

**HUMAN RIGHTS ORGANISATIONS:
RIGHTS AND RESPONSIBILITIES**

FINAL DRAFT REPORT 2009

The International Council on Human Rights Policy

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HUMAN RIGHTS ORGANISATIONS: RIGHTS AND RESPONSIBILITIES

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This remains a draft report. Previous drafts have indicated that little consensus exists among human rights organisations about how to discuss issues of responsibility. Our aim is to clarify issues, and provide elements that will allow human rights organisations themselves to reflect on issues of responsibility that may confront them. We do not expect this draft to receive general approval from all quarters. We seek advice from those who read it about how it could be improved and made more useful to human rights organisations and the members of human rights organisations. We would like to thank all those who, as researchers, writers, advisers, or commentators, have stayed with us – despite differences – as we have tried to address this difficult issue constructively.

INTRODUCTION

1. Human rights organisations play a key role in defending and promoting human rights and their work has greatly advanced acceptance of the idea that every person has inalienable rights by virtue of the fact that they are human. As their number and influence expand, questions about the rights and also the responsibilities of these organisations will become more important. The overall aim of this report is to assist human rights organisations to discuss issues related to rights and responsibilities.
2. Chapter I notes that all organisations have rights and responsibilities and that the purpose of this report is to explore those rights and responsibilities that are specifically applicable and relevant to NGOs whose primary purpose or mandate is to protect and promote human rights. Though human rights NGOs are the primary audience of this report, many of the issues it raises will also be relevant to other governmental, inter-governmental or non-governmental organisations that work on, or have an interest in human rights.
3. Chapter II frames the responsibility debate in the context of human rights, which are set out in international standards that protect human rights defenders and defenders' organisations. It notes that many governments obstruct human rights NGOs and restrict their fundamental rights. In theory governments have very limited scope to interfere with and regulate the affairs of human rights organisations. In practice a large gap is evident in many countries between the protections set out in law and the daily experience of human rights organisations that are subject to attacks, threats and administrative and judicial restrictions. Very often governments claim the restrictions that they place on rights are legitimate even though what they are really attempting to do is silence critical voices. Abuses of rights and accountability principles are the starting point for the accountability debate.
4. Chapter III discusses the principles governing responsibility. We ask what responsibility is and to whom and for what organisations are responsible. Principles are offered in the place of exact and prescriptive formulas because one must examine an organisation's character and constituency, and consider the environment in which it operates, in order to make sense of its responsibilities. We distinguish two general categories: responsibilities that relate to organisational performance (such as management of funds and people and programmes, and governance); and responsibilities that flow from the human rights mission of an organisation and from human rights standards. The latter are moral and ethical responsibilities generated by fundamental human rights principles, which create a duty on human rights NGOs to prioritise the claims of people who are at the heart of their mission, above all else.
5. Chapter IV examines the responsibilities derived from the human rights mission in more depth. It focuses on the core human rights principles of universality, equality, non-discrimination, and respect for human dignity. Though these principles are relevant to other types of organisations, NGOs that have a human rights mission are distinctive: they must themselves uphold the fundamental human rights principles that they call upon others to observe, if they wish to be consistent, legitimate, credible and effective. This chapter identifies some of the difficult conceptual and practical dilemmas that arise for organisations when they attempt to stay true to their mission.
6. Chapter V examines performance-related responsibilities which reflect key values of human rights NGOs. These responsibilities relate to good governance, organisational effectiveness,

independence, objectivity and impartiality, transparency, and truthfulness and honesty. Although these values are not themselves human rights standards, organisations that fail to uphold them will not be able to stay true to the human rights mission they espouse and this will erode their performance and trust in their work.

7. This report does not advocate a precise way forward. It offers some principles as a starting point for discussion. Human rights NGOs are so diverse that prescriptive solutions are inappropriate. We cite examples that illustrate how some organisations have dealt with the questions the report examines, but we purposely avoid a single approach. In the end, each organisation must navigate its own route through these issues, taking account of its particular mandate and the context in which it works. Universal recipes that do not consider differences of scale, of mandate, of history, and the very different environments in which human rights organisations operate, will not be useful and may even create risks for the staff of such organisations, and those they work for and with.
8. Self-examination is, nevertheless, an essential first step; acting responsibly, and being seen to do so, matter. Human rights organisations need to ask themselves whether they are being sufficiently responsible, and whether they are staying true to their mission.
9. The International Council started work on this project several years ago. Preparing this report has been a lengthy and sometimes uncomfortable process. There is still little consensus among human rights NGOs about how to approach questions of responsibilities. Many believe that public discussion of responsibility is best avoided because it offers intolerant governments new opportunities to restrain or repress human rights activity. They fear our report will be misquoted and misused by governments. Other activists argue that it is healthy and a sign of maturity when organisations question their own performance, and that it is in the strategic interests of human rights NGOs to do so because it will enable them to work more effectively to protect and promote human rights and defend themselves against specious criticism.
10. Both sides make important points. We realize that intolerant governments will continue to seek to restrain or repress independent NGO voices, in human rights and other matters. At the same time we believe that the issues addressed here need discussion; they will not go away. We hope this report creates a foundation for further discussion, without making human rights NGOs more vulnerable to harassment or harm than they are already. An increasing number of humanitarian NGOs have adopted mechanisms that help them to monitor their operations self-critically. Since the point of departure for human rights NGOs is that governments must be accountable, they also might benefit from tools that help them to examine their performance.
11. This report is a draft. When the final report is published, it will be accompanied by a one-day workshop module designed to provide human rights organisations with a framework for exploring the issues the report raises. We hope the report and the module will together make a useful contribution to a long and complex conversation.

I. POINTS OF DEPARTURE

WHAT ARE “HUMAN RIGHTS ORGANISATIONS”?

12. It would be desirable to start this report by defining “human rights organisation” in a clear and unambiguous manner. Unfortunately, definition turns out to be particularly difficult, for two reasons. First, a vast number of associations might be called, or might call themselves “human rights organisations”. Second, these bodies are quite distinct from one another: they work to protect and promote a wide range of different civil, economic, social, political and cultural rights; they work in different ways and employ various methodologies; and they are extremely varied in terms of organisational structure and geographical reach. For these reasons, exclusive definition turns out to be unsatisfactory.
13. The category of “human rights organisations” could be understood to include international organisations like the UN Office of the High Commissioner for Human Rights, the UN Human Rights Council, the Office of the European Commissioner for Human Rights, or the Inter-American or African Commissions of Human Rights. It could also include the Human Rights Committees of many national parliaments, ministries and statutory bodies that deal with human rights, a wide range of ombudsperson offices, and national human rights commissions. It could equally be understood to include the human rights departments or offices of numerous international organisations whose more general mandate takes account of human rights: the World Council of Churches and the International Trades Union Confederation; development agencies like Care or Novib; or institutional donor organisations or foundations that fund human rights work, like the Ford Foundation or the Open Society Institute. A vast number of organisations draw upon, make reference to, or are guided by human rights considerations while having a distinct and separate main purpose.
14. This report does not give attention (though attention is certainly deserved) to the particular responsibilities of international or official human rights bodies, national human rights institutions, business institutions, or institutions that have a more general mandate. This does not imply that we believe such organisations are more or less able to promote or protect human rights; that such organisations do not have rights and responsibilities; or that they should be in any way more or less accountable. All have important rights and responsibilities and should be held accountable in particular ways.
15. This report – while not irrelevant to other kinds of organisations – focuses on the rights and responsibilities of human rights *non-governmental* organisations (NGOs) which have chosen to make human rights their *primary* purpose, when they act individually or when they act collectively as “NGO coalitions” or in networks.
16. We focus on human rights NGOs because other types of organisation, such as governments and private businesses, have specific and often different responsibilities that reflect their identity and the work they do. It would be far too ambitious to address the rights and responsibilities of every kind of body that works on or takes an interest in human rights. Much research has already been done on general principles of organisational or institutional accountability: it is not the aim of this report to add to that literature, or to duplicate the extensive work that has been carried out on NGO governance generally or the accountability of humanitarian and development NGOs more specifically. This report seeks to explore those rights and

responsibilities that are specifically applicable and relevant to non-governmental organisations whose primary purpose or mandate is to protect and promote human rights.

17. At the same time, we resist a definition of human rights NGOs that is over-explicit. The field “NGOs whose primary purpose is human rights” is itself large and strikingly diverse. The category is useful because human rights organisations themselves recognise it; it contains a group of non-governmental, non-profit organisations that consciously share similar or the same (human rights) values. Over-definition would be unhelpful, nevertheless, because it would eliminate elements of difference that are essential to the experience of their members. The organisations concerned share principles but, in scale and character, methods of work, geographical reach, capacity and experience, they are very different. In addition, over-definition would tend to exclude non-governmental organisations that identify themselves as human rights organisations but would not fit any specific definition that we chose to offer.
18. Resisting a narrow definition of human rights organisations reflects the approach taken by the UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the UN Declaration on Human Rights Defenders). The Declaration defines “human rights defender” inclusively, and the former UN Special Representative on Human Rights Defenders also resisted attempts to categorise that would by definition exclude certain people from its remit.¹

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What is a human rights defender?

The UN Declaration on Human Rights Defenders recognises the legitimacy of human rights work and the right of “everyone, individually and in association with others”, to promote and to strive for the protection, promotion and realization of human rights both nationally and internationally. The UN Declaration therefore has a broad definition of human rights defender that extends to any group of individuals protecting or promoting human rights, including people working for, associated with, or in any way supporting national, regional or international human rights NGOs.

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19. We feel a similar wish not to exclude. Parts of this report may well be relevant and useful to a wide range of different institutions that may not at first glance be viewed as “human rights organisations”. We encourage any organisation to use this report if elements of it are useful to them.
20. We ask readers to bear these considerations in mind. When the report refers to “human right organisations” its subject is essentially NGOs whose primary mandate is human rights – a group of organisations that, while it is united by a largely-shared vision of human rights and inspired by international human rights standards, is nevertheless extraordinarily diverse.

The Specific Nature of Human Rights Work

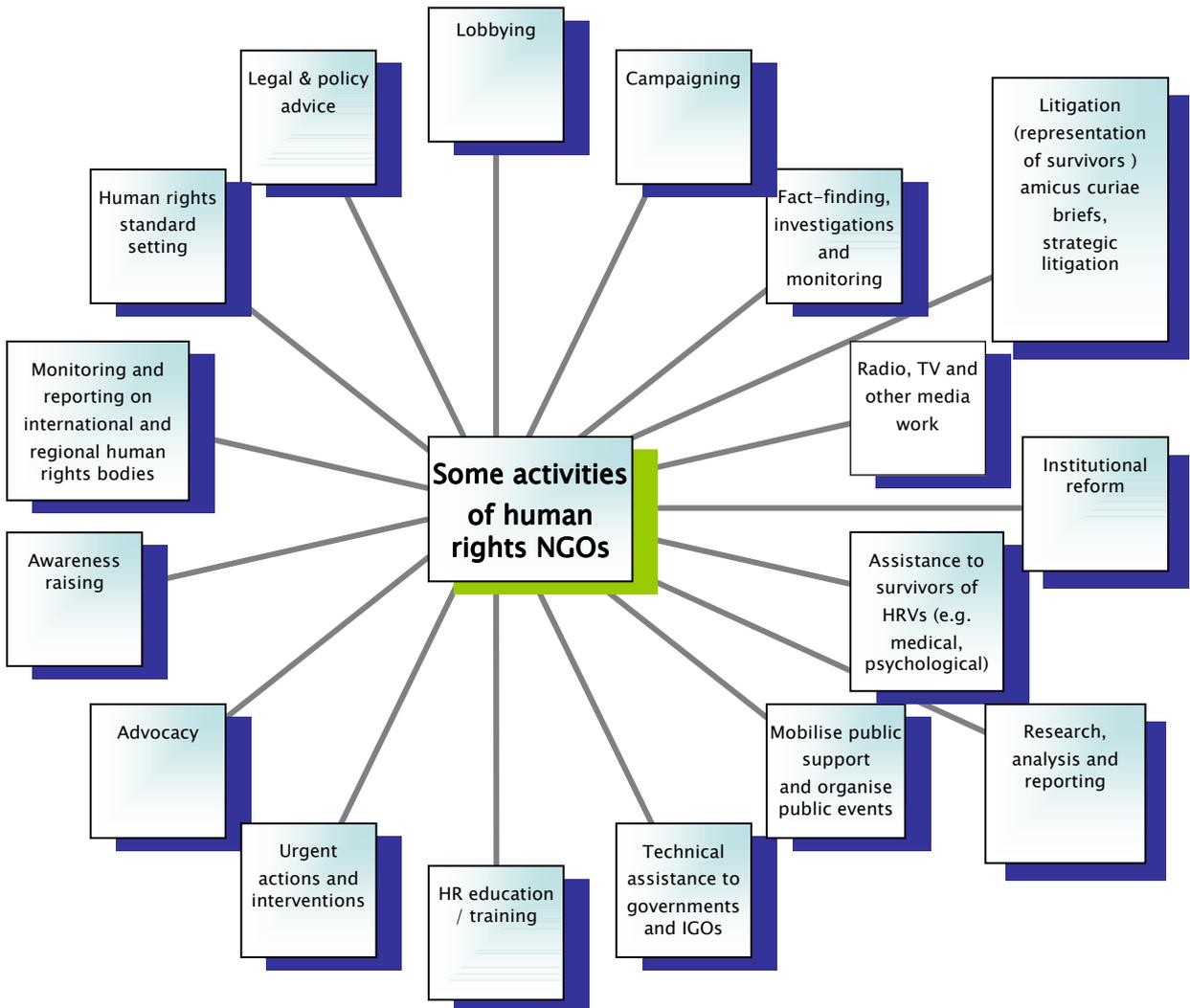
21. Practically, human rights organisations follow their mission to protect and promote human rights in markedly different ways. Some focus on the protection of one human right (for example, the right to housing), while others work to protect many different human rights (such as all economic, social and cultural rights). Some organisations aim to protect a distinct

¹ See: Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, to the 62nd session of the Commission on Human Rights, 23 January 2006 (E/CN.4/2006/95), p. 10.2

category of people (linguistic, racial or sexual minority groups, women, refugees and migrants, or internally displaced persons) while others work to protect the rights of a wide range of individuals or groups.

22. Diagram A illustrates this diversity.

Diagram A: Some activities of human rights organisations



23. The fundamental purpose of the work of human rights NGOs is to ensure that governments, and other entities that hold power, protect and promote human rights and fulfil their human rights obligations. In this respect human rights organisations are rather distinctive. Genuine human rights organisations do not take sides with respect to particular political or other interest groups. At the same time, whenever they lobby or campaign for victims or otherwise advocate for changes in law, public policy or official practice, they challenge the status quo. Much human rights work involves opposing, criticising or challenging the opinions to those in positions of authority. For this reason, human rights NGOs are often perceived by the authorities to pose a threat. This is particularly the case in societies that are authoritarian or otherwise intolerant of claims to rights.

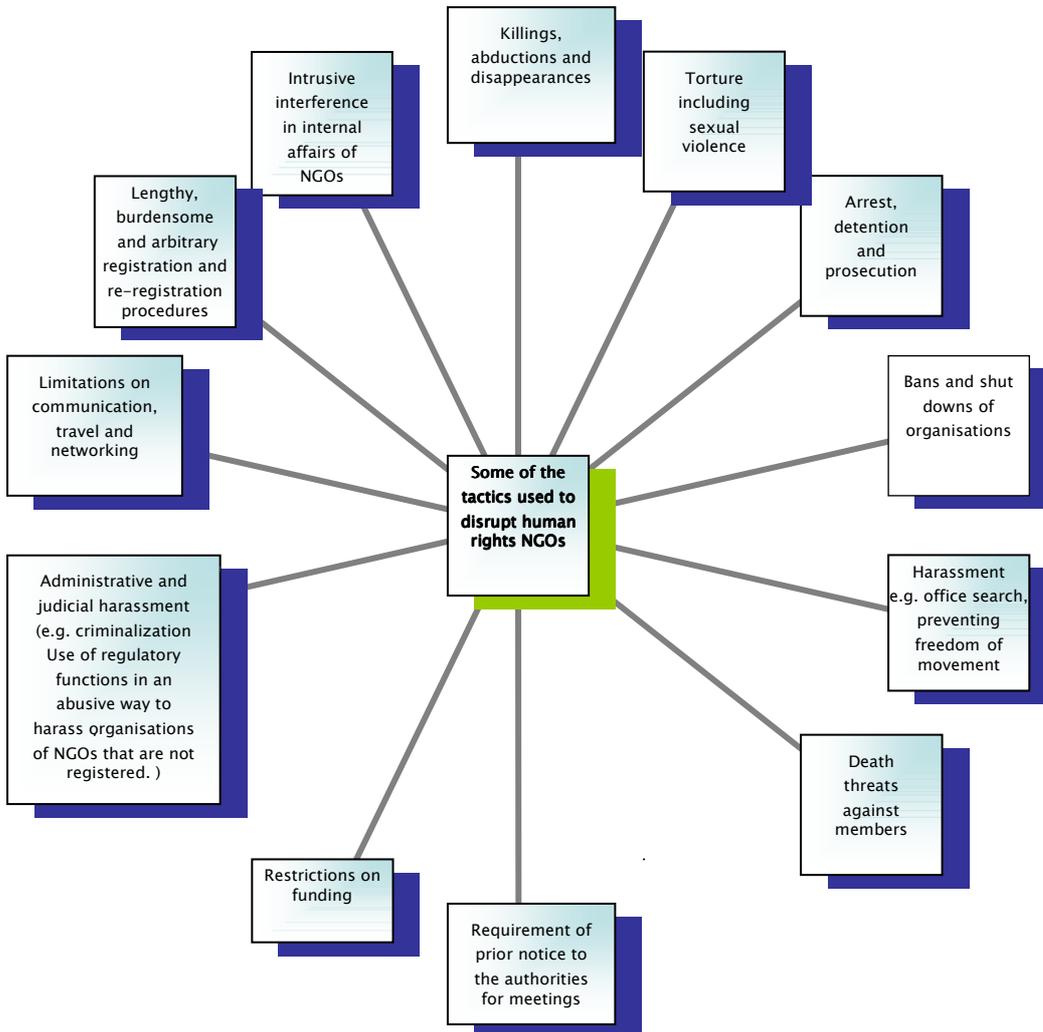
24. In more extreme cases – during apartheid rule in South Africa, during the dictatorships in Argentina and Chile, today in Burma – the lines between political activism and human rights work often become blurred. In such situations, human rights organisations tend to be viewed by those in power as anti- rather than non-governmental.
25. Even where organisations are not perceived to be challenging the authorities, they are often viewed as a threat because they comment and advocate on some of the most highly politicised areas of private and public life. Examples include abortion, sexuality, the status of women, the situation of ethnic or racial minority groups, self-determination, democracy, the treatment of prisoners, the distribution of economic resources in society, long-standing cultural practices, impunity of political leaders for human rights violations, humanitarian intervention, religious rights and freedoms, and counter-terrorism policies.
26. Lobbying and campaigning organisations are most likely to be perceived as political, because they often voice their views and broadcast their criticisms to a public audience, through the media, the internet and global advocacy networks. In their efforts to oblige governments or other institutions to act in defence of human rights, they may be strongly critical or use emotive language.
27. NGOs engaged in many other forms of work – providing services to members of a particular group subject to discrimination, or running human rights education programmes, or measuring the delivery of social or economic rights, or supporting survivors or victims of violations – are less likely to be targeted on political grounds; but this too is relative. Where tolerance for human rights is largely absent, such work may also be branded as political.
28. Of course the relationship between human rights NGOs and government is not necessarily adversarial. Increasingly, NGOs are engaging in constructive partnerships with government. They contribute to official and judicial training programmes, participate in government/civil society consultative bodies, are invited to join government delegations and so on. The viability of cooperation naturally depends on the quality of the programme and the commitment of government officials to reform, but many organisations that operate in enabling environments are now involved in reform initiatives as well as “name and shame” advocacy.

Attacks on human rights organisations

29. Most human rights organisations have been attacked in some way at some time simply because they were doing their job. The severity of such attacks usually depends on the political environment in which an organisation operates. The types of tactic that governments and other actors use to disrupt and attack human rights organisations have been well documented by IGOs and NGOs and are summarised in Diagram B.²

² Attacks have been documented by the Special Representative of the UN Secretary-General (SRSG) on Human Rights Defenders. We examine the mandate of the SRSG in Chapter II. The SRSG’s reports can be accessed at www.ohchr.org/english/bodies/chr/sessions/61/lisdocs.htm.

Diagram B: Some of the tactics used to disrupt human rights organisations



30. Attacks may be subtle. Governments and other institutions may try to undermine the credibility or moral reputation of human rights advocates by claiming, for example, that they are promoting separatism and violence, protecting criminals and terrorists, destabilising the state, threatening national security, have a hidden political agenda, or are the agents of foreign powers; or that their staff are corrupt or sexually promiscuous or dishonest. It may be implied that an NGO has a hidden political agenda, makes false or overstated claims, fails to understand the political, historical or cultural context or is idealistic and naïve.
31. Governments regularly use administrative or legal procedures to disrupt the work of human rights NGOs. In many countries they deliberately present attempts to silence and disrupt organisations as legitimate and necessary steps that are required to ensure proper regulation and accountability of NGOs. Some governments may also enlist or tolerate attacks against human rights organisations by non-state actors.

32. In the worst cases, human rights defenders and organisations are subject to serious human rights violations such as arbitrary killings, enforced disappearance and torture. Repression may be so severe that the organisation can no longer operate; this is often the aim (and may indicate that an organisation is operating successfully and doing its job well). Human rights defenders may be forced into hiding or exile. Defenders who remain in their country may only be able to continue their work in a clandestine manner.

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The UN SRSG on Human Rights Defenders has highlighted some of the tactics used by governments to attack human rights organisations. These include:

- Implementing “NGO laws” that violate free association.
- The criminalisation of non-registered groups.
- Unnecessary burdensome and lengthy registration procedures and inappropriate denials of registration.
- Re-registration requirements.
- Limits on the creation of domestic and international networks.
- State scrutiny of, and interference with, the internal management and activities of human rights organisations.
- Administrative and judicial harassment.
- Restrictions on access to funding.
- Restrictions on cooperation with international partners.
- The use of violence, threats of violence, harassment, intimidation and arbitrary arrest and detention.
- Note by the Secretary-General of the UN. Doc A/59/401 (1 October 2004).

END BOX

33. Understanding the nature of human rights work and the repression that human rights organisations often face is a key starting point for any discussion of the responsibilities of human rights organisations. For this reason, any discussion of the responsibilities of human rights organisations should be contextualised by reference to the protective elements of human rights law. In the next chapter we review those protections and examine the extent to which they restrict the ability of government to interfere in legitimate activities of human rights organisations.

II. RIGHTS RELEVANT TO HUMAN RIGHTS ORGANISATIONS³

THE PROTECTION OF HUMAN RIGHTS DEFENDERS AND DEFENDER'S ORGANISATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

34. The first formal commitments by the international community to protect rights that underpin the individual's ability to freely form associations and act collectively to pursue a commonly identified goal were rooted in the earliest international human rights standards. The Universal Declaration of Human Rights (UDHR) established the rights to freedom of association, assembly, speech, expression and information. When protected, these rights ensure that individuals can engage in public life and form civic associations. They were subsequently given legal bite in the UN International Covenant on Civil and Political Rights (ICCPR) and all the major regional human rights treaties.
35. The first specific commitments to protecting human rights defenders and defenders' organisations were set out in the UN Declaration on Human Rights Defenders and subsequent General Assembly Resolutions.⁴ These commitments have been reaffirmed in Resolutions of the UN Human Rights Council and through the appointment of a Special Representative of the UN Secretary-General (SRSG) and subsequently a Special Rapporteur (SR) on the situation of Human Rights Defenders.⁵

START BOX

A mandate on the situation of human rights defenders was created in August 2000.⁶ Ms Hina Jilani was then appointed Special Representative of the UN Secretary General (SRSG) on this question. In March 2008, the Human Rights Council renewed the mandate and appointed Mrs Margaret Sekaggya as Special Rapporteur on the situation of human rights defenders; she succeeded Ms Jilani later the same year. The Special Rapporteur has a mandate to:

- seek, receive, examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;
- promote the effective and comprehensive implementation of the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms through cooperation and constructive dialogue and engagement with Governments, relevant stakeholders and other interested actors;
- establish cooperation and conduct dialogue with governments and other interested actors on the promotion and effective implementation of the UN Declaration of Human Rights Defenders;
- recommend concrete and effective strategies better to protect human rights defenders, through the adoption of a universal approach, and follow up on these recommendations.

www2.ohchr.org/english/issues/defenders/index.htm

END BOX

36. Regional organisations have taken various steps to protect human rights defenders and defender's organisations. The Organization of American States (OAS) has passed a number of resolutions

3 This chapter is based on E. Griffin, "The Rights of Human Rights NGOs", ICHRP (August 2007), on file with the International Council.

4 *GA Resolutions on Human Rights Defenders*: A/RES/54/170 (2000); A/RES/2001/64(2001); A/RES/56/163(2002); A/RES/57/209(2003); A/RES/58/178(2004); A/RES/59/192(2005); A/RES/60/161(2006); A/RES/62/152 (2007).

5 See UN Human Rights Council, *Resolutions on Human Rights Defenders*: resolution 7/8 (2008), resolution 5/1 (2007); UN Commission on Human Rights, *Resolutions on Human Rights Defenders*: E/CN.4/RES/2005/67 (2005); E/CN.4/RES/2004/68 (2004); E/CN.4/RES/2003/64 (2003); E/CN.4/RES/2002/70 (2002); E/CN.4/RES/2001/64 (2001).

6 In accordance with the provisions of *Commission on Human Rights Resolution E/CN.4/RES/2000/61* (2000).

calling for implementation of the UN Declaration,⁷ and the Inter-American Commission on Human Rights established the Human Rights Defenders Unit in 2001 to monitor the situation of defenders in the Americas.⁸ The Commission on Human and Peoples' Rights (ACHPR) created the post of Special Rapporteur on Human Rights Defenders in Africa in 2004.⁹ Within Europe, several documents of the Organization for Security and Co-operation in Europe (OSCE) underline the importance of protecting human rights defenders.¹⁰ The European Union (EU) has promulgated Guidelines on Human Rights Defenders. The Council of Europe (CoE) has approved Fundamental Principles on the Status of NGOs and has adopted a Declaration on improving their protection defenders and promoting their activities,¹¹ together with a set of Fundamental Principles on the Status of NGOs.¹² The OSCE and EU documents reiterate key protections found in the UN Declaration.

37. The UN SRSG on Human Rights Defenders has highlighted the importance of ensuring and maintaining a “contextual space” within which human rights defenders are able to carry out their activities. This space exists when a government protects freedom of association in conjunction with other important rights such as peaceful assembly, expression, speech and the right to receive and impart information.¹³
38. The rights of freedom of association, assembly, expression, speech and information have achieved broad recognition in international law and are closely linked. They are not privileges – they are legal rights that governments must grant to every person. There is a strong presumption against governmental interference with these rights. The only permissible restrictions upon these rights are those that are:
- “prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”.¹⁴
39. International human rights law protects the rights of individuals to form human rights NGOs and to carry out a wide range of activities to protect and defend human rights and it narrows the scope for governmental interference in the affairs of all NGOs.

7 Organization of American States, Resolutions on Human Rights Defenders: AG/RES.2067(XXXV-O/05) (2005); AG/RES.2036 (XXXIV-O/04) (2004); AG/RES.1920 (XXXIII-O/03) (2003); AG/RES.1842 (XXXII-O/02) (2002); AG/RES.1818(XXI-O/01) (2001); AG/RES.1711(XXX-O/00) (2000); AG/RES.1671(XXIX-O/99)(1999).

8 Established by the Inter-American Commission on Human Rights taking into account OAS Resolution 1818 (AG/RES.1818 (XXI-O/01) (2001)).

9 The mandate of the Special Rapporteur on Human Rights Defenders in Africa was established by a Resolution of the ACHPR on the Protection of Human Rights Defenders in Africa passed at its 35th ordinary session (21 May – 4 June 2004).

10 OSCE, Compilation of OSCE Commitments on Human Rights Defenders (2006).

¹¹ <https://wcd.coe.int/ViewDoc.jsp?id=1245887&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

12 *EU Guidelines on Human Rights Defenders* (2004); CoE, *Fundamental Principles on the Status of Non-Governmental Organizations in Europe* (2002); CoE, *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities* (2008).

13 *Report of the SRSG on Human Rights Defenders*, UN.Doc.A/61/312 (2006): paras. 92–96.

14 Article 22(2), *ICCPR* (freedom of association). The restrictions on freedom of association in regional treaties are almost identical to Article 22(2) of the *ICCPR* – see: Article 11, *African Charter*; Article 16(2), *American Convention*; Article 28, *Arab Charter*. Permissible restrictions of freedom of speech and expression are almost identical and are set out in Article 19, *ICCPR*; Article 9, *African Charter*; Article 13, *American Convention*; Article 32, *Arab Charter*. Freedom of information – Article 9, *African Charter*; Article 13, *American Convention*; Article 10, *European Convention*; Article 32, *Arab Charter*. Freedom of assembly – Article 21, *ICCPR*; Article 11, *African Charter*; Article 15, *American Convention*; Article 11, *European Convention*; Article 28, *Arab Charter*.

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The UN Declaration on Human Rights Defenders states that the only permissible limitations on rights are those that are in accordance with other applicable international obligations and which are “solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of a democratic society” (Article 17).

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Government regulation of NGOs

40. International human rights law does not place an outright prohibition on governmental regulation of NGOs. Governments may take steps to satisfy themselves that the aims and activities of organisations do not, for example, genuinely threaten public safety or national security, and may ensure that members of NGOs do not promote hate speech or racism, engage in criminal activity, such as fraud or deception, or use NGOs for personal financial gain. Governmental regulation must not, however, be carried out in a manner that is incompatible with freedom of association, assembly, speech and other fundamental rights, and the circumstances under which governments may limit these rights are narrow.
41. Regulation must therefore carefully balance the fundamental rights of non-governmental organisations with the need to protect the public. Of course governments can and should take steps to ensure that NGOs are not engaging in illegal or irresponsible behaviour; but, when checking for irresponsible or illegal behaviour, governments must never erode fundamental rights. For example, it may well be legitimate for governments to ask to review the accounts, organisational structure, founding documents, records and activities of human rights organisations. However, this audit power should not be used to inhibit the freedom of association of individuals connected to the organisation nor should it be used to harass the organisation or undermine its ability to operate.¹⁵
42. In fact, governments frequently put restrictive administrative and legislative measures in place in order to disable legitimate NGO activities, but argue that the measures in question are necessary to protect the public from illegal or illegitimate NGO behaviour.

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International human rights standards do not contain lists of specific regulatory measures that are and are not permissible. However, a number of resources exist to assist governments, NGO regulatory bodies and NGOs to assess whether measures, such as NGO laws on registration and funding, are in line with human rights standards. See for example: International Centre for Non-Profit, *Checklist for Civil Society Organisation Laws*: www.icnl.org/knowledge/pubs/NPOChecklist.pdf; The Open Society Institute, *Guidelines for Laws Affecting Civic Society Organisations* www.soros.org/resources/articles_publications/publications/lawguide_20040215; see also the work of the NGO Regulation Network, an NGO that has created a resource web site that aims to share good ideas for NGO regulation and which contains many useful resources: www.ngoregnet.org

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43. Where restrictions are appropriate (for example, to protect society from fascist organisations or to protect against criminal activities) they must be:
 - Necessary;
 - clearly articulated;

¹⁵ See, Checklist for Civil Society Organisation Laws, International Centre for Non-Profit Law. Available at www.icnl.org

- prescribed by laws that are formulated with sufficient precision to enable the individual to regulate his conduct and foresee the consequences of certain action;
- justified in unambiguous terms;
- proportionate to the aims they seek to achieve;
- applied in a non-discriminatory manner;
- accompanied by appropriate procedural guarantees that ensure due process and judicial review.¹⁶

START BOX

Responsibility in Action

In response to allegations of misconduct by NGOs in Uganda, a group came together to draft and endorse a generic code of conduct. The code responds to accusations that NGOs are engaged in activities that threaten national security, and aims to increase the legitimacy of NGOs. To this end, the code states: "All activities that show evidence of subversion and threaten Uganda's peace and national security shall be considered contrary to the NGO principle of support to the marginalised since such act shall but exasperate further marginalization. NGOs shall be arbitrators for peace and reconciliation." For more information see the web site of the Ugandan National NGO Forum: www.ngoforum.or.ug.

END BOX

44. Exceptionally, in states of emergency that "threaten the life of the nation", governments may derogate from the rights of freedom of association, assembly, speech, expression, and the right to receive and impart information. A derogation is not permissible if it violates any other international legal obligations of the state (e.g. those imposed by international humanitarian law) or if it is applied in a discriminatory manner. Any derogation is only lawful where a state of emergency is officially declared, the government has followed the formal derogation procedure set out in the relevant treaty,¹⁷ and has demonstrated that a specific and temporary derogation is "strictly required by the exigencies of the situation". In cases, where a derogation is made the state must provide a clear and unambiguous justification for the specific derogation and must regularly review the need for it.¹⁸ These important safeguards mean that governments cannot suspend important rights at will for indefinite periods.

THE RIGHT TO FORM HUMAN RIGHTS ORGANISATIONS

45. The UN Declaration recognises the important role that NGOs play in "safeguarding democracy and promoting human rights" (Article 18) and states that everyone has a right to "form, join and participate in non-governmental organizations, associations and groups." (Article 5 (b)). Freedom of association extends to all, regardless of whether the government dislikes its purpose or outcome.

START BOX

Freedom of association extends to human rights organisations "whose work may offend the Government, including organisations that criticize policies, publicise human rights violations perpetrated by the authorities, or question the

¹⁶ These criteria have been set out by various international and regional human rights bodies that have examined restrictions on fundamental freedoms. See, for example: *Church of Scientology Moscow v. Russia*, ECHR, App. No.18147/02 (5 April 2007): para. 87; *Mukong v. Cameroon*, HRC Comm. No. 458/1991 (views of 21 July 1994); *Kivenmaa v. Finland*, HRC Comm. No. 412/1990 (views of 31 March 1994).

¹⁷ Derogation procedures are set out in Article 4, *ICCPR*, Article 15, *European Convention* and Article 27, *American Convention*.

¹⁸ Human Rights Committee *General Comment No. 29 on States of Emergency*, CCPR/C/21/Rev.1/Add.11 (31 August 2001).

existing legal and constitutional framework”.

Report of the SRSG on Human Rights Defenders, UN Doc.A.59/401 (2004), para. 49.

END BOX

46. The right to form NGOs, as the chart on page 17 indicates, is derived from the right to freedom of association. This is a widely accepted legal right that is protected by all the major international and regional human rights treaties.¹⁹
47. Freedom of association recognises that human beings are entitled to unite together to pursue a common purpose (e.g. for political, religious, ideological, professional, cultural, or social reasons or to defend human rights).²⁰ At its core lies a simple proposition: the attainment of individual goals, through the exercise of individual rights, is generally impossible without the aid and cooperation of others. This premise underpins NGO action to defend human rights.
48. The European Court of Human Rights has interpreted restrictions on freedom of association cautiously and narrowed the scope of governments to invoke restriction clauses.²¹ The Court has stated that it is the essence of democracy to allow diverse views to be debated, even those that call into question the way in which the state is currently organised, provided that such debates do not harm democracy itself.²² The Court underlined that:

“the State's power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a “pressing social need”; thus, the notion “necessary” does not have the flexibility of such expressions as “useful” or “desirable”.”²³
49. The implications for human rights organisations are, in theory, clear. It is not lawful for governments to impose restrictions on genuine human rights NGOs on the grounds that it is “useful” or “desirable” for them to do so because they do not like what NGOs say or do.

Freedom of Association and “NGO laws”

50. Various regimes govern NGO registration. In some countries registration occurs automatically when an NGO is formed. In others, NGOs must register in order to gain the status of a legal entity. In most domestic systems, the granting of status as a legal entity, often associated with registration, brings significant benefits: NGOs are able to sign contracts, rent office space, open a bank account, receive funds, employ staff, and file a law suit. The granting of legal status is, therefore, often an essential prerequisite that enables an NGO to function.

19 See also, Article 20, *UDHR* and Article 4, *European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations* ETS 124, adopted 24 April 1986.

20 This dictum has been restated by the European Court on numerous occasions when it has been asked to examine freedom of association. See, for example: *Sidiropoulos and Others v. Greece*, ECHR, App. No. 26695/95 (10 July 1998): para. 40.

21 See, for example: *Sidiropoulos and Others v. Greece*, (10 July 1998): para. 40.

22 See *Socialist Party v. Turkey*, ECHR, App. No.21237/93 (25 May 1998): para. 43; and *Party of Freedom and Democracy (Özdep) v. Turkey*, ECHR, App.No.23885/94 (8 December 1999): para. 44.

23 *Gorzelik and Others v. Poland*, ECHR, App. No.44158/98 (17 February 2004): paras. 94–95.

51. Registration should only be refused where there is genuine evidence that a refusal is “necessary” for a lawful reason (i.e. when it is necessary in a democratic society to protect one of the aims set out in Article 22 (2) of the ICCPR, such as to ensure public safety).²⁴ So, for example, it may be lawful to refuse registration to an NGO that advocates violence against a particular racial group because this activity would indeed threaten public safety. In the absence of such a justification, refusal by the domestic authorities to grant legal status to an NGO violates the right to freedom of association.²⁵ In cases where registration is refused there should be a right to appeal that decision before an independent body.

START BOX

“In a great number of countries, national laws regulating the functioning of NGOs impose severe restrictions on their registration, funding, management and operation. Far from being used to give legal basis to NGOs and guarantee their rights, domestic legislation has been enforced to keep them under strict control and has been arbitrarily used to legitimize taking legal action against human rights NGOs for activities protected and promoted by the Declaration. In other countries, where legislation on freedom of association appears to be in accordance with international law, registration requirements have been used arbitrarily or restrictively to void legal protection for those human rights NGOs that are most critical against the Government.”

SRSG, *Promotion and Protection of Human Rights Defenders*, United Nations Economic and Social Council, 23 January 2006, E/CN.4/2006/95 (2006): para. 51.

END BOX

52. It is common for governments to use registration procedures to disrupt the work of human rights organisations. For example, in a recent case before the European Court of Human Rights, one NGO that submitted its initial application for registration to the authorities in April 2001 complained that it had to re-submit its registration application on five separate occasions and take legal proceedings against the authorities before it was finally registered in February 2005.²⁶ The Court found that freedom of association had been violated even though the NGO never received a final refusal of registration. The Court viewed the arbitrary delays on the part of the authorities as *de facto* denials of registration and emphasised that, even if it was theoretically possible for the NGO to function without being registered, in reality the organisation was disabled because, without registration, it could receive no grants or donations.²⁷ In its examination of the restrictions on freedom of association in this case, the Court found that the requirement that restrictions be “prescribed by law” not only refers to the existence of a domestic law but to the quality of that law. In this case, the domestic NGO law did not specify the number of times the authorities could return a registration request with “no action taken” and therefore allowed arbitrary prolongation of the registration procedure.²⁸

24 This area of international human rights law is one that requires further elaboration in order to provide more clarity on permissible exceptions.

25 In the case of *Sidiropoulos v. Greece*, the European Court found that the decision by the Greek government to refuse to register an association that had been established to promote the culture of the Macedonian minority living in Northern Greece did not constitute a justified limitation on freedom of association. *Sidiropoulos v. Greece* (10 July 1998): para. 47.

26 *Ramzanova and Others v. Azerbaijan*, ECHR, App. No.44363/02, (1 February 2007): paras. 5–28.

27 *Ibid.*, paras. 58–59.

28 *Ibid.*, para. 66. Every time the NGO had its registration application returned, the Ministry of Justice cited a different article of the Law on Non-Governmental Organizations as the basis for its decision to take “no action”.

53. Many governments have adopted laws that require international or domestic NGOs to re-register, sometimes under terms that are impossible to meet.²⁹ For example, laws may require that a domestic organisation has active participants in all regions of the country or that an international organisation is governed with the active participation of nationals. Justifications for such provisions vary. Governments may claim they seek to suppress money laundering or other crimes, even in the absence of criminal charges or prosecutions; or to regulate “political activities” under an expansive definition of “political” that includes legitimate, non-partisan advocacy, again in the absence of charges or prosecutions for violations of election or other laws.

START BOX

International and regional human rights laws and jurisprudence require that NGO registration processes should not:

- Be used as a means to deter or prevent individuals from forming human rights NGOs.
- Be so lengthy, burdensome, expensive and onerous (e.g. in terms of the amount of information sought or the type of disclosure required) that in effect they deny the right of freedom of association.
- Be subject to arbitrary delays.
- Be used by the authorities to request records or data to which it is not entitled (e.g. information that would infringe the privacy of founders, members, donors or beneficiaries, including victims of human rights violations).

NGO laws must:

- Be formulated with sufficient clarity to indicate the scope of any discretion in granting registration and the precise manner of its exercise. NGOs must be able to foresee the consequences of a given action and laws must afford a measure of legal protection against arbitrary interference by authorities or unfettered power by the executive.
- Protect NGOs from the arbitrary prolongation of the registration process by specifying, for example, the number of times a registration application can be returned to an NGO with a request for further information.
- Clearly set out the consequences of failure by the government to take prompt action on a registration request (e.g. by providing for automatic registration when the government does not take timely action).

END BOX

54. A necessary corollary to the obligation to allow individuals to form and join organisations as they see fit is the duty of governments to refrain from arbitrary interference in the affairs of organisations. NGOs should, therefore, be allowed to be self-governing, draw up their own rules, set their own policies and priorities, determine for themselves which human rights issues they wish to work on, administer their own affairs and be free to create networks with other domestic and international organisations, without government interference.³⁰ Of course, in order to ensure responsible behaviour by NGOs, governments may require that organisations disclose information about their funding base, organisational composition and aims. However, this regulation must not be used as an excuse to undermine freedom of association and the presumption is against interference.

NGO funding and freedom of association

29 This problematic governmental tactic has been highlighted by the *SRS* on Human Rights Defenders on numerous occasions. See, for example: *Report of the SRS on Human Rights Defenders* UN Doc.A.59/401 (2004): paras. 51–62.

30 IACHR, *Report on the Situation of Human Rights Defenders in the Americas*: para. 70.

55. The non-profit nature of NGOs means that their ability to function depends on being able to secure donations. The UN Declaration on Human Rights Defenders recognises the importance of funding and sets out that “everyone has the right, individually and in association with others, to solicit, receive and utilize resources” for activities to promote and protect human rights (Article 13). The Council of Europe’s Fundamental Principles set out a similar but more explicit standard: “NGOs may solicit and receive funding – cash or in-kind donations – from another country, multi-lateral agencies or an institutional or individual donor, subject to generally applicable foreign exchange and customs laws.”³¹
56. Organisations should generally be permitted to carry out legitimate fundraising activities. For example, they should be able to meet and make applications to grant-making individuals or organisations, and conduct telephone, door-to-door, mail, television and other fundraising events. In some cases, it may be appropriate for governments to require prior notice of a particular fundraising event. However, governments are not permitted to screen or require approval of specific grants or sources of funding and great care must be taken to ensure that any regulation is necessary and that it is not so burdensome and bureaucratic that it renders the NGO incapable of raising funds and incapable of operating.
57. Particularly in developing countries and countries where there is little domestic support for civil society activities or human rights, NGOs may require foreign funding to survive. Legal restrictions on funding from abroad and, in particular the requirement of prior approval for funds from sources outside the country, are increasingly a source of concern.

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Prior authorisation for funding

“Given the limited resources available for human rights organizations at the local level, the legal requirement of prior authorization for international funding has seriously affected the ability of human rights defenders to carry out their activities. In some cases, they have seriously endangered the very existence of human rights organizations. The ability of human rights defenders to carry out their activities rests on the ability to receive funds and utilize them without undue restriction, in conformity with article 13 of the Declaration.”³²

SOURCE: Report, *SRSG on Human Rights Defenders*, UN Doc.A/59/401(2004): para. 77.

END BOX

58. Justifications for restrictions typically refer to the protection of national security and the need to co-ordinate national activities and guard against corruption and fraud and inappropriate foreign intervention in domestic affairs. While these justifications may identify legitimate goals, in each case this issue should be subject to the same review as other limitations on freedom of association. It must be shown that restrictions are “necessary” to achieve a legitimate goal and that they are proportionate. When official funding restrictions have the effect of rendering an organisation incapable of operating, they violate freedom of expression.

START BOX

“Foreign funders, like domestic funders, should be entitled to support any lawful civic organization activities. Requiring advance approval for every foreign grant, as is done by countries in some parts of the world, is a wasteful, dilatory, and excessively bureaucratic approach to an illusory problem. Problems with respect to foreign grants can arise because of banking or foreign exchange rules. In a country that does not have a fully convertible currency, states may extract a significant share of the value of a foreign grant by requiring that it be exchanged for local currency at an unrealistic rate of exchange or that a substantial tax or fee be paid to a state bank for

31 Principle 50, CoE *Fundamental Principles on NGOs*. Principle 51 further sets out that NGOs should have access to banking facilities.

32 Report of the *SRSG on Human Rights Defenders*, UN Doc.A/59/401(2004): para. 77.

processing the transfer. Such confiscatory practices both discourage foreign funding and provide an incentive for surreptitious cash transfers. Foreign funders are increasingly interested in providing funding to civic organizations in the form of loans or guarantees or other types of financial instruments. These forms of support are particularly useful in the economic development context, where donors seek to support lending by civic organizations to micro-enterprises and small businesses.”

Open Society Institute, Guidelines for Laws Affecting Civic Organisations, 2004.

END BOX

THE RIGHT TO CARRY OUT ACTIVITIES TO PROTECT, PROMOTE AND DEFEND HUMAN RIGHTS

59. It is entirely lawful and legitimate for human rights organisations to engage in a wide range of activities that aim to protect, promote and defend human rights. Permissible activities are summarised in the chart below.

<ul style="list-style-type: none"> • Rights set out in UN Declaration on Human Rights Defenders 	<ul style="list-style-type: none"> • Rights set out in international human rights law treaties
<ul style="list-style-type: none"> • To form associations and NGOs: Article 5(b) • To conduct human rights work individually and in association with others: Article 2, Article 18 • To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad): Article 13 	<ul style="list-style-type: none"> • Freedom of Association: Article 22, ICCPR; Article 10, African Charter; Article 16, Inter-American Convention; Article 11, European Convention; Article 24, Arab Charter; Article 5(d)(ix), CERD³³
<ul style="list-style-type: none"> • To meet or assemble peacefully: Article 5(a), 12(1) • To unhindered access to and communication with NGOs and intergovernmental organizations: Article 5(c) 	<ul style="list-style-type: none"> • Freedom of Assembly: Article 21, ICCPR; Article 11, African Charter; Article 15, American Convention; Article 11, European Convention; Article 28, Arab Charter
<ul style="list-style-type: none"> • To seek, obtain, receive and hold information and resources relating to human rights: Article 6(a), Article 13 • To publish, impart or disseminate to others views, information and knowledge on human rights: Article 6(b) 	<ul style="list-style-type: none"> • Freedom of Information: Articles 9 and 32, African Charter; Article 13, American Convention; Article 10, European Convention; Article 32
<ul style="list-style-type: none"> • To develop and discuss new human rights ideas and principles and to advocate their acceptance: Article 6(c), Article 7 • To make complaints about official policies and acts relating to human rights and to have such complaints reviewed: Article 9(2) • To publish, impart or disseminate to others views, information and knowledge on human rights: Article 6(b) 	<ul style="list-style-type: none"> • Freedom of Expression and Speech: Article 19, ICCPR; Article 9, African Charter; Article 13, American Convention; Article 10, European Convention; Article 32, Arab Charter
<ul style="list-style-type: none"> • To seek the protection and realization of human rights at the national and international levels: Article 1 • To submit to governmental bodies and agencies and organisations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights: Article 8(2) • To make complaints about official policies and acts relating to human rights and to have such complaints reviewed: Article 8 	<ul style="list-style-type: none"> • Right to Participate in Affairs of the State: Article 21, UDHR; Article 25, ICCPR; Article 7, CEDAW; Article 13, African Charter; Article 23, American Convention; Article 24, Arab Charter
<ul style="list-style-type: none"> • To make complaints about official policies and acts relating to human rights and to have such complaints reviewed: Article 9(2) • To benefit from an effective remedy: Article 9(1) • To effective protection under national law in reacting against or 	<ul style="list-style-type: none"> • Right to an Effective Remedy: Article 2(3), ICCPR; Article 25, American Convention; Article 13, European Convention

33 A number of other international treaties protect the right of freedom of association of specific categories of individuals, such as: children (Article 15, UN CRC; Article 8, African Charter on the Rights and Welfare of Children); refugees (Article 15, Convention relating to the Status of Refugees); women (Article 7, Convention on the Elimination of all forms of Discrimination CEDAW); stateless persons (Article 15, Convention Relating to Stateless Persons, Article 4(h) Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women); and national minorities (Articles 3, 7 and 8 of the European Framework Convention for the Protection of National Minorities).

opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights: Article 9(3)	
<ul style="list-style-type: none"> To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights: Article 9(3)(c) To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations: Article 9(3)(b) To the lawful exercise of the occupation or profession of human rights defender: Article 11 	<ul style="list-style-type: none"> The right to a fair trial, Article 14, ICCPR; Article 5 ECHR; Article 8, American Convention; Articles 7 and 25; Article 13, Arab Charter UN Declaration on Human Rights Defenders
<ul style="list-style-type: none"> To be protected by the competent authorities against any violence, threats, retaliation, <i>de facto</i> or <i>de jure</i> adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of this right: Article 12(2) 	<ul style="list-style-type: none"> Right to life: Article 6, ICCPR; Article 4, African Charter; Article 2, ECHR; Article 4, American Convention. Freedom from torture, cruel, inhumane or degrading treatment: Article 5, UDHR; Article 7, ICCPR; Article 4, African Charter; Article 2, European Convention; Article 4, American Convention. Freedom of movement: Article 12, ICCPR; Article 12, African Charter; Article 22, American Convention; Articles 2 and 3, Fourth Protocol to the European Convention. Liberty and security of person: Article 9, ICCPR; Article 6, African Charter; Article 7, American Convention; Article 5, European Convention. Right to a fair trial: Article 14, ICCPR; Article 7, African Charter; Article 8, American Convention; Article 6, European Convention

Peaceful assembly

60. Human rights defenders and organisations have a right to peaceful assembly and are entitled to organise events such as public and private meetings, vigils, marches, seminars, conferences and demonstrations (Articles 12(1) and 5(a), UN Declaration on Human Rights Defenders).
61. Governments are entitled to place proportional restrictions on assembly only when it is genuinely necessary – for example, when a demonstration would undoubtedly present a serious and imminent danger to the safety of the public. Often, however, governments restrict freedom of assembly in the absence of genuine concerns about public security, public safety or order.³⁴

START BOX

Some of the tactics used by governments to prevent and disrupt peaceful assembly include; the imposition of travel restrictions upon human rights defenders; the promulgation of legislation banning or restricting assemblies; threats, arbitrary arrests, violence and even the assassination of human rights defenders, before, during and after assemblies.³⁵

SOURCE: A report of the SRSG on Human Rights Defenders focuses specifically on concerns related to exercise of freedom of assembly. See: *Report of the SRSG on Human Rights Defenders*, UN Doc.A/61/312 (2006).

END BOX

62. Organisations are particularly vulnerable to obstruction when they organise public demonstrations.³⁶ The Inter-American Commission on Human Rights has stated that social

³⁴ *Report of the SRSG on Human Rights Defenders*, UN Doc.A/61/312 (2006): para. 56.

³⁵ A report of the SRSG on Human Rights Defenders focuses specifically on concerns related to the exercise of freedom of assembly. See: *Report of the SRSG on Human Rights Defenders*, UN Doc.A/61/312 (2006).

³⁶ See: *Report of the SRSG on Human Rights Defenders*, UN.Doc.A/HRC/4/37, (2007), para. 29. This report examines the vulnerable position of human rights defenders working on economic, social and cultural rights.

participation through public demonstration is critical to the consolidation of democratic life in societies.³⁷ It underlined that when governments regulate freedom of assembly, they should not create a basis for prohibiting peaceful assemblies. On the contrary, regulations that require advance notice of demonstrations, for example, exist to permit the authorities to “take measures to facilitate the exercise of the right without significantly disturbing the normal activities of the rest of the community”.³⁸ This principle may apply even where there is a threat of violence. The SRSG on Human Rights Defenders has stated that she is “unable to accept that a peaceful assembly that is threatened with violence should itself be prohibited rather than be assured of protection in accordance with State responsibility”.³⁹

Accessing, holding and disseminating information and expressing human rights opinions

63. The UN Declaration on Human Rights Defenders contains a cluster of provisions that protect the right of human rights defenders to obtain information and use it to raise awareness, influence public opinion and speak out on human rights issues.
64. The Declaration sets out the right of access to information on human rights (Article 6(a)); to publish, impart and disseminate views and information on all human rights (article 6(b)); to study, discuss, form and hold opinions on the observance of human rights; to draw public attention to those matters (Article 6(c)) and to develop and discuss new human rights ideas and advocate their acceptance (Article 7). This cluster of rights flows from the rights to freedom of information and freedom of speech and expression.
65. The Inter-American Commission has examined limitations on the right to freedom of expression and pointed out that for a restriction to free expression to be “necessary” it is not enough to show that it is “useful”, “reasonable”, or “desirable”. The legality of restrictions on freedom of expression will depend on showing that they are required by a compelling governmental interest. Thus, any restriction must be proportionate and closely tailored to the accomplishment of the legitimate governmental objective that made it necessary.⁴⁰
66. The European Court of Human Rights has also interpreted the scope of restrictions on freedom of expression and underlined that freedom of expression is applicable not only to information and ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock and disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society.⁴¹
67. Despite the restricted scope for limitations, governments continue to regularly use repressive tactics to prevent NGOs from collecting and holding information and to prevent them from speaking out on human rights violations. For example, the African Commission on Human and

37 IACHR, *Report on the Situation of Human Rights Defenders in the Americas*: para. 60.

38 Ibid. para. 57.

39 *Report of the SRSG on Human Rights Defenders*, UN Doc.A/61/312 (2006): para. 56.

40 *Compulsory Membership in an Association Prescribed by Law for Journalists*, IACHR, Consultative Opinion OC-5/85 (13 November 1985). Series A No. 5: para. 46. Quoted in IACHR, *Report on the Situation of Human Rights Defenders in the Americas*: para. 55.

41 *Vgt Verein Gegen Tierfabriken v. Switzerland*, App. No. 24699/94, 66 (28 June 2001). The case involved the ability of an animal protection NGO (in reaction to meat industry commercials) to secure official permission to broadcast a television commercial urging consumption of less meat. For an elucidation of permissible restrictions on the right to freedom of expression, see also: HRC *General Comment 10 on Freedom of Expression* (29 June 1983).

Peoples' Rights examined a complaint from a defender who was subject to arbitrary arrest and detention for expressing views and disseminating information about the human rights record of his government. As a part of the harassment campaign against this defender and his NGO, the state security services carried out extra-judicial searches of its offices and seized computers and files containing information related to human rights. In this case, the African Commission underscored the duty of governments to ensure that human rights NGOs are able to "freely hold information on human rights and express their views without arbitrary interference from government or fear of harassment or persecution".⁴²

68. Another case before the African Commission involved the persecution of a human rights defender who expressed views on the human rights situation in his country. In this case the Commission stressed the fact that, where governments violate freedom of expression, it not only has the effect of silencing the individual concerned but also has "a seriously discouraging effect on others who might also contribute to promoting and protecting human rights".⁴³

The right to criticise government and present proposals to improve human rights

69. Presenting criticisms and proposals related to human rights to government and other entities is a key activity of many human rights NGOs. Human rights organisations are legally entitled to criticise governments and other entities and present suggestions for change based upon the rights of freedom of expression and to participate in the public affairs of the state.⁴⁴
70. The UN Declaration on Human Rights Defenders reaffirms the rights to participate in public affairs on a non-discriminatory basis and to submit criticisms and proposals for improvement to governmental bodies, agencies or organisations concerned with public affairs (Article 8 (2)).

The right to an effective remedy and NGO access to international bodies

71. The ability of NGOs to present information to governments on specific human rights violations is inextricably linked to the right to an effective remedy for human rights violations. The right to complain about violations and to have that complaint reviewed before an independent, impartial and competent judicial or other authority established by law, and the duty of the authorities to conduct prompt and impartial investigations into alleged violations, is a fundamental principle of international human rights law which is reaffirmed in the UN Declaration on Human Rights Defenders.
72. Where victims of human rights violations are not afforded an effective remedy at the domestic level, NGOs play an important role in presenting communications on their behalf to international and regional bodies such as the UN Human Rights Committee and the special procedures of the Human Rights Council. Article 9(2-4) of the UN Declaration, that protects the right of organisations to have access to international bodies, is therefore crucial to ensuring that there is international scrutiny of governmental compliance with international law and that the victims of human rights violations are able to receive a remedy. In order to protect the right to an

42 *Huri-Laws v. Nigeria* (2000) AHRLR 273 (ACHPR 2000: para. 47).

43 *Law Office of Ghazi Suleiman v. Sudan*: para. 50.

44 Article 7(c) of *CEDAW* also provides a specific right for women to "participate in non-governmental organizations and associations concerned with the public and political life of the country".

effective remedy, Article 9(3) the UN Declaration establishes a right to attend public hearings, proceedings and trials and to offer legal assistance.

73. Although the UN Declaration does not purport to grant an absolute right to human rights organisations and defenders to participate in international bodies, it provides an important safeguard against governments wishing to block their access to international bodies.⁴⁵ The American Convention on Human Rights and the European Convention recognise the competence of human rights organisations to submit complaints to the Inter-American Commission of Human Rights and European Court of Human Rights respectively.⁴⁶ Most international and regional inter-governmental organisations dealing with human rights issues have established mechanisms for civil society access through consultative or observer status.

WHAT CAN HUMAN RIGHTS ORGANISATIONS DO WHEN THEIR RIGHTS ARE RESTRICTED?

74. Though governments are not entitled to restrict rights solely because they consider it is useful or desirable to do so, there is nevertheless often a large gap between the theoretical protections set out in human rights law and government practice.
75. When governments act to intimidate, hobble, or disable human rights NGOs (see Diagram B), they usually do not state that this is their objective. They tend to argue that restrictions on NGOs are necessary and appropriate responses to prevent organisations from carrying out activities that are “extremist”, “threatening” or “morally depraved”. On these grounds, they claim that their actions are lawful and in accordance with restrictions permitted by international human rights law.

START BOX

“In many States, “reasonable” restrictions have been used to limit the freedom of association of defenders, to deny registration to human rights organizations or to justify their closure. In several countries, the law enables authorities to ban organizations that show signs of “extremism” in their activities, plans or statements. In others, activities that “threaten national unity”, “violate public or moral codes”, or are “political” are prohibited. In yet another State, associations can be disbanded for activities “endangering the integrity and security of the State, engaging in propaganda for war, or racial, national and religious hatred, or if they threaten the physical and psychological well-being of citizens”. Interpretations of whether an organization falls into one of these vague categories is left to the authorities, which have increasingly included any organization critical of the Government, paving the way for the criminalization of human rights activities.”

Human rights defenders, Note by the Secretary-General, UN Doc. A/59/401, 65 (1 October 2004).

END BOX

76. How can organisations challenge such restrictions? How can they demonstrate bad faith on the part of government? Where bad faith is self-evident, what can organisations do?
77. Organisations that work in countries blessed with an independent judiciary may be able to challenge restrictions in court or to seek a remedy before a national human rights commission (if one exists). Where a domestic remedy is not available, it may be possible to complain to one of the international or regional human rights bodies, such as the UN Human Rights Committee

45 The basis for the participation of NGOs in the UN system is found in Article 71 of the *UN Charter* and *ECOSOC Resolutions 1296* (1968) and *1996/31* (1996). NGOs play a key role in the UN system, in particular through their extensive participation in the UN charter and treaty-based human rights machinery.

46 Article 44, *American Convention*; Article 34, *European Convention*.

or the Inter-American Commission of Human Rights (provided that the government has recognised the jurisdiction of such a body to examine individual complaints).

We have highlighted several cases involving human rights defenders that international and regional human rights organisations have heard. We have also highlighted that the mandate of the UN Special Rapporteur on Human Rights Defenders and the Special Rapporteur of the African Commission allow them to intervene with the authorities on behalf of human rights defenders and NGOs.⁴⁷

78. Action at international level is a lengthy process, however, and at the end of the day there is no guarantee that governments will respond positively to the interventions made by international experts or decisions of international or regional human rights bodies. As noted above, governments at times also often try to prevent national NGO involvement with inter-governmental bodies and deny them observer or consultative status with these bodies. Further, numerous HR defenders and HR NGOs have been severely harassed and intimidated at home for having used international channels to raise awareness or complain about HR violations at home.⁴⁸ For many organisations, the only realistic option is to try to draw international attention to their situation through the media, advocacy networks and other NGOs, in the hope that this will create outside pressure on the authorities to lift restrictions and lessen their attacks. For example, NGOs like Frontline work to raise the alarm and protect individual defenders and defender's organisations that are under attack.

⁴⁷ For practical information about how to submit complaints to international and regional human rights bodies, see for example: *Using International Human Rights Mechanisms and Procedures: An Online Manual for Human Rights Defenders*, Front Line, www.frontlinedefenders.org/manual and *Claiming Rights, Claiming Justice: A Guidebook on Women's Human Rights Defenders*, 2007 Asia Pacific Forum on Women, Law and Development, <http://defendingwomen-defendingrights.org/pdf2007/book3NeoWithCover.pdf>

⁴⁸ From 1990 to 2005, the Commission on Human Rights adopted resolutions on "Cooperation with representatives of United Nations Human Rights bodies". For example, CHR Resolution 2005/9 "urged all Governments to refrain from all acts of intimidation or reprisals" against human rights defenders who submitted information to its enquiry mechanisms (Special Procedures).

III. PRINCIPLES OF RESPONSIBILITY

THE DEBATE ON NGO RESPONSIBILITIES

79. NGO responsibilities began to be debated in the 1990s at a time when NGOs were exerting greater influence on public policy.⁴⁹ Critics asserted that NGOs were politically unaccountable, mismanaged, unrepresentative, and in some cases misused funds.⁵⁰
80. Humanitarian agencies were the first NGO “cluster” to examine their responsibilities closely, in the wake of perceived failures within the sector, in particular during the Rwandan genocide (1994).⁵¹ This work led notably to the adoption of the Humanitarian Charter and Minimum Standards in Disaster Response in 2000, a voluntary set of universal minimum standards governing core areas of humanitarian work produced by the Sphere Project.⁵² The Humanitarian Accountability Project (HAP) was subsequently established to act as a focal point for information on good accountability practice. In addition, many humanitarian NGOs devised accountability principles for their own use.⁵³ This pioneering work provided a catalyst for accountability initiatives in other NGO sectors, including conflict resolution and development.⁵⁴ In parallel, through the UN coordination mechanism for humanitarian response, discussions took place to strengthen the accountability of inter-governmental organisations.⁵⁵
81. Human rights NGOs have generally been behind the curve in this area, though some have involved themselves in certain discussions and initiatives. Some human rights NGOs have signed international or country-based codes of conduct – for example in Ethiopia, Uganda, Cambodia, South Africa and Bangladesh.⁵⁶ Most of these codes do not address issues specific to human rights organisations but are intended for any NGO. Other organisations have established country level mechanisms of accountability, for example in India. In the rest of the report we provide some examples of responsibility initiatives taken by human rights NGOs.
82. For human rights organisations, discussion of this subject has been sensitive for two reasons. Firstly, it is more complicated in some respects to pinpoint the responsibilities of human rights

49 L.Jordan & P.van Tuijl (eds.), *NGO Accountability: Politics, Principles and Innovations* (London:Earthscan 2006):4.

50 See, for example, Editorial, *New York Times*, 21 July 2003; Angry and Effective, *Economist*, 23 September 2000; J. Garten, “Globalization without Tears – A New Social Compact for CEOs,” *Harvard Business School Press* (2002); M. Edwards, “Make the Protesters Accountable”, *Financial Times* (19 June 2000).

51 A. Callamard, “NGO Accountability and the Humanitarian Accountability Partnership: Towards a Transformative Agenda”, in Lisa Jordan and Peter van Tuijl, (eds.) (2006): 183–194.

52 Sphere Humanitarian Charter and Minimum Standards in Disaster Response: at www.sphereproject.org.

53 Humanitarian Accountability Project, www.hapgeneva.org.

54 For a survey of the evolution of the debate on non-governmental accountability see: L. Jordan and P. van Tuijl (2006): 9–13 and 22–30; also: L. Conradi, “Accounting for Success? Improving Performance Evaluation and Accountability of Non-governmental Organizations engaged in Conflict Resolution”, *International Studies Association*, working paper (1998), available at: www.ciaonet.org/conf/co101/co101.html.

55 See Inter-Agency Standing Committee (IASC) Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises, www.unicef.org/emerg/files/IASCTFReport.pdf

56 Code of Conduct for NGOs in Bangladesh Code of Ethics, (initially signed by 13 members), www.asianphilanthropy.org/pdfs/conference/bangladesh1.pdf; Cambodia Code of Ethics for Social Development NGOs (signed by 150 NGOs and staff): at www.ngoforum.org.kh/Development/Docs/ngo_2002/38.htm; Ethiopia (signed by 165 local and international NGOs): at www.gdrc.org/ngo_codesofconduct/africa-code.html; Uganda National NGO Forum: at www.ngoforum.or.ug/conduct/index.htm; South Africa Code of Ethics, www.sangoco.org.za/site/index.php?option=com_content&task=view&id=8&Itemid=30.

organisations that advocate or campaign than it is to identify the responsibilities of organisations that provide services. Second, the discussion is difficult because human rights organisations are exposed to repression and run specific risks because of their work, to a greater extent than most other NGOs.

WHAT IS RESPONSIBILITY?

83. Much has been said about NGO “accountability”. In this report, we have preferred the term “responsibility”.⁵⁷ The concept of accountability is problematic for NGOs for two reasons. Firstly, an equivalent does not exist in many languages (including French and Spanish). Accountability is usually translated as “explaining one’s actions”, “presenting accounts to someone” or simply as “responsibility”. Secondly, even in English the concept raises problems because it implies a one-to-one contractual or representational relationship with another person or body (of the form: “I hire you so you are accountable to me” or “I elect you so you are accountable to me”). NGOs do not pretend to be “accountable” to the public in the direct way that governments are (or should be) through electoral processes, or as businesses are to their shareholders. Human rights NGOs are not “hired” by the people they protect. Thus, the concept of “accountability” does not reflect very well the experience of NGOs, which have more dispersed duties.⁵⁸
84. This does not mean that NGOs do not have legal, moral or ethical *responsibilities* towards others, but that they are accountable *differently* than other entities such as governments and companies.⁵⁹
85. Each NGO has legal, contractual, organisational, moral and ethical responsibilities which are determined by reference to the character of the organisation (its size, geographical location, financial base, organisational and management structure) and its purpose (mission and activities). In this chapter we set out the principles that underlie the responsibilities of human rights NGOs.

START BOX

What is responsibility?

Responsibility is defined as:

- having an obligation to do something, or having control over or care for someone;
- being morally accountable for one’s behaviour;
- being capable of being trusted;
- having to report and be answerable.

Source: Compact Oxford English Dictionary (on line version) www.askoxford.com.

END BOX

57 From this point we use the term accountability when quoting others who use the term.

58 The Council thanks Lisa Jordan of the Ford Foundation for her insight into the difference between accountability and responsibility. Telephone interview, 22 October 2007.

59 P. Wapner. “Defending Accountability in NGOs” *Chicago Journal of International Law* 3, 1 (Spring 2002): 200.

RESPONSIBILITY FOR WHAT?

START BOX

What are human rights organisations responsible for?

- **Mission-related responsibilities** – they have a responsibility to stay true to their human rights mission.
- **Performance-related responsibilities** – they have responsibilities regarding how they work – for their financial and resource management, achievements and managerial practices.

END BOX

Mission-related responsibilities⁶⁰

86. Mission-related responsibilities flow from the human rights mission of an organisation and in turn from international human rights standards. Mission-related responsibilities derive from the core principles that guide human rights work and which impose a range of moral and ethical duties on human rights NGOs. Mission-related responsibilities involve adherence to human rights principles.
87. Certain principles underpin human rights: they include respect for human dignity, equality, non-discrimination, and universality. In general terms, they require NGOs to act in a principled manner, informed first and foremost by the interests of those that they seek to help and protect. The core principles (explored more fully in chapter IV) help NGOs to define what their responsibilities are, and should be reflected in what organisations say, how they represent others, what they do, how they organise themselves, and the processes they follow.

Human rights NGOs and International human rights standards

88. NGOs are not legally bound by international law in the same way as states. NGOs do not have full international legal personality and unlike states they cannot (in most cases) be held liable for breaches of international law. Furthermore, human rights NGOs, unlike some other non-state actors, do not carry out governmental functions or exercise power or control over individuals.⁶¹ (NGOs are nonetheless bound by domestic laws, of course.)

International human rights standards nevertheless contain general public duties that “everyone” has, including human rights defenders and organisations.⁶² Article 29 of the Universal Declaration of Human Rights, for example, states that: “[e]veryone has duties to the community in which alone the free and full development of his personality is possible”. The specific duties of human rights defenders and defenders’ organisations are set out in the UN Declaration on Human Rights Defenders which sets out that “everyone has duties towards and within the community” and further stresses that:

60 What we call mission-related responsibilities roughly equate to responsibilities that have been called “political” (L. Jordan, “Political Responsibility in Transnational NGO Advocacy” *World Development*, Vol. 28 no. 12 (2000): 251–265), “strategic” (S. Cavill and M. Sohail “Increasing Strategic Accountability; A Framework for International NGOs” *Development in Practice*, Vol.17, No.2 (2007): 238), or “moral” (M. Kaldor (2003)).

61 M.T. Kamminga “The Evolving Status of NGOs under International Law: A Threat to the Inter-State System?” in P. Alston, *Non-State Actors and Human Rights*: 107.

62 For further analysis of individual duties under human rights law see: International Council on Human Rights Policy “Taking Duties Seriously: Individual Duties in International Human Rights Law, A Commentary” (Geneva, 1999).

“individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.”⁶³

89. In addition, as “guardians” of human rights standards, human rights organisations call on those in authority to protect, promote and respect human rights and demand that governments and other authorities should be accountable, responsible and transparent. Even though NGOs are not formally bound by law, it is clearly reasonable to expect them to honour the same principles themselves.
90. Mission-related responsibilities are not about demonstrating quantifiable “outputs”, nor are they indicators of performance. They reveal how organisations should behave – should organise and act – if they pursue a human rights mission. They imply participation, consultation and fair representation. NGOs might expect, for example, to embrace not only certain goals in a campaign but also to conduct campaigns in a certain way, respectful of democratic principles and the people who are involved.⁶⁴
91. Mission-related responsibilities remain relevant to organisations working in repressive political environments too, when normal standards of accountability and transparency are likely to be inapplicable or inappropriate. Though they are not negotiable, they can be respected in different ways, and do not necessarily require public demonstration. Rather, adherence involves self-examination and constant reference to principle. For example, an organisation working in a repressive environment may operate in clandestinity, and may face difficult dilemmas about who it helps and what risks it asks its members to take. Whatever compromises it is forced to make, it should nevertheless act in ways that are self-aware, cognisant of its commitment to fundamental principles of human rights.

Performance-related responsibilities⁶⁵

92. Performance-related responsibilities are about the practical workings of an organisation. They include the responsibility to ensure that finances and resources are managed properly, that accounts are kept, that governance is sound, that safeguards prevent corruption and illegal behaviour, that staff and volunteers are treated fairly and professionally, and that the organisation is effective. These responsibilities can usually be measured and demonstrated by mechanisms for reporting and accounting, independent assessments and audits.

⁶³ Article 18, UN Declaration on Human Rights Defenders. Article 11 of the UN Declaration also states that “everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.”

⁶⁴ Referring to “Political Responsibility”, L. Jordon (2003).

⁶⁵ What we call performance-related responsibility has also been referred to as “practical” accountability (S. Cavill and M. Sohail (2007): 234) and “procedural” accountability” (M. Kaldor (2003)).

93. Demonstrating fulfilment of performance-related responsibilities can sometimes be problematic for human rights NGOs:
- Many forms of work (such as campaigning and fact-finding) may not have quantifiable results. It may also be inappropriate to seek “results” because the process used or the goal pursued may be more important than any tangible result.
 - When a result can be shown, it may be difficult to attribute a cause to the result or assess the contributions that different actors have made to achieving it.⁶⁶
 - Full transparency may be impossible for organisations working in difficult political environments because disclosure of information may put people in danger. To illustrate, an NGO in Mexico provided donors with a list of workers that it had trained in workers’ rights. The list became publicly available and the companies concerned fired all the workers that had been involved in the workshop. By providing the donor with this information, the NGO was demonstrating that it had fulfilled its performance-related responsibilities, but the effect was “mission failure” for the NGO.⁶⁷
94. It is important to say that an organisation should not use such justifications to avoid making the effort to measure its performance and effectiveness or the impact of its activities.

START BOX

Performance-related responsibilities and the importance of context

Principles of organisational responsibility and institutional governance presume a context in which law broadly prevails, and in which criminality and corruption are subject to relatively effective sanctions; they presume the presence of government and judicial recourse, and that both function relatively effectively. What happens to the responsibilities of human rights organisations when this is not the case?

Much human rights work occurs in places that are not law-abiding – where criminality and corruption are systemic or frequent, and where those who have power are largely immune from prosecution or sanction when they commit abuses. In such a space, human rights organisations play an absolutely vital role, one that is at the centre of their vocation. Human rights advocates speak out and protest for those who are victims of injustice, often risking prosecution themselves. They help and protect people who are in danger, often materially by giving them shelter or financial assistance, or by helping them to seek asylum abroad. They investigate incidents, collect information about abuses, and report this information (at home and abroad). In doing these things (and certainly when they collect evidence against powerful individuals who have committed crimes), advocates frequently put themselves at risk. When they do, they are often unprotected by local law or by the local judiciary; the law itself may violate rights, and may itself be the subject of human rights criticism and advocacy.

It is plainly both unreasonable and impractical for organisations that work in these conditions to respect “normal” standards of transparency and public accountability. For example, it may well be inappropriate or impossible for them to report on their activities or disclose financial information, and thereby demonstrate fulfilment of organisational responsibilities. To do so would be suicidal and irresponsible because it would trigger the closure or repression of the organisation, and the ending of its work to protect human rights. Individuals at risk would be less protected from abuse, abuses would be less often recorded, impunity would increase.

Discussions of mission-related responsibilities must therefore take account of the context in which organisations operate. When we consider principles of responsibility for human rights organisations, it is vital to avoid adopting a standardised description of responsible institutional behaviour. A simplistic model will not be able to take account of the strikingly different environments in which organisations operate. Generic guidelines of conduct are inappropriate for this reason and in some cases can put human rights organisations and their members and supporters at risk.

66 S. Cavill and M. Sohail (2007): 238.

67 Event notes, “Making Accountability Count: Citizens, NGOs and the State” (21 March 2007).

The context within which organisations operate conditions their responsibilities and rights; but it does not relieve organisations of their duty to ask themselves what their rights and responsibilities are. Nor does it absolve them of their responsibility to stay true to human rights principles.

END BOX

95. In many circumstances, of course, it is both possible and appropriate to seek evidence that NGOs are fulfilling performance-related responsibilities. Many NGOs work in environments where their rights are respected, and they can and should be expected to account for their performance. They should demonstrate that they are spending funds responsibly and practicing good governance. Indeed, many organisations do this in environments that are less than enabling. When human rights NGOs do not demonstrate that they are fulfilling performance-related responsibilities, when they could do so, they put at risk their legitimacy and their reputation – and sometimes that of the entire sector.

START BOX

Responsibility in action – People's Watch and the Committee of Concerned Citizens (CCC)

The Indian NGO People's Watch demonstrates responsible behaviour through its Committee of Concerned Citizens. The CCC is composed of prominent members of society that have no connection with the NGO, such as parliamentarians, lawyers and businessmen. Once a year People's Watch opens its accounts to the CCC which can review and question all aspects of the NGO's finances and programme. From 2008 the books are also opened for two hours every month to allow CCC members to inspect them. For more information see www.pwtn.org.

END BOX

96. Of course, there is some overlap between mission and performance-related responsibilities, which we examine more fully in chapters IV and V. The distinction nevertheless remains a useful one for two reasons. First, some discussions of NGO accountability have focused too narrowly on performance-related responsibilities. This work has over-emphasised reporting, accounting, and demonstration of “outputs” and has tended to foster a “tick-box” mentality. We have already seen that it is inappropriate to seek “outputs” for many types of human rights work and that it is better to assess whether an organisation has acted responsibly by examining the extent to which its activities and processes have been designed and implemented in accordance with its human rights mission. A narrow focus on performance and outputs may ignore relations of power, and may privilege the interests of more powerful actors (such as donors) over less powerful ones (such as survivors of violations). Second, we have underlined the importance of understanding the specific context within which organisations work. In environments where rights are curtailed, human rights NGOs may find it impossible to demonstrate that they are fulfilling performance-related responsibilities – even though they may be carrying out their mandate very effectively and with integrity. The Box below summarises the mission and performance-related responsibilities that we examine in chapters IV and V.

START BOX

Mission related

Core principles for human rights NGOs

Respect for human rights, in particular:
Respect for human dignity
Equality and non-discrimination
Universality

END BOX

Performance related

Values derived from core principles

Good governance
Effectiveness
Independence
Truthfulness and accuracy

RESPONSIBILITY TO WHOM?

97. NGOs have various types of responsibility to people and institutions that have a direct or legitimate interest in the work they do (in more academic terms, their constituencies or “stakeholders”). An interested constituency is any group or body that can affect or be affected by an organisation and its work. Every NGO has constituencies (internal or external), in relation to whom it has responsibilities.

START BOX

Possible constituencies of human rights organisations⁶⁸

Internal

- People who are represented within the organisation:
 - Board, council or trustees
 - Staff (paid or voluntary)
 - Supporters and members

External

- People the organisation aims to protect or represent
- Donors (including government donors)
- Other NGOs, particularly those working on human rights
- The general public and society in general?
- Governments?

END BOX

98. An NGO wishing to explore its responsibilities might start by identifying, mapping and prioritising its constituencies and identifying the individuals or groups that have an interest in its work. Mapping helps an organisation to identify the specific responsibilities it has towards various individuals and institutions and answer some key questions. To whom is the organisation primarily responsible? Which constituency has the most power over the organisation? Which has least power? Whose voice is listened to when decisions are made? How can different views and needs be balanced and met? Who in fact “owns” the organisation? (The staff? The director? Senior managers? Supporters and members? The Board? Donors? The people at the heart of the mission?)
99. In the following chapters we examine some of the specific responsibilities that human rights organisations have towards each of their constituencies.

68 This box is illustrative. Different organisations have different constituencies
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IV. MISSION-RELATED RESPONSIBILITIES

100. In chapter III we observed that the human rights framework provides a structure of principles which underpin human rights work. These are expressed formally in human rights standards.
101. The credibility, authority and effectiveness of human rights NGOs are rooted in these principles. Genuine human rights organisations base their work and their behaviour on them and emphasise their importance in their mission, organisational documents and public statements. In chapter III we highlighted that NGOs are not legally bound by international human rights law in the same way as states. Nevertheless, they have an ethical obligation to stay true to the basic and fundamental principles of human rights in every aspect of their work. Mission-related responsibilities flow from the fundamental principles of international human rights law and they underpin genuine human rights work.

START BOX

Mission related responsibilities

Core principles for human rights NGOs

Respect for human rights, in particular for:

- Human dignity
- Equality and non-discrimination
- Universality

END BOX

102. Some principles, notably respect for human dignity, universality, and equality and non-discrimination, are at the heart of human rights and they are unavoidably central to the identity and activity of genuine human rights NGOs. These principles are not negotiable, although the way in which an organisation stays true to them will depend on the particular work it does and the context in which it operates. In other words, these are responsibilities of which NGOs should be mindful whether they work in enabling or repressive environments. Staying true to them does not imply one specific form of public conduct but, regardless of activity and context, they can never be disregarded or dismissed.
103. In many respects, these principles are of course relevant to other organisations too. Nevertheless, human rights organisations occupy a unique position because they specifically proclaim and publicise these principles in their daily work, and condemn governments, businesses and armed groups when they transgress them. Given this, human rights organisations are naturally expected to uphold and respect principles that they expect others to honour.
104. When organisations fail to do so, they not only fail to live up to their own ethical and moral responsibilities but undermine the credibility and legitimacy of other human rights organisations.
105. In this chapter we explore the mission-related responsibilities of human rights organisations and examine some of the challenges and dilemmas that NGOs face when they attempt to live up to them. We do not pretend that solutions are easy or that a single approach is appropriate, but hope the positions we take provide a sound basis for further reflection.

RESPECT FOR HUMAN DIGNITY

106. Human rights organisations recognise that respect for human dignity is a central principle that guides their work. This being so, it is their responsibility to ensure that their activities and practices reflect that belief. Because an NGO campaigns to protect the rights of women, for example, does not automatically imply that the organisation respects women's rights in everything it does. Positive action will be required to ensure, for example, that the organisation consults the women it represents, ensures their participation, and makes its campaigns and programmes relevant to women. Fundraising and publicity should not victimise or exploit. An NGO should also take steps to ensure that its processes are democratic when it works with other organisations. When an NGO directly represents women, it should ensure that it acts with their best interests in mind and that, for example, it avoids further victimisation and does not simply take women's stories without following up or reporting back on how those stories were used or made public.
107. Organisations are likely to stay true to their mission if they work in an appropriate way with the people they aim to protect or represent. The quality of this central relationship is likely to measure an organisation's respect for human dignity. Respect for human dignity puts the human being at centre stage. This principle drives human rights work and underpins the demand for justice. It is this principle that explains why genuine human rights NGOs will always prioritise their mission responsibilities over their performance-related responsibilities. Performance-related responsibilities are secondary to purpose. Respect for human dignity implies that human rights organisations have a responsibility to ensure that people for whom they work, or speak, have a voice within the organisation (in relation to staff, for example) and participate where possible in its planning and activities.

START BOX

The primary constituency for human rights organisations

Human rights are about people and people are the most important core constituency for human rights organisations. The specific responsibilities that an organisation has to its core constituency or constituencies will depend on the nature of the organisation and its activities. For example, an international NGO with a large paid staff that works across continents organising international campaigns will have very different responsibilities from a community-based NGO staffed by volunteers that provides medical and legal assistance to survivors of human rights violations. In general terms, however, organisations should:

- Prioritise respect for human dignity above performance-related responsibilities.
- Ensure participation by the primary constituency in decision-making, design of activities, and implementation and evaluation of programmes.
- Design activities that are relevant and useful to the core constituency the organisation claims to represent or protect.
- Respect the dignity of victims and survivors of human rights violations.
- Act in good faith towards its core constituency.
- Avoid exploiting or further victimising members of the constituency (for example by insensitive or inappropriate interviewing and reporting, by inclusion of inappropriate messages or images in fundraising or education campaigns, or by prioritising organisational goals over the needs of people).
- Ensure that any services provided (such as training, counselling or medical assistance) are professional.
- Listen carefully to members and supporters and represent their views carefully.
- Listen carefully to staff, volunteers and employees and treat them with respect.

The survivors of human rights violations are often the least powerful constituency that an NGO has. They do not pay for the help they receive nor do they fund the organisation. They may not be aware that they have rights and that these can be protected, and may lack because they experience discrimination and marginalisation. They may be afraid or at risk and may not have the power to ask organisations to report to them. They may also be out of

reach of communications, or preoccupied by the problems they face. For several reasons, therefore, organisations should regularly examine how they can best fulfil their responsibilities towards the people who are at the heart of their mission and it should never be *assumed*, simply because an organisation has a mandate to protect human rights, that those the organisation was established to protect or represent are being given appropriate attention and respect.

END BOX

108. It is often not easy for NGOs to fulfil their mission-related responsibilities to their core constituency. Certainly it is far more complex than satisfying performance-related responsibilities (such as writing reports for donors). Some of the challenges include the following:
- The people that an organisation represents may be dead or may have “disappeared”.
 - It may be difficult to identify some victims (for example, after mass killings or in cases of incommunicado detention).
 - It may be impossible to work directly with the constituency (for instance, a group that protects the rights of women in Asia cannot consult all its primary stakeholders – nor would the women have a single point of view or a common experience).
 - It may be impossible to work directly with the constituency because its members are physically isolated, dispersed by war, or a diaspora.
 - The authorities may prohibit access to the constituency (for example, to prisoners or detainees).
 - Communicating with some survivors may put them at risk (for example, human rights defenders who are in hiding or under surveillance).⁶⁹
 - The organisation may not work directly to represent or protect anyone.

IS THE GENERAL PUBLIC A CONSTITUENCY FOR HUMAN RIGHTS NGOS?

109. One question commonly asked of NGOs in general is whether they have responsibilities towards society and the general public, in particular when their activities could have an effect on public policy and law.
110. Must human rights organisations have a defined constituency? Are they entitled to an opinion even if they speak only for themselves? One response is to say that the international standard on freedom of expression provides everyone with a right to express views and opinions. It applies equally to individuals and to the groups of individuals who constitute NGOs. NGOs are entitled, therefore, to express opinions on matters of public policy, whether or not they have any direct link to a particular constituency. Two additional obligations might be identified. As noted, international human rights standards impose a general responsibility on individuals, *vis-à-vis* the public and the public interest, for the content of their views. At the minimum this would indicate that a human rights group should not adopt positions that are inconsistent with human rights principles. Secondly, it has an obligation, where there are survivors or victims, to take account of their presence, whether or not it agrees with their views.

⁶⁹ Human rights NGOs, activists and victims must be keenly aware of the dangers and hazards such surveillance presents. Those seeking to communicate with them must be equally careful and vigilant. This important concern is the reason for the creation of Privaterra, a coalition of computer and human rights professionals created in 2001 to provide technological education and support for human rights NGOs in the areas of data privacy, secure communications and information security. For more information, see www.privaterra.org.

111. This is an important proviso. In practice, public attitudes and the attitudes of specific constituencies will often clash with the views of human rights groups. This is true with respect of issues to the death penalty, due process for criminals and those accused of terrorism, and the rights of asylum seekers. On both the death penalty and due process, in particular, victim and survivor groups often articulate advocacy positions that human rights groups oppose on principle. As one commentator has pointed out:

The work of human rights organizations under authoritarian contexts, for instance, many times is carried out by minor groups that must confront the hostility of both the regimes they are denouncing and of society at large. The significance of such politics rests precisely on its unrepresentative character, that is, in the refusal to abide to the predominant standards of an existing political culture that welcomed or tolerated human rights abuses and on their efforts to trigger processes of political learning that would eventually reshape social identities and behaviors.⁷⁰

112. This underlines the difficulty of taking public policy positions. Opinions will diverge on most issues and public opinion will rarely be unanimous.⁷¹ If adherence to human rights principles is clearly an essential point of reference for human rights organisations when they take public policy positions, there is evidently no guarantee that the views expressed by any particular NGO will be reasonable or accurate.
113. NGOs are by definition self-appointed; no-one elected them and NGOs do not pretend to be elected. They are nevertheless publicly accountable in an indirect manner, because irresponsible or incompetent behaviour will incur loss of credibility and reputation and consequent loss of support, including financial support.
114. For human rights organisations that do not directly represent the survivors of human rights violations, the constituency issue presents itself rather differently. Where respect for human dignity cannot be measured by the quality of an organisation's interaction with its main constituency, other factors may be more important to examine, for example the extent to which the organisation's work helps to protect the rights of people in the community as a whole. How can an anti-impunity organisation that does not directly represent any survivors or their families ensure that its work remains respectful of human dignity? Does it have a responsibility to consult society at large in order to evaluate the relevance of its programmes? Is a justification based on human rights principles practically sufficient? To such questions, there are clearly no neat answers – especially in view of the fact that on a range of key issues human rights advocates are frequently in tension or at odds with public opinion.

START BOX

Respect for human dignity and strategic litigation

A number of human rights organisations conduct strategic litigation. Litigation can be strikingly effective and lead rapidly to changes in law and policy. In the course of prosecutions, nevertheless, organisations need to exercise particular care that they do not inadvertently exploit or disrespect human rights survivors whose cases are prosecuted.

END BOX

⁷⁰ Enrique Peruzzotti, "Civil Society, Representation and Accountability: Restating Current Debates on the Representativeness and Accountability of Civic Associations," in Lisa Jordan and Peter Van Tuijl, eds., *NGO Accountability: Politics, Principles and Innovations* (Earthscan, 2006),

⁷¹ Edwin Rekosh, *Who Defines the Public Interest Law Strategies in Central and Eastern Europe* (Public Interest Law Initiative 2005) [available at www.pili.org/2005r/dmdocuments/pili_papers_july_2005.pdf]

115. Organisations have other responsibilities that are intertwined with respect for human dignity, most notably towards their own staff, volunteers, members, supporters and interns. For example a human rights organisation that works to protect and promote labour rights in Africa should not underpay, exploit or disrespect its employees. We discuss the internal responsibilities that human rights organisations have towards their staff, volunteers and interns in more depth in chapter V (the section on good governance).

START BOX

Responsibility in Action – Statement of Ethical Commitments of Human Rights Professionals

In 2008 the University of Nottingham (UK) published a “Statement of Ethical Commitments of Human Rights Professionals”. Though these commitments were drafted for human rights professionals working with inter-governmental organisations, they contain some useful principles for human rights NGOs, especially those seeking to draft internal codes of conduct or sector-wide codes within their countries or region. The following commitments are particularly relevant:

Commitment no. 1: The primary commitment of human rights professionals is to the human rights of the individuals, communities and peoples they serve; in cases of professional dilemma or uncertainty this principle shall be the fundamental consideration.

Commitment no. 7: Human rights professionals in all their activities shall respect the principle of participation that empowers individuals, communities and peoples. Human rights professionals shall strive to ensure the participation of the most marginalised and vulnerable members of society in activities and definitions that affect them.

See: www.humanrightsprofessionals.org/images/guiding%20principles%20for%20human%20rights%20field%20office%20rs.pdf

END BOX

START BOX

Responsibility in Action – The Responsibilities of Representation: A Voluntary Code of Conduct for NOs with Consultative Status with ECOSOC

In 2004 the Conference of NGOs with Consultative Status with ECOSOC (CONGO) published a voluntary code of conduct which stresses the responsibilities that are attached to representation. With regard to the responsibility to be representative it stresses that:

- a) The nomination of an individual or individuals to represent an organization in consultative relationships with ECOSOC implies the choice of a person who will reflect the policies of the organization.
- b) While an individual cannot suppress all personal priorities or styles of expression, these should have the approval of the organization.
- c) If possible there should be reflection in the chosen representatives of organizations’ inclusive nature (e.g. related to nationality, race, gender, age, etc.).
- d) It should be clear whether someone is representing an organization with a diverse membership across many nationalities and levels of society or whether an international or widely ramifying concern is being addressed from the perspective of a particular, national or restricted perspective.
- e) Representation of particular national, professional, cultural or gender perspectives can be entirely justifiable but should not claim on the basis of a “global” or “international” title to be representing constituencies that have not been included or consulted.

The code also includes the responsibilities to be independent, truthful, to be co-operative and self critical. For more information see: www.ngocongo.org/files/codeofconductrev2.doc

END BOX

Questions for human rights organisations concerning respect for human dignity

- *What does human dignity mean to you and to your organisation?*
- *What does your organisation do to ensure that the people it serves are respected and represented fairly?*
- *How does your organisation facilitate consultation and communication with those whom it protects or represents? What challenges and dilemmas do you face?*
- *To what extent is your core constituency involved in designing your activities?*

- *How does your organisation manage different opinions in your primary constituency?*
- *How, if at all, are victims of human rights violations portrayed in your fundraising campaigns? If your organisation does not directly represent or protect individuals how do you ensure respect for human dignity?*
- *For monitoring and reporting organisations – how, if at all, do you follow up with the survivors of human rights violations after you have collected their testimony? To what extent does your reporting work assist victims? Could your methodology be improved? If so, how?*
- *How are paid staff, interns and volunteers treated within your organisation?*
- *How much influence, if any, do internal stakeholders, such as staff, volunteers and interns, have on decision making?*
- *Has your organisation endorsed a code of conduct that contains the principle of respect for human dignity? Do you think that codes of conducts can be a valuable means of ensuring that this and other principles are upheld or can this principle be promoted better in other ways?*

EQUALITY AND NON-DISCRIMINATION

116. All human rights organisations consider equality of rights and non-discrimination to be core human rights principles. Indeed, the mission of a large number of organisations is dedicated to combating various forms of discrimination.
117. A human rights organisation quite clearly has a responsibility not to discriminate against anyone, be it a staff member, volunteer, supporter, beneficiary, survivor of human rights violations or any other person it comes into contact with, on the basis of factors such as race, age, colour, sex, disability, sexual orientation, language, religion, political or other opinion, national or social origin.
118. Many organisations have drafted policies on non-discrimination in order to ensure that they put the principle into practice in both their internal and external dealings. NGOs have also expressed a commitment to equality and non-discrimination by approving self-regulatory codes of conduct.

START BOX

Responsibility in Action – the 2006 INGO Accountability Charter

Seventeen International NGOs, including some that have human rights as their primary focus (e.g. Amnesty International, Save the Children and Terre des Hommes International Federation) have endorsed a voluntary code of conduct. The INGOs that endorsed the Charter agreed to put their compliance reports online at periodic intervals. The INGO Accountability Charter contains a range of commitments relating to governance, management and programmes. On the issue of non-discrimination the Charter states that:

“We value, respect and seek to encourage diversity, and seek to be impartial and non-discriminatory in all our activities. To this end, each organisation will have policies that promote diversity, gender equity and balance, impartiality and non-discrimination in all our activities, both internal and external.”

While the INGO Accountability Charter provides a useful resource for NGOs wishing to promote responsible behaviour it should be stressed that it was not specifically drafted with human rights organisations in mind and does not attempt to address the specific responsibilities of human rights NGOs. www.ingoaccountabilitycharter.org

END BOX

119. By implication, the principles of equality of rights and non-discrimination involve a responsibility not to show undue or improper partiality or bias in favour of any of the organisation’s stakeholders. Corruption, patronage, privileges for friends and family, sinecures and other such practices fall foul of the prohibition of discrimination, because they grant

privileges to friends, relatives or colleagues, and by implication do so to the disadvantage of others – both other stakeholders who lose out as a result, or non-stakeholders who are excluded from fairly competing for jobs or opportunities.

120. The principle of non-discrimination therefore sets demanding tests across the range of an organisation's activities – from the treatment of people in the design, implantation and evaluation of programmes, to recruitment, governance and budget allocation.
121. The principle of non-discrimination flows from the core building block of human rights, that all individual is entitled to enjoy a full range of civil, economic, political, social and cultural rights and that each person's rights are equally important. The principle does not necessarily imply, however, that every human rights organisation has a duty to work to protect every right or every person. Obviously, most organisations have limited resources and must select the issues they work on.
122. When does selection become discrimination? Most organisations make distinctions every day – about which cases they will take up, which issues, constituencies or countries they will focus on, which rights they will promote, what new posts they will create. Decisions will be justified by reference to various factors: the organisation's mandate; resources; expertise; the urgency or seriousness of cases; the interests of members; potential influence on policy etc.

START BOX

Issue selection by human rights NGOs

Many factors influence an organisation's selection of the issues it works on:

- level and scope of human rights violations
- available resources
- its knowledge and expertise
- organisational mandate.
- donor priorities and the possibility of raising funds.
- internal politics within the organisation.
- personal passions of staff, members and supporters (people may have an expertise in or strong commitment to certain issues).
- assessments about which human rights violations are more "severe" and require urgent attention.
- tactical considerations (where progress and "success" are more likely (new emerging issues).
- strategic considerations (where cases will set a legal precedent or influence general policy).
- consultation with the organisation's internal and external constituencies.

END BOX

123. Taking such decisions does not necessarily imply discrimination. An organisation set up to advance the cause of a particular ethnic or cultural group will obviously make distinctions on the basis of ethnicity or racial characteristics. It is entitled to do so provided the distinctions it makes are generated by a programme to address disadvantage or human rights violations experienced by members of that group.
124. Though selection is inevitable and does not usually constitute discrimination, NGOs nevertheless have a responsibility to reflect on the choices they make and their consequences. Arguably, this responsibility increases with an organisation's power and resources. This is because larger and relatively rich internationally-based NGOs have greater potential to work on a wider range of issues and may command more influence on policy and law. This is, of course, not a new debate: historically a number of international NGOs have had to justify their choices under pressure from internal and external stakeholders. At different times, both Amnesty

International and more recently Human Rights Watch were pressed to explain why they chose not to work on economic, social and cultural rights.⁷² It is legitimate to ask organisations to explain why they prioritise certain issues, and do not address others – just as it is reasonable for organisations to set certain priorities.

START BOX

Dilemma: non-discrimination and issue selection

A small national human rights NGO with 16 staff has a mandate to work on “the domestic protection of human rights”. In the country in which this NGO is based, violence against women is frequent and homophobic attacks are common. The Board of the NGO, in consultation with the Director and staff, decides to use all the organisation’s resources for two years to campaign to close down Guantanamo Bay and secure the release of 5 nationals who have been held there for the past three years. What arguments could the NGO use to justify the priority it gives to Guantanamo Bay? How might it defend itself against a charge that it was ignoring principles of equality and non-discrimination?

END BOX

125. Above all, NGOs should reflect on the positions they take, and ought to be able to explain how and why they make the choices they do. This implies that decisions should reflect their mandate, the interests of their core constituencies, and fundamental human rights principles.

Questions for human rights defenders on equality and non-discrimination and issue selection

- *Which rights do you prioritise?*
- *What motivates you to prioritise these rights? How, if at all, does your choice affect how you approach your work?*
- *Which groups in society does your organisation prioritise and work for?*
- *How does your organisation select the issues that it works on? Which factors have greatest influence on the selection process?*
- *Possibility of being effective*
- *Wishes of victims of human rights violations that you speak to.*
- *Severity of violations (In this case, what does “severity” mean to you?)*
- *Input of other NGOs that you speak with in the South*
- *Consultations with a particular constituency; Board members.*
- *The financial situation of your organisation.*
- *When your organisation selects its priorities, are the principles of equality and non-discrimination considered?*
- *Who “wins” and who “loses” as a result of your selection process? How would you go about justifying your choices to those who “lose” out? And to society as a whole?*
- *Could the selection process be more participatory and democratic?*
- *Do the human rights issues your organisation selects deserve the most attention?*
- *Does your organisation have a policy on non-discrimination? If not, why not?*
- *Has your organisation endorsed a code of conduct that includes a provision on non-discrimination?*

⁷² See for example, Kenneth Roth “Defending Economic, Social and Cultural Rights: Practical Issues faced by an International Human Rights Organization”, *Human Rights Quarterly* 26 (2004) pp. 63–73. For several years, Amnesty International has worked on ESC rights.

Universality

126. Human rights organisations hold, as a fundamental principle, that every person has rights regardless of their status or position in society. Most also support the idea that international human rights standards articulate principles that are recognised in all societies.
127. The claim that human rights are universal has long been the subject of academic debate.⁷³ Less attention has been paid, however, to understanding how the principle of universality plays out in practice for human rights NGOs.

START BOX

Responsibility in Action – Guiding Principles for Human Rights Field Officers

In 2008, the University of Nottingham (UK) published the “Guiding Principles for Human Rights Officers Working in Conflict and Post-conflict Environments”. Although the Guiding Principles are intended for human rights professionals deployed by inter-governmental organisations in conflict and post conflict situations they provide many principles that are equally relevant to the work of human rights NGOs in all kinds of environments. The Guiding Principles provide guidance on how the principle of universality should be put into practice:

- International human rights law is the basis for the work of human rights field officers (HRFOs) and includes recognition of human rights for all persons, the indivisibility of all rights, civil, cultural, economic, political and social
- Although much of human rights is considered customary and universal, debate continues on its local application, for example in the context of some traditional practices. HRFO need to work closely with local partners to ensure the spirit of international human rights law is applied while recognising local cultural specificity consistent with this law. Local partners help HRFOs identify how best to reconcile respect for local practices while upholding the universality of human rights regardless of culture, religion or region.

The principles may be useful for NGOs or NGO networks that believe drafting principles or codes of conduct for human rights work are useful and necessary. (www.humanrightspersonals.org/images/guiding%20principles%20for%20human%20rights%20field%20officers.pdf)

END BOX

128. Some commentators have argued that the human rights agenda is set by a small group of international human rights NGOs that promote Western values and that this élite group fails to properly consult with or incorporate voices from the South. “[i]nstead of being the currency of social justice or of the consciousness driven moment, ‘human rights’ has increasingly become a specialised language of a select professional cadre, with its own rights of passage and methods of certification. Far from being a badge of honour human rights activism is, in some of the places....increasingly a certificate of privilege.”⁷⁴
129. At country level too, it has been argued that national NGOs are staffed by a professional elite, are donor dependant, or promote predominantly Western values.⁷⁵ In Uganda, for example,

73 J. Donnelly. *Universal Human Rights in Theory and Practice*, (Ithica, New York, Cornell University Press (1989): ix. A. Sen “Human Rights and Asian Values” (Cambridge: Cambridge Council on Ethical Affairs): 1997: Xiaorong Li. “‘Asian Values’ and the Universality of Human Rights” *Report from the Institute for Philosophy and Public Policy*, Volume 16, No. 2 (Spring 1996), available at <http://www.puaf.umd.edu/IPPP/li.htm>; V. Leary, The Effect of Western Perspectives on International Human Rights, in *Human Rights in Africa: Cross Cultural Perspectives* 15 (A. An-Na’im & F. Deng (eds.) 1990).

74 Chidi Anslem Odinkalu “Why more Africans Don’t Use Human Rights Language”, *Human Rights Dialogue*, Carnegie Council of Ethics and International Affairs 2 (2000), p. 1, quoted in Barbora Bukovska, *Perpetrating Good: The Unintended Consequences of Human Rights Advocacy*, PILI Papers, No. 3, April 2008.

75 M. Mutua (2007: 591) argues that, though the world of human rights NGOs is large, complex and diverse, a few Western INGOs dominate and promote western philosophy even in the South. See also A. Pollis and P. Schwab, “Human Rights: A Western Construct with Limited Applicability” in *Human Rights: Cultural and Ideological*

“most foreign funded HROs tend to raise human rights issues that are not applicable to the real situation of the communities in which they operate, especially in the case of activities in rural Uganda, where immediate needs/human rights concerns (food, education, water) are sacrificed for say, paralegal training. Most, if not all of them, have preconceived ideas of what is important, yet when translated, in most cases these ideas do not fit into the working structures of the ordinary people”.⁷⁶

130. Whatever the merits of these criticisms, it is clear that applying human rights across cultures and societies will be complicated in practice, whether or not they are truly universal. For this reason human rights law recognises the need to take account of local political and cultural contexts when interpreting international standards. This creates a specific responsibility: for international organisations: to think about how they advocate rights appropriately in countries other than their own; and to consider carefully the agendas they promote and whose interests they serve. Equally, national human rights organisations have a responsibility to think how they can avoid inappropriate forms of exceptionalism that undermine the universality of rights.

START BOX

NGOs and Human rights standard-setting

International NGOs with permanent offices in Geneva, New York and eventually Vienna, or which regularly participate in regional human rights organisations, exert a consistent, direct and powerful influence on processes of treaty negotiation, which other NGOs cannot emulate. (See ICHRP, 2006: 77.)

The evolution of communications technology, in particular email and faxes, has made it easier to involve a broader range of organisations. However, many organisations in the South lack reliable access to broadband internet; they cannot afford to travel and language remains a barrier and because it is hard for non-English speakers to participate equally.

International NGOs often make sweeping claims during treaty-making processes that they represent the voices of global “civil society” or the views of a diverse but specific group (such as the disabled or women). Although large powerful Western based INGOs have the power to influence the wording of a treaty, downward accountability to the primary constituency often does not figure in examinations of NGO influence over standard setting.⁷⁸

How can better representation be secured? How can power imbalances between human rights organisations in North and South be addressed? From where does an NGO receive its authority to push for a particular issue to be addressed by a new treaty? How might NGOs create agreement about which issues should be prioritised? How can they ensure that the outcome will be useful and relevant to all the people they claim to represent? Can NGO coalitions develop more democratic methods of communication, participation and co-operation to ensure that the views of large powerful organisations do not predominate by default over other views, in particular those of people who will be affected?

END BOX

131. The principle of universality, in conjunction with the principle of non-discrimination, gives body to the notion of human dignity. Respect for this principle implies that NGOs must be objective when they assess political situations and human rights claims; must avoid privileging claims of country, or clan, or family, or other interests, when they make judgements, set priorities, or allocate resources. These are not *choices*, strictly speaking: once organisations have accepted the principle, they are consequences. In this sense, universality can be understood to be the positive expression of the principle of non-discrimination.

Perspectives, A. Pollis & P. Schwab (eds.), (1979).

76 Susan Dicklitch and Doreen Lwanga, “The Politics of being Non-Political: Human Rights Organizations and the Creation of a Positive Human Rights Culture in Uganda”, *Human Rights Quarterly* 25 (2003), p. 498.

77 ICHRP, Standard Setting: Lessons for the Future (2006)

78 With regard to the dominance of certain INGOs in the drafting of the Disability Convention see: Janet Lord, *Mirror, Mirror on the Wall: Voice Accountability and NGOs in Human Rights Standard Setting*, *Seton Hall Journal of Diplomacy and International Relations* 101.

START BOX

Relations between international and national human rights groups

The relationships between international and local organisations are complex and sometimes problematic. Many international NGOs recognise and value the work of local organisations and consult with them about national issues. At the same time, some international organisations do not. In addition, some international NGOs do not feel bound to observe the advice they are given and tend to consider that they should independently reach their own judgements. Local organisations, on the other hand, feel entitled to participate in policy formation on matters that concern them.

In general terms, international organisations have a responsibility to take proper account of the views of local groups, not least because they are often a primary source of the information on which international organisations rely. At the least, international organisations should have sound justifications when they choose to ignore or override local advice.

In some cases, international NGOs have sought local approval for international campaign initiatives. They have often done so when sanctions or calls for disinvestment are proposed, because these hurt the survivors of repression as well as those who oppress them. International organisations consulted Burmese NGOs about whether they should call on foreign business to disinvest, for example; subsequently, Aung San Suu Kyi was the first person to announce this demand.

END BOX

START BOX

British Overseas NGOs for Development (BOND), a network of 340 UK based development organisations, drafted a set of principles for members which directly address the issue of north – south relations. The principles state that:

A4) Working with southern organisations – aiming for common development goals.

BOND members, when working with organisations in the south, believe in co-operation on the basis of shared values and vision. They believe that both parties should learn from each other's values, experience and approaches, and that this should lead to increasingly close partnership for change. They recognise that such partnership is often not based on equal degrees of power in the relationship; that usually greater power rests with the northern party; but that the partnership should be based on an equal commitment to shared goals and that inequality of power should be redressed by both parties through practical action.

www.bond.org.uk/aboutus/principles.html

END BOX

Questions for human rights defenders organisations on universality:

- *What does universality mean to you and to your organisation?*
- *What more could be done to promote respect for universality in your NGO?*
- *How would you respond to the claim that the human rights agenda is set by a small group of elites that promote Western values?*
- *Do the people that work for your organisation from diverse backgrounds? Is diversity important to you? If not, why not?*
- *What factors have the greatest influence on the organisation's objectives:*
- *The abilities of staff members?*
- *The personal values of managers or other strong characters in the workplace?*
- *Your own personal values?*
- *Projects that are likely to attract funding?*
- *Proposals suggested by other organisations?*
- *For international organisations – how does your organisation engage with nationally based human rights NGOs? To what extent are national NGOs consulted when activities related to the country in which they work are being planned, implemented and evaluated?*
- *For national organisations – how does your organisations engage with international organisations? In what ways, if any, could relationships be improved?*
- *For organisations engaged in standard setting – how does your organisation go about deciding which issues it will advocate on? How does your organisation ensure participation in the process of standard setting advocacy and campaigning activities? To what extent are the*

groups on whose behalf you advocate including in the process? In which ways, if any could there be improvement?

Questions for human rights defenders on relations between international and national NGOs

- *What are the main issues that arise when considering the relationship between international and national NGOs?*
- *Does your organisation work with international or national organisations? If so, describe your relationship? Can you identify areas of tension? If so, what is their cause?*
- *Should international organisations always report back to national NGOs and local counterparts after on-site missions?*
- *What are the benefits and drawbacks of cooperation between international and national NGOs?*

V. PERFORMANCE-RELATED RESPONSIBILITIES

132. In general, performance-related responsibilities are duties that relate to the practical organisation of an NGO, for example, how it is managed, how it controls money and how it demonstrates effectiveness.

START BOX

Performance related responsibilities of human rights NGOs

Sound Governance	Truthfulness and Accuracy
Effectiveness	Transparency
Independence	Integrity and honesty
Objectivity, Impartiality and Consistency	

END BOX

133. In chapter III we noted that human rights organisations have both mission- and performance-related responsibilities, and that these may overlap. Indeed, there is a good case for saying that when NGOs do not meet their performance-related responsibilities they will undermine their ability to stay true to their human rights mission.
134. Performance-related responsibilities reflect values that human rights NGOs cherish – ones that have operational effect and expression but are not core principles of human rights. Though not articulated explicitly in international standards, they are implied. Many human rights bodies have pointed out that, in the absence of transparency, honesty and good governance, human rights cannot be properly protected. These values therefore need to be given attention because they are vital to the integrity of human rights work and core human rights principles cannot be respected when these values are absent.
135. Other values deriving indirectly from core principles are also vital to the credibility, legitimacy, integrity and effectiveness of human rights work. In their absence, core principles cannot be respected or shown to have been respected, and from a practical and strategic perspective organisations that do not uphold them will be unlikely to persuade, win trust or be successful in their work. These values include a commitment to objectivity, to impartiality, to truthfulness, to accuracy, to transparency, and to independence.
136. In many cases these same values are shared by other kinds of organisation, because they are ethically sound, and operationally some of them improve effectiveness. They are not therefore exclusively human rights values. In this chapter we examine specific responsibilities that these values imply for organisations whose primary mandate is to protect and promote human rights.

START BOX

Key values of human rights organisations

Some of the key values that underpin human rights work were identified by the former UN Secretary-General's Special Representative on Human Rights Defenders, who commented that: "[I]ndependence, credibility and transparency are cornerstones of the efforts to promote and protect human rights. Objectivity, non-partisanship and accuracy in the communication of information are therefore essential elements of all activities in which human rights defenders engage. It is only through these qualities that defenders are able to maintain respect for their work despite attempts to discredit them."⁷⁹

END BOX

⁷⁹ *Report of the Special Representative of the Secretary-General on Human Rights Defenders in Human rights defenders*. Note by the [UN] Secretary-General [to the 57th session of the General Assembly]. UN Doc. A/57/182 (2002), para 98.

GOOD GOVERNANCE

137. As it is elsewhere, sound governance is vital for human rights NGOs. It underpins their legitimacy, effectiveness and credibility. Failure to ensure good governance in severe cases leads to organisational collapse, because staff grievances are not addressed, staff leave, programmes are ineffective, and eventually funding dries up. In the process, people who are at the heart of the organisation's mission are neglected as its focus shifts to internal problems.
138. Good governance involves a number of performance-related responsibilities, regarding purpose and mission, organisational structure, management, oversight, leadership, and the treatment of staff, employees, members and volunteers.
139. When a human rights NGO fails to practice sound governance, it is unlikely to stay true to its mission-related responsibilities. For example, if it fails to treat its employees and staff properly and fairly, it is unlikely to be able to ensure respect for human dignity and in some cases may act in ways that are incompatible with principles of equality and non-discrimination. Where it fails to manage its finances prudently or soundly, it will not provide a professional service efficiently to those it seeks to serve – and will therefore fail to protect and promote their rights as well as it could.

START BOX

Responsibility in Action – the INGO Accountability Charter and good governance

Seventeen international NGOs recently endorsed the INGO “Accountability Charter”, an interesting example of INGO self-regulation. The INGOs that endorsed the Charter have agreed to put compliance reports online at periodic intervals.⁸⁰ The Charter also contains commitments in several other areas, including treatment of stakeholders and good governance. It states that:

“We should be held responsible for our actions and achievements. We will do this by: having a clear mission, organisational structure and decision-making processes; by acting in accordance with stated values and agreed procedures; by ensuring that our programmes achieve outcomes that are consistent with our mission; and by reporting on these outcomes in an open and accurate manner. The governance structure of each organisation will conform to relevant laws and be transparent. We seek to follow principles of best practice in governance.

Each organisation will have at least:

- A governing body which supervises and evaluates the chief executive, and oversee programme and budgetary matters. It will define overall strategy, consistent with the organisational mission, ensure that resources are used efficiently and appropriately, that performance is measured, that financial
- integrity is assured and that public trust is maintained;
- Written procedures covering the appointment, responsibilities and terms of members of the governing body, and preventing and managing conflicts of interest;
- A regular general meeting with authority to appoint and replace members of the governing body.

We will listen to stakeholders' suggestions on how we can improve our work and will encourage inputs by people whose interests may be directly affected. We will also make it easy for the public to comment on our programmes and policies.”

END BOX

Leadership and governance

140. Leadership plays a key role in building and sustaining a responsible NGO. Much of the human rights movement's progress may be attributable to charismatic individuals who broke out of the mould, flouted convention, and invented new forms of human rights work. Strong leadership

⁸⁰ Amnesty International has signed. The Charter is available at: www.ingoaccountabilitycharter.org.

can also be problematic. If an individual comes to dominate the organisation, neglecting processes of consultation and participation, blocking change or displaying favouritism towards certain staff, NGOs can rapidly ossify or become over-personalised.

141. Other human rights NGOs have experienced problems when the Director (often a founding member of the organisation) fails to create conditions in which day-to-day affairs are managed in a smooth and legitimate manner. NGOs may thrive under the leadership of a single person who remains in control for many years. As time passes, however, the advantages of stability and continuity may be off-set by structural weaknesses common to organisations that remain identified too closely with one person.
142. Succession is a crucial test for organisations. Leaders are often not good at arranging their departure. Experience shows the institutional damage that can occur when leaders overstay. It is sensible to consider the issue of succession before it becomes an issue.
143. It is perfectly legitimate for Trustees or Boards to determine that a leader should stay in office for a long time, if it can be demonstrated that he or she is managing the organisation effectively. If the NGO is of any size and influence, however, it is important to ensure that a group of people *other* than the leader makes such judgements. That group should be independent and able to exercise authority.

START BOX

Key constituency: Boards, Councils and Trustees

Some Boards, Councils or Trustees (hereafter Boards) are involved in daily management while others act more like independent advisers or auditors. Generally, the Board should ensure that an NGO fulfils both its mission and performance-related responsibilities. Boards are there to provide oversight and are perceived to be a central element in ensuring that an NGO acts responsibly. Boards usually carry out this function by receiving and assessing periodic reports from the staff, and holding periodic meetings of the Board and with the staff.

As an element of an NGO's formal governance structure, Boards have a responsibility to be effective to the organisation's other stakeholders. Unfortunately, Boards are often less effective than they could be. In some cases this is because the Board is composed of individuals who lack the skill, time or expertise to properly contribute. For instance, often HR NGOs with large budgets do not have a Board member with business and financial expertise.⁸¹ In others, it may be that their role has not been properly defined or communicated to them or they are not sufficiently independent to exercise the oversight required.

The need to strengthen the capacity of Boards has been recognised by many organisations and donors, and resources are now available to assist NGOs to improve Board governance.⁸² The Board is the single most important entity ensuring sound governance.

END BOX

81 Amnesty International's International Executive Committee includes a businessperson and the treasurer on the Board of the Association for the Prevention of Torture comes from the banking world.

82 See for example: R. Tandon. "Board Games: Governance and Accountability in NGOs" in M. Edwards and D. Hulme, *Beyond the Magic Bullet: NGO Performance and Accountability in the Post-Cold War Era* (1996): 53-64; P. Bradshaw, "Do Nonprofit Boards Make a Difference: An Exploration of the Relationship among Board Structure, Process, and Effectiveness", *Nonprofit and Voluntary Sector Quarterly* Vol.21, 3 (Fall 1992): 227-249. Several organisations specialise in providing advice to NGOs on management including Boards. See: Boardsource (formerly National Center for Nonprofit Boards) www.boardsource.org, *Board Mentoring Handbook*: available at www.abcgta.ca/docs/BoardMentoringHandbook.pdf, Nonprofit Governance & Management Centre: www.governance.com.au.

Management

144. In many ways, good management of a human rights NGO is no different from that of any other body. This said, human rights groups are distinctive in that they actively promote within them the principles and values they stand for, from ensuring protection against violations of staff members' rights to articulating and adhering to clear policies on gender balance and diversity, labour rights, and open debate within the organization. In affirming rights in the context of management procedures, human rights NGOs can serve as a model for other organisations.
145. Because staff members are particularly familiar with the day-to-day operations of their organisation, they will often be the first to notice problems or behaviour that are inconsistent with their NGO's mission and principles. For this reason, the existence of an internal procedure permitting employees to raise concerns, anonymously if necessary, is an important tool, particularly for larger NGOs. Such procedures may entitle staff to bring their concerns to the attention of a manager or to a member of the management board. In many circumstances, however, conventional channels may not be appropriate or sufficient. This may be true, for example, where the manager himself is responsible for an abuse (financial dishonesty, sexual harassment, a serious conflict of interest) or bad management. In such cases prudent NGOs will call on the assistance of management specialists that are quite independent.
146. Many NGO problems can be traced back to weak or non-existent management structures. The environment in which NGOs operate in developing countries is often characterised by weak social structures (in terms of government, infrastructure and civil society), while NGOs themselves, particularly smaller and newer organisations, tend to have under-developed internal structures. Income streams that are uncertain and unstructured also undermine sound governance. Finally, the culture of many NGOs does not encourage staff to adopt a well-structured approach to their work.⁸³ Such problems are not confined to NGOs based in developing countries, of course; they arise in large and well-known international human rights NGOs as well.
147. Some NGOs have committed themselves to respecting sector-wide codes or other NGO standards. These tend to make NGOs publicly accountable, for example in their relations with staff. A group of (mainly British) development NGOs that regularly employ staff around the world committed themselves in 1997 to respecting the *People in Aid Code of best practice in the management and support of aid personnel*.⁸⁴ Some of its seven principles are relevant to human rights NGOs (such as "We provide appropriate training and support" and "We take all reasonable steps to ensure staff security and well-being"), while others are designed specifically for organisations employing people abroad. Clearly any standards in this area would have to take into account issues of operational scale and accommodate the different capacities of very small organisations and larger ones that employ staff abroad, or expect staff to visit other countries frequently. Codes of conduct only go so far, however, and in many cases there is a need to ensure that an organisation restructures, opens itself to external evaluation or considers dismissing staff and managers that are preventing the NGO from operating productively.

⁸³ Eoghan Walsh and Helena Lenihan "Accountability and Effectiveness of NGOs: Adapting Business Tools Successfully" *Development in Practice*, Vol. 16, No. 5 August 2006, 413.

⁸⁴ See Overseas Development Institute, 1997, www.peopleinaid.org.

START BOX

Key Constituency: Staff (employees, volunteers and interns)

Employees, volunteers and interns are important internal stakeholders who often sacrifice job security, financial rewards and employment benefits to work for organisations that pursue a cause they believe in.

First and foremost, NGOs have a responsibility to ensure that employees, volunteers and interns are consulted and their views taken into account. When NGOs fail to practice internal democracy staff feel disenfranchised and disempowered. This is an issue of professional ethics but also of effectiveness, since the greatest resource most organisations possess is the quality and contribution of their staff, volunteers and interns. In addition, when staff feel mistreated they become less efficient.

Many of the responsibilities that NGOs have towards their paid employees are set out in local employment laws which cover issues such as health and safety, minimum pay, holidays and leave (for example maternity benefit) and protection from non-discrimination. When an NGO meets the minimum standards required by domestic law this does not always guarantee that staff have adequate working conditions or enjoy all their labour rights.⁸⁵

Employment practices in the NGO sector are distinctive. In many countries, NGO workers are not unionised and work on temporary contracts, and therefore have little or no job security. There may also be discrepancies between rates of pay, for example, between men and women and foreigners and nationals⁸⁶ and workers may lack benefits such as health insurance and pensions. Many organisations employ consultants on a long term basis thereby avoiding the responsibility to ensure staff benefits and employment rights.

NGOs also sometimes lack independent mechanisms for reviewing harassment, discrimination and complaints about misconduct and in some countries foreign staff may work illegally because the employer does not assist foreign workers to apply for work visas.

Volunteers and interns that give their services for free often work without any employment rights whatsoever because they fall outside the protection of domestic employment law. There may be an unacknowledged assumption that this is “acceptable” and that voluntary staff are “rewarded” with valuable experience, training and contacts in return for their unpaid work. Unfortunately, some organisations do not actually provide adequate training or professional development but use voluntary staff to carry out mundane administrative tasks.

The nature of human rights work is often harrowing and distressing and it can present physical and psychological risks for staff, particularly those that work directly with the survivors of human rights violations or in conflict and post-conflict situations. It is still, however, the exception rather than the rule for organisations to provide staff with proper security training or formulate security guidelines and emergency evacuation procedures. Furthermore, very few organisations provide their staff with proper debriefings and free access to professional services that can help to prevent and treat excess stress, burnout and post-traumatic stress disorder.

Human rights work is now a recognised career track and there is fierce competition for jobs among young people leaving university with doctoral or masters degrees in human rights. Some human rights professionals feel that they have no choice but to put up with unacceptable working conditions because this is part and parcel of “doing noble work for the sake of humanity”.⁸⁷ Staff may feel under pressure to work all the time and are reluctant to complain about their working conditions because they fear that if they do so they will be made to feel that they are selfishly undermining valuable work by diverting attention from the “real issues”.⁸⁸

Competition for employment coupled with a “culture of doing good” may prevent some organisations from improving the capacity to fulfil their responsibilities to internal stakeholders.

END BOX

Questions for human rights organisations on good governance

- *How does your organisation ensure participation by internal stakeholders, such as staff, interns and volunteers?*

85 These issues are relevant to other organisations and are not specific to human rights NGOs.

86 *Syndicat interprofessionnel de travailleuses et travailleurs*, Geneva Based Non-Governmental Organisations “Labour Rights” (2006): 4.

87 Interview with human rights NGO worker based in Geneva, October 2007 (notes on file).

88 Speaking more generally on problems within the human rights movement David Kennedy has noted that sometimes time spent fleshing out critical reflections of the human rights movement is seen as “time lost to the project of using human rights for emancipation”, D. Kennedy (2004): 3.

- *How effective is the governing body (e.g. Board) of your organisation? What problems, if any, reduce the effectiveness of the governing body? How could the performance of the governing body be improved?*
- *Do the internal policies of your organisation conform with the basic provisions of local and international labour law? If not, why not?*
- *Does your organisation have policies on non-discrimination, whistle blowing, sexual-harassment and professional misconduct? If not, why not?*
- *How are staff grievances addressed by your organisation? Do you see room for improvement?*
- *How does your organisation review the work of the Director and senior management? Is this process independent and impartial?*
- *How transparent and participatory are management decisions? How, if at all could transparency and participation be improved?*
- *How does your organisation review the work of staff? How, if at all, could this be improved?*
- *How does your organisation treat unpaid staff members like volunteers and interns? Are volunteers and interns provided with structured professional development opportunities, if not, why not?*
- *What professional development opportunities exist for staff? How, if at all, could your organisation improve opportunities?*
- *Do you every personally feel that you are pressured to work excessive hours? If so why? When you work overtime how does the organisation compensate you?*

Effectiveness

148. Human rights organisations seek to transform the world. Effectiveness should therefore be a key question for them. Measuring the effectiveness of different types of human rights work is not a straightforward matter. Effectiveness can nevertheless be measured in a number of ways:

- Pinpoint a specific goal that was achieved (a change in law or policy, a favourable decision by a court or human rights body, provision of counselling to a trafficking victim, approval of a restraining order against a spouse responsible for domestic violence, the arrest of a genocide suspect).
- Demonstrate that an organisation has fulfilled mission-related responsibilities regardless of whether a specific goal was achieved (showing that a campaign to reduce poverty was planned, carried out and evaluated in full consultation with people living in poverty and national NGOs and grass roots movements that represent these people).
- Increased public recognition.
- Evident increase in public trust and legitimacy.
- Evidence of sustainability (evidence that individuals, communities or national systems are in a position to consistently defend their own rights).
- Evidence of public support and action for a campaign or activity (such as public support for a protest or demonstration).
- Influence on decision makers.
- Substantive and relevant media coverage.
- Response and recognition by government and other official bodies.
- An increase in membership or public support.
- An increased in income.
- Growing public awareness of an issue.
- Improved performance of public institutions or trust in such institutions following NGO training programmes.

149. In broader terms, effectiveness can be assessed in terms of *overall improvement* – the general improvement that human rights organisations make to the lives of people (“macro” changes) – or in terms of *smaller changes* that may eventually contribute to an improvement in human rights (“micro” changes).
150. NGOs that have relatively specific aims, such as training law enforcement professionals in human rights, can measure their effect quite simply. Sometimes, however, performance-related outputs measure effectiveness less well than mission-related results which show, for example, improved or sustained respect for human dignity and equality and non-discrimination. The key measure of effectiveness here would be the organisation’s adherence to its mission-related principles. Assessing the formulation, implementation and evaluation of a campaign to reduce poverty, for example, would involve determining the extent to which an NGO conducted its work in full consultation with people living in poverty and organisations that represent them, and the efforts it made to ensure that various different groups living in poverty (e.g. women or the disabled) were taken into account. Where a participatory method was used and respect for all people affected by the issue being worked on could be demonstrated, the activity might be said to be effective even if an immediate reduction of poverty did not result.

START BOX

Key constituency – Donors

Individual and institutional donors are often powerful stakeholders because they obviously have the authority to terminate funding if an organisation fails to demonstrate that it is doing a good job (or for other reasons). The power of donors means that they have the potential to encourage NGOs to act responsibly. They can provide incentives that foster responsible behaviour and can support NGOs that take their responsibilities seriously.

Organisations have two main responsibilities to their donors: to carry out their work effectively; and to spend the money they receive on the purposes for which it was given. Most institutional donors have developed reporting requirements to ensure that NGOs meet these responsibilities, and these make NGOs accountable, not only for with the grants, but also for their programmes, their management and their financial accounting.

The relationship between donors and grantees is not a simple one, nevertheless. It is greatly complicated by the fact that, in most cases, it is inherently unequal. Though in theory donors need recipients (in order to spend their budgets fruitfully) just as recipients need donors, in reality the recipient is usually far more dependent. Donors have more choice because, if they withdraw, unlike recipients, they can usually find alternative candidates for grants. This creates space for abuse or misuse of power, which donors and recipients alike find difficult to resolve well. Institutional donors sometimes impose overly bureaucratic and inflexible reporting requirements which can soak up the resources and time of small organisations. They can undermine effectiveness by imposing their own priorities, forcing NGOs to redesign or distort their activities. Many organisations become adept at funding, sometimes at the expense of their programmes or at the cost of losing their sense of purpose. Donors can also be collectively over-demanding – merely, for example, by requiring a small NGO, that has a well balanced funding list, to report differently and separately to each of the funders that assist it.

On the other hand, donors themselves are overstretched and lack the time and resources to monitor the work of all their grantees closely. This means they are less able to support them than they would wish, and less able to exercise regulatory oversight. This creates a different risk that organisations may continue to receive significant support even though they are failing to manage projects and funds correctly. Over time, unnoticed by their donors who admire their professional reports, even good organisations may lose touch with their core constituencies and become ineffective.

END BOX

151. It is not possible always to measure the effectiveness of human rights work in terms of “success”. For example, an organisation that works on sexual orientation may be able to show no proof that legal or social discrimination have decreased – yet may discreetly be raising awareness and thereby laying a sound foundation for future reform. How can this be measured?

152. Measuring effectiveness generally requires an organisation to become more self-conscious, even introspective, about its role and influence. It means agreeing targets – which may be revised, possibly repeatedly, in fast-changing situations – and creating systems for monitoring and evaluating the impact of activities in relation to those targets. It also implies monitoring unintended effects of activity (which may be negative, either for people the organisation seeks to defend or for others). Finally, it means keeping an eye out for effects that an organisation did *not* have because it did *not* take action or did *not* use its influence when it could have done.
153. With respect to human rights education, human rights organisations work on the premise that increasing popular understanding of, and support for, human rights will lead eventually to a decrease in violations. It is relatively easy to measure human rights education activities in terms of quantity and quality of *output*.⁸⁹ It is much more difficult to assess *impact* because the underlying hypothesis that education produces a cultural shift in behaviour remains unproven. The same difficulty of measuring impact recurs in much human rights work.
154. Campaigning and advocacy organisations tend to measure their success by different yardsticks. These include the impact of campaigns on violations of rights in countries that are targeted, the impact on public opinion in the same or other countries, and the impact on policy-makers in those countries or internationally. Impact may also take the form of a new law or international treaty. However, organisations also need to look beyond these simple. They should assess, for example, whether people were represented fairly and accurately during the campaign, and its impact and relevance to survivors of abuse.
155. Organisations and their supporters are often tempted to gauge impact solely in terms of public profile. This is entirely understandable. News coverage is powerful; it brings recognition as well as access, and possibly income. “If you have heard of them”, goes the argument, “they must be doing some good”. But public profile or publicity does not always translate into greater effectiveness.
156. The challenge for organisations is not only to understand better the impact of their work, but to be clear about what needs to be measured, so that they can monitor the effectiveness of their “micro” activities, without losing sight of their broader “macro” and mission-related objectives.

Questions for human rights defenders on effectiveness:

- *Do you think that it is possible to measure the effectiveness of your human rights work?*
- *Do you ever take time to think about your own effectiveness as a human rights advocate and the effectiveness of your organisation?*
- *Is the effectiveness of your work and ways to improve your organisation a topic that is discussed within your organisation?*
- *Do you think that your organisation is effective?*
- *How do you measure the effectiveness of your work? The work of your organisation?*
- *How could you improve your measures of effectiveness?*
- *List ten examples of effective work by any human rights NGOs including two from your own organisation and examine the reasons why you believe this work to have been effective.*

⁸⁹ This is described by F. Tibbitts in “Evaluation in the Human Rights Education Field: Getting Started” *Human Rights Education Associates* (1997), available at: www.hrea.org.

Independence

157. Human rights organisations take their independence seriously. It is felt to be at the heart of their ability to convince and persuade. Independence implies that an organisation is free of outside influence, able to determine its policies and activities and in control of its internal affairs.
158. In terms of principle, the attachment to independence is logical. A human rights organisation that is not independent – one that in some manner is in fief to an interest – cannot expect to fulfil its obligation to act without discrimination in everything it does. In addition to pragmatic and professional justifications for reasons for wishing to be being independent, therefore, human rights organisations have a reason based on principle.

START BOX

Government: a key constituency?

Humanitarian and development organisations that receive official funds or accept government contracts to provide services include governments among their stakeholders. Many human rights organisations do not work in this way. Governments are often the targets of human rights activity, and while many human rights NGOs now accept government money and co-operate with governments and IGOs, many still do not, believing that, if they are to be effective and hold governments to their legally binding obligations, they should be entirely independent of governmental influence.

Of course human rights NGOs, like other institutions and individuals, must obey reasonable laws: as described in chapter II, governments are entitled to regulate some of their activities and ensure that the public is protected and reasonable laws upheld.

In some cases, organisations that work with government will seek feedback and input on their work (for example, to improve a training course for police officers). In such a case the organisation may treat the government as a key constituent.

Generally, government is only to be considered as a constituency when the organisation co-operates with government in its activities or accepts grants or payments from government. Outside of these relationships, governments have no right to influence the work of organisations or demand a voice in their affairs. To do otherwise would undermine the independence of human rights work in a way that carries particular risks because of the special responsibility that governments have in relation to human rights and their fulfilment.

END BOX

159. In practise, what does this imply? Should human rights organisations be precluded from affiliation with any institution of a different kind?
160. Some groups do not think so. In many societies, NGOs have affiliations with other organisations, such as political parties, religious groups, trades unions or governments. Indeed, many faith-based organisations have themselves advanced the mission-related responsibilities of human rights organisations and played an important role in protecting and promoting human rights. Other NGOs consider that any affiliation undermines an organisation's reputation for objectivity, makes co-operation with other organisations more difficult, or creates a perception in wider society that, despite what they say, human rights organisations are biased in favour of certain interests.
161. A few operational principles may be helpful here. The first is that human rights organisations are clearly free to cooperate with other organisations, in partnerships or coalitions, to advance a shared objective. The tests here would be the relevance of the objective, both to human rights and the organisation's mandate; and the freedom of the organisation to join or leave the association in question without compromise or harm to its interests. In such associations, what

an organisation must avoid is to subordinate its own priorities and mandate to other interests in a manner that does harm to the organisation's mission.

162. In situations of political transition, similar issues arise in a different form. Individuals who work for human rights NGOs are entitled to participate in political life and to stand for office. The organisations to which they belong should normally encourage political participation, even when it is difficult to manage the loss of key staff (or overcome distaste for professional politics). The challenge here is to make sure that individuals who make the transition to political office do not trade improperly on the credibility of their former organisations; and that human rights organisations remain non-partisan and do not trade improperly on their relationships with former staff who are in political office. Essentially this is about understanding and managing changes of identity, even if it must be admitted that the complexity of political transitions and the persistence of political cultures are such that this is much easier to say than to do.

START BOX

Dilemmas: political transitions

Particularly when authoritarian regimes are replaced by a more pluralistic and democratic environment, emerging political parties and political leaders often see NGOs as vehicles to strengthen their political base. Conversely, leaders of non-governmental organisations often decide to join political parties or are invited to enter government. In both situations, the distinctions between NGO work and political activism can become blurred in ways that affect the actual or perceived independence and credibility of NGOs or the NGO sector.

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163. Even more difficult problems can arise when political parties or governments create NGOs to advance their interests. The loyalty, affiliation or financial dependence of such organisations (often called GONGOs – government organised non-governmental organisations) is often concealed. Governments often create GONGOs to disarm international opinion, by presenting an anodyne version of their country's human record, or to discredit the work of legitimate human rights critics. Such organisations tend to report human rights issues in a partial manner, deny certain violations, or fabricate and misrepresent evidence. Representatives of GONGOs have been observed as they threatened or intimidated representatives of HR NGOs (for example, by taking photos of them when they denounce human rights violations abroad). The creation of GONGOs creates a difficult environment for other NGOs. They are not only likely to have good funding and official access; they also create mistrust within the NGO community, and may undermine public confidence in the work of genuinely independent NGOs.
164. There are currently no simple recipes for dealing with this problem. Where NGOs are free to operate, and media reporting is independent, the quality of independent HR NGOs should eventually prevail (or GONGOs would be forced to improve their work). But of course GONGOs are most commonly created in countries where those conditions do not exist and, in the absence of independent sources of funding, it can be extremely difficult for genuine NGOs to survive or do effective work. Government officials that sympathise with human rights often ask representatives of human rights NGOs to police their ranks, but this is usually unrealistic too. It would help if inter-governmental organisations that have established bodies to screen NGO applications for consultative or observer status were to develop procedures that were demonstrably impartial and independent; unfortunately, in most cases such bodies include representatives of states that sponsor GONGOS.
165. Receipt of funds is another issue. Are organisations that accept government funds, or the support of aid agencies, in a position to claim that they are independent? How does an NGO that

receives external funding know whether it has been compromised? Is the proportion of income received a crucial test, or the conditions attached?

166. Some NGOs refuse outright to take any money from governments or institutional donors, because they are unwilling to sacrifice their independence in return for income, or to implement projects that may reflect a donor's priorities more than their own. Others have adopted ethical guidelines to help them determine when they will and will not accept grants. Two kinds of test are relevant here: one to determine whether an organisation's programme or mandate *has* been distorted by its funders' objectives or conditions; the other to determine whether an organisation's *reputation* (not behaviour) is damaged by the *perception* that its programme or mandate are distorted by the objectives or conditions of its funders. Both considerations are relevant. Rules for ensuring that distortion does not occur, and rules to address questions of reputation are both necessary. Does it need to be added that, while the ideal position for any organisation is to be independently self-funding (as Amnesty International is), for most organisations this is not realistic. For most organisations, the key to independence lies in establishing clear and transparent rules covering the receipt of funds. These should include (ethical and other) tests that rule out acceptance of grants that are compromising, because the donor is involved in activities that will damage the NGOs reputation, or because conditions are attached that will change the focus of the organisation's programmes.

START BOX

The responsibility of donors

Donors often have the power to impose their views on human rights organisations or influence the content of their programmes. They may do this by earmarking funds for particular areas of work, or making grants available only for their own priorities. Some government donors may use financial assistance to NGOs as a means to pursue their political goals.

In some countries, so-called "donor dependency" means that donors set the agenda, rather than grantees or those on whose behalf they work. Where this is the case, NGOs that accept funds from large donors may find it difficult to stay true to their mission or prioritise the needs and desires of the communities they serve.

It should be stressed that this problem is not confined to NGOs. Large donors are also criticised for setting the agenda of governments that depend on their aid.

The power of large institutional donors has led to growing calls for a clearer definition of donor responsibilities.⁹⁰ We suggest that many of the responsibilities discussed in this chapter are relevant to donors that have an organisational commitment to human rights.

END BOX

167. Questions are also asked about the independence of NGOs that have a religious orientation. Many excellent organisations have a religious affiliation and individuals are entitled (as human rights law affirms) to their religious beliefs. In itself, religious orientation is not therefore grounds for criticism. When, however, do religious affiliations undermine an organisation's independence or its claim to work for human rights?
168. David Kennedy has argued that the human rights movement has tended to promote a "secular spirit" and "encourage people to seek emancipation in the vocabularies of reason rather than faith, in public rather than private life, in law rather than politics"; and that in doing so it may deny "the validity of other emancipatory forms".⁹¹ Is it true that human rights NGOs tend to label as partisan organisations that do not frame their work in terms that explicitly refuse political, ideological, religious or other affiliations? Is it realistic, in addition, to expect organisations to

90 J. Bendell and P. Cox "The Donor Accountability Agenda" in L. Jordan and P. van Tuijl. *NGO Accountability: Politics, Principles and Innovations* (2006):109–126.

91 D. Kennedy: 19.

be “independent” (in the terms defined by large international NGOs) if the great majority of people in their society are strongly influenced by particular religious (or political) beliefs? Some have argued on these grounds that human rights organisations can never be truly independent, and that the human rights project is inherently naïve (and politically unbalanced because it promotes a Western liberal democratic vision of society).⁹²

169. This view challenges the claim – fundamental to the human rights vision – that human dignity and human rights are universal. While this relativist approach cannot be dismissed lightly, because it is clearly difficult to apply universal values across the diversity of human societies, its weakness needs to be recognised too. If ethical standards are locally generated, how is their authority or area of reference to be measured? If some values are not universal, what limits relativisation? Why can individuals not choose the code of values they prefer?
170. This report cannot answer so complex a question. What needs to be emphasised here is that universality is fundamental to the conception of human rights and the identity of human rights organisations; and that human rights standards recognise the diversity of societies, so that that the application of rights must take account of context. One test for organisations that have loyalty to a faith (or political creed) would be to show that they apply the same principles to all groups who face discrimination or oppression of the same kind, and are not partisan or biased in their advocacy. While many human rights violations are based on religious differences, and people of the same faith naturally organise to defend themselves, it would not be acceptable for a faith-based organisation to call itself a human rights organisation if it defended people of the same faith but refused in a discriminatory manner to offer its support and services to people of other faiths whose rights were similarly violated.

Questions for human rights defenders on independence

- *What does the concept of independence mean to you as an individual working for a human rights organisation?*
- *Do you think human rights organisations can be truly independent?*
- *Do you think human rights organisations can legitimately have affiliations with political parties, religious groups or governments? In what circumstances do such affiliations compromise independence?*
- *Is your organisation perceived as independent? Do you agree that it is?*
- *Is the concept of independence important for your NGO? If so, define what independence means for it? How is preserved? What are the organisational parameters of independence?*
- *Has the independence of your NGO been threatened? How did it respond?*
- *To what extent do donors influence the agenda and programmes of your organisation? Do you think donors undermine its work? If so, how?*
- *Does your organisation work in partnership with government or receive money from a government? If so, how does it remain independent?*

Objectivity, impartiality and consistency

171. Objectivity and impartiality imply that NGOs are free from “improper” influences, apply the same standards to everyone, and act and speak in an unbiased manner. Objectivity and impartiality

⁹² M. Mutua, “The Complexity of Universalism in Human Rights”, 10th Annual Conference on “The Individual vs. the State” Central European University, Budapest (14–16 June 2002): 2.

are qualities that human rights organisations claim on professional grounds, but also, like independence, because they are linked to fundamental principles. Objectivity and impartiality can be said to measure the extent to which an organisation is consistent in what it says and does.

172. In terms of principle, human rights organisation that are not objective and impartial in their judgements and behaviour – like those that are not independent – cannot expect to fulfil their obligations to be universal in their approach and non-discriminatory in everything they do. On the contrary, an organisation that shows bias for or against particular groups or interests (in its reporting or judgements, or recruitment or programmes) would inevitably discriminate. Once more, therefore, in addition to the pragmatic and professional reasons that organisations put forward for being objective and impartial in their behaviour, human rights organisations have a reason based on principle.
173. By stating that they are impartial, NGOs usually mean that their motivation for saying and doing things is not to provide support to a particular group such as a government. Where the work of an organisation focuses on or represents a particular constituency (such as a minority group), they mean that they will maintain their objectivity and impartiality in relation to facts and they will be consistent in their views and actions.
174. Of course, the notion of objectivity raises large issues. Inside and outside the human rights movement, some would argue that objectivity is impossible to achieve. Not only do all organisations have interests and biases of perception, but acts of perception are inevitably subject to bias. We confront here, once again, the challenge of intellectual positions that are relativist or “post-modern”. And again, this is not the place to address them in detail. What should be emphasised, first, is that those who contest the possibility of being “objective and impartial” also need to defend their own position. What does the alternative look like? If the claim is that reporting and procedures should be honestly and explicitly biased, this does not inspire confidence that such procedures would advance human rights. If the claim is only that we can never know what the bias is, it does not advance us much further either. The minimum position for impartialists is surely that they should attempt in all they do to take fair account of evidence, consider all points of view against the same criteria, and ensure that the criteria in question are in accordance with human rights principles (not least, human dignity, universality and non-discrimination).
175. In practical terms, several additional comments might be added. One is that in this area transparency matters. An organisation’s reputation will certainly suffer if affiliations that it has hidden are exposed. An organisation that fails to declare its affiliations (to a faith, a minority, a political movement, funder, or another interest) immediately puts at risk its reputation for objectivity and impartiality.
176. A second point is that objectivity should not be confused with giving equal attention to every point of view. This results in distorted reporting (for example, if one side in a conflict commits more abuses than another). The Committee on the Administration of Justice (Northern Ireland) made this clear when it asserted that “impartiality” and “balance” are not the same thing:

“They are not. CAJ has always taken the view that the rights of all should be protected impartially and equally. However this does not mean that we feel rights should be advocated in a balanced way. When talking of racism we do not feel that we have to provide as many case-histories of white people who allege discrimination as of black people and when reporting on domestic violence it is

not appropriate to have an equal number of cases of men and women who have suffered such violence."⁹³

177. This is an important element to consider when human rights organisations are dealing with sensitive or controversial political issues (such as poverty, caste-based discrimination, issues of sexual identity, or politically-motivated violence). Human rights organisations are not neutral umpires that observe and do not take sides. An organisation can take sides on such issues without forfeiting its claim to be a human rights organisation, provided that its positions are consistent with human rights principles, and provided too that it argues its case transparently and is honestly independent in the position it takes. Many organisations and staff who belong to them live at considerable personal risk because they take positions in this way – on behalf of gay rights, in defence of repressed political movements, against land expropriation of poor people, or in support on “new rights” not yet framed in international law. In societies where repression is extreme, it is often impossible for organisations to take such positions publicly and remain in the country.
178. Expressing human rights opinions freely is therefore perfectly permissible. Indeed, it is an essential dimension of human rights and many human rights activists strongly assert their right to be political and take political positions in this sense. Here too, however, it is essential to set some terms. An organisation could not call itself a human rights organisation if the positions it took were in conflict with human rights principles (as distinct from not yet being articulated in human rights law); and it could not do so plausibly if it was covertly affiliated to other organisations and its positions reflected those affiliations.
179. The latter problem perhaps arises particularly often during conflicts, when it is especially difficult for organisations to be and to appear objective, because severe violations of rights are very frequent, because all sides in conflicts tend to hold polarised views, and because very high levels of suspicion are prevalent. NGOs are pressed to take sides – and, even when they do not, other parties easily disbelieve them. The effort to be objective, especially in public reporting, is likely to require exceptionally rigorous verification of facts or provision of services and assistance to more than just one group in society. It is more likely to be successful if international actors, including international NGOs, complement and support such local efforts to document human rights violations. Such work can be particularly dangerous and those involved may be vulnerable to attack from all sides. If reporting is consistently accurate and “fair”, however, it can eventually influence all sides.

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Dilemma: Maintaining objectivity in times of armed conflict

It is difficult but essential for human rights organisations to maintain their objectivity during armed conflict. If a government, its security forces, or militias associated with them, are able to demonstrate that an NGO is biased or identifies with the political interests of armed opponents, it puts the credibility of the organisation at risk and its staff in danger. Other organisations may be implicated by association and also put at risk. Governments frequently allege that NGOs that report on the ill-treatment of suspected insurgents are fronts for illegal opposition movements, or manipulated by them. (Sometimes such allegations are true.) In such conflicts, the reputation and security of organisations depend unusually heavily on the quality of their reporting and behaviour, and the behaviour of their peers. (These issues have been addressed by the International Council in *Ends and Means, Human Rights Approaches to Armed Groups*, Geneva: ICHRP (2000); and in *Talking about Terrorism*, Geneva, ICHRP (2008).)

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⁹³ CAJ, *Just News*, October 2002, quoted in E. Felner, “Human Rights Leaders in Conflict Zones: A Case Study of the Politics of ‘Moral Entrepreneurs’” (Carr Center for Human Rights Policy, 2004): 40.

Questions for human rights defenders on objectivity and impartiality

- *What do objectivity and impartiality mean to you? What do they mean for your organisation?*
- *How does your organisation ensure that it remains objective and impartial? What internal or external checks ensure that the organisation's objectivity and impartiality are upheld?*
- *Can organisations affiliated with political parties, religious groups or governments remain objective and impartial? If so, how?*
- *In conflicts, what can human rights organisations do to demonstrate their objectivity and impartiality? What challenges and risks arise?*
- *If your organisation works in a conflict environment, identify the dilemmas that arise when it attempts to be objective and impartial?*

Truthfulness and accuracy

180. Truthfulness and accuracy are the means by which organisations prove they are objective and impartial. Being truthful and accurate means never deliberately distorting or exaggerating information about abuses or organisational achievements and making every effort to avoid negligent errors of fact.
181. A tradition of accurate factual reporting is deeply established among human rights NGOs and is one of the reasons why they have public trust and influence.⁹⁴ Organisations generally take great care to ensure that the information they publish is accurate and that they cannot be accused of having an undisclosed bias. Truthfulness and accuracy are particularly important for NGOs that report on violations because they rely on the accuracy of their reporting to distinguish their work from propaganda and establish a reputation of objectivity. Truthfulness and accuracy are no less important in other areas of human rights work, however, because they establish trust, which is often the first step to being invited to participate in education or training activities with businesses, government departments or other institutions.
182. Some NGOs are less concerned about checking the accuracy of allegations they make; they may advance allegations on the basis of tentative or poor evidence, without indicating this. What should an NGO do when it becomes aware that an organisation is circulating inaccurate information? The NGO responsible may not necessarily be acting in bad faith, or may consider that exaggeration is justified because it will lead to corrective action than would otherwise not be taken. Yet, while an organisation that is already considered unreliable will not do its reputation much harm by peddling new inaccuracies, such behaviour can cause considerable damage to the work of organisations that have carefully built a reputation for sound research and accurate reporting.
183. Experienced human rights investigators have developed different ways to check whether allegations are accurate. They conduct their own investigations rather than rely on information provided by others; and they take great care to verify all information that they receive.
184. Organisations that can explain transparently how they verify information can provide stronger assurances that what they say is accurate. Others depend for credibility on the accuracy of past work they have published.

⁹⁴ See: H. Slim (2002).

185. At the heart of this discussion is a tension between the risk of publishing inaccurate information and thereby undermining legitimacy, and the risk of withholding accurate information and thereby not exposing human rights violations in a timely manner. One way to approach this is to make a public accuracy assessment when releasing information. Organisations can indicate how reliable they consider the information they release. So, for example, where there is evidence of mass violations of human rights but it is untested, an organisation might release the information but indicate that it needs to be verified. Transparency of this type might help to resolve some of the tensions or at least make them more manageable.
186. Verification is an essential tool for guarding against negligent inaccuracy. Some organisations have detailed guidelines on how to investigate violations; but many do not. There is room for improvement in this area. Many NGOs still do not provide adequate training to their staff and do not allocate time and resources to improving research methodologies. Indeed, across the sector too little has been done to develop and disseminate human rights research methodologies.

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Dilemma: Challenges to accuracy

When the accuracy of reports is challenged, the first question that organisations need to ask is whether the challenge should be taken seriously. It is common for those who are allegedly responsible for human rights violations to rebut accusations by claiming that the NGO producing the information is biased, acting in bad faith, motivated by undisclosed interests or simply lying. The risk is that NGOs become blasé when accuracy is challenged and do not react when faced with a serious claim.

NGOs that report on human rights violations are bound to make occasional mistakes. The test is how they react when these are pointed out. Do they admit to having made a mistake but bury the admission at the bottom of an inside page? Do they give corrections the same profile they gave the original report? What errors merit correction? Is correction required only if no abuses occurred of the sort alleged? What if responsibility was wrongly attributed? What if only a few details were wrong? Should corrections be issued if an organisation is not challenged from outside, but learns of the error from its own staff?

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Questions for human rights defenders on truthfulness and accuracy

- *How do you verify information? How does your organisation verify information? Where is there room for improvement?*
- *Has your organisation ever made a mistake in its reporting? If so, how did it address the mistake when it came to light? What happened after that?*
- *Does your organisation have a policy on information? If not, would you like to see one developed? What would be the most important points to include?*
- *Do you think it is legitimate to exaggerate a report of abuse if it is the only way to draw attention to it? Under what circumstances is exaggeration justified?*
- *Does your organisation provide training on how to investigate and report on human rights violations? What should training focus on?*
- *What would you do if a report you received from another human rights organisation was inaccurate? Would it matter which organisation was responsible?*
- *How, if at all, do inaccurate reports affect your organisation and its work?*
- *Do you think that human rights organisations could or should try to develop common standards governing truthfulness and accuracy?*

Transparency

187. Transparency implies that an organisation should disclose as much information as possible to its stakeholders (and the general public) about its decisions and decision-making processes, activities, organisational structure and finances. Organisations that are transparent gain a higher level of public trust and confidence because they are able to demonstrate that they are acting responsibly.
188. Principles are also relevant in this case. A human rights organisation that conceals information and is not transparent is more likely to be discriminatory (not universal in its treatment of people or consistent in its decisions), partly because it will be less accountable (more prone to the private play of interests) but primarily because it will not be able to demonstrate whether its procedures and actions have been discriminatory or not. Even if those in charge have not been discriminatory, their lack of transparency exposes the organisation to perceptions of bias that it will not be able to refute. In this case, two further human right principles come into play: the right to participate, and the right to information. They affirm that people are entitled to information that concerns them, and to participate in decisions that concern them. Lack of transparency is at odds with both principles. In addition, therefore, to pragmatic and professional reasons that they may have to be transparent, human rights principles are engaged.
189. Furthermore, transparency is closely linked to accountability, another notion central to human rights. Much human rights advocacy focuses on the obligation of governments and other institutions to make officials accountable for their actions. In pursuit of this goal, human organisations call on governments and other institutions to subject public decisions and the conduct of policy to scrutiny, by making information about them public, and consulting those they affect. It is only reasonable to expect human rights organisations to subject themselves, and their own decisions, to similar standards of transparency and reporting.

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Responsibility in Action – the Credibility Alliance

The Credibility Alliance began as a consortium of thousands of voluntary organisations working across India. It works to increase transparency and accountability in the NGO sector. In 2004 the Alliance registered as an independent NGO. Organisations seeking to become members are required to agree to the Alliance's norms which cover organisational structure, vision, good governance, management, transparency and accountability. With regard to Accountability and Transparency the Norms establish the following principles:

Principle: The organisation is accountable and transparent to the community served, the state, the public, donors, staff, volunteers and concerned others.

a. Accountability

- Signed audited statements are available: balance sheet, income and expenditure statement, receipts and payments account, schedules to these, notes on accounts and the statutory auditor's report
- Statement of accounts indicates whether constructed on a cash or accrual basis
- There are no serious adverse notes on any material point
- There are no material transactions involving conflict of interest between a Board or staff member and the organisation

b. Transparency

- The organisation's Annual Report needs to be distributed and communicated to the stakeholders and others and is made available on request every year, within eight months of the end of the organisation's financial year
- The Annual Report contains a description of the main activities, a review of the progress and results achieved in the year; and information on the Board members' names, position in the Board, remuneration or reimbursement and should contain brief financial details

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190. Of course, this does not mean that organisations should be expected to disclose all the information they hold. For security reasons it may be reasonable to withhold information about survivors of human rights violations; or proper to protect their right to privacy. What it means is that, though they have a duty to protect certain categories of information, organisations should seek to be transparent and should release information to the public domain unless they have a specific justification not to do so. For many organisations this may be as simple as taking the time to review public and web-based information to make sure that decisions and procedures are accurately described.
191. Transparency cannot, however, be practised everywhere. What is to be done when human rights defenders are subject to repression and are forced to work clandestinely? In such situations, transparency may be impossible and may put people in danger.

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Dilemma: Withholding of information

A human rights NGO created a distress relief fund solely for the families of suspected insurgents whom the authorities had detained without charge for long periods under special legislation. The government had asserted that any support for insurgents or their families would be traitorous, likening the act to giving aid to families of enemy soldiers when a country is at war. Should the NGO publicly announce the launching of its fund? In this case, the NGO decided in the affirmative. It is important that NGOs have the flexibility to assess their particular context and make such judgments without external pressure.

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192. Different questions need to be asked by organisations that work clandestinely. Firstly, is clandestinity still justified? Going into clandestinity is often not a matter of choice; repression may force organisations to act secretly in order to survive. Exiting from clandestinity can be more complex. It is particularly difficult to decide how to act when repressive systems are on the cusp of reform but still dangerously authoritarian.
193. Even when organisations find themselves working in a clandestine manner, however, they need to ask what benchmarks and standards they can use to assess whether they are still acting responsibly. It is important, in fact, to recognise that many organisations cannot conduct their affairs in a “normal” manner because of the disabling and repressive context in which they work; and to recognise at the same time that this fact does not automatically release an organisation from thinking ethically about its conduct, or seeking to operate in an accountable manner.

Questions for Human Rights Defenders on Transparency

- *In what ways does your organisation encourage transparency?*
- *Does your organisation have a policy on transparency?*
- *What kinds of information does your organisation disclose and to whom? Are there areas where more disclosure and transparency are possible and desirable?*
- *To what extent is transparency an absolute principle?*
- *Are there really situations that prevent human rights organisations from being transparent? If there are, what are the justifications for this?*

Integrity and honesty

194. Human rights organisations fight against corruption and abuses of power. If they are to be taken seriously, they need to demonstrate that they themselves act with integrity and honesty.
195. Honesty and integrity imply that organisations will not engage in, tolerate, or cover up any form of corruption, deception, fraud or dishonesty. Checks and balances should be in place to ensure that organisations prevent and sanction dishonest behaviour. With regard to financial matters, organisations should be truthful about how donated funds have been used. For formally-constituted NGOs this entails a duty to ensure good governance and management.⁹⁵
196. Here too, principle underpins these values, because an organisation that tolerates corruption or dishonesty will advantage some of its stakeholders while disadvantaging others or non-stakeholders, thereby infringing principles of universality and non-discrimination.
197. For formally-constituted NGOs, organisational documents provide the means by which an organisation can set up checks and balances and ensure that it acts responsibly. Organisational documents should clarify the mission of the organisation, its internal governance structure, and its relationships with stakeholders and decision-making authorities. Policies to promote good internal management might cover conflicts of interest, recruitment and termination of staff, a complaints procedure, compensation rules, recruitment of consultants and rules of procurement, confidentiality, discrimination, and the rights and terms of reference of various stakeholders, including staff. Rules about conflicts of interest are important in larger organisations that have significant resources.
198. Smaller organisations and organisations that do not raise funds from the public or other public sources have less need for elaborate formal policies. In such organisations, Boards will play a key role in ensuring good governance.⁹⁶
199. Because staff members are involved in day-to-day operations, they will often be the first to notice actions or behaviour inconsistent with an NGO's values. For this reason, internal procedures that permit employees to raise concerns (anonymously if necessary) are an important tool, particularly for larger NGOs. Such procedures may entitle staff to bring their concerns to the attention of a manager or a member of the management board. In many circumstances, nevertheless, conventional channels may not be appropriate or sufficient. This may apply when the manager is responsible for the abuse in question (financial dishonesty, sexual harassment, a serious conflict of interest, etc.). Clear mechanisms therefore need to be in place for taking action on, and following up staff grievances.

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The personal behaviour of NGO staff

Human rights NGOs came under pressure to take notice of the private behaviour of their staff after children's and women's rights were incorporated into the human rights agenda in the 1990s. This drew attention to treatment of wives and children in the home. NGOs should be expected to give attention to such issues – but how far should they go? Should staff exhibit standards of behaviour that exceed what would be considered “normal” in the societies concerned?

To illustrate, should an organisation that campaigns for children's rights ensure that its own employees respect children's rights? Today, in virtually all industrialised countries, a children's rights organisation that lacks a code of conduct or regulations stipulating what its staff may and may not do in respect to children in their care (or children

⁹⁵ The principles of integrity and honesty also relate to some of the responsibilities we have already discussed such as the commitment to truthfulness and accuracy.

⁹⁶ Cross reference, Part III, section on Boards, Council and Trustees.

they come across in the course of their work) will almost certainly be called upon to explain this omission to donors and supporters.

Minimum standards governing the behaviour of NGO employees at work is one thing; but many employees still believe their private life is another. Others increasingly hold the view that inconsistency between work and home life is damaging and unacceptable. The child protection policy of one international NGO, for example, stipulates that its staff (and anyone else working with the organisation) “should not hire minors as ‘house help’ or provide shelter for minors in their homes”.⁹⁷

The treatment of domestic servants by NGO staff raises similar issues. Domestic workers are frequently indigenous or other minorities, sometimes migrant workers, and may be particularly exposed to exploitation and discrimination. What standards in this area should NGOs set for their employees?

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200. If the management of human rights NGOs raises ethical and professional issues that resemble those faced by other kinds of organisation, one distinguishing feature is that they espouse clear moral standards and thereby invite others to judge them by those standards. This means that human rights organisations, because of their convictions, but also for credibility, need to give particular attention to the way they conduct their own affairs. They are not in fact expected to be unusually efficient; they are expected to behave in accordance with their convictions – to avoid abuse, exploitation, discrimination, and hypocrisy. This expectation generates a degree of moral accountability that helps human rights NGOs to identify and maintain personal and institutional standards of conduct.
201. NGOs are bound by the domestic criminal and civil laws of the country in which they are based and in any other countries in which they may operate. As advocates of the rule of law, they are bound to respect the law themselves. They should not break laws and are required, like other institutions, to pay applicable taxes, pay employees a legal wage, and refrain from committing fraud or other financial crimes.⁹⁸
202. If an organisation provides a service regulated by government standards, it should meet those standards. When organisations operate an advice centre, a clinic or school, own property, employ staff, import goods from abroad, they are subject to the rules and regulations that apply to other entities or individuals. When organisations sell products they must ensure they meet safety standards.

Non-compliance with the law

203. As usual, there are exceptions to the above. Though human rights organisations place a high value on respect for the rule of law, in some instances, domestic laws are illegitimate, unjust or in violation of international human rights law. In such cases organisations will obviously face dilemmas. Breaking bad laws and respecting bad laws both involve costs and risk, which may sometimes pose dangerous threats to the organisation. In some circumstances, organisations will feel not only entitled to break the law, but required to do so – for example to save life.

⁹⁷ World Vision UK, *Child Protection Handbook*, para 2.3 (undated). The Handbook goes on to explain that “A minor for World Vision purposes is defined as a child under the age of 18 years. Even though providing employment for a minor may be culturally acceptable and provide benefits not otherwise available to the child, the hiring of minors may lead to misunderstandings and is inconsistent with World Vision’s efforts to ban exploitation of child labour.”

⁹⁸ In some countries NGOs receive special benefits such as tax exemptions. For NGOs that receive special benefits under law, there may be conditions related to some activities. For example, in many countries, NGOs that receive tax exemptions may be limited in the degree to which they can participate in partisan political activities.

204. In situations where a government uses violence and intimidates human rights defenders, the members and supporters of NGOs may be required to “go underground” in order to avoid persecution. They may need to interview victims and witnesses of human rights violations covertly, even in breach of the law. They may have to meet secretly to discuss the internal management of their organisations and to plan. They may have to conceal flows of money from abroad. They may need to forge papers, or bribe officials, or cross frontiers illegally in order to bring political prisoners or others to safety. They may have to shelter people against whom the authorities have issued arrest warrants. They may meet (and argue human rights with) representatives of banned political movements or illegal armed groups in their country. They may have to break laws that require them to disclose all the donations they receive or the identity of their members, or notify the authorities in advance of their meetings.

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Human Rights Dilemma

Particularly (but not only) in situations of insurgency, human rights NGOs may breach the law by making contact with a wide range of people. It may be difficult to collect information, to report accurately, or to protect people at risk without breaking the law. In many cases, NGOs may also be legally obliged to notify the authorities if they are aware of the location of people who are banned or subject to arrest. Their position becomes still more hazardous when such persons are (accused of being) involved in politically motivated violence or acts of terror.

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205. Organisations have developed different strategies or handling such dilemmas. Most agree that they should use non-violent methods, such as “civil disobedience”. Classic forms of civil disobedience, like those pioneered in India by Gandhi, by the civil rights movement in the United States, and by democracy movements in Eastern Europe, have been extraordinarily effective but typically require large scale public support.
206. In numerous cases, in order to achieve essential human rights goals, NGOs and their staff have been driven to act clandestinely – to act illegally in order to act justly. When they break the law, organisations balance achievement of their mission-related priorities against the risk that discovery may delegitimise their work or cause the arrest or killing of staff or closure of the organisation. Clearly these are not choices that can be taken lightly.

Questions for human rights defenders on honesty and integrity

- *In what ways could the community of human rights NGOs better promote the principles of honesty and integrity?*
- *In what circumstances, if any, would you feel that it is legitimate to break the law?*
- *Identify examples of bad practice in the human rights sector. What was done to remedy this bad practice? What was said about this behaviour?*
- *Does your policy have a policy on dishonesty and bad practice? What checks are in place to prevent and punish employees that commit crimes such as abuse of authority or fraud?*

CONCLUSION

207. This report has explored the responsibilities of human rights organisations. It suggests that, to operate effectively and responsibly, human rights organisations require an appropriate and enabling environment. Governments, in particular, must respect the fundamental freedoms of association, assembly, expression and speech, and other key human rights. These rights are set out in international and regional human rights standards; but a large gap remains between these protections and the real environment in which many human rights organisations work. In numerous countries, human rights organisations are disabled by unnecessary or obstructive regulation and other forms of harassment that prevent human rights organisations from operating effectively. In many countries, governments claim that their actions are legitimate and necessary attempts to make sure that independent NGOs are accountable. In some, the situation is even worse: human rights advocates and their organisations are openly assaulted, imprisoned, ill-treated, even killed. The conditions in which human rights NGOs operate condition and influence the ways in which they can fulfil their responsibilities. If they operate in a highly repressive environment, human rights NGOs do, and must, organise their affairs in unusual ways.
208. The report went on to identify the specific responsibilities that organisations have. It argued that, to pinpoint the responsibilities of a specific organisation, it is important to understand, not just the context in which it works but what the organisation does and who its stakeholders are. In addition, since some stakeholders will have more power than others, human rights NGOs need to prioritise their essential stakeholders if they are to fulfil the mission they give themselves.
209. The report identified the mission-related responsibilities flowing from certain core values that are held in common by every genuine human rights organisation. These should not be conflated with the legal obligations that states have, or with the performance-related responsibilities of human rights NGOs, which they share with many other kinds of organisations. Fulfilling mission-related responsibilities implies remaining true to core values – including respect for human dignity, equality and non-discrimination, and universality – at all times and in all they do. The responsibility of human rights NGOs to stay true to their mission cannot be set aside even though forms of implementation will vary considerably, because organisations have different mandates and work in different circumstances.
210. The report then discussed a number of performance-related values, including good governance, independence, objectivity and impartiality, transparency, honesty and integrity, and effectiveness. It noted that, although these responsibilities do not reflect formal human rights standards, they are nevertheless values that human rights organisations tend to embrace because, when they are not adhered to, an organisation will find it impossible to meet its mission-related responsibilities.
211. The report discussed some of the dilemmas that human rights organisations confront as they attempt to act responsibly in very different environments. In most instances, it suggests that there are few “right” or “wrong” answers: there are tough dilemmas, risky choices, grey areas.
212. Throughout, the report gives examples of initiatives that NGOs in general and human rights organisations in particular, have taken to enhance responsible behaviour. NGOs have adopted codes of conduct, formed networks and taken action together to promote accountability, and

applied methods of engaging the public in oversight. We have not advocated a particular way forward. The diversity of human rights work and human rights organisations, their vulnerability to repression, and the extremely varied environments in which they operate, mean that it is inappropriate and may even be dangerous to call for one approach, based on a monolithic definition of responsible institutional conduct. We urge organisations to use this report as a tool to assist self-reflection, in the hope that it may help them move towards identifying an appropriate framework of responsibility for their circumstances.

213. Human rights organisations should take a human rights-based approach to responsibility. They have an ethical reason for doing so; in addition, the report suggests that healthy self-examination, based on human rights criteria, will increase their efficiency, legitimacy and credibility.
214. The final report will be accompanied by a one day workshop module which has been designed to provide human rights organisations with guidance on how they can explore some of the issues it raises. We hope that the report and the module make a useful contribution to what must be a long and complex conversation.

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