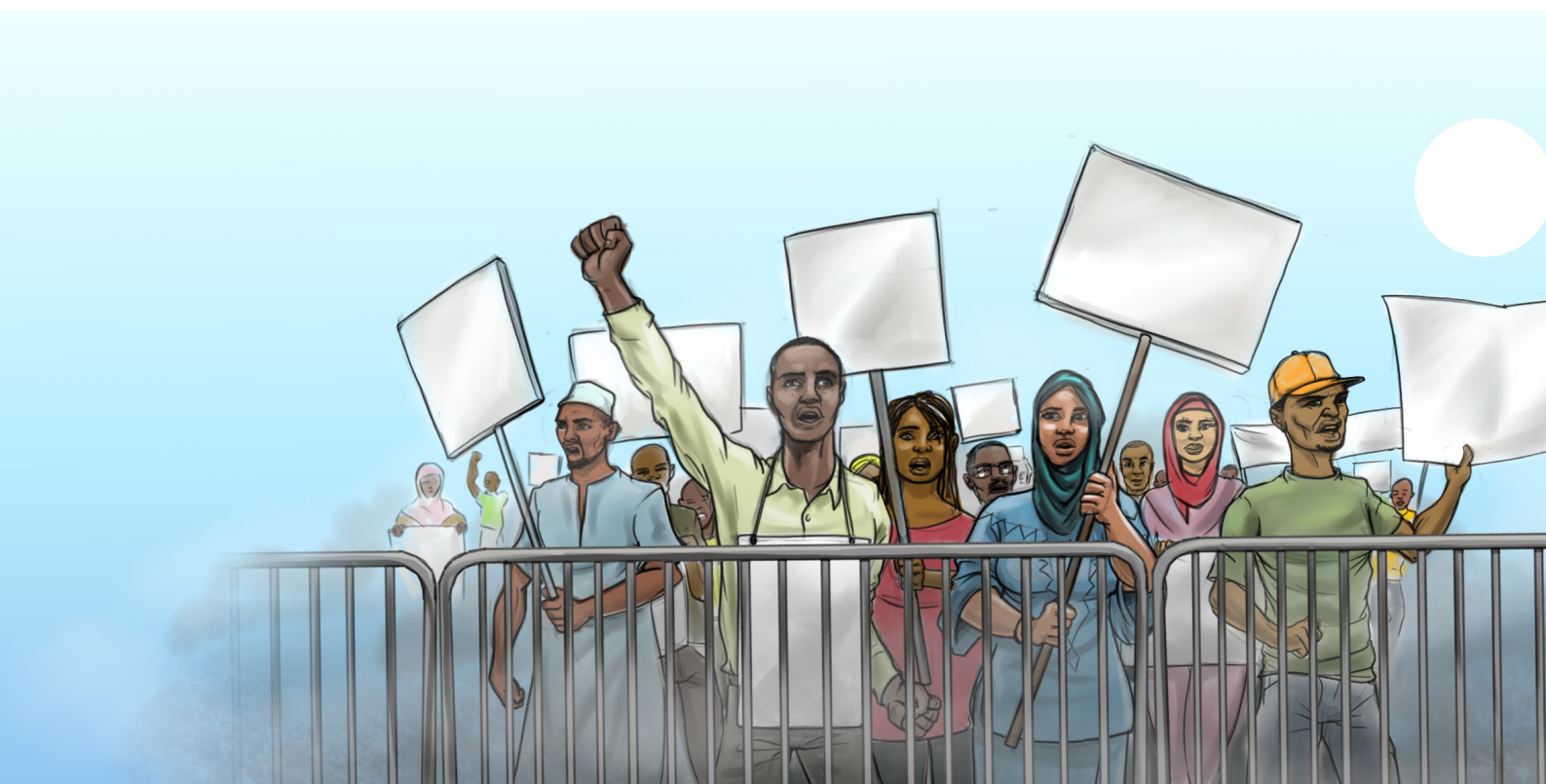


# LEGAL ANALYSIS OF THE CHADIAN ORDINANCE ON THE RIGHT TO FREEDOM OF ASSOCIATION



THE USE OF NATIONAL LEGISLATION TO IMPOSE UNLAWFUL  
RESTRICTIONS ON THE RIGHT TO FREEDOM OF ASSOCIATIONS

## GLOSSARY

WORD	DESCRIPTION
ACHPR	African Commission on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
HRDS	Human rights Defenders
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
UN	United Nations

## INTRODUCTION

In the wake of the Fourth Republic of Chad<sup>1</sup> and after President Idriss Deby Itno promulgated a new Constitution in May 2018,<sup>2</sup> Chadian authorities have amended a number of laws including the Ordinance no.023/PR/2018 of 27 June 2018, that regulates associations.<sup>3</sup> Amnesty International and four federations of Chadian civil society organizations<sup>4</sup> – comprising 36 associations – regret that the authorities missed this opportunity to integrate recommendations made by several human rights organisations and bring the previous Ordinance in line with the Chadian Constitution and international and regional human rights laws and standards. The process to reform this law did not include a consultation with national and international human rights organizations and has resulted in hardening draconian provisions which unlawfully restrict the right to freedom of association.<sup>5</sup> Chadian authorities must review the ordinance and bring it into line with Chad's obligations under international and regional human rights law and standards as well as the country's own Constitution.

While civil society organisations play an essential role in the promotion and protection of human rights, and are an effective tool for human rights defenders to work towards the elimination of human rights violations, several provisions made in the new ordinance

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<sup>1</sup> The Fourth Republic of Chad is the fourth republic since Chad gained independence from France in 1960.

<sup>2</sup> In May 2018, the President promulgated a new Constitution which expanded the President's powers and allow him to stay in office until 2033 after the presidential term of five years, with no limits on re-election was replaced by a six-year term, with a limit of two terms. The new Constitution also eliminated the post of Prime Minister and created a fully presidential system.

<sup>3</sup> The new Ordinance regulating associations is applicable to human rights associations, youth associations, school associations, sport and cultural associations, foreign associations, religious associations, charity and foundations, non-governmental organisations, and unions of association [federations].

<sup>4</sup> These federations of civil society organizations are: the IYINA citizen movement, which brings together eight associations, the 'collectif des associations de défense des droits de l'homme' with six associations, the 'collectif Ça suffit' with seven associations and 'Trop c'est trop' with 15 associations.

<sup>5</sup> As part of the EU-funded project 'Civil Society Support Programme' (PASOC), a consultative space was set up to enable civil society organizations and the Chadian authorities to make proposals to align a number of laws including the Ordinance on associations, with Chad's international and regional human rights obligations. However, none of the recommendations made under the PASOC were incorporated into the new Ordinance on associations.

regulating associations [civil society organisations] violate the Declaration on Human Rights Defenders which outlines the rights of individuals to form, join and participate in civil society organizations, associations or groups to promote or defend human rights, which is a key component of the right to association.

For instance, the new Ordinance violates the right to freedom of association by imposing a blanket prohibition on “regional or community-based associations” and banning associations who have different aims or activities to group together and establish or join national or international federations. Furthermore, the Ordinance allows the authorities to withdraw the registration of an association on illegitimate grounds, such as undermining territorial integrity or national unity.

Chadian authorities have also maintained the former authorization regime to grant legal personality to associations, despite indications that a simple notification procedure offer a higher level of protection, including by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association. The amended Ordinance requires that an association receives an approval from the Ministry of Territorial Administration to establish it as a legal entity. The Ordinance establishes that the Ministry of Territorial Administration must respond within three months, and bans associations to operate until they have been authorized to do so. It also criminalizes membership in an unregistered association.

The Ordinance further limits the right to freedom of expression of members of an association by providing severe sanctions such as dissolution for human rights associations, religious associations and students associations that depart from their initial goals and engage in vaguely defined “political activities”.

The Ordinance also incorporates specific requirements for foreign associations and requires them to renew their authorization on a regular basis, although the law fails to define how often the authorization needs to be renewed. Furthermore, while the Ordinance gives the Ministry of Territorial Administration wide powers to dissolve associations including on several legitimate grounds such as national security, territorial integrity and public order, it fails to provide any further information about the meaning of these broad terms which may be used to limit the right to freedom of association.

Amnesty International and four federations of Chadian civil society organizations call on the Chadian authorities to amend the Ordinance that regulates associations to ensure it is consistent with its obligations under regional and international human rights law and standards, and in particular to:

- Replace the current authorization regime with a simple, easily accessible, non-discriminatory and non-onerous or free of charge notification process for associations to gain legal personality including foreign associations; and ensure that associations can group together and establish or join national or international federations or unions;
- Ensure associations and their members can exercise their right to freedom of expression without undue restrictions, including through vague and overly broad concepts of “political activities or opinion”;
- Ensure that the decision to dissolve or suspend an association is a measure of last resort, and ensure that clear, transparent and detailed information and reasoning is provided to justify the dissolution or suspension of an association and that a process to appeal the decision before an independent court is provided.

# DRACONIAN AND RESTRICTIVE PROVISIONS

## BANNING OF REGIONAL OR COMMUNITY ASSOCIATIONS

The right of everyone to freedom of associations is guaranteed by Article 27 of the Chadian Constitution, as well as under article 22 of the International Covenant on Civil and Political Rights (ICCPR),<sup>6</sup> Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>7</sup> Article 10 of the African Charter on Human and Peoples' Rights (ACHPR),<sup>8</sup> Article 8 of the African Charter on the Rights and Welfare of the Child (ACRWC),<sup>9</sup> several of the Declaration on human rights defenders,<sup>10</sup> and several ILO conventions,<sup>11</sup> all of which have been ratified by Chad.

Under international human rights law, while the exercise of the right to freedom of association may be subject to restrictions on certain prescribed grounds, they must not jeopardize the right itself. Restrictions must be provided by law, necessary and proportionate to protect a legitimate concern (national security or public safety, public order, the protection of public health or the protection of the rights and freedoms of others).<sup>12</sup> This means that a restriction must be easily accessible to all, should not be vague nor overly broad, and must be formulated with sufficient precision and appropriate for achieving its protective function.

It is important to recall that the right to freedom of association includes as well the right of those within an association to choose with whom to associate. In this sense, the guidelines on freedom of association and assembly in Africa of the African Commission on Human and Peoples' Rights has established that "those founding and belonging to an association may choose whom to admit as members, subject to the prohibition on discrimination".<sup>13</sup>

However, Article 3 of the new Ordinance that regulates associations imposes a blanket prohibition of "regional or community associations",<sup>14</sup> without providing any legal grounds or explanations for people to be able to organize in this type of associations.

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<sup>6</sup> According to Article 22 (1) of the ICCPR, "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.

<sup>7</sup> According to article 8(1)(a) of the ICESCR, "The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others", <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

<sup>8</sup> According to Article 10 of the ACHPR, "1. Every individual shall have the right to free association provided that he abides by the law. 2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.", <http://www.achpr.org/instruments/achpr/#a10>.

<sup>9</sup> According to Article 8 of the ACRWC, "Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law." <http://www.achpr.org/instruments/child/>.

<sup>10</sup> Articles 1, 5 (b), 6, 7, 8, 9, 11, 12, 13 and 17, <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

<sup>11</sup> Chad has also ratified the Freedom of Association and Protection of the Right to Organise Convention (1948), the Right to Organise and Collective Bargaining Convention (1949) and the Workers' Representatives Convention (1971)

<sup>12</sup> Article 22 (2), <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.

<sup>13</sup> Guidelines on freedom of association and assembly in Africa, Part I: Freedom of Association, para 8, [http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf).

<sup>14</sup> Article 3 « Les associations à caractère régionaliste ou communautaire sont interdites. »

Furthermore, the same article imposes additional grounds to restrict the exercise of the right to association that is unlawful under international law, including “territorial integrity” and “national unity”.

## **PRIOR AUTHORIZATION IS A PREREQUISITE**

Chadian authorities have ignored recommendations made by civil society organisations and international human rights mechanisms to amend the previous Ordinance that regulated associations to shift away from an authorization regime, despite indications that a simple notification procedure offer a higher level of protection. The new Ordinance maintains the old authorization regime in Articles 4 to 6 and requires all associations, including federations<sup>15</sup> and sections of associations,<sup>16</sup> to receive a prior authorization from the Ministry of Territorial Administration before they can start operating. The Ordinance imposes an obligation for the authorities to respond within three months of any application to be established as a legal entity. However, Article 8 further explains that “under no circumstances does the declaration of foundation of an association mean authorization to function”.

Such provisions are in violation of Articles 22 of the ICCPR and run contrary to the recommendations of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, who has stated that a notification procedure, in which associations declare their status rather than require authorization for it, is more in line with the best practices related to the right to freedom of association. In addition, the guidelines on Freedom of Associations and Assembly in Africa of the of the African Commission on Human and Peoples’ Rights strongly call on states not to compel associations to register in order to be allowed to exist and operate freely, and recommends that the legislation explicitly recognizes the right to exist of informal [unregistered] associations.<sup>17</sup>

Furthermore, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has encouraged states to act immediately and set short time limits to respond to submissions and applications.<sup>18</sup> Pending response by the authorities, associations should be presumed to be operating legally, even if the authorities take longer than the established time or if they fail to provide a response at all.

## **ABSENCE OF LEGAL PROVISIONS RELATED TO THE REFUSAL OR REJECTION OF AN AUTHORIZATION**

Article 8 of the new Ordinance allows the Ministry of Territorial Administration to refuse an authorization for an association to be registered including based on unlawful provisions made in Article 3, such as undermining territorial integrity or national unity.<sup>19</sup> The Ordinance also fails to establish a procedure in which the authorities demonstrate that such decision is necessary and proportionate to a legitimate aim. Furthermore, the Ordinance fails to require the Ministry to provide clear reasoning to the denial of an authorization that

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<sup>15</sup> Article 30 of the Chadian Ordinance no.023/PR/2018 of 27 June 2018, regulating associations.

<sup>16</sup> Article 30 further requests that all sections of a given association receive an authorization to start operate while the Special Rapporteur on freedom of peaceful assembly and of association believes that the formation of branches of associations, foreign associations or unions or networks of associations should be subject to the same notification procedure.

<sup>17</sup> Guidelines on freedom of association and assembly in Africa, para 11, [http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf).

<sup>18</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para 60, 21 May 2012, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf).

<sup>19</sup> Article 3 of the Chadian Ordinance no.023/PR/2018 of 27 June 2018, regulating associations.

is duly communicated in writing to the applicant. The way in which this particular provision is drafted gives the authorities broad discretionary powers, which may result in the arbitrary interference with the right to association by denying the registration to organizations, including on spurious and vague grounds especially when the applying organization is deemed to be undesirable by the authorities.

Furthermore, the Ordinance does not provide an effective avenue for those associations whose registration has been denied to challenge the decision before a competent, independent and impartial court.<sup>20</sup>

Chadian authorities have increasingly justified the denial of registration on grounds of counter-terrorism, national security and public order. The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has specifically stressed that terrorism should never be used to undermine the credibility of an association, nor to unduly impede its legitimate work.<sup>21</sup> The Special Rapporteur has also highlighted that states must not use the protection of national security and public order as excuses for hiding the true purpose of undue limitations to the work of associations, such as suppressing opposition or to justify repressive practices against the general population.

## **UNDUE RESTRICTIONS TO FORM AND JOIN NATIONAL AND INTERNATIONAL FEDERATIONS**

Associations should be free to determine and operate within their areas of concern without interference from the authorities. As part of the right to association, States are also obliged to guarantee the right of associations to join national and international federations to jointly pursue their goals.<sup>22</sup>

The guidelines on freedom of association and assembly in Africa also stipulate that the “state shall not stipulate by law the existence of particular or exclusive regional or national federations of associations.”<sup>23</sup>

Article 29 of the Chadian Ordinance, however, limits the right to form and join federations of associations to those with the same nationality, similar aims and activity focused on identical problems. Furthermore, Article 30 requires associations who wish to form a

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<sup>20</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para 61, 21 May 2012, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf)

<sup>21</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, para 70, 21 May 2012, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf).

<sup>22</sup> According to article 8 of the ICESCR, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

<sup>23</sup> Guidelines on freedom of association and assembly in Africa, para 52, [http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf).

federation to obtain prior authorization to start operating.<sup>24</sup> Such restrictions undermine the right of associations to join or create national or international federations which should be made freely by the associations themselves.

## **PENALIZATION FOR MEMBERSHIP OF UNREGISTERED ASSOCIATIONS**

While the right to freedom of association equally protects both registered and unregistered associations, the Ordinance imposes criminal sanctions to those who act as part of an unregistered organization.

The UN Special Rapporteur on the right to freedom of peaceful assembly and of association has stressed that “individuals involved in unregistered associations should be free to carry out any lawful activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions”.<sup>25</sup>

However, Article 31 of the Ordinance explicitly prescribes prison terms of up to five years and fines of up to XAF3,000,000 (EUR 4,573) for people involved in the creation and administration of “unauthorized [unregistered] associations”.<sup>26</sup>

## **DISCRIMINATION BETWEEN NATIONAL AND FOREIGN ASSOCIATIONS**

International human rights law stipulates that everyone has the rights to freedom of association, including foreign nationals. Under all major human rights treaties, including Article 2 of the ICCPR, discrimination on the basis of nationality is clearly prohibited.

The new Ordinance clearly discriminates between Chadian and foreign associations, which are associations with either their headquarters abroad, led by non-nationals or associations which at least one third of its board are foreign nationals.

While Article 24 of the Ordinance stipulates that foreign associations are ruled by the same norms as national associations, it also establishes that foreign associations will only be authorized to operate for an unspecified period of time depending on their activities before they are required to renew the authorization. The Ordinance does not provide any further information on the time limit nor the periodic renewal.

Article 24 further adds that authorization to foreign associations may be withdrawn at any time by order of the Ministry of Territorial Administration without providing any legal basis to this or legal mechanisms to challenge such decision before a court.

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<sup>24</sup> Article 29 and 30 of the Chadian Ordinance no.023/PR/2018 of 27 June 2018, regulating associations.

<sup>25</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, p 14, para 56, 21 May 2012, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf).

<sup>26</sup> Article 31 of the Chadian Ordinance no.023/PR/2018 of 27 June 2018, regulating associations.

## PROVISIONS PROHIBITING VAGUELY DEFINED “POLITICAL” ACTIVITIES

The new Ordinance contains provisions that unduly restrict the right to freedom of expression of associations and its members by prohibiting the involvement of human rights organizations,<sup>27</sup> religious associations,<sup>28</sup> and students associations<sup>29</sup> in “political” activities without defining and determining what exactly is understood by this. States have an obligation not to unduly obstruct the exercise of the right to association, including by ensuring associations are free to determine their objectives and activities without interference.

Associations should have the right to participate in matters of political and public debate, regardless of whether the position taken is in accord with government policy or advocates a change in the law. As protected by the right to freedom of expression and opinion, associations should in practice be allowed to freely undertake research, education and advocacy on issues of public debate, including political debates and regardless of whether the position taken is in accordance with government policy or advocates a change to the law. In this same sense, the UN Declaration on Human Rights Defenders also articulates the importance of civil society organizations to be able to freely exercise the rights to association and expression for the defense and promotion of human rights, including through activities such as seeking, obtaining and disseminating ideas and information; advocating for human rights; engaging in governance and the conduct of public affairs; and submitting proposals for policy and legislative reform at the local, national and international level.<sup>30</sup> The guidelines on freedom of association and assembly in Africa similarly stress that the “right to freedom of association protects, *inter alia*, expression; criticisms of state action [...]”<sup>31</sup>

Laws regulating the registration or operation of associations which define their scope by reference to inherently vague and imprecise terms such as “political activity” afford authorities overly broad discretion and may unduly restrict the rights to freedom of expression and association. Therefore, states have an obligation to ensure that such measures are established in terms that are adequately prescribed by law and sufficiently precise to allow their consequences to be reasonably foreseeable to those affected by them

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<sup>27</sup> Article 28 of the Chadian Ordinance no.023/PR/2018 of 27 June 2018 regulating associations, prohibits human rights associations to take political positions or activities “Elles ne peuvent en aucun cas savoir des prises de position ou des activités à caractère politique”.

<sup>28</sup> Article 25 contains vague provisions forbidding religious associations to undertake any activity deviated from their original purpose and contrary to their apolitical vocation, which could be used to prevent religious associations to exercise their right to freedom of expression, “Est interdit aux associations religieuses toute activité déviée de leur objet initial et contraire à leur vocation apolitique”.

<sup>29</sup> Article 21 “Est interdit aux associations d’étudiants toute activités contraire à leur vocation apolitique et non confessionnelle”.

<sup>30</sup> Article 9.3 (a) of the UN Declaration on Human Rights Defenders states “[...] everyone has the right, individually and in associations with others, *inter alia*: To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay”, <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

<sup>31</sup> Guidelines on freedom of association and assembly in Africa, para 28, [http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf).



## UNLAWFUL CONTROL OVER ACCESS TO FUNDING AND RESSOURCES

The new Ordinance establishes undue restrictions for associations to seek funding and resources from a limited list of sources, which are only contribution of its members, membership fees, donations, bequests or grants.<sup>32</sup> The right to seek, receive and use resources from national, foreign and international sources is an essential component of the right to freedom of association. Undue restrictions on the ability of associations to access funding and resources of different types, including financial, in-kind and material resources, and from different sources, including public or private, domestic, foreign or international, violate the right of associations to seek and secure funding and resources and undermine the existence and operation of any association.

The Human Rights Council has in particular stressed the importance of safeguarding the capacity of civil society organizations to engage in fundraising activities, calling upon States not to criminalize or delegitimize activities in defence of human rights on account of the origin of funding.<sup>33</sup> Similarly, the UN Declaration on HRDs in relation to the promotion and protection of human rights and fundamental freedoms through peaceful means, highlights that “everyone has the right, individually and in association with others, to solicit, receive and utilize resources”.<sup>34</sup> Furthermore, the UN Human Rights Committee and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association have stressed the importance of safeguarding the capacity of both registered and unregistered associations to engage in fundraising activities, and have argued that funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with Article 22 of the ICCPR.<sup>35</sup>

Article 17 of the Ordinance further limits the resources associations are allowed to manage to buildings when “strictly necessary for the accomplishment of the purpose an association intends to achieve” and offices required for meetings of an association’s members. It contains further provisions under which the state “may control, by all appropriate means, the sound management of the property of the association within the limits set above. It [the state] may, at any time, be presented with the books and records”. This vague provision may lead to an unjustified interference in the governance of associations to further curb their activities, especially those seen as critical to the authorities.

## VAGUE AND REPRESSIVE PROVISIONS TO DISSOLVE OR SUSPEND ASSOCIATIONS

Suspension and the involuntary dissolution of an association are among the severest restrictions states can impose on the right to freedom of association. Such measures must always be a measure of last resort, used only when less restrictive measures have proven

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<sup>32</sup> Article 17 of the Chadian Ordinance no.023/PR/2018 of 27 June 2018, regulating associations “Toute association régulièrement autorisée peut gérer dans les limites de ses statuts: Les sommes provenant des cotisations de ses membres; les sommes provenant des droits d’entrée, dont le maximum reste libre, et des cotisations rédimées; les locaux destinés à l’administration de l’association et aux réunions de ses membres; les immeubles strictement nécessaires à l’accomplissement du but qu’elle se propose d’atteindre; les dons, legs ou subventions qu’elle est susceptible de recevoir. Les immeubles compris dans un acte de donation ou testament, qui ne seraient pas nécessaires au fonctionnement de l’association, seront aliénés dans la forme et les délais prescrits par décret. L’autorité administrative peut contrôler par tous moyens appropriés, la saine gestion des biens de l’association dans les limites ci-dessus. Elle peut à tout moment se faire présenter les registres et document comptables. »

<sup>33</sup> Human Rights Council Resolution, 22/6, Protecting human rights defenders, UN Doc. A/HRC/Res/22/6, para. 9.b.

<sup>34</sup> Article 13 of the UN Declaration on human rights defenders, <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

<sup>35</sup> Human Rights Committee, Viktor Korneenko et al v. Belarus, Communication No. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004, 10 November 2006, para 7.2; Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, 24 April 2013, UN Doc. /HRC/23/39, para. 16.

to be insufficient, and strictly proportionate to the legitimate aim it pursues. The UN Special Rapporteur on the rights to peaceful assembly and of association has stressed out that, given the severity of such measures, ordering the dissolution or prohibition of an association should only be allowed when there is a clear and imminent danger resulting in a flagrant violation of the law and may only occur following a decision by an independent and impartial court.<sup>36</sup>

Article 34 of the new Ordinance that regulates associations, states that “associations can be either voluntarily dissolved by its members or through a judicial decision at the request of the public prosecutor or at the request of any interested person in case of nullity provided for in article 4 on authorization.” Its Article 38 further adds that all associations that do not comply with the new Ordinance “could be dissolved through a ministerial order and after a formal notice is given to regularize its situation within six months”.

Article 56 of the guidelines on freedom of association and assembly in Africa takes the same approach, establishing that the suspension may only be taken following a court order, and dissolution only following a full judicial procedure and the exhaustion of all available appeal mechanisms. Such judgments, according to the guidelines, shall be made publicly available and shall be determined on the basis of clear legal criteria in accordance with regional and international human rights law.<sup>37</sup>

Article 35 of the new Ordinance that regulates on associations provides wide powers to the Ministry of Territorial Administration - on the proposal of the Governor – to “dissolve by decree any association which departs from its object and whose activities seriously endanger public order and the security of the State.” The Ordinance provides no defined circumstances when such powers could be exercised which could led to their arbitrary application.

Article 37 establishes grounds for the dissolution of an association that goes beyond the permissible restrictions under international human rights law,<sup>38</sup> including if its aim is in contradiction with the country’s Constitution, laws, territorial integrity, national unity, national integration and the republican form of the state.

Provisions for appealing a dissolution order in Article 36 of the new Ordinance require that appeals be lodged to the High Court within 15 days after a dissolution order is pronounced and it adds that the appeal does not have a suspensive effect. Such provision is contrary to the recommendations of the guidelines on freedom of association and assembly in Africa that establish that the commencement of legal appeals should suspend the enforcement of sanctions until the appeals process has been exhausted.<sup>39</sup>

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<sup>36</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, p 14, para 56 and 100, 21 May 2012, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf).

<sup>37</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, p 14, para 56, 21 May 2012, para 58, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf).

<sup>38</sup> The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and Peoples’ Rights (ACHPR), the African Charter on the Rights and Welfare of the Child, the Declaration on human rights defenders, and the guidelines on the right to freedom of associations and assembly in Africa of the ACHPR.

<sup>39</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, p 14, para 56, 21 May 2012, para 60, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf).

Whenever a state imposes sanctions against associations, the burden of proof is on the state to provide adequate justification for such measures.<sup>40</sup>

## RECOMMENDATIONS

Amnesty International and four federations of Chadian civil society organizations are thus calling on the Chadian authorities to comply with the country's Constitution and its international and regional obligations related to the right to freedom of association by amending Ordinance no.023/PR/2018 of 27 June 2018, that regulates associations, and in particular to:

- Ensure that the right to freedom of association is enjoyed by everyone without discrimination and offer protection to both registered or unregistered associations;
- Replace the current authorization regime with a simple, easily accessible, non-discriminatory and non-onerous or free of charge notification process for associations to gain legal personality including foreign associations ;
- Amend provisions restricting the right to freedom of association of foreign nationals by removing the time limit on their authorization and renewal requirements, and align any other requirements to operate foreign associations to those of national associations;

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<sup>40</sup> Guidelines on freedom of association and assembly in Africa, para 61, [http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf).

- Ensure that unregistered associations are equally protected under the law and allowed to carry out their activities in an enabling and safe environment, with no risks of criminal or other sanctions due to lack of registration;
- Ensure there is a legal provision requiring registration bodies to provide a detailed and timely written explanation when denying the registration of an association; and ensure associations are able to challenge any rejection before an impartial and independent court;
- Ensure associations can group together and establish or join national or international federations or unions with no undue restrictions;
- Repeal Article 17 that makes provision for undue restrictions related to access to funding and resources of associations, and ensure associations are able to seek, receive and utilise resources from local, foreign and international sources;
- Ensure associations and their members can exercise their right to freedom of expression without undue restrictions, including through vague and overly broad concepts of “political activities or opinion”;
- Ensure that the decision to dissolve or suspend an association is a measure of last resort, used only when less restrictive measures have proven to be insufficient, and strictly proportionate to the legitimate aim pursued. Ensure that clear, transparent and detailed information and reasoning is provided to justify the dissolution or suspension of an association and that a process to appeal the decision before an independent court is provided.
- Ensure that law enforcement authorities which violate the rights to freedom of association are held personally and fully accountable for such violations by an independent and democratic oversight body, and by the courts of law; and ensure that victims of violations and abuses of the rights to freedom of association have to the right to an effective remedy and obtain redress.

## ANNEX

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