AMERICAN BAR ASSOCIATION
CENTER FOR HUMAN RIGHTS
WASHINGTON, DC

MEMORANDUM

DATE: June 14, 2013

RE: Foreign Contribution (Regulation) Act and the Right to Freedom of Association and Expression under International Law

I. Introduction

The American Bar Association Center for Human Rights (the Center)[1] is concerned with whether the Foreign Contributions (Regulation) Act (FCRA), as written and as applied in the case of *Indian Social Action Forum v. Union of India*, Special Leave Petition (Civil) of 2013, is consistent with the internationally protected rights of freedom of association and expression. For the reasons outlined below, the Center believes that the FCRA, as written, appears to conflict with India's international treaty obligations because it imposes restrictions on these fundamental rights that are impermissibly vague and are not necessary in a democratic society. Furthermore, the FCRA, as applied in this case, effectively silences civil society using means, such as freezing of bank accounts, which severely curtail their activities without stating a legitimate reason that is necessary to democratic society.

II. Summary of the Case

The FCRA requires organizations of a "political nature" that operate in India and receive foreign funding to register with the government or obtain prior approval for the use of those funds. It permits the Ministry of Home Affairs to suspend such an organization's registration, thereby freezing the assets of such organization if, *inter alia*, they engage in conduct that is contrary to

[1] This statement was prepared by the Justice Defenders program of the American Bar Association, Center for Human Rights. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

the "public interest." The term "public interest" does not appear to be defined in the Act or attendant regulations.

The Indian Social Action Forum (INSAF) is a non-governmental organization with an active presence in 15 States of India. INSAF is a coalition of 700 civil society groups which work to promote democratic governance and respect for human rights. It is registered pursuant to the FCRA. On April 30th, 2013, the Ministry of Home Affairs of the Government of India reportedly issued an order suspending the registration of the Indian Social Action Forum (INSAF) for 180 days, under Section 13 of the FCRA. The order alleged that the actions of INSAF are "likely to prejudicially affect the public interest." As a result of this order, many, if not all, of INSAF's assets were frozen, thereby severely constraining the organization's ability to continue operations and support their coalition partners around the country that are protecting, promoting and defending human rights.

Relevant International Standards

The rights to freedom of association and expression are enshrined in articles 22[2] and 19[3] of the ICCPR. The ICCPR broadly protects the right to freedom of association and expression and permits only narrowly drawn limitations on the right. India acceded to the International Covenant on Civil and Political Rights (ICCPR) on April 10, 1979. The Indian Supreme Court has held that the rights guaranteed by the Covenant "elucidate" and "effectuate fundamental rights guaranteed" by the Indian Constitution.[4]

The U.N. Human Rights Committee (UNHRC) – the body charged with authoritative interpretation and enforcement of the ICCPR – explained in *Belyatsky v. Belarus* that restrictions on freedom of association must meet three requirements: (1) proscription by law; (2) the law may be imposed solely to protect national security or public safety, public order, public health or morals, or the rights and freedoms of others; and (3) the restrictions must be "necessary in a democratic society."[5] The UNHRC elaborated that the protection afforded by Article 22 extends

[2] International Covenant on Civil and Political Rights, art. 22, Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter ICCPR]; *See also* Universal Declaration of Human Rights, art. 10, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948) [hereinafter UDHR]; American Convention of Human Rights, art. 16, 1144 U.N.T.S. 143 (1969) [hereinafter American HR Convention]; African Charter on Human and People's Rights, Art. 10, June 27, 1981, 21 I.L.M. 58 [hereinafter "African HR Charter"]; European Conv. on Human Rights, art. 11, Nov. 4, 1950, Europ. T.S. No. 155 [hereinafter "ECHR"].

[3] ICCPR, *supra* note 2 at art. 19; *See also* UDHR, *supra* note 2 at art. 19; American HR Convention, *supra* note 2 at art. 13 African HR Charter, *supra* note 2 at art. 9; ECHR, *supra* note 2 at art. 10.

[4] *See* People's Union for Civil Liberties v. Union of Inida (1997) 3 SCC 433 (where the Court found that "…it would suffice to state that the provisions of the covenant [ICCPR], which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such.)

[5] Aleksander Belyatsky et al. v. Belarus, U.N. Human Rights Committee, Communication No. 1296/2004, U.N. Doc. CCPR/C/90/D/1296/2004, at ¶7.3 (July 24, 2007). [hereinafter Belyatsky];

to all activities of an association and that, therefore, official or *de facto* dissolution of an association must satisfy all of the requirements above.[6] As with the right to freedom of association, restrictions on the right to freedom of expression are carefully circumscribed by the ICCPR. The UNHRC has specified the same permissible restrictions on freedom of expression, in *Kim v. Republic of Korea.*[7]

The standard recognized by the UNHRC for restricting the rights to freedom of expression and association is accepted around the world. Further, as a State Party to the ICCPR, India should ensure its laws and practices conform to the UNHRC's interpretation of the ICCPR.[8] In the case of the FCRA, it appears the law, as written and as applied, fails to meet this standard.

A. The right to access foreign funding is protected by Article 22.

The right to access funding is a direct and essential component of the right to freedom of association for all non-governmental organizations (NGOs). Most NGOs, and especially human rights organizations, function on a "not-for-profit" scheme and therefore depend heavily on external sources of funding to carry out their work. Therefore, barriers and restrictions to funding sources directly undermine the ability of NGOs to function and thus the right of their members to freedom of association and the right to freedom of expression.

For these reasons, the UNHRC has consistently expressed concern over foreign funding restrictions as an impediment to fully realizing the right to freedom of association. For example, after reviewing Egyptian legislation which required NGOs receiving foreign funding to register with the government, the Committee stated that:

> The State Party should review its legislation and practice in order to enable non-governmental organizations to discharge their functions without impediments which are inconsistent with the provisions of article 22 of the Covenant, such as prior authorization, funding controls, and administrative dissolution.[9]

The UNHRC reiterated this concern when evaluating an Ethiopian law prohibiting Ethiopian NGOs from obtaining more than 10% of their budget from foreign donors. The law in question

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[6] Korneenko, et. al v. Belarus, U.N. Human Rights Committee, Communication No. 1274/2004, CCPR/C/88/D/1274/2004 (10 November 2006) [hereinafter Korneenko].

[7] Kim v. Republic of Korea, U.N. Human Rights Comm'n, CCPR/C/64/D/574/1994, 64th Sess., at ¶12.2 (4 Jan. 1999) [hereinafter Kim] ([a]ny restriction on the right to freedom of expression must cumulatively meet the following conditions: it must be provided by law, it must address one of the aims set out in paragraph 3 (a) and (b) of article 19 (respect of the rights and reputation of others; protection of national security or of public order, or of public health or morals), and it must be necessary to achieve a legitimate purpose.)

[8] *See* People's Union for Civil Liberties v. Union of India (1997) 3 SCC 433.

[9] U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee: Egypt*, at ¶21, U.N. Doc. CCPR/CO/76/EGY (November 28 2002), http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.76.EGY.En?Opendocument

also prohibited NGOs considered by the government to be "foreign", from engaging in human rights and democracy related activities. The Committee stated:

> The State party should revise its legislation to ensure that any limitations on the right to freedom of association and assembly are in strict compliance with articles 21 and 22 of the Covenant, and in particular it should reconsider the funding restrictions on local NGOs in the light of the Covenant and it should authorize all NGOs to work in the field of human rights. The State party should not discriminate against NGOs that have some members who reside outside of its borders.[10]

The United Nations General Assembly echoed this holding in the Declaration on Human Rights Defenders which states, "[e]veryone has the right, individually and in association with others, to solicit, receive, and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means . . . ."[11] The Special Representative of the Secretary-General on the Situation of Human Rights Defenders has also stated that "governments must allow access by NGOs to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments."[12]

In addition, the U.N. Special Rapporteur on the Right of Freedom of Assembly and Association has stated that:

> The ability for associations to access funding and resources is an integral and vital part of the right to freedom of association… Any associations, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations.[13]

Restrictions on foreign funding create significant barriers for non-governmental organizations and civil society to function. Such restrictions also may undermine the right to freedom of expression as funding may legitimately be used to pay expenses related to acts of expression, including the costs of publicizing an individual's or an association's views. It therefore follows

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[10] U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee: Ethiopia,* at ¶25, U.N. Doc. CCPR/C/ETH/CO/1 (August 19, 2011), http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/448/95/PDF/G1144895.pdf?OpenElement

[11] *Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,* U.N. General Assembly, U.N. Doc. G.A. Res. 53/144, 9 December 1998, art. 13 (under this framework, States are supposed to adopt legislation to facilitate and not impede the solicitation, receipt and use of resources.) [hereinafter Declaration on Human Rights Defenders].

[12] Special Representative of the Secretary-General on the Situation of Human Rights Defenders, United Nations General Assembly, A/59/401 (2004) at ¶82(l).

[13] United Nations Human Rights Committee, *Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association,* at ¶¶67-68, U.N. Doc. A/HRC/20/27 (May 21, 2012), http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

that restrictions on access to funding for those whose purpose is to participate in public debates and human rights discourse must meet the requirements set forth in the ICCPR for restrictions on freedom of expression. Because these restrictions severely limit rights to association and expression, they must meet the stringent limitations on such restrictions embodied in the ICCPR under Articles 22 and 19.

B. The FCRA is impermissibly vague

All restrictions on the rights of freedom of association and expression must be 'proscribed by law'. This has been interpreted to mean, not only that the law was duly enacted, but that the provisions of the law are not overly broad or vague.[14] The UNHRC has elaborated that 'proscription by law' means the law "must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression [and association] on those charged with its execution."[15]

These legal principles have been universally accepted by human rights courts around the world.[16] Interpreting nearly identical language in the European Convention on Human Rights, the European Court of Human Rights stated:

> Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as 'law' unless it is formulated with sufficient precision to enable the citizen to regulate this conduct: he must be

[14] Kungurov v. Uzbekistan, U.N. Human Rights Committee, Communication No. 1478/2006, U.N. Doc. CCPR/C/102/D/1478/2006, at ¶¶8.5-8.7 (September 15, 2011) (Committee found that the law was not precise in explaining the restrictions imposed upon registered organizations) [hereinafter Kungurov]; *See also* Leonardus Johannes Maria de Groot v. The Netherlands, U.N. Human Rights Committee, Communication No. 578/1994, U.N. Doc. CCPR/C/54/D/578/1994 (July 14, 1995) [hereinafter de Groot]; *See generally* U.N. Human Rights Committee, *General Comment No. 27*, U.N. Doc. CCPR/C/21/Rev.1/Add.9, ¶13 (November 2, 1999) [hereinafter General Comment No. 27].

[15] United Nations Human Rights Committee, *General Comment No. 34*, U.N. Doc. CCPR/C/GC/34 (2011) at ¶25 [hereinafter General Comment No. 34]; *See also* de Groot, *supra* note 14; General Comment No. 27, *supra* note 14 at ¶13, ("Proscribed by law" is a term of art that the UNHRC uses consistently an d has adopted the same interpretation and meaning for throughout its General Comments and Committee decisions.); *See generally* U.N. General Assembly, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, at* ¶9, U.N. Doc. A/61/267 (August 16, 2006) [hereinafter Report on Protecting Human Rights while Countering Terrorism].

[16] *See* Novaya Gazeta V. Voreonezhe v. Russia, Eur. Ct. H.R., App. No. 27570/03 (2011) at ¶33 (found that restrictions on freedom "must be narrowly interpreted and the necessity for any restriction must be established convincingly."); Sunday Times v. United Kingdom, Eur. Ct. H.R., App. No. 6538/74 (1979) at ¶56 (developed a three-part test, similar to the UNHRC to evaluate the legality of restrictions on the freedom of expression); Herrera Ulloa v. Costa Rica, Inter-Am. Ct. H.R. (ser. C) No. 107, at ¶120 (July 2, 2004) (holding that exceptions to the freedom of expression must be narrowly construed by creating a three-part test similar to that of the ICCPR and the European Court of Human Rights); Media Rights Agenda v. Nigeria, Comm. Nos. 105/93, 128/94, 130/94, 152/96, 12th Afr. Comm'n H.P.R. AAR Annex V (1998-1999) at ¶¶60-70 (determined limitations on the right of expression similar to those in the ICCPR).

> able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.[17]

The FCRA conflicts with relevant provisions of the ICCPR because its terms are impermissibly vague violating the requirement that restrictions be "proscribed by law". As discussed above, in order for limitations on these rights to be valid, they must be clearly defined and articulated in the law; vague laws are invalid.[18]

The Act's stated purpose is "to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest."[19] This stated purpose is unduly broad, potentially sweeping into its scope legitimate, protected activities that are essential to the proper functioning of a democracy. Furthermore, Section 9(e) of the Act permits the freezing of an organization's assets if doing so would be in the "public interest". The legislation does not clearly define "national interest" or "public interest" and thereby allows the exercise of broad discretionary powers that could be applied in an arbitrary and capricious manner.

While the legislature cannot be expected to foresee every instance in which the use of foreign funding might threaten a legitimate purpose, like public order, it must specify with adequate detail what activity is prohibited so that individuals are on notice as to what conduct is prohibited.[20] The FCRA fails to provide this level of specificity. Therefore, the Act is, as written, impermissibly vague, in violation of article 19 and 22 of the ICCPR.

C. The FCRA does not meet the requirements of necessity and proportionality

Even if the FCRA were not vague and overbroad, it would still violate international law because it does not enumerate a legitimate aim and is not necessary in a democratic society. Freedom of association and expression can be limited to protect only certain enumerated purposes, as set out in the ICCPR. The legitimate reasons a State can limit these rights are to protect public order, public health and morals, national security, and the rights and freedoms of others.[21] These

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[17] Sunday Times v. United Kingdom, Eur. Ct. H.R., App. No. 6538/74 (1979) at ¶49 [hereinafter Sunday Times].
[18] Kungurov, *supra* note14, at ¶¶8.5-8.7 (Committee found that the law was not precise in explaining the restrictions imposed upon registered organizations); *See generally* General Comment No. 27, *supra* note 14, at ¶13.

[20] De Groot, *supra* note 14; Sunday Times, *supra* note 17, at ¶49.
[21] As experts in international law, the Center would not presume to address the Court on matters of domestic law. We note however that, before ratifying the ICCPR, India issued a declaration that, *inter alia*, articles 19 and 22 of the Covenant "shall be so applied as to be in conformity with the provisions of article 19 of the Constitution of India." Human Rights Comm., Reservations, Declarations, Notifications and Objections Relating to the International Covenant on Civil and Political Rights and the Optional Protocols Thereto, at 25, U.N. Doc. CCPR/C/2/Rev.4 (Aug. 24, 1994). Article 19 of the Constitution of India sets forth a definitive list of permissible purposes for limiting the rights to freedom of expression and association. This list does not include the terms "national interest" or "public interest". It further requires that such restrictions must be "reasonable." The Government of India is to be commended for adopting constitutional protections that are consistent with

legitimate aims should not be interpreted loosely.[22] The Special Rapporteur on Protecting Human Rights while Countering Terrorism provides definitions for each of these aims.[23] In this case, the FCRA's stated purpose is "to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest."[24] This stated purpose is not among those specifically permitted by the ICCPR

Articles 22 and 19 of the ICCPR require that restrictions to this right be necessary to achieve a legitimate goal and must not impair the democratic functioning of society. In accordance with UNHRC, General Comment No. 34, any restrictions on freedom of expression "may not put in jeopardy the right itself. . . . [T]he relation between the right and restriction and between norm and exception must not be reversed."[25] The UNHRC has clarified what it means for restrictions to be "necessary to achieve a legitimate purpose:"

> Restrictions must not be overbroad […] restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might

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international law in that they do not permit restrictions on fundamental rights that do not serve a legitimate interest and are not reasonable. It is our understanding, therefore, that there is no conflict between domestic and international law. If, however, article 19 of the Constitution of India were interpreted to permit a statute that authorizes the freezing of an organization's assets for vague reasons not listed in article 19, such as unspecified threats to "public interest", the declaration would arguably have the effect of defeating the object and purpose of the relevant provisions of the ICCPR. The Vienna Convention on the Law of Treaties prohibits reservations to treaties that would be "incompatible with the object and purpose of the treaty." Vienna Convention on the Law of Treaties, art. 19(c), Jan. 27, 1980, 331 U.N.T.S. 1155. It follows that declarations, which unlike reservations do not permit deviations for treaty obligations, must – at a minimum – comport with the object and purpose of the treaty. The Vienna Convention has been ratified by 113 nations and is widely considered to constitute customary international law which is binding on non-State parties, including India.

[22] Report on Protecting Human Rights while Countering Terrorism, *supra* note 15 at ¶19.

[23] "The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights define public safety as "protection against danger to the safety of persons, to their life or physical integrity or serious damage to their property". The same principles state that national security may be invoked by States to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or the threat of force. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order or used as a pretext for imposing vague or arbitrary limitations and may be invoked only when there exist adequate safeguards and effective remedies against abuse. Public order (*ordre public*) is defined as "the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded". Finally, limitations are permitted for the protection of the rights of others. This provision is to be read in the light of article 20, paragraph 2, of ICCPR, which prohibits any advocacy of national, racial or religious hatred, and article 5, which excludes from the protection of the Covenant activities or acts "aimed at the destruction of any of the rights and freedoms recognized" in the Covenant." Report on Protecting Human Rights while Countering Terrorism, *supra* note 17 at ¶19.

[24] The Foreign Contribution (Regulation) Act, No. 42 of 2010; Indian Code (2010), v. 51 [hereinafter FCRA]

[25] General Comment 34, *supra* note 15, at ¶21; Mukong v. Cameroon, Communication No. 458/91, U.N. Human Rights Committee, CCPR/C/51/D/458/1991 (10 August 1994).

> achieve their protective function; they must be proportionate to the interest to be protected . . . .[26]

The UNHRC has found that for restrictions to be "necessary in a democratic society," they cannot be justified on the "mere existence of reasonable and objective" reasons.[27] Instead, governmental limitation must be necessary to avert a "real and not only hypothetical danger to national security or democratic order."[28] Even gross violations of law, if they are not tied to an immediate and real danger, cannot justify restrictions on the right to free association.[29] Further, even if there is a "real" and legitimate danger that the government can identify, the government must show "that less intrusive measures would be insufficient to achieve the same purpose."[30]

The Committee has also stated that if a State articulates an enumerated reason for the restriction, "it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat."[31]

Since the freedoms being limited are fundamental to a democratic society, the limitations must be as narrowly construed as possible for their objective. Restrictive measures which are not necessary or are disproportionate, which do not deal with a specific threat that is clearly prescribed, identified and defined by law, or which will have a negative impact on the enjoyment fundamental freedoms, are not permissible.

Requiring the registration of those receiving foreign funds does not itself conflict with the right to freedom of association and expression. However, restrictions that effectively prohibit the receipt of all foreign funding or prohibit the use of foreign funds to engage in vaguely defined "political activities" would not be consistent with international law. The proper functioning of democratic society depends upon the ability of citizens to form associations to petition their government for the redress of grievances. The UNHRC has said that "the reference to a

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[26] General Comment 34, *supra* note 15 at ¶ 34; *See also* Marquez v. Angola, Communication No. 1128/2002, U.N. Human Rights Committee, U.N. Doc. CCPR/C/83/D/1128/2002 at ¶6.8 (2005) ("… the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect); Coleman v. Australia, Communication No. 1157/2003, U.N. Human Rights Committee, CCPR/C/87/D/1157/2003 (2006).

[27] Belyatsky, *supra* at note 5 at ¶7.3; *See also* Korneenko, *supra* note 6, at ¶10.6; Kungurov, *supra* note 14, at ¶¶8.5-8.7.

[28] Belyatsky, *supra* at note 5 at ¶7.3

[29] *Id.* at ¶7.5.

[30] Mr. Jeong-Eun Lee v. Republic of Korea, Communication No. 1119/2002, U.N. Doc. CCPR/C/84/D/1119/2002 (2005), at ¶7.2. *See also,* Report on Protecting Human Rights while Countering Terrorism, *supra* note 17, at ¶21 (elaborating on the strict limitations of necessity and proportionality required to restrict freedom of association and discussing the need for the restriction to be the least restrictive means necessary).

[31] General Comment 34, *supra* note 15 at ¶ 35; *See* Shin v. Republic of Korea, Communication No. 926/2000, U.N. Human Rights Committee, CCPR/C/80/D/926/2000 (2004) at ¶¶7.1-7.3; *See also* Govsha, et. al. v. Belarus, Communication No. 1790/2008, U.N. Human Rights Committee, CCPR/C/105/D/1790/2008 (2012) at ¶9.4.

'democratic society' in the context of article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably viewed by the government or the majority of the population, is a cornerstone of a democratic society."[32] Any restriction that renders this right illusory is not permitted.

D. As applied in the present case, the Act appears to conflict with international law

Even if the FCRA were drafted in a manner that was narrowly tailored to a legitimate purpose, as applied in the instant case, it appears to conflict with the strict requirements set by international law. INSAF's assets were frozen pursuant to Section 9(e) of the FCRA because the organization's activities were alleged to be "likely to prejudicially affect public interest". According to INSAF's application, it has directly asked for clarification from the Ministry of Home Affairs as to what activities "prejudicially affect public interest," and has not, to our knowledge, received an answer. If in fact this is the case, the government has failed to meet its burden to articulate a real and not hypothetical danger to national security or public order. Since the Ministry of Home Affairs has not provided further reasoning for its actions, it cannot be shown that this restriction is "necessary in a democratic society" and that no less restrictive limitation would meet this purpose as is required under the ICCPR.

Finally, restrictions on freedom of association and expression must be proportional to the legitimate reason for which they are imposed. In the present case, the freezing of the organization's assets may have the ultimate effect of making it impossible for the organization to continue its operations. If so, the penalty would be clearly disproportionate absent a clear threat to a legitimate state interest.

Even if it could be found that the FCRA has a necessary and proportionate purpose to restrict these rights in certain cases, the activities engaged in by INSAF are given a heightened protection in international law. This organization and its members are defending human rights by peacefully engaging with the government on issues of transparency and accountability.

Given the importance of protecting debate about public matters in a democratic society, international law provides heightened protections for speech and activities of human rights defenders. Proportionality under the ICCPR takes into account the subject of the expression. Speech about public figures and political issues receives more protection than speech about private individuals. The UNHRC noted in General Comment No. 34 that

[32] Kungurov, *supra* note 14, at ¶8.4; Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka v. Sri Lanka, U.N. Human Rights Committee, Communication No. 1249/2004, U.N. Doc. CCPR/C/85/D/1249/2004 (2005) at ¶7.2.

> [T]he value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.[33]

As the U.N. General Assembly stated in the Declaration on Human Rights Defenders, "everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."[34] The Inter-American Commission on Human Rights (IACHR) has found that "the registration of organizations dedicated to the defense of human rights may not be subject to unreasonable or discriminatory restrictions."[35] International bodies recognize and protect the right of individuals to collectively protect, promote and defend any right enshrined in the ICCPR or regional human rights treaty.[36]

States must not adopt laws that would make activities for the defense of human rights unlawful, or invoke practices that would lead to prohibition of activities aimed at defending human rights.[37] With regards to funding sources, the IACHR has found that restrictions on receiving "international funding to defend political rights" are not permitted by international law.[38] Therefore human rights defenders, such as INSAF, have a right to promote these rights regardless of whether the organization receives funding from a foreign source.[39]

III. Conclusion

The FCRA appears to contravene India's obligations under the ICCPR to ensure the rights of its citizens to free association and expression. It restricts associations' access to foreign funding for vague and overbroad reasons. Furthermore, if an organization is found in violation of one of these arbitrary restrictions its assets may be frozen, effectively disabling the organization. In the

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[33] General Comment No. 34, *supra* note 15, at ¶38; *See also* Bodrozic v. Serbia and Montenegro, U.N. Human Rights Comm'n, Comm. 1180/2003, at ¶ 7.2, U.N. Doc. A/61/40, Vol. II, at 288 (HRC 2005) ("The Committee observes, moreover, that in circumstances of public debate in a democratic society, especially in the media, concerning figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high.").

[34] Declaration on Human Rights Defenders, *supra* note 11, at art. 1.

[35] Inter-American Comm'n on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, at ¶174 (December 31, 2011) [hereinafter IACHR Report on Human Rights Defenders]; *See also* Inter-American Comm'n on Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II. Doc. 54, at ¶564 (December 30, 2009).

[36] IACHR Report on Human Rights Defenders, *supra* note 37, at ¶185.

[37] Report on Protecting Human Rights while Countering Terrorism, *supra* note 17 at 29.

[38] IACHR Report on Human Rights Defenders, *supra* note 37, at ¶185 (noting that "a situation different from the one just described would be one in which an organization was proselytizing on behalf of a certain political party or candidate to a particular post. Under this circumstance, the activity would not be protected by the aforementioned standard.").

[39] *Id.*

present case, the law appears to have been applied in a manner that was unnecessary and excessive to any legitimate government purpose.