental human rights organisations (NGO Forum) and a human rights book fair. Providing an opportunity for discussion, exchange, information and training, these events contribute significantly to improving the work of the Commission. Many Commissioners have acknowledged how much they have learned during the sessions of the Forum, whose resolutions have often been endorsed by the Commission. This important contribution by NGOs to the work of the Commission would not have been possible without a number of converging factors, including the

formal recognition of the right of freedom of association within the African system.

The legal framework of freedom of association in Africa

The legal basis of the right to freedom of association is provided by article 10 of the Universal Declaration of Human Rights, article 22 of the International Covenant on Civil and Political Rights and article 10 of the Charter.

Under article 10 of the Charter:

"Every individual shall have the right to free association provided that he abides by the law. Subject to the obligation of solidarity provided for in article 29, no one may be compelled to join an association".

Article 10 of the Charter has the merit to determine the content of freedom of association, namely the possibility for anyone to **create** one or more associations. The right to create an association implies the right to put an end to an association through its **dissolution**, be it voluntary or statutory. Freedom of association also implies another aspect, namely the right to join an existing association, which is explicitly covered under article 20 of the Universal Declaration of Human Rights. The provisions of articles 60 and 61 of the Charter relating to the interpretation of the Charter led us to retain this interpretation. The same reasoning applies in relation to other aspects of freedom of association, including the possibility to cease to be a member of an association by **resignation** or **exclusion**. The right to freedom of association also includes the right to **participate** to the activities of the association once it is formed. This right is expressly envisaged under article 5 of the UN Declaration on Human Rights Defenders. A last aspect is the right of the members to **organise** the association as they see fit. This is recognised by most States and can be regarded as descending from customary international law or general principles of law.

The associations we are focussing on in this analysis are not economic or industrial associations such as companies or corporations, even though nothing prevents associations from realising economic benefits as long as they are not transferred to its members, which is what is usually called a para-commercial association. In addition to non-profit associations and non-governmental organisations, other types of associations covered include political associations or political party, para-administrative associations, trade unions, confessional organisations, etc.

² Para 17.

³ Para 28.

The second important aspect of article 10 of the Charter is the regulation of permissible limitations to the right to freedom of association. States can use the law to restrict freedom of association in relation to each of its four components mentioned above, namely the constitution/dissolution, the possibility to join/leave, the participation to the association and its organisation. Unfortunately the possibility to limit the right is unrestricted. In this regard, article 10 of the Charter is less protective than article 20 of the Universal Declaration of Human Rights or article 22 of the International Covenant on Civil and Political Rights. Under article 22 of the Covenant:

"No restrictions may be placed on the exercise of this rights 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".

Article 29(2) of the Universal Declaration of Human Right, which provides for a limitation clause applicable to all the rights protected under the Declaration, reads as follows:

"In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for this rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

Therefore, limitations to freedom of association are valid only in so far as they are prescribed by the law on the one hand and, on the other hand, that they are justified by the need to ensure the protection of public order, public health, peace or the rights of others, in accordance with the requirements of a democratic society, which include inter alia pluralism. To meet these requirements, the exercise of freedom of association should not be subject to any form or regime of authorisation, but rather only to sanctions in case of abuse.

Accordingly, the legislation should not prohibit constituting or joining association, nor should it subject the exercise of the right to freedom of association to an authorisation from the administration. The law may only request the submission of information and this, not for the formation and the legal existence of association, since the will expressed by the founders with the adoption of the statutes is sufficient in this respect, but rather for the granting of legal personality. Concretely, with a view to preserve public order,

the legislator could for example subject associations to the obligation to promote democracy, or could it require that the majority of the members are involved in the management of the organisation. This is the case of the Congolese law n°004/2001 of 20 July 2001 on general provisions applicable to no-profit associations and publicly owned establishments⁴.

These observations are valid within the African system. The resolution on freedom of association adopted by the Commission during its 11th ordinary session in 1992 states the following:

"1. Legislative authorities should not exceed Constitutional provisions or obstacle the exercise of the fundamental rights guaranteed by the Constitution and international human rights norms.
2. In regulating this right, the authorities should not adopt measures restricting the exercise of this right.
3. Any restriction on the exercise of the right to freedom of association should be compatible with the obligations of the States under the African Charter of human and peoples' rights".

In its decisions on communications n° 105/93, 128/94, 130/94 and 152/96, the Commission specified that the word "law" in article 10 of the Charter must be understood in its broadest sense taking into account international engagements of States parties. Consequently, the legislator cannot restrict the right to freedom of association in a manner incompatible with the guarantees provided by international instruments.

Conclusion

As an essential component of human rights protection, freedom of association is of crucial importance for the African human rights system. The task all those engaged in human rights work in Africa should be concerned with, is to contribute in whatever way they can to the protection of this right. This is the price to pay for an effective African human rights protection system!

Challenges of the kind mentioned in this paper should be identified in other African countries where associations are prohibited or their existence subject to preliminary authorisation of administration etc.

Human rights defenders' organisations contribute effectively to the promotion and protection of

⁴ *Loi (congolaise) n°004/2001 du 20 juillet 2001 portant dispositions générales applicables aux Associations sans but lucratif et aux Etablissements publics*, Kinshasa, Official Journal of the Democratic Republic of Congo, 42nd year, special number, 15 August 2001, 27 p.

human rights. They can continue to do it effectively only if they themselves are protected. This would imply the examination of the compatibility of applicable laws with constitutional and conventional requirements and standards; the revision of these laws when necessary; the denunciation of the violations of those rights protected under the constitution and international

conventions. Each one of us (States, the Commission, the Special Rapporteur on human rights defenders, human rights defenders, human rights defenders networks, etc.) shall take up this challenge. Shall this paper constitute our small contribution to this exciting as well as painful work!

FREEDOM OF ASSOCIATION IN INTERNATIONAL LAW

By the International Service for Human Rights

“For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the rights, individually and in association with others, at the national and international levels [...] to form, join and participate in non-governmental organization, association or groups” art 5, UN Declaration on HRD

The right to freedom of association lies at the crossroad between civil and political rights. It is a classic example of civil right and at the same time it constitutes a precondition for the functioning and development of democratic societies for “political interests can be effectively championed only in community with others”⁵.

Freedom of association is protected under a number of international human rights treaties. The International Covenant on Civil and Political Rights (ICCPR) was the first binding instrument to codify this right, building upon the provisions of the Universal Declaration of Human Rights. The 1998 United Nations Declaration on Human Rights Defenders (the Declaration) protects freedom of association in the specific context of human rights defenders' activities. While the Declaration is not binding, it constitutes the international framework for the protection of defenders and elaborates on rights protected under binding human rights treaties including the ICCPR.

As the Declaration clarifies, freedom of association not only covers the possibility for anybody to join or create an organisation, but also protects the possibility for its members to contribute effectively to the achievement of its objectives. In other words, the State has to allow the creation of NGOs as well as respect their right to carry out their activities in complete independence and free of undue control. Any attempts to restrict or undermine the legitimate activities of NGOs run contrary to the right to

freedom of association. This means, for example, that in principle, governments cannot require NGOs to submit periodic activity reports, or to notify management decisions, nor can a government grant to regulatory bodies the authority to issue policy guidelines for NGOs. All these examples represent forms of undue control⁶.

Associations are created for the pursuit of an interest common to all its members. This interest, or purpose, may in principle be of any kind, including political, religious, social, or cultural⁷. As obvious as this may sound, the Declaration makes it explicit that human rights constitute a legitimate purpose for an organisation to pursue and thus reiterates the legitimacy of human rights organisations and the work they carry out. Any country restricting the activities of human rights organisations under the pretext, for example, of national security contradicts international human rights law⁸.

Under international law, an association can be organised in a formal structure with legal personality or operate as an informal group. In principle, human rights defenders should therefore be free to decide whether to register their organisation or not. The State should not view their activities as illegal solely on the basis that they are carried out by non-registered entities. Therefore, a law imposing criminal sanctions for carrying out

5 M. Nowak, *CCPR Commentary* (N.P.Engel, 2005), 385.

6 United Nations treaty monitoring bodies have often address the issue of undue control by governments on NGOs. See, for example, Central African Republic (2006), UN doc CCPR/C/CAF/CO/2, §18; Democratic Republic of the Congo (2006), UN doc CCPR/C/COD/CO/3, § 23; *et al.*

7 M. Nowak, *CCPR Commentary* (N.P.Engel, 2005), 386.

8 SRSR HRD Report 2003, UN doc E/CN.4/2003/104, § 35. While national security is one of the permitted grounds for restrictions to freedom of association according to ICCPR article 22, it may only justify restrictions in case of grave threat to the life of the entire nation (Nowak, 276). In practice, this clause is often used to hinder the activities of human rights organisations. See also SRSR HRD Report 2004, UN doc E/CN.4/2004/94, § 70.

human rights activities in the absence of registration falls short of international standards.

Further, associations should be free to operate at the level they wish, be it local, national, regional or international. Governments must ensure respect for this right regardless of whether the organisation is a local or international one, of whether it is affiliated to international networks, or has offices abroad. This means that, for example, a law prohibiting local NGOs to be affiliated with an international network is not permissible.

Another important point concerns funding. Full respect for freedom of association implies that NGOs are free to access and obtain funding for carrying out their activities. This issue, often overlooked, has explicitly been addressed by the Declaration, which protects the possibility for human rights NGOs to access funding, including from abroad.

While international law allows for restrictions on freedom of association, the restrictions must strictly comply with the criteria set forth therein. According to the ICCPR, restrictions must be prescribed by law⁹, be necessary in a democratic society and be in the interest of national security, public safety, public order, public health or morals, or the protection of the rights and freedoms of others. Therefore, restrictions contained in a government decree (and not in legislation) are not permissible. Equally not permissible are restrictions that do not conform to basic values of democratic societies, including "pluralism, tolerance, broadmindedness and people's sovereignty"¹⁰. For example, a ban on organisations working on sexual orientation and gender identity issues does not comply with this requirement, as an open and democratic society should allow NGOs to work on such issues even if considered sensitive by the majority of the population. International law therefore sets a high threshold for restrictions to freedom of association to be permissible: if they do not effectively protect one of the listed grounds, are not proportional to the interest protected, are not provided for by the law, and are not compatible with democratic values, restrictions are prohibited.

While the provisions of international instruments set the broad framework for the right to freedom of association, international mechanisms have helped clarify what are the specific standards that this right implies. The box on this page summarises the recommendations made by the Special

Representative of the UN Secretary-General on human rights defenders.

BEST PRACTICES ON FREEDOM OF ASSOCIATION

The following list summarises some of the recommendations made by the Special Representative of the UN Secretary-General on human rights defenders (Report A/59/401, 2004):

- (a) NGOs have a right to register as legal entities. Nevertheless, they should be allowed to carry out collective activities without having to register if they so wish;
- (b) States should favour regimes of declaration instead of registration, whereby an organization is considered a legal entity as soon as it has notified its existence to the relevant administration;
- (c) Expedient process with time limits for State authorities to respond to application for registration; failure to respond should result in the NGO being considered as legally operative;
- (d) Decisions to deny registration must be fully motivated;
- (e) Clear and publicly accessible criteria and procedures for registration;
- (f) No burdensome requests of unnecessary documents;
- (g) NGOs should be presumed to be operating legally until it is proven otherwise;
- (h) Registering bodies should be independent and include representatives of civil society;
- (i) In the event of the adoption of a new law all previously registered NGOs should be considered as continuing to operate legally;
- (j) Possibility to appeal the decision denying registration must be ensured;
- (k) Foreign NGOs must be allowed to register and function without discrimination;
- (l) Governments must allow access by NGOs to foreign funding;
- (m) No government's scrutiny and interference with the objectives of NGOs. Only courts should determine whether NGOs are in breach of existing laws;
- (n) No restrictions should be imposed on the types of human rights activities NGOs carry out;
- (o) No government's interference with the management structure and activities of NGOs;
- (p) The courts only –not the government– can suspend the activities of human rights groups and only in case of clear and imminent danger;
- (q) Any actions by the government against NGOs, including dissolution, must be proportionate and subject to appeal and judicial review.

⁹ The term 'law' is to be intended as a general-abstract parliamentary act or an equivalent unwritten norm of common law, Nowak, 505 and 271-272.

¹⁰ M. Nowak, 394.

SOME EXAMPLES OF IMPLEMENTATION OF FREEDOM OF ASSOCIATION AT THE NATIONAL LEVEL

DRC

By Marcel Wetsh'okonda Koso Senga

Contrary to the situation that prevailed in the past, when in many African States single parties and affiliated associations were imposed, nowadays many African constitutions protect the right to freedom of association, as does the jurisprudence. This is the case in Democratic Republic of Congo (DRC) where this right is guaranteed by article 37 of the Constitution of February 18, 2006. The same article also refers to the possibility of collaboration, namely in the form of subsidies, between the State and associations that contribute to the social, economic, intellectual, moral and spiritual development of the population and to the education of citizens. The right to create political parties is further protected and reinforced by the criminalisation of the imposition of a single party-system, which is considered by the law as a crime of high treason, and the institution of the statute of the political opposition, including its chief. Furthermore, as in France with the decision on freedom of association taken on July 16, 1971 by the Constitutional Court, the first important judgment delivered by the Supreme Court of Justice on constitutional matters is the case "Jehovah Witnesses" on the right to freedom of association. The Supreme Court declared null for default of motivation the presidential decree invalidating the decision granting legal personality to the association "Jehovah Witnesses". This played a positive role in encouraging the exercise of freedom of association and contributed to the dramatic increase in the number of associations in general and of human rights organisations in particular, which we have witnessed since the early 1990s. Going from an extreme to another, after having suffered from an absence of associations, the Democratic Republic of the Congo suffers today from an excessive number of associations!

Repeated violations of freedom of association

This constitutional and jurisprudential progress does not mean however that the exercise of the right to freedom of association does not pose any problem, as it was the case at time of the single party system. On the contrary, all those who care about freedom, including the Special rapporteur on human rights defenders, shall remain vigilant. In the same way as the killings of human rights defenders successive like Pascal Kabungulu and the journalists Franck Ngyke, Bapuwa and Serge Maheshe, other events threatening the rights of human rights defenders

should retain their attention and inspire their actions.

We are referring in particular to the trial against members of the African association of human rights defence (ASADHO) and of the Action against impunity for the defence of human rights (ACIDH), whose only guilt was to carry out their activities as members of their organisation. We also refer to the requirement that humanitarian NGOs carrying out their humanitarian activities in DRC obtain an authorisation from the Ministry in charge of humanitarian affairs, while according to articles 3 and 30 of the law on associations, the role of the Ministry for humanitarian affairs should be limited to recommending to the Ministry of Justice whether to grant legal personality to Congolese organisations, and to the President of the Republic for foreign organisations. In addition, NGOs have to bear the costs of the commission set up to control their administrative status in breach of constitutional and legislative provisions stating that taxes can only be imposed by law. To add to this situation, this commission does not make any distinction between humanitarian and other associations.

“Bundu Dia Kongo” case

We are also referring to the withdrawal by the Council of Ministers, at its meeting on March 21, 2008, of the registration of the association Bundu Dia Kongo (BDK) on the ground that it would have ceased to be cultural.¹¹ This decision surprises in various respects. First of all, it is surprising that BDK did not obtain its registration from the Minister of Justice as prescribed by law, or from the President of the Republic according to previously applicable legislation, but rather from the Ministry of Social Affairs. Then, even without considering this issue of a "personal" competence in granting registration to associations, the validity of the withdrawal of the registration after this has been given, must be questioned. This is clearly a case of abuse of power since according to the Constitution the exercise of freedom of association rests on a principle of registration and not of prior authorization. Accordingly, the administration

¹¹ See the ministerial decree n°MINAH/CAB/MN/004/2007 of 15 juin 2007 established conditions of agreement for an association of non-making profit or organisation of non-making profit working in the humanitarian sector. To our knowledge, this decree had not been published yet in the Official Journal, if it is the case, it could not be opposable to association, in any event they can argue against.

cannot refuse registration once all requirements for this purpose are met. Neither can it withdraw the decision to register. In this case, there is also disrespect by the government of the procedure that has to be followed in case of dissolution of an organisation for non-respect of its objectives. Under the cover of the withdrawal of registration to BDK, it is rather its dissolution that was decided. That is even more evident when thinking to the many measures that have been taken in practice to prevent this organisation from carrying on its activities. The third reason of surprise on this case is that the withdrawal by the Council of Ministers of the registration of BDK requires –in order to produce effects- a ministerial decree as well as the notification of the decree to the association. To our knowledge, this has not been the case. In addition, far from preventing an association from functioning, the withdrawal of registration would only deprive it of legal personality, without which associations can well continue to exist and function.

The behavior of the Government in this case recalls the episode of the Governor of the Province of Katanga who had banned, without indicating the basis of his competence to do so, the cultural association "Solidarite katangaise", wrongly accused to be implied in a secession attempt. These attacks against the freedom of association by various political and administrative decisions do not require any further comment on our side. Neither does the long delay in adopting the law regulating the collaboration between the State and associations in general and human rights associations in particular.

Conclusion

As seen above, there may well be a huge gap between having constitutional and legislative guarantees of the rights to freedom of association, and respecting it in practice. The past situation in the country, characterized by a single-party regime, may partly explain the recent attacks on freedom of association. All human rights defenders and defenders of democracy shall be vigilant, creative and dedicated in monitoring and reacting to violations and protecting freedom of association.

TOGO

By the Togolese human rights defenders coalition

Law No 40.484, dating back to 1901 and still in force today, regulates freedom of association in Togo. The law defines an association as a convention by which two or more persons share, in permanent way, their knowledge or activity with an aim other than to share a benefit.

As regards the validity of the contract of association, general principles of the law on contracts and obligations are applicable. Four conditions are necessary for the validity of a convention according to article 1108 of the Civil code: the consent of the party which takes the obligation; its capacity to contract; an incontestable object which forms the matter of the engagement; and, a legitimate cause.

The will being the fundamental element of contracts, associations of people are freely formed without preliminary authorisation or declaration. Associations of people will be able however to enjoy the legal capacity only if they conform to the provisions of article 5.

Any association founded on an illicit cause or to pursue an objective contrary to the law or morals, or for the purpose of threatening the integrity of the nation or to the republican nature of the government, is null and void. According to article 5, in order to obtain legal personality, the association will have to be made public by its founders.

In practice, the declaration regime envisaged by the law of 1901 functions instead like a preliminary authorisation arrangement. Indeed, since the 1990s and despite fulfilling all registration formalities, human rights organisations face increasing problems in obtaining the receipt conferring them a legal existence. In theory, according to the law, this is not necessary for carrying out their activities. In practice, however, legal personality is required by

INFO

A chapter ends for human rights defenders. Hina Jilani's mandate as United Nations Special Representative of the Secretary-General on human rights defenders has come to end after almost eight years. Her struggle for the protection of defenders, however, will continue. She said: "I am myself a human rights defenders, and I know I must continue to fight as you do, wherever I will be".

Another chapter starts. Margaret Sekagya has been appointed as new UN Special Rapporteur on human rights defenders. We are convinced that there will be continuity in the mandate. The seed is well planted, now we need to water it.

Good luck to both of them!

the administrative authorities to allow association to carry their activities. This is particularly the case for human rights organisations publishing materials or otherwise expressing positions critical of the government. For example, the Togolese section of Amnesty International, following the publication of the report "Togo: State of terror " in 1999, had been requested by the authorities to present its receipt to proof its existence, after 10 years of activity. This receipt is also often required by donors before considering requests for financial support from NGOs. Obtaining this receipt is often a tough fight.

If according to the provisions of the law, the receipt is supposed to be delivered just after an investigation onto the morality of the objectives of the organisation, in practice the procedure to obtain such a document can be protracted for years and sometimes without success. Several human rights associations complain about the uncertainty surrounding the delivery of receipt and about selectivity in granting the document.

To remedy to this situation, the Togolese Coalition on human rights defenders started consultations in 2005, with the involvement of civil society as well as the competent authorities, with the aim of reviewing the legal framework of freedom of association and bring it into compliance with the 1998 United Nations Declaration on Human Rights Defenders. One of the strategies considered is the proposal of a progressive bill on human rights associations that would complete and clarify the law of 1901.

THE RAPPOREUR'S REPORT

During the intersession, the Special Rapporteur (SR) has undertaken various activities in addition to sending individual communications, which have increased over time, sign of the good functioning and the effectiveness of the protection mechanism. However, this also raises our concern about violations of the rights of defenders, who being more and more targeted.

Communications sent November 2007 – April 2008

Nbr	COUNTRY	Concerns
15	Algeria (1), Tunisia (3), Congo (1), Chad (2), Cameroon (2), RDC (4), Kenya (3), Djibuti (1)	Police harassment, threats, intimidation
2	Egypt (1), Tunisia (1)	Violations of freedom of expression and freedom of association
8	Tunisia (2) Algeria (1), Zimbabwe (1), Kenya (1), Cameroon (1) Rwanda (2)	Excessive charges, arbitrary arrest and detention, ill treatment
2	Senegal (1), Zimbabwe (1)	Enforced disappearance
1	Nigeria (1)	Killing

ZOOM



AN EXAMPLE OF SYNERGY BETWEEN THE MANDATE AND HRD NETWORKS

On the initiative of the West African Human Rights Defenders Network and the Spanish organisation ADANE, the Special Rapporteur (SR) on human rights defenders went on mission to Spain from 5 to 19 April 2008.

The objective of the visit was to raise awareness about the African human rights protection mechanisms and in particular the mandate on human rights defenders. The visit was also an opportunity to discuss the main human rights challenges in Africa.

The SR met with State institutions and civil society actors as well as the local authorities of the cities of Barcelona, Bilbao, Corona and Santadere. She met representatives of NGOs such as ECOS DOS, ADANE, Centre d'Estudis Africans, etc. She had a discussion with the mayor of Barcelona, with the president of the parliament and with the deputy mayor of Santadere.

The theme of the visit was "from Africa for Africa", in other words some African people went to Spain to talk about Africa. The SR has on several occasions presented the work of the African Commission and her mandate as Special Rapporteur. Several opportunities of collaboration between Spanish and African human rights NGOs and institutions have been explored and will be further discussed in more details in the next issue of our Newsletter. The SR left Spain convinced of the effectiveness of creating synergies between Spain and African for a better protection of human rights in the continent.

Adequate provisions should be taken by States to ensure better protection of human rights defenders. To encourage States to do that, the SR has participated in a number of seminars organised jointly by the Inter-Parliamentary Union (IPU), the Office of the United Nations High Commissioner for Human Rights (OHCHR) in collaboration with national assemblies.

One of these seminars, in collaboration with the national assembly of Togo, was held from 13 to 15 February in Lomé and the SR made a presentation on the African human rights instruments and their mechanisms. Another was organised in collaboration with the national assembly of Mali under the general topic: "the Role of Malians Parliament members in the preparation of the national reports to treaties bodies and in the follow-up of their recommendations".

These seminars targeted members of parliamentary commissions on human rights and other socio-political actors. The main objective of this initiative was the sensitisation of parliament members, who are essential actors in the decision-making process, on human rights realities and requirements.

The protection of human rights defenders remains a concern at the regional as well as at the international level. This intersession has been marked by the appointment of the new Special Rapporteur of the United Nations on human rights defenders, Ms Margaret Sekaggya, from Uganda. Ms Sekaggya has replaced Ms Hina Jilani, from Pakistan, who has finished her mandate.

Future co-operation between the RS and Ms Sekaggya will focus mainly on follow-up to individual cases of violations against human rights defenders in the continent, but it will also extend to various issues relating to the promotion and protection of human rights in general and of defenders in particular. We think to the difficult

situations that defenders face in many countries, in particular where political tensions emerged such as in Chad, Kenya and Zimbabwe, where the HRD situation is precarious. It is not surprising that defenders are the main targets during such time of tension. It is much more difficult for them to carry out their human rights activities in such contexts. It is therefore important that binding instruments are developed at the national, regional as well as international level to better protect defenders.

It is in the hope that a stronger awareness of their rights will help them to be well equipped in order to carry out the struggle of convincing politicians to adopt national laws, that the SR has decided to develop tools for human rights defenders. A workshop planned for this purpose during the next intersessional period.

During her first mandate, the SR has tried to create a synergy between the various actors concerned with HRD issues. She continues to do so. Moreover, she is in touch with various women human rights defenders networks and encourages the creation of new networks, like the women human rights defenders networks of Benin, which has been established during this intersessional period. The issue of women human rights defenders remains on the agenda and the SR has undertaken activities at the local level with the aim to consolidate the achievements of the women human rights defenders campaign.

COMMENTS

*Dear human rights defenders,
This section is where you can leave messages and share your ideas and opinions. We are keen to be as accessible as possible and await therefore your own contributions to this newsletter. Do not hesitate to send emails to chafib@achpr.org*

OUR THANKS TO...



I owe special thanks to the International Service for Human Rights (ISHR) for its support to *The Rapporteur's Newsletter*, which is becoming an important communication tool between the Rapporteur and all actors concerned with the promotion and protection of the rights of human rights defenders.

I am also very grateful to all those defenders who contributed to this issue of *The Rapporteur's Newsletter*.

I invite all defenders to see this newsletter as their own and to share with all others their experience in the defence of human rights.

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