



THE RIGHT TO FREEDOM OF ASSOCIATION

PRELIMINARY OBSERVATIONS TO THE UN HUMAN RIGHTS COMMITTEE
TO INFORM THE DEVELOPMENT OF GENERAL COMMENT NO. 38

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INTRODUCTION

Amnesty International welcomes the opportunity to provide the following preliminary observations on the right to freedom of association, following the call for input¹ by the UN Human Rights Committee (the Committee) to inform the development of General Comment No. 38 on Article 22 (right to freedom of association) of the International Covenant on Civil and Political Rights (ICCPR). Amnesty International looks forward to further consultations on the Draft General Comment as the drafting progresses.

The organization would like to express its strong support for this initiative. The drafting of a General Comment on the right to freedom of association provides a unique opportunity for the Committee to clarify important principles and codify progressive standards to ensure the respect, protection and realization of this right. A strong General Comment could not come at a better moment, as civil society around the world is faced with the expansion of authoritarian practices, a shrinking civic space and increasing, multipronged and often existential challenges.

This initial contribution does not attempt to be comprehensive in terms of the topics included, or to reflect Amnesty International's priorities or the research and campaigning carried out on the right to freedom of association over the years. Rather, this submission focuses on a number of general considerations and challenges in relation to the effective protection of this right and the meaningful enjoyment of associational life, building on the organization's human rights work and what we learn from the individuals, groups and associations that the organization supports and collaborates with – primarily, human rights non-governmental organizations (NGOs).

¹ <https://www.ohchr.org/en/calls-for-input/2025/call-input-draft-general-comment-no-38-article-22-freedom-association>

1. GENERAL OBSERVATIONS

1.1 AUTONOMOUS IMPORTANCE OF THE RIGHT TO FREEDOM OF ASSOCIATION

The right to freedom of association is often exercised with the objective of achieving the realization of other human rights. It is only by creating associations that certain groups attain power and agency in a way that would not be possible otherwise, such as in the case of company workers, religious minorities or marginalized sectors of society, particularly when claiming their rights against powerful actors. In many instances, attacks on the right to freedom of association happen alongside attacks on other rights, such as the rights to public participation, freedom of religion, expression or peaceful assembly. Laws unduly restricting the rights of associations proliferate in contexts of public discontent, criticism of the authorities or mass protests, often as part of the state's efforts to tighten the grip on the civic space.² It is not unusual that, in contexts of repression of civil and political rights, not enough attention is given to the specific threats to the right to freedom of association. Such threats are often hidden behind ostensibly legitimate and untargeted regulation or purposefully complex technical or legalistic requirements.

The instrumental dimension of the right to freedom of association – the fact that it operates in a manner that complements and enables the fulfilment of so many other rights – reinforces the importance of ensuring its realization. However, it can also lead to the invisibility of the intrinsic and autonomous value of the right, obscuring challenges that are specific to the right of association as well as the measures needed to effectively address them. General Comment 38 will provide an opportunity to reaffirm the intrinsic and independent value of the right to freedom of association, in a similar way to General Comment 37 in relation to the right of peaceful assembly.³

1.2 GENDER, RACIAL AND INTERSECTIONAL JUSTICE

General Comment 38 can play a crucial role by reminding states how to concretely fulfil their obligations towards groups that face discrimination and marginalization.⁴ The wording of Article 22 makes clear that “[e]veryone shall have the right to freedom of association with others”. However, the reality of many communities, and individuals pertaining to groups facing discrimination and marginalization, is one of structural challenges to the enjoyment of their right to freedom of association, due to systemic discrimination in their access to spaces of political participation and/or to resources, or because they are the target of discriminatory laws and practices.⁵

States have a particular obligation to respect and ensure that associations fighting discrimination against marginalized groups and campaigning for justice and accountability for present, past and ongoing violations (including those resulting

² Amnesty International has documented recent examples of the link between the crackdown on the right to freedom of association and civil society more broadly, and the occurrence of periods of discontent and protests, often met with undue restrictions of the rights to freedom of expression and peaceful assembly, and the unlawful use of force. See for instance: Amnesty International, Freedom of assembly and association rights, collective action and human solidarity facing existential threat: preserving the fundamental principles: Submission to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Index: IOR 40/9533/2025, 25 June 2025, pp. 2-4. <https://www.amnesty.org/en/documents/ior40/9533/2025/en/>

³ UN Human Rights Committee, General Comment 37, para. 1 (“The fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others...”) and para. 102 (“The right of peaceful assembly has an intrinsic value. It is, moreover, often exercised with the aim of advancing the implementation of other human rights and other norms and principles of international law. In such cases, the duty to respect and ensure the right of peaceful assembly derives its legal justification also from the importance of the broader range of other rights, norms and principles whose implementation it advances.”).

⁴ Article 22 of the ICCPR must be read together with Article 2 and article 26 of the ICCPR (Article 2.1 states: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” and Article 26 provides that: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”)

⁵ See for instance Amnesty International, Violations of rights to freedom of expression, association and assembly based on sexual orientation, gender identity and/or expression: Submission to the UN Independent Expert on sexual orientation and gender identity, Index: IOR 40/7655/2024, 13 February 2024, pp. 7-8, <https://www.amnesty.org/en/documents/ior40/7655/2024/en/> (in relation to the right to freedom of association of organizations working on sexual orientation, gender identity and/or expression and sex characteristics (SOGIESC) issues); Amnesty International, Russia/Ukraine: A decade of suppressing non-Russian identities in occupied Crimea, 18 March 2024, <https://www.amnesty.org/en/latest/news/2024/03/russia-ukraine-a-decade-of-suppressing-non-russian-identities-in-occupied-crimea/> (on the targeting of religious groups); Amnesty International, France: Written submissions to the European Court of Human Rights in the case of *Collective Against Islamophobia in France (CCIF) v France*, Index: EUR 21/6982/2023, 28 June 2023, <https://www.amnesty.org/en/documents/eur21/6982/2023/en/> (on the link between structural racism in France and the challenges facing particular groups, including those with anti-discrimination mandates that are led by affected communities, in exercising their right to freedom of association).

from colonialism)⁶ can carry out their activities in an enabling environment. This includes taking positive measures to overcome specific challenges confronted by those groups.⁷ As noted by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association:

“restrictions on and exclusions from the exercise of the rights to freedom of peaceful assembly and of association have the consequence of reinforcing marginalization. The inverse is also true and more compelling: marginalization often means that individuals and groups are unable to effectively exercise their rights to freedom of peaceful assembly and of association. [...] The ability to exercise the rights to freedom of peaceful assembly and of association constitutes a key component in the empowerment of marginalized communities and individuals.”⁸

In fulfilling their obligations to address discrimination, it is crucial that states adopt positive measures and implement an approach that is antiracist, feminist and intersectional, also in relation to the exercise of the right to freedom of association. Examples of the recognition of the importance of an intersectional approach can be found in the Convention on the Rights of Persons with Disabilities⁹ and General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.¹⁰

1.3 CHILDREN

The enjoyment of the right to freedom of association, guaranteed in Article 22 of the ICCPR to “everyone”, extends therefore to children.¹¹ The UN Convention on the Rights of the Child (CRC) explicitly recognizes the right of the child to freedom of association¹² without discrimination.¹³ This means that the state has the same obligations to respect, protect and facilitate the right to freedom of association of children, including by ensuring an enabling environment for them to enjoy full participation in civil society,¹⁴ and that any restrictions of the right comply with the same requirements of legality, legitimate aim, necessity and proportionality that apply to adults.¹⁵

Under international human rights law, children are autonomous rights holders. The CRC establishes a number of crucial principles for the interpretation of the scope of children’s rights. These include the right of children to be heard in all decisions affecting them,¹⁶ the requirement that their best interests be treated as a primary consideration in all actions concerning them,¹⁷ and the obligation to respect of the evolving capacities of children in exercising their human rights,¹⁸ including to freedom of association as recognized in Article 15 of the CRC. This means that states must progressively enable and support children’s exercise of the right to freedom of association in accordance with their evolving capacities, avoiding unwarranted restrictions that are paternalistic or that only nominally protect the best interests of children. The reality in many countries, however, is one of excessive barriers and undue restrictions on children’s right to freedom of association (minimum age restrictions being most common), often resulting from a restrictive interpretation of the principle of the child’s evolving capacity and of the concept of the child’s best interests.¹⁹ The Committee on the Rights of the Child

⁶ In 2024, as a result of the longstanding campaigning of Metis survivors and organizations, the Brussels Court of Appeal convicted Belgium of crimes against humanity for acts committed during colonization. African Futures Lab and Amnesty International, *Belgium Convicted of Crimes against Humanity for Acts Committed during Colonization*, 2 December 2024, <https://www.afalab.org/news/2024-12-02-african-futures-lab-and-amnesty-international-joint-press-release-belgium-convicted-of-crimes-against/>

⁷ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/26/29, 14 April 2014, para. 56; See also how this was briefly acknowledged in General Comment 37, para. 2.

⁸ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/26/29, 14 April 2014, para. 15.

⁹ The Convention on the Rights of Persons with Disabilities, that explicitly addresses the right to freedom of association of persons with disabilities in its Preamble, (p): “Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status”.

¹⁰ General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, UN Doc CEDAW/C/GC/28, para. 18: “Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.”

¹¹ Article 1 of the UN Convention on the Rights of the Child defines child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577.

¹² Article 15.1 of the UN Convention on the Rights of the Child.

¹³ Article 2 of the UN Convention on the Rights of the Child; Article 26 of the ICCPR; Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/KEN/CO/3-5, 2016, paras 24 and 25.

¹⁴ UN Human Rights Council, Resolution 50/17, The rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/RES/50/17, 20 July 2022, preamble. It is worth noting that as part of states’ obligation to ensure children’s enjoyment of human rights and considering that in the exercise of their right to freedom of association they may face specific risks, states should adopt and implement safeguarding frameworks to protect children that are child-centred, rights-respecting and enabling.

¹⁵ Article 15.2 of the UN Convention on the Rights of the Child; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, 21 May 2012, UN Doc. A/HRC/20/27, para. 54.

¹⁶ UN Convention on the Rights of the Child, Article 12.

¹⁷ UN Convention on the Rights of the Child, Article 3; UN Committee on the Rights of the Children, General comment 14 on the right of the child to have his or her best interests taken as a primary consideration, UN Doc. CRC/C/GC/14, 29 May 2013.

¹⁸ UN Convention on the Rights of the Child, Article 5.

¹⁹ See Nico Brando and Laura Lundy, “Discrimination and children’s right to freedom of association and assembly”, *Harvard Human Rights Journal*, 2 December 2022. <https://journals.law.harvard.edu/hri/2022/12/discrimination-and-childrens-right-to-freedom-of-association-and-assembly/>

has clarified that “[t]he flexibility of the concept of the child’s best interests allows it to be responsive to the situation of individual children and to evolve knowledge about child development. However, it may also leave room for manipulation; the concept of the child’s best interests has been abused by Governments and other State authorities to justify racist policies, for example: by parents to defend their own interests in custody disputes; by professionals who could not be bothered, and who dismiss the assessment of the child’s best interests as irrelevant or unimportant.”²⁰ General Comment 38 should clarify that the best interests of the child principle cannot be used to negate or restrict children’s right to freedom of association.

In relation to the right of children to form and join associations, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association has stressed that some restrictions imposed on children may amount to discrimination.²¹ In the same vein, the UN Committee on the Rights of the Child has expressed concern regarding the impact of minimum age restrictions on the right of children to freedom of association²² whereby, for example, children below the age of 18 require parental consent to join an association.²³ The UN Special Rapporteur on the Situation of Human Rights Defenders, in her 2024 report about child and youth human rights defenders, provides examples of restrictions on the exercise of the right²⁴ imposed by the authorities that “are too expansive and lack the nuanced justifications required under article 15 of the Convention on the Rights of the Child for limiting the exercise of the rights of children to freedom of association.”²⁵

As regards to the online dimension of the right to freedom of association (see sections 2.1 and 3.1.3), the Committee on the Rights of the Child in its General Comment No 25 on children’s rights in relation to the digital environment provides guidance to states on how to guarantee children’s rights online. The Committee stresses the importance of the digital environment for children’s right to association and that “State parties should ensure that their laws, regulations and policies protect children’s right to participate in organizations that operate partially or exclusively in the digital environment.”²⁶ The Committee also recognizes that “the digital environment enables children, including children human rights defenders, as well as children in vulnerable situations, to communicate with each other, advocate for their rights and form associations” and reminds states that they “should support [children], including by facilitating the creation of specific digital spaces, and ensure their safety.”²⁷

Amnesty International’s research has documented the risks that certain digital technologies involve for activists and human rights defenders (see sections 2.1 and 2.3), as well as the harms created by the surveillance-based business models of TikTok, Meta and Google and their fundamental incompatibility with privacy rights,²⁸ which also impact on children and young human rights defenders. Amnesty International has documented that three out of five child and young human rights defenders face online harassment in connection with their activism²⁹ and how, for example, authorities in the Philippines³⁰ and Kenya³¹ have weaponized digital tools against young human rights defenders, causing real life harms and a chilling effect on the exercise of their human rights, including to freedom of association. Associational activities online and offline are not separate spheres, but fundamentally interconnected.

In recognition of the importance of online organizing for children – which provides them with unique opportunities to express their views, connect with like-minded individuals, access information and share resources – Amnesty International calls on state authorities to put in place robust safeguards to protect young people online, including on social media platforms, through better regulation, stronger data protection laws and better platform design (see section 2.1).³²

²⁰ UN Committee on the Rights of the Children, General comment 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, UN Doc. CRC/C/GC/14, 29 May 2013, para. 34.

²¹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, Threats to the rights to freedom of peaceful assembly and of association for groups most at risk, UN Doc. A/HRC/26/29, 14 April 2014, paras 10, 49-50. See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 54.

²² UN Committee on the Rights of the Child, Concluding observations: Turkey, UN Doc. CRC/C/TUR/CO/2-3, 20 July 2012, para. 38.

²³ UN Committee on the Rights of the Child, Concluding observations: Japan, UN Doc. CRC/C/15/Add.231, 26 February 2004, paras 29 and 30.

²⁴ UN Special Rapporteur on the situation of human rights defenders, Report, UN Doc. A/HRC/55/50, 17 January 2024, paras 69-71.

<https://docs.un.org/en/A/HRC/55/50>

²⁵ UN Special Rapporteur on the situation of human rights defenders, Report, UN Doc. A/HRC/55/50, 17 January 2024, para. 72.

<https://docs.un.org/en/A/HRC/55/50>

²⁶ UN Committee on the Rights of the Child, General Comment 25 on children’s rights in relation to the digital environment, UN Doc. CRC/C/GC/25, para. 65.

²⁷ UN Committee on the Rights of the Child, General Comment 25 on children’s rights in relation to the digital environment, UN Doc. CRC/C/GC/25, para. 66.

²⁸ Amnesty International, Facebook and Google’s pervasive surveillance poses an unprecedented danger to human rights, 21 November 2019.

<https://www.amnesty.org/en/latest/news/2019/11/google-facebook-surveillance-privacy-2/>

²⁹ Amnesty International, Three out of five young activists face online harassment globally for posting human rights content, 1 July 2024.

<https://www.amnesty.org/en/latest/news/2024/07/three-out-five-young-activists-face-online-harassment-globally-for-posting-human-rights-content/>

³⁰ Amnesty International, Philippines: “I turned my fear into courage”: Red-tagging and state violence against young human rights defenders in the Philippines, 14 October 2024. <https://www.amnesty.org/en/documents/asa35/8574/2024/en/>; Amnesty International, Philippines: Left to Their Own Devices Report, 4 April 2025. <https://www.amnesty.org/en/documents/asa35/9187/2025/en/>

³¹ Amnesty International, Kenya: Authorities weaponized social media and digital tools to suppress Gen Z protests, 18 November 2025.

<https://www.amnesty.org/en/latest/news/2025/11/kenyan-weaponized-social-media-and-digital-tools-to-suppress-gen-z-protests/>

³² Amnesty International, Australia: Social media ban for children and young people an “ineffective quick fix” that will not prevent online harms, 9 December 2025. <https://www.amnesty.org/en/latest/news/2025/12/australia-social-media-ban-for-children-and-young-people-an-ineffective-quick-fix-that-will-not-prevent-online-harms/>

Amnesty International, in the context of its Protect the Protest campaign³³ and particularly as part of the development of the Global Children's Right to Protest Project, has been engaging with relevant actors, including partner organizations, academics and importantly, child activists from different backgrounds, to better understand the experiences, challenges, and priorities of children when exercising their right to protest. Some of the learning that transpired from these conversations touched upon the exercise of the right to freedom of association. Children have identified that being able to access age-appropriate information as fundamental to the exercise of their human rights, including their rights to public participation and freedom of association. Access to information is essential for children to understand their own rights; make informed decisions about their participation in civic life; and identify opportunities for involvement in child-led initiatives and decision-making processes.

During these conversations, children activists and human rights defenders also shared that the views, concerns and wishes of those under 18 are generally under-represented and that they feel excluded from spaces of consultation and participation. The process to develop General Comment 38 provides an important opportunity to ensure children's concerns are taken into account.

1.4 ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 22 of the ICCPR, in addition to mentioning trade unions as a special type of association (recognising that the freedom to form and join trade unions is both a social and civil right) (see section 3.2), enshrines a broad understanding of the types and purposes of associations (see section 3.1.1). General Comment 38 can play a role in stressing this interlinkage and interdependence between civil, political and economic, social and cultural rights (ESCR).

Amnesty International has documented innumerable examples over the years of these links and dependencies, and of how violations and abuses of the right to freedom of association impact on the ability of individuals and groups to advocate for their economic, social and cultural rights and to participate in how these rights are protected, monitored and implemented. Recent research has documented how governments, factories and global fashion brands are profiting from the continued repression of the rights of garment workers (the majority of whom are women)³⁴ to freedom of expression and peaceful assembly, as well as to freedom of association by continuing to abuse their labour rights in Bangladesh, India, Pakistan and Sri Lanka.³⁵ Amnesty International has also exposed how the prohibition on migrant workers being able to organise and join trade unions in Qatar and Saudi Arabia has facilitated widespread abuses against them.³⁶ The organisation has also documented attacks faced by those defending abortion rights as essential healthcare around the world: they and their organizations have endured stigmatization, physical and verbal attacks, intimidation and threats, and criminalization.³⁷ Similarly, organizations that work on sexual orientation, gender identity and/or expression and sex characteristics (SOGIESC) issues, often campaigning for the economic and social rights of LGBTI communities, very often experience undue restrictions on their right to freedom of association and other political rights.³⁸ A recent report that maps the global scale of risks to human rights and critical ecosystems from existing and planned fossil fuel infrastructure³⁹ brings to the forefront the devastating effects of fossil fuel exploration, production, transportation and decommissioning on fenceline communities⁴⁰ and the ecosystems upon which we all rely. It provides numerous examples of the courage and struggles of land and environmental human rights defenders protecting ecosystems and the health, traditional ways of life, culture, livelihoods, and food security of their communities. It further documents the attacks they face for exercising their rights to freedom of expression, association, and peaceful assembly, including threats, intimidation, criminalization or violence,

³³ Amnesty International, Protect the Protest. <https://www.amnesty.org/en/what-we-do/freedom-of-expression/protest/>

³⁴ Amnesty International, Why are workers' rights in the garment industry a gender discrimination issue? 27 November 2025. <https://www.amnesty.org/en/latest/campaigns/2025/11/workers-rights-in-the-garment-industry-a-gender-discrimination-issue/>

³⁵ Amnesty International, South Asia: Stitched up: Denial of freedom of association for garment workers in Bangladesh, India, Pakistan and Sri Lanka, Index: ASA 04/8929/2025, 27 November 2025. <https://www.amnesty.org/en/documents/asa04/8929/2025/en/>

³⁶ Amnesty International, Saudi Arabia: "I would fear going to work" Labour exploitation at Carrefour sites in Saudi Arabia, Index: MDE 23/8586/2024, 21 October 2024. <https://www.amnesty.org/en/documents/mde23/8586/2024/en/>; Amnesty International, Qatar: Six things you need to know about the hosts of the 2022 FIFA World Cup, 16 November 2022. <https://www.amnesty.org/en/latest/news/2022/11/qatar-six-things-you-need-to-know-about-the-hosts-of-the-2022-fifa-world-cup/>

³⁷ Amnesty International, An unstoppable movement: A global call to recognize and protect those who defend the right to abortion, Index: POL 40/7420/2023, 24 November 2023. <https://www.amnesty.org/en/documents/pol40/7420/2023/en/>; Amnesty International, Europe: When rights aren't real for all: the struggle for abortion access in Europe, Index: EUR 01/0275/2025, 6 November 2025. <https://www.amnesty.org/en/documents/eur01/0275/2025/en/>

³⁸ Amnesty International, Violations of rights to freedom of expression, association and assembly based on sexual orientation, gender identity and/or expression: Submission to the UN Independent Expert on sexual orientation and gender identity, Index: IOR 40/7655/2024, 13 February 2024, pp. 7-8, <https://www.amnesty.org/en/documents/ior40/7655/2024/en/>

³⁹ Amnesty International, Extraction Extinction: Why the lifecycle of fossil fuels threatens life, nature and human rights, Index: POL 30/0438/2025; 12 November 2025. <https://www.amnesty.org/en/documents/pol30/0438/2025/en/>

⁴⁰ Fenceline communities are "communities that live near industrial infrastructure, including that which produces or transforms fossil fuels. Fenceline communities directly experience the adverse impacts of pollution and environmental degradation emanating from extractive projects and tend to live in so-called 'sacrifice zones'". Amnesty International, Extraction Extinction: Why the lifecycle of fossil fuels threatens life, nature and human rights, Index: POL 30/0438/2025; 12 November 2025, p. 8. <https://www.amnesty.org/en/documents/pol30/0438/2025/en/>

noting too how critical funding, resources and related support for associations can be impacted by corruption in the use of public funds by private contractors and municipal and regional authorities.⁴¹

UN and regional human rights bodies have repeatedly acknowledged the importance of the exercise of the right to freedom of association for marginalized groups, minorities or those with dissenting views.⁴² Taking into account that associations focusing on ESCR will often be led by, and represent the interests of, individuals and groups facing discrimination and marginalization, General Comment 38 can play a crucial role in urging states to address their most common hurdles to the full enjoyment of the right to freedom of association. These include, among others, being excluded from spaces of decision-making and genuine consultation,⁴³ lack of access to funding,⁴⁴ and the lack of recognition of informal associations and registration regimes that constitute undue restrictions on the right to freedom of association (see sections 2.3, 3.1.2, 4.4).

⁴¹ Amnesty International, *Extraction Extinction: Why the lifecycle of fossil fuels threatens life, nature and human rights*, Index: POL 30/0438/2025; 12 November 2025, pp. 30, 59, and across the key case studies from the Americas and West Africa.

<https://www.amnesty.org/en/documents/pol30/0438/2025/en/>

⁴² UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, 21 May 2012, UN Doc. A/HRC/20/27, para. 64: "...The Special Rapporteur recognizes that the formation of associations embracing minority or dissenting views or beliefs may sometimes lead to tensions, but he emphasizes the duty of the State to ensure that everyone can peacefully express their views without any fear. For instance, in Lesotho, the Registrar General registered the first ever lesbian, gay, bisexual and transgender organization in the country called Matrix in November 2010 (after numerous delays)."; Guidelines on Freedom of Association and Assembly in Africa state that the right to freedom of association protects "... expression; criticism of state action; advancement of the rights of discriminated-against, marginalized and socially vulnerable communities ...". African Commission on Human and Peoples' Rights (ACHPR), *Guidelines on Freedom of Association and Assembly in Africa*, 2017, para. 28.

⁴³ Amnesty International, COP30: Keep people, not profits and power, at heart of negotiations, 5 November 2025.

<https://www.amnesty.org/en/latest/news/2025/11/cop30-un-climate-summit/>

⁴⁴ Amnesty International, *Freedom of assembly and association rights, collective action and human solidarity facing existential threat: preserving the fundamental principles*: Submission to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 25 June 2025, <https://www.amnesty.org/en/documents/ior40/9533/2025/en/>

2. CHALLENGES

This chapter addresses only some of the complex challenges to the exercise of the right to freedom of association and some of the most concerning trends based on our areas of focus. The targeting of associations through the misuse of the legal system, frequently under the pretext of the protection of national security (section 2.2), unlawful surveillance, and unduly restrictive legislation, is a manifestation of authoritarian practices deployed by state and other powerful actors to sabotage accountability, entrench power and silence critical voices.⁴⁵ Amnesty International's understanding of the threats to and attacks upon freedom of association is informed by the experiences and perspectives of activists, human rights defenders, environment and land defenders, journalists, and others, often overlapping with those of groups that face discrimination and marginalization (section 2.3). Regarding the digital challenges to the right to freedom of association, this submission focuses on the human rights harms and chilling effects caused by surveillance technology (section 2.1). However, there are many other aspects linked to the deployment of new technologies against civil society organizations and the exercise of the right to freedom of association that are not expanded in this section but that have nevertheless been acknowledged as serious challenges,⁴⁶ such as ensuring access to online information dissemination systems,⁴⁷ and the availability of associations' websites and relevant communication tools.⁴⁸

2.1 DIGITAL SURVEILLANCE: VIOLATIONS AND CHILLING EFFECT

The UN Human Rights Council and its Special Procedures mandate holders have consistently recognized the threat that surveillance presents to the rights that associations and their members exercise in the pursuit of their goals.⁴⁹ The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has stated that:

“[t]he use of surveillance techniques for the indiscriminate and untargeted surveillance of those exercising their right to peaceful assembly and association, in both physical and digital spaces, should be prohibited. Surveillance against individuals exercising their rights of peaceful assembly and association can only be conducted on a targeted basis, where there is a reasonable suspicion that they are engaging in or planning to engage in serious criminal offences, and under the very strictest rules, operating on principles of necessity and proportionality and providing for close judicial supervision.”⁵⁰

The weaponization of new technologies, including surveillance and facial recognition technology (FRT), in the name of national security and counterterrorism has been identified as a fundamental threat to civil society and the civic space in which it operates.⁵¹

⁴⁵ International human rights law and standards do not define authoritarian practices. Political theorist Marlies Glasius defines authoritarian practices as “patterns of action that sabotage accountability to people over whom a political actor exerts control, or their representatives, by means of secrecy, disinformation and disabling voice”. For more information see Glasius, M. (2018). What authoritarianism is... and is not: a practice perspective. International affairs, 94(3), 515-533 and Glasius, M. (2023). Authoritarian practices in a global age. Oxford University Press.

⁴⁶ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report, Impact of counter-terrorism measures on civil society and civic space, and counter-terrorism-based detention, UN Doc. A/78/520, 10 October 2023, para. 32.

⁴⁷ UN Human Rights Committee, General Comment 34: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 29 July 2011. para. 43: “Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3 [of Article 19 of the ICCPR]. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.”; UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report, UN Doc. A/HRC/17/27, 16 May 2011, paras 29-32; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Thematic Report, UN Doc. A/HRC/41/41, 17 May 2019, paras 51-53.

⁴⁸ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Thematic Report, UN Doc. A/HRC/41/41, 17 May 2019, paras 41 and 42.

⁴⁹ UN Human Rights Council, Resolution 38/7, The promotion, protection and enjoyment of human rights on the Internet, UN Doc. A/HRC/RES/38/7, 17 July 2018, preamble, <https://docs.un.org/en/A/HRC/RES/38/7>; UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report, Surveillance and human rights, UN Doc. A/HRC/41/35, 28 May 2019, para. 21, <https://docs.un.org/en/A/HRC/41/35>; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Thematic Report, UN Doc. A/HRC/41/41, 17 May 2019, para. 29; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, Preserving the gains and pushing back against the global attack on civic space and growing authoritarianism, UN Doc. A/HRC/56/50, 21 June 2024, para. 62, <https://docs.un.org/en/A/HRC/56/50>

⁵⁰ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Thematic Report, UN Doc. A/HRC/41/41, 17 May 2019, para. 57.

⁵¹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, Preserving the gains and pushing back against the global attack on civic space and growing authoritarianism, UN Doc. A/HRC/56/50, 21 June 2024, para. 55. <https://docs.un.org/en/A/HRC/56/50>; UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report, Impact of counter-terrorism measures on civil society and civic space, and counter-terrorism-based detention, UN Doc. A/78/520, 10 October 2023, paras 31-35.

For decades, civil society, tech experts and academics⁵² have warned that we live in a “golden age of surveillance” where states and non-state actors have at their disposal a growing range of tools designed to gather an increasing amount of information about the online and offline existence of individuals and organizations. Amnesty International has documented numerous types of technology whose use impacts on human rights, including the right to freedom of association, and other rights intrinsically linked to the effective exercise of freedom of association, such as the rights to privacy, freedom of expression, peaceful assembly and the right to defend human rights. The scale and potential impact of this technology has exponentially increased with the emergence of Artificial Intelligence (AI), and this, paired with the inadequate (or wholly absent) regulation of the production and trade of surveillance tech, continues to fuel a surveillance crisis globally. Additionally, tech companies fail to uphold their human rights responsibilities and are not held accountable.⁵³

Amnesty International has documented human rights abuses linked to the use of FRT in the Occupied Palestinian Territory,⁵⁴ Hyderabad,⁵⁵ and New York City.⁵⁶ Its use is becoming increasingly commonplace and has recently raised serious concerns in, for instance, France,⁵⁷ where authorities turned to mass video surveillance powered by AI in the run-up to the Paris Olympics, and in Denmark,⁵⁸ the Netherlands⁵⁹, Argentina⁶⁰ and Hungary,⁶¹ in relation to policing and the surveillance of peaceful protests. The Hungarian example, where legal changes governing the use of FRT were introduced ahead of Budapest Pride (extending its permissible use to track and identify individuals involved in minor infractions, such as attending a banned assembly),⁶² highlights how this technology poses a particular risk of harm for marginalized communities that oftentimes are already targeted by the state. This has also been documented in relation to Black Lives Matter activists⁶³ and demonstrators supporting Palestinians’ human rights in the United States.⁶⁴ FRT for identification is one of the technologies that Amnesty International considers to be, by design, fundamentally incompatible with international human rights law and whose production, transfer and use must be prohibited. FRT is built upon mass surveillance, and its use creates impermissible violations of the rights to privacy, equality and non-discrimination, as well as associated human rights including freedom of peaceful assembly and association.

The use of spyware, as well as other forms of mass and targeted digital surveillance, continue to be a grave threat to activists and human rights defenders, including human rights organizations. Highly invasive spyware refers to spyware that allows unlimited access to a device by default, and which cannot be limited in its functionality to access only those functionalities that are necessary and proportionate to a specific use and target; or whose use is not verifiable and capable of being independently audited. These characteristics mean that this type of spyware, by design, cannot comply with the

⁵² See for instance, Swire, Peter and Ahmad, Kenesa, Encryption and Globalization (November 16, 2011). Columbia Science and Technology Law Review, Vol. 23, 2012, Ohio State Public Law Working Paper No. 157, Available at SSRN: <https://ssrn.com/abstract=1960602> or <http://dx.doi.org/10.2139/ssrn.1960602>

⁵³ The lack of accountability results from a lack of transparency, coupled with often deliberately complex and shifting corporate structures (see for instance: Indonesia: A web of surveillance: Unravelling a murky network of spyware exports to Indonesia and Uncovering the Iceberg: The Digital Surveillance Crisis Wrought by States and the Private Sector - Amnesty International). This dynamic is facilitated by investors, including venture capital firms, failing to take account of their due diligence responsibilities (Silicon Shadows: Venture Capital, Human Rights, and the Lack of Due Diligence | Amnesty International USA), as well as states failing to regulate the surveillance industry, including by controlling dangerous exports (see: Out of Control: Failing EU Laws for Digital Surveillance Export - Amnesty International, Pakistan: Shadows of Control: Censorship and mass surveillance in Pakistan - Amnesty International). Moreover, the market dominance of a handful of large companies (Breaking up with Big Tech: A human rights-based argument for tackling Big Tech’s market power - Amnesty International) creates dangers to numerous human rights, notably in the power of these companies to lobby against effective regulation that protects human rights. In the EU, a push for “simplification” of digital rights regulations could threaten key rights protections, and follows a massive increase in lobbying by Big Tech firms, (see: Byte by byte | Corporate Europe Observatory, Trojan horses: how European startups teamed up with Big Tech to gut the AI Act | Corporate Europe Observatory, Big Tech lobby budgets hit record levels | Corporate Europe Observatory).

⁵⁴ Ban the Scan: Occupied Palestinian Territory, <https://banthescan.amnesty.org/opt/index.html> ; Amnesty International, Automating Apartheid: how facial recognition fragments, segregates and controls Palestinians in the OPT, Index: MDE 15/6701/2023, 2 May 2013, <https://www.amnesty.org/en/documents/mde15/6701/2023/en/>

⁵⁵ Ban the Scan: Hyderabad, <https://banthescan.amnesty.org/hyderabad/index.html>

⁵⁶ Ban the Scan: New York City: <https://banthescan.amnesty.org/nyc/index.html>

⁵⁷ “French plans for AI surveillance during Olympics are dangerous,” Agnes Callamard, Al Jazeera, 10 March 2023, <https://www.aljazeera.com/opinions/2023/3/10/french-plans-for-ai-surveillance-during-olympics-are-dangerous>; Amnesty International, France: Intrusive Olympics surveillance technologies could usher in a dystopian future, 20 March 2023, <https://www.amnesty.org/en/latest/news/2023/03/france-intrusive-olympics-surveillance-technologies-could-usher-in-a-dystopian-future/>; Amnesty International, France: Allowing mass surveillance at Olympics undermines EU efforts to regulate AI, 23 March 2023, <https://www.amnesty.org/en/latest/news/2023/03/france-allowing-mass-surveillance-at-olympics-undermines-eu-efforts-to-regulate-ai/>

⁵⁸ Open letter initiated by IDA and Justitia and signed by Amnesty International Denmark alongside a wide range of organizations, experts and civil society actors, Justitia publishes open letter: Establish a privacy commission and stop urgent processing of the PET Act, 7 May 2025, <https://justitia-int.org/justitia-udgiver-aabent-brev-nedsaet-en-privatlivskommission-og-stop-hastebehandling-af-pet-loven/>

⁵⁹ Amnesty International, The Netherlands: Recording dissent: Camera surveillance at peaceful protests in the Netherlands, Index: EUR 35/8469/2024, 16 October 2024, <https://www.amnesty.org/en/documents/eur35/8469/2024/en/>

⁶⁰ Argentina has recently adopted a series of measures that raise serious human rights concerns, framed in an increasingly repressive context toward protest and dissent. The government has authorized the use of artificial intelligence, cyber patrolling, and predictive algorithms in policing tasks. These measures, combined with the “anti-protest protocol” (Resolution 943/2023), have created an environment in which digital and physical surveillance converge to monitor, deter, and criminalize peaceful assembly and association. The state’s ability to track online speech, identify participants in demonstrations, and store this information in opaque databases poses direct risks to freedom of expression, association, and assembly. Amnesty International, The State of the World’s Human Rights: April 2025, Index: POL 10/8515/2025, 28 April 2025, p. 81, <https://www.amnesty.org/en/documents/pol10/8515/2025/en/>

⁶¹ European Center for Not-for-profit Law (ECNL), Liberties and the Hungarian Civil Liberties Union called on the EU to protect Pecs Pride participants from AI surveillance Digital Rights, Hungary: The Commission must uphold the AI Act and fundamental freedoms in Hungary, <https://edri.org/our-work/the-commission-must-uphold-the-ai-act-and-fundamental-freedoms-in-hungary/>

⁶² Amnesty International, Hungary: Pride ban is full-frontal attack on LGBTI people and must not be signed into law, 18 March 2025, <https://www.amnesty.org/en/latest/news/2025/03/hungary-pride-ban-is-full-frontal-attack-on-lgbti-people-and-must-not-be-signed-into-law/>

⁶³ Ban the Scan: New York City, <https://banthescan.amnesty.org/nyc/index.html>

⁶⁴ Amnesty International, USA/Global: Tech made by Palantir and Babel Street pose surveillance threats to pro-Palestine student protestors & migrants, 21 August 2025, <https://www.amnesty.org/en/latest/news/2025/08/usa-global-tech-made-by-palantir-and-babel-street-pose-surveillance-threats-to-pro-palestine-student-protestors-migrants/>

requirements of proportionality in its deployment (since by default it has access to the maximum amount of data possible) and it defeats any possibility of effective oversight and accountability, as well as undermining the right to an effective remedy (since it deliberately obscures traces of its use and subverts the investigation of abusive uses). Amnesty International has documented numerous cases of abuse of this type of spyware,⁶⁵ with examples including NSO's Pegasus software,⁶⁶ and Intellexa's Predator.⁶⁷ The organization has also documented the abuse of digital forensics tools, such as Cellebrite's UFED, to extract data and surreptitiously install spyware in the phones of activists and journalists seen as a threat for simply exercising their human rights.⁶⁸ In Thailand, women and LGBTI activists have been subjected to online harassment and unlawfully targeted with digital surveillance, including Pegasus spyware, by state and non-state actors, in an effort to silence them.⁶⁹

Amnesty International calls for highly invasive spyware to be banned, a call that is supported by the findings of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism,⁷⁰ the European Data Protection supervisor,⁷¹ and the Special Rapporteurship for Freedom of Expression of the Inter-American Commission on Human Rights.⁷² Additionally, Amnesty International has long called for a moratorium on the sale, transfer or use of all spyware until a comprehensive system of human rights safeguards, capable of preventing abuses, is in place.⁷³

Amnesty International is also advocating for the banning of the development and deployment of other AI-powered tools that are incompatible with human rights, many of them having a direct or indirect impact on the right to freedom of association. Such tools include biometric technologies that enable mass surveillance and discriminatory targeted surveillance; AI systems that create or expand facial recognition databases through the untargeted scraping of facial images from the internet or CCTV footage; and the use of AI in predictive policing (prediction of crimes by individual person(s) and/or in given spaces and/or times).⁷⁴

Generally, the regulation of AI-powered surveillance technologies must ensure that safeguards are put in place throughout the lifecycle of AI products and not focus only on the procurement or deployment phases.⁷⁵ AI regulation must also apply to the research and development phases of the AI lifecycle and to exported AI technologies. Deployers must publish detailed human rights impact assessments before each deployment. Regulation must ensure transparency and accountability mechanisms that empower affected communities to realize the right to remedy in practice. Moreover, regulations must not create blanket or disproportionate exemptions based on policing, national security, military or other objectives. It is also critical to emphasize that sector-specific safeguards must form part of a larger human rights regulatory framework that includes, inter alia, privacy and data protection laws, as well as corporate governance and due diligence laws, and strong protections for privacy-protecting technologies, such as encryption.⁷⁶

The chilling effect on the exercise of human rights (including freedom of association) is one of the most pervasive and often misunderstood harms resulting from the abuses of surveillance technologies and the lack of comprehensive

⁶⁵ See for instance: Morocco, <https://securitylab.amnesty.org/latest/2020/06/moroccan-journalist-targeted-with-network-injection-attacks-using-nso-groups-tools/>; Kazakhstan, <https://securitylab.amnesty.org/latest/2021/12/kazakhstan-four-activists-mobile-devices-infected-with-pegasus-spyware/>; India, <https://securitylab.amnesty.org/latest/2023/12/india-damning-new-forensic-investigation-reveals-repeated-use-of-pegasus-spyware-to-target-high-profile-journalists/>; Thailand, <https://securitylab.amnesty.org/latest/2024/05/thailand-state-backed-digital-violence-used-to-silence-women-and-lgbt-activists/>; Serbia, <https://securitylab.amnesty.org/latest/2025/03/journalists-targeted-with-pegasus-spyware/>; Armenia/Azerbaijan, <https://securitylab.amnesty.org/latest/2023/05/armenia-azerbaijan-pegasus-spyware-targeted-armenian-public-figures-amid-conflict-2/>; Dominican Republic, <https://securitylab.amnesty.org/latest/2023/05/dominican-republic-pegasus-spyware-journalists-phone/>; El Salvador, <https://securitylab.amnesty.org/latest/2022/01/el-salvador-pegasus-spyware-surveillance-journalists/>.

⁶⁶ Amnesty International, The Pegasus Project: How Amnesty Tech uncovered the spyware scandal, 23 March 2022,

<https://www.amnesty.org/en/latest/news/2022/03/the-pegasus-project-how-amnesty-tech-uncovered-the-spyware-scandal-new-video/>

⁶⁷ Amnesty International, Global: "Intellexa Leaks" investigation provides further evidence of spyware threats to human rights, 4 December 2015.

<https://www.amnesty.org/en/latest/news/2025/12/intellexa-spyware/>; The Predator Files - Amnesty International Security Lab, 2023,

<https://securitylab.amnesty.org/case-study-the-predator-files/>

⁶⁸ Amnesty International, Serbia: "A Digital Prison": Surveillance and the suppression of civil society in Serbia, Index: EUR 70/8813/2024, 16 December 2024, <https://www.amnesty.org/en/documents/eur70/8813/2024/en/>

⁶⁹ Amnesty International Security Lab, Thailand: State-backed digital violence used to silence women and LGBTI activists, 16 May 2024,

<https://securitylab.amnesty.org/latest/2024/05/thailand-state-backed-digital-violence-used-to-silence-women-and-lgbt-activists/>

⁷⁰ UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Global Regulation of the Counter-Terrorism Spyware Technology Trade: Scoping Proposals for a Human-Rights Compliant Approach, April 2023, <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/2022-12-15/position-paper-unsrct-on-global-regulation-ct-spyware-technology-trade.pdf> paras. 125 – 127.

⁷¹ European Data Protection Supervisor, EDPS Preliminary Remarks on Modern Spyware, 15 February 2022, section 4, https://www.edps.europa.eu/data-protection/our-work/publications/papers/edps-preliminary-remarks-modern-spyware_en

⁷² Special Rapporteurship for Freedom of Expression of the Inter-American Commission on Human Rights, The Impact of Digital Surveillance on Freedom of Expression in the Americas, EA/Ser.LV/II CIDH/RELE/ INF.33/25, September 2025, <https://www.oas.org/en/iachr/expression/reports/VigilanciaRELECIDH.pdf>

⁷³ Amnesty International, Towards a Global Moratorium on Targeted Surveillance Technology, Index: POL40/6154/2022, 26 October 2022,

<https://www.amnesty.org/en/documents/pol40/6154/2022/en/>

⁷⁴ Amnesty International, Council of Europe: Amnesty International's Recommendations on the Draft Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, 11 April 2024, <https://www.amnesty.eu/news/council-of-europe-amnesty-internationals-recommendations-on-the-draft-framework-convention-on-artificial-intelligence-human-rights-democracy-and-the-rule-of-law/>

⁷⁵ Amnesty International, The Urgent but Difficult Task of Regulating Artificial Intelligence, 16 January 2014,

<https://www.amnesty.org/en/latest/campaigns/2024/01/the-urgent-but-difficult-task-of-regulating-artificial-intelligence/>; Amnesty International, Council of Europe: Amnesty International's Recommendations on the Draft Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, 11 April 2024, <https://www.amnesty.eu/news/council-of-europe-amnesty-internationals-recommendations-on-the-draft-framework-convention-on-artificial-intelligence-human-rights-democracy-and-the-rule-of-law/>

⁷⁶ Amnesty International, Encryption: a matter of human rights, Index: POL40/3682/2016, 22 March 2016,

<https://www.amnesty.org/en/documents/pol40/3682/2016/en/>

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safeguards to prevent such abuses by state and non-state actors.⁷⁷ Amnesty International's research shows how, in contexts where states and non-state actors fail to uphold their human rights obligations and responsibilities to prevent abuses and to put in place comprehensive safeguards, the fear of surveillance abuses leads to concrete human rights harms.⁷⁸ Activists have reported fears that their offices were bugged, their phone calls listened in on, their locations tracked and their online communications placed at risk of hacking. The psychological stress of the fear of surveillance and the self-censorship this fear causes, undermined their ability to conduct daily activities and to exercise their human rights, including freedom of association.⁷⁹ The chilling effect resulting from the abuse of surveillance technologies and its impact on the right to freedom of association and other rights, has been widely acknowledged by international and regional human rights bodies.⁸⁰

2.2 MISUSE OF THE LEGAL SYSTEM ON NATIONAL SECURITY AND COUNTERTERRORISM GROUNDS

Special attention should be given to some of the most severe undue restrictions on the right to freedom of association in the form of the misuse of the legal system, including of criminal law, against organizations and their members, often leading to the most extreme sanctions of prohibition or dissolution, and having a chilling effect on the right to freedom of association and related rights. The misuse of the legal system to clamp down on the right to freedom of association under the pretext of fighting terrorism or protecting national security more broadly, happens often in repressive contexts where criticism of those in power and the expression of dissenting opinions are not welcome or tolerated. This includes the targeting of human rights organizations, religious groups and political organizations.⁸¹ In other contexts it involves the targeting of certain groups and views that are seen as a threat, stigmatized and pushed even further to the margins (such as protest groups,⁸² anti-racism campaigners,⁸³ environmental direct-action groups⁸⁴).

The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism in a 2023 report presenting the analysis and findings of a global study on the impact of counter-terrorism measures on civil society and civic space, concluded that “civil society experiences complex and compounding misuse of measures and practices relating to counter-terrorism and prevention and countering of violent extremism, with connections to an ever-growing national, regional and global counter-terrorism, prevention and countering of violent extremism and security architecture”.⁸⁵

⁷⁷ European Court of Human Rights, *Roman Zakharov v. Russia*, Application no. 47143/06, Grand Chamber, 4 December 2015, para. 171 (citing European Court of Human Rights, *Kennedy v. the United Kingdom*, Application no. 26839/05, 18 May 2010, para. 124): “... [W]here the domestic system does not afford an effective remedy to the person who suspects that he was subjected to secret surveillance, widespread suspicion and concern among the general public that secret surveillance powers are being abused cannot be said to be unjustified ... In such circumstances the threat of surveillance can be claimed in itself to restrict free communication through the postal and telecommunication services, thereby constituting for all users or potential users a direct interference with the right [to private and family life].” <https://hudoc.echr.coe.int/?i=001-159324>

⁷⁸ Amnesty International, South Sudan: “These walls have ears”: The chilling effect of surveillance in South Sudan, Index: AFR 65/3577/2021, 2 February 2021, <https://www.amnesty.org/en/documents/afr65/3577/2021/en/>

⁷⁹ Amnesty International, Belarus: “It’s enough for people to feel it exists”: Civil society, secrecy and surveillance in Belarus, Index: EUR 49/4306/2016, 7 July 2016, <https://www.amnesty.org/en/documents/eur49/4306/2016/en/>

⁸⁰ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, Preserving the gains and pushing back against the global attack on civic space and growing authoritarianism, UN Doc. A/HRC/56/50, 21 June 2024, paras 55 and 65; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Thematic Report, UN Doc. A/HRC/41/41, 17 May 2019, para. 56; Office of the United Nations High Commissioner for Human Rights, Report, The right to privacy in the digital age, UN Doc. A/HRC/27/37, 30 June 2014, para. 20: “It follows that any capture of communications data is potentially an interference with privacy and, further, that the collection and retention of communications data amounts to an interference with privacy whether or not those data are subsequently consulted or used. Even the mere possibility of communications information being captured creates an interference with privacy, with a potential chilling effect on rights, including those to free expression and association. The very existence of a mass surveillance programme thus creates an interference with privacy. The onus would be on the State to demonstrate that such interference is neither arbitrary nor unlawful.” <https://docs.un.org/en/A/HRC/27/37>

⁸¹ Kyrgyzstan: UN rights experts dismayed by new restrictions on freedom of religion or belief, 27 February 2025, <https://www.ohchr.org/en/press-releases/2025/02/kyrgyzstan-un-rights-experts-dismayed-new-restrictions-freedom-religion-or>; Amnesty International, Russia/Ukraine: A decade of suppressing non-Russian identities in occupied Crimea, 18 March 2024, <https://www.amnesty.org/en/latest/news/2024/03/russia-ukraine-a-decade-of-suppressing-non-russian-identities-in-occupied-crimea/>; Amnesty International, Russia: Move to label Navalny’s Anti-Corruption Foundation a “terrorist organization” puts thousands in danger, 23 October 2025, <https://www.amnesty.org/en/latest/news/2025/10/russia-move-to-label-navalnys-anti-corruption-foundation-a-terrorist-organization-puts-thousands-in-danger/>

⁸² Amnesty International France, Dissolution d’Urgence Palestine: une menace contre les défenseurs des droits des Palestiniens, 15 May 2025, <https://www.amnesty.fr/liberte-d-expression/actualites/dissolution-urgence-palestine-une-menace-contre-les-defenseurs-des-droits-palestiniens>; Amnesty International, Peacefully protesting against injustice in Israel/OPT is not a threat to security, 9 November 2023, <https://www.amnesty.org/en/latest/news/2023/11/peacefully-protesting-against-injustice-in-israel-opt-is-not-a-threat-to-security/>

⁸³ Amnesty International, France: Written submissions to the European Court of Human Rights in the case of *Collective Against Islamophobia in France (CCIF) v France*, Index: EUR 21/6982/2023, 28 June 2023, <https://www.amnesty.org/en/documents/eur21/6982/2023/en/>

⁸⁴ See for instance, Amnesty International France, Dissolution Des Soulèvements de la Terre. Un dangereux rétrécissement des espaces d’expression de la société civile en France, 20 June 2023, <https://www.amnesty.fr/presse/reaction-presse>. Also, see UN Special Rapporteur on Environmental Defenders, The Right to Peaceful Environmental Protest and Civil Disobedience, ECE/MP.PP./2025/44 (https://unece.org/sites/default/files/2025-11/ECE.MP_PP_2025.44.E.pdf) and the accompanying Guidelines: United Nations Economic Commission for Europe (UNECE), Guidelines on the Right to Peaceful Environmental Protest and Civil Disobedience by the Special Rapporteur on environmental defenders, ECE/MP.PP/2025/21, 6 October 2025, particularly Guiding principle 3 and Operational principles 5.4.b, 5.7, 13.5. https://unece.org/sites/default/files/2025-11/ECE.MP_PP_2025.21.E.pdf

⁸⁵ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report, Impact of counter-terrorism measures on civil society and civic space, and counter-terrorism-based detention, UN Doc. A/78/520, 10 October 2023, p. 2. <https://docs.un.org/en/A/78/520>

The Human Rights Committee has identified how the judicial harassment and misuse of the legal system against civil society organizations is enabled by domestic legislation supposed to protect national security but that does not comply with international human rights law. This can result from provisions that fail the legality tests by not addressing concrete and real dangers to national security,⁸⁶ or by relying on vague and overly broad definitions of “terrorism”,⁸⁷ “extremist activity”⁸⁸ or “illegal organizations”.⁸⁹ Judicial harassment of associations in the context of counterterrorism can lead to extremely serious sanctions, such as the proscription⁹⁰ and dissolution of organizations (see section 4.8), and serious violations of the rights of an association (and its founders and members), including through unlawful surveillance,⁹¹ arbitrary detention and numerous fair trial violations. Regrettably it has been widely documented how, in the counterterrorism context, states consistently apply regimes of exceptionality, removing human rights protections and failing to apply rules of due process and procedural protections.⁹²

Crucially, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has stressed that the misuse of the legal system on counterterrorism/national security grounds “is often discriminatory and directed against religious, ethnic and cultural minorities, women, girls, lesbian, gay, bisexual and transgender and gender-diverse persons, Indigenous communities and other groups in society that are historically discriminated against.”⁹³

Associations around the world have also been subjected to a proliferation of domestic legislation regulating non-profit associations that under the pretext of preventing money-laundering and the financing of terrorism impose unnecessary and burdensome administrative requirements, hurdles to registration and operation, and restrictions on access to resources, in particular to foreign funding,⁹⁴ all these sustained by and feeding into stigmatizing narratives about independent associations,⁹⁵ particularly those engaged in the defence of human rights, challenging government policies or expressing dissenting views, as well as those representing the interests of marginalized groups.⁹⁶ Amnesty International has widely documented how the spread of such restrictive measures often results from state’s exploitation of the recommendations of the Financial Action Task Force (the global terrorism financing and money laundering watchdog) to restrict the civic space and stifle human rights, including the right to freedom of association.⁹⁷

Another common challenge faced by civil society organizations globally results from the existence of counter-terrorism targeted sanctions and listing related to terrorism and the misuse at domestic level.⁹⁸ Likewise, the undue criminalization of freedom of expression (including through widely framed provisions that target ‘apology’ or ‘propaganda’ for, ‘glorification’

⁸⁶ UN Human Rights Committee, Mr. Jeong-Eun Lee v. Republic of Korea, UN Doc. CCPR/C/84/D/1119/2002, 20 July 2005, paras 7.2 and 7.3. See also, UN General Assembly, Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, UN Doc. A/61/267, 16 August 2006, para. 20.

⁸⁷ UN Human Rights Committee, Concluding Observations: Egypt (2023), para. 51; Israel (2022), para. 48; Equatorial Guinea (2019), para. 22; Kyrgyzstan (2022), para. 19; Sri Lanka (2014), para. 11.

⁸⁸ UN Human Rights Committee, Concluding Observations: Russian Federation, 1 December 2003, UN Doc. CCPR/CO/79/RUS, para. 20.

⁸⁹ UN Human Rights Committee, Concluding Observations: Turkey, 13 November 2012, UN Doc. CCPR/C/TUR/CO/1, para. 19; Israel (2022), para. 48; Turkey (2013), para. 18; El Salvador (2018), para. 37; Lybia (2007), para. 24.

⁹⁰ The UN Special Rapporteur on the promotion and protection of human rights while countering terrorism stated that “[p]roscribing associations which have as their aim the destruction of the State through terrorist means, or banning public demonstrations which call for the use of terrorist means to destroy the State may be covered by the limitation clauses of ICCPR. The Special Rapporteur underlines, however, that Governments must not use these aims/purposes as smokescreens for hiding the true purpose of the limitations.” UN General Assembly, Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, UN Doc. A/61/267, 16 August 2006, paras 20 and 53. <https://docs.un.org/en/A/61/267>

⁹¹ UN Human Rights Committee, Concluding Observations: Egypt (2023), para. 51; Japan (2022), para. 16; Hong-Kong – China (2022), para. 12.

⁹² See for instance UN Human Rights Committee, Concluding Observations on the fifth periodic report of Egypt, UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, para. 13, <https://digitalibrary.un.org/record/4009224?v=pdf>; Amnesty International, Fair Trial Manual – Second Edition, 9 April 2014. <https://www.amnesty.org/en/documents/pol30/002/2014/en/>

⁹³ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report, Impact of counter-terrorism measures on civil society and civic space, and counter-terrorism-based detention, UN Doc. A/78/520, 10 October 2023, p. 1. <https://docs.un.org/en/A/78/520>

⁹⁴ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report: Access to resources, UN Doc. A/HRC/50/23, 10 May 2022, para. 18 and section B, paras 33-39; UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 70; UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report, Impact of counter-terrorism measures on civil society and civic space, and counter-terrorism-based detention, UN Doc. A/78/520, 10 October 2023, paras 19 and 20; Amnesty International, Egypt: “Whatever security says must be done”: Independent NGOs’ freedom of association restricted in Egypt, Index: MDE12/0464/2025, 24 November 2025. <https://www.amnesty.org/en/documents/mde12/0464/2025/en/>

⁹⁵ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, Protecting the rights to freedom of peaceful assembly and of association from stigmatization, UN Doc. A/79/263, 31 July 2024, paras 31-38 (Vilification, demonization and misuse of security and counter-terrorism measures and policies) and 39-42 (Narratives of preventing foreign influence and preserving national interests). <https://docs.un.org/en/A/79/263>

⁹⁶ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, Protecting the rights to freedom of peaceful assembly and of association from stigmatization, UN Doc. A/79/263, 31 July 2024, para. 15. <https://docs.un.org/en/A/79/263>

⁹⁷ Amnesty International, India: FATF raps India on the risk to abuse that non-profits face, 19 September 2024, <https://www.amnesty.org/en/latest/news/2024/09/india-fatf-raps-government-on-the-risk-to-abuse-that-non-profits-face/>;

Amnesty International, India: Weaponizing Counterterrorism: India’s exploitation of terrorism financing assessments to target the civil society, Index: ASA 20/7222/2023, 26 September 2023. <https://www.amnesty.org/en/documents/asa20/7222/2023/en/>; Amnesty International, Turkey: Weaponizing Counterterrorism: Turkey exploits terrorism financing assessment to target civil society, Index: EUR 44/4269/202, 18 June 202. <https://www.amnesty.org/en/documents/eur44/4269/2021/en/>

⁹⁸ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report, Impact of counter-terrorism measures on civil society and civic space, and counter-terrorism-based detention, UN Doc. A/78/520, 10 October 2023, para. 30.

of, ‘aiding’ or providing ‘material support’ to, proscribed groups) have also had significant adverse consequences for associations and their founders and members.⁹⁹

2.3 HUMAN RIGHTS DEFENDERS

In recognizing everyone’s right to defend human rights, the UN Declaration on Human Rights Defenders (Declaration) adopts a definition of human rights defender that recognizes the individual and collective dimensions of the right – as demonstrated by the use of “individually and in association with others” throughout. It also underscores the interactions between the right to defend human rights and the rights to freedom of expression, association and peaceful assembly. The Declaration recognizes the right of human rights defenders “to form, join and participate in non-governmental organizations, associations or groups”.¹⁰⁰ It also recalls the right of human rights defenders (individuals and associations) to participate in the conduct of public affairs; to meet or assemble peacefully; to develop and hold opinions about the protection of human rights; and to critique any aspect of the work of governmental bodies that may hinder or impede the promotion, protection and realization of human rights; and to draw these matters to public attention and to advocate for human rights.¹⁰¹ The UN Special Rapporteur on the Situation of Human Rights Defenders has also highlighted the importance of the rights to freedom of expression and association to the work of human rights defenders, as without these rights they would not be able to perform their monitoring and advocacy work to promote and protect human rights, including by discussing and developing new human rights ideas.¹⁰² The UN Human Rights Committee and other human rights bodies (internationally and regionally), recognize that associations should be allowed to express criticism and carry out their activities without fear of facing reprisals.¹⁰³

The right to freedom of association therefore protects the right of individuals to create associations for the defense of human rights, as well as the right of such human rights organizations to act freely in order to achieve their objectives. In this regard, the African Commission on Human and People’s Rights has clarified that: “[t]he right to freedom of association protects, *inter alia*, expression; criticism of state action; advancement of the rights of discriminated-against, marginalized and socially vulnerable communities, including the rights of women and children; and all other conduct permissible in the light of regional and international human rights law.”¹⁰⁴

Undue restrictions on human rights organizations’ right to freedom of association take place at every step of the life cycle of associations. Human rights defenders are very often denied the right to form associations. In Cuba, the state prevents women from organizing formally or informally on women’s issues, since it only recognizes the constitutionally sanctioned Federation of Cuban Women (Federación de Mujeres Cubanas, FMC). As a result, women’s rights defenders face harassment and criminalization.¹⁰⁵ Union organizers, interviewed by Amnesty International as part of research on the global garment industry, described a climate of fear in which supervisors and factory bosses frequently harassed, dismissed and threatened workers for belonging to or organizing a union.¹⁰⁶

Informal human rights associations face particular challenges as in many contexts they lack recognition and they are denied access to the political spaces and the necessary resources to achieve their objectives, including funding. The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, while stressing that the right to freedom of association applies to informal associations and does not require registration, has acknowledged that the lack of a formal organizational structure can be a challenge for informal groups to achieve their objectives if considered “illegal” by those they try to influence.¹⁰⁷ In the Americas, associations of family members of people subjected to enforced disappearance – mostly formed and led by women –, tend to form organically when searchers connect with

⁹⁹ Amnesty International, Algeria: Authorities must drop bogus charges against Hirak activist Mohamed Tadjadit, 17 July 2024. <https://www.amnesty.org/en/latest/news/2024/07/algeria-authorities-must-drop-bogus-charges-against-hirak-activist-mohamed-tadjadit/>; Amnesty International, Europe: Dangerously disproportionate: The ever-expanding national security state in Europe, Index: EUR 01/5342/2017, 17 January 2017, pp. 8, 12 – 13. <https://www.amnesty.org/en/documents/eur01/5342/2017/en/>

¹⁰⁰ United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Adopted by General Assembly Resolution A/RES/53/144, 09 December 1998, Article 5.b.

¹⁰¹ United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Adopted by General Assembly Resolution A/RES/53/144, 09 December 1998, especially articles 5, 6, 7, 8, 9 and 12.

¹⁰² UN Special Rapporteur on the situation of human rights defenders, Report, 28 July 2011, UN Doc. A/66/203, paras. 29, 43 and 56.

¹⁰³ UN Human Rights Committee, Views: Communication No 1128/2002, 29 March 2005, UN Doc CCPR/C/83/D/1128/2002 (de Morais v Angola), para. 6.7: Associations must be able to “criticize or openly and publicly evaluate their Governments without fear of interference or punishment”; UN Declaration on Human Rights Defenders, Article 6, 7 and 8; the European Court of Human Rights has maintained that the right of an association, in the form of an NGO, to exercise their right to freedom of expression when addressing matters of public interest requires particular protection, since NGOs play the role of “watchdog[s]” similar to that of the media. European Court of Human Rights, Vides Aizsardzibas Klubs v. Latvia, Application no. 57829/00, 27 May 2004, para 42; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para 31; African Commission on Human and Peoples’ Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 29.

¹⁰⁴ African Commission on Human and Peoples’ Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 28, citing International Pen and Others (on behalf of Ken Saro-Wira) v. Nigeria, Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998) <https://achpr.au.int/en/decisions-communications/international-pen-constitutional-rights-project-civil-liberties-13794>

¹⁰⁵ Amnesty International, Nos quieren calladas, pero seguimos resistiendo: prácticas autoritarias y violencia estatal contra mujeres en cuba, 26 November 2025, p. 36. <https://www.amnesty.org/en/documents/amr25/0488/2025/es/>

¹⁰⁶ Amnesty International, South Asia: Stitched up: Denial of freedom of association for garment workers in Bangladesh, India, Pakistan and Sri Lanka, Index: ASA 04/8929/2025, 27 November 2025. <https://www.amnesty.org/en/documents/asa04/8929/2025/en/>

¹⁰⁷ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, A/HRC/29/25, 28 April 2015, para. 59.

each other. The building and strengthening of these organizations, often informal, is seen by perpetrators and other actors opposing their fight for justice as a threat, exposing them to risks of reprisals.¹⁰⁸ The UN International Convention for the Protection of All Persons from Enforced Disappearance recognizes “the right to form and participate freely in organizations and associations.”¹⁰⁹

Registration processes (see further in section 4.4 and 4.5) can represent serious obstacles for human rights organizations, particularly for groups already facing discrimination,¹¹⁰ and expose them to burdensome and intrusive requirements, and even expose them to unlawful surveillance and harassment by state authorities.¹¹¹ State authorities often use the denial of registration to target independent NGOs and human rights defenders,¹¹² including by pressing criminal charges for failing to register,¹¹³ and as a tool to further discriminate against certain groups, such as LGBTI associations.¹¹⁴

Amnesty International has long documented NGO laws imposing undue restrictions on registered associations (or during the registration processes)¹¹⁵ under the pretext of tackling foreign interference, lack of transparency, or criminal activity such as money laundering or the financing of terrorism. These laws are built on stigmatizing narratives against those perceived as critical, often branding them as “foreign agents”,¹¹⁶ “extremist”,¹¹⁷ or “undesirable”,¹¹⁸ and they result in undue restrictions on access to funding, intrusive and onerous reporting requirements, and other violations of the right to freedom of association of human rights organizations and other dissenting voices.¹¹⁹ Repressive NGO legislation often provides for serious sanctions against associations, including suspension and dissolution, for lack of compliance with stringent requirements.¹²⁰

Human rights defenders, including trade unionists,¹²¹ are often targeted by both state and non-state actors to punish or discourage their actions. In the context of the current climate crisis, environmental rights defenders play a crucial role¹²² exposing the inaction of, or inadequate steps taken by, governments, as well as companies’ wrongdoing and human rights abuses.¹²³ Confronting powerful actors carries serious risks and environmental defenders are bearing the

¹⁰⁸ Amnesty International, Americas: Searching Without Fear: International Standards for protecting women searchers in the Americas, Index: AMR 01/8458/2024, 29 August 2024, p.49. <https://www.amnesty.org/en/documents/amr01/8458/2024/en/>

¹⁰⁹ International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), United Nations General Assembly resolution 61/177, 20 December 2006, Article 24.7. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

¹¹⁰ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/26/29, 14 April 2014, para. 54.

¹¹¹ Amnesty International, Egypt: “Whatever security says must be done”: Independent NGOs’ freedom of association restricted in Egypt, Index: MDE12/0464/2025, 24 November 2025, <https://www.amnesty.org/en/documents/mde12/0464/2025/en/>; Amnesty International, Africa: We are facing extinction: Escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries, Index: AFR 01/7533/2024, 9 January 2024, for example, pp. 25-26 (Kenya), pp. 31-32 (Malawi), pp. 55-56 (Zimbabwe).

https://www.amnesty.org/en/documents/afr01/7533/2024/en/?utm_source=annual_report&utm_medium=pdf&utm_campaign=2024

¹¹² Amnesty International, Update: The Human Rights Situation in Azerbaijan ahead of COP29, 1 November 2024.

https://www.amnesty.org/en/documents/eur55/8703/2024/en/?utm_source=annual_report&utm_medium=pdf&utm_campaign=2024

¹¹³ Amnesty International, Equatorial Guinea: Human rights defender arrested once again: Joaquín Elo Ayeto, Index: AFR 24/8453/2024, 29 August 2024.

https://www.amnesty.org/en/documents/afr24/8453/2024/en/?utm_source=annual_report&utm_medium=pdf&utm_campaign=2024

¹¹⁴ Amnesty International, Violations of rights to freedom of expression, association and assembly based on sexual orientation, gender identity and/or expression: Submission to the UN Independent Expert on sexual orientation and gender identity, Index: IOR 40/7655/2024, 13 February 2024, pp. 7-8, <https://www.amnesty.org/en/documents/ior40/7655/2024/en/>

¹¹⁵ Amnesty International, Laws designed to silence: The global crackdown on civil society organizations, Index: ACT 30/9647/2019, 21 February 2019, <https://www.amnesty.org/en/documents/act30/9647/2019/en/>

¹¹⁶ Nicaragua: The year ends with systematic repression and a streamlined state strategy against any form of dissent, Index: AMR 43/8834/2024, 17 December 2024, <https://www.amnesty.org/en/documents/amr43/8834/2024/en/>; Amnesty International, The State of the World’s Human Rights: April 2025, Index: POL 10/8515/2025, 28 April 2025, p. 276, <https://www.amnesty.org/en/documents/pol10/8515/2025/en/>

¹¹⁷ UN Human Rights Committee, Concluding Observations: Russian Federation, 1 December 2003, UN Doc. CCPR/CO/79/RUS, para. 20.

¹¹⁸ Russia: Amnesty International declared “undesirable organization” amid escalating crackdown on dissent, 19 May 2025, <https://www.amnesty.org/en/latest/news/2025/05/russia-amnesty-international-declared-undesirable-organization-amid-escalating-crackdown-on-dissent/>

¹¹⁹ Amnesty International, Freedom of assembly and association rights, collective action and human solidarity facing existential threat: preserving the fundamental principles: Submission to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Index: IOR 40/9533/2025, 25 June 2025. <https://www.amnesty.org/en/documents/ior40/9533/2025/en/>

¹²⁰ Amnesty International, Egypt: “Whatever security says must be done”: Independent NGOs’ freedom of association restricted in Egypt, Index: MDE12/0464/2025, 24 November 2025, <https://www.amnesty.org/en/documents/mde12/0464/2025/en/>; Amnesty International, Tunisia: Escalating crackdown on human rights organizations reaches critical levels, 14 November 2025. <https://www.amnesty.org/en/latest/news/2025/11/tunisia-escalating-crackdown-on-human-rights-organizations-reaches-critical-levels/>

¹²¹ Amnesty International, Algeria: 19 NGOs and International Trade Union Federations Call for the Immediate Release of Unionist and Human Rights Defender Ali Mammeri, Index: MDE 28/0506/2025, 24 November 2025. <https://www.amnesty.org/en/documents/mde28/0506/2025/en/>; Amnesty International, El Salvador: Criminal justice system used to punish defenders, 9 October 2025, <https://www.amnesty.org/en/latest/news/2025/10/el-salvador-sistema-penal-utilizado-como-arma-para-castigar-a-quienes-defienden-derechos-humanos/>; Amnesty International, Belarus: Release of 52 prisoners “welcome” but without accountability repression persists, 12 September 2025. <https://www.amnesty.org/en/latest/news/2025/09/belarus-release-of-52-prisoners-welcome-but-without-accountability-repression-persists/>

¹²² The crucial role and the risks faced by environmental rights defenders has been widely acknowledged. See for example: Inter-American Court of Human Rights Advisory Opinion OC-32/25 of 29 May 2025. Requested by the Republic of Chile and the Republic of Colombia. Climate emergency and human rights, para. 563. https://www.refworld.org/sites/default/files/2025-08/20250703_18528_decision-1.pdf; United Nations, Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), adopted on 4 March 2018, Articles 9, 4.2, 4.6. <https://treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf>; UN Special Rapporteur on the situation of human rights defenders, Report, Tipping points: human rights defenders, climate change and a just transition, UN Doc. A/80/114, 4 July 2025.

¹²³ Amnesty International, Extraction Extinction: Why the lifecycle of fossil fuels threatens life, nature and human rights, Index: POL 30/0438/2025; 12 November 2025. <https://www.amnesty.org/en/documents/pol30/0438/2025/en/>

brunt, accounting for particularly high number of documented violations against and killings of human rights defenders in recent years.¹²⁴

Attacks on human rights defenders take many forms: unlawful digital surveillance (see section 2.1), administrative restrictions and criminalization on bogus counterterrorism grounds (see section 2.2), Strategic Lawsuits Against Public Participation (SLAPPs - see below), arbitrary arrests, physical attacks, and killings. The tactics deployed against human rights defenders are often enabled and compounded by existing discrimination, often intersectional, as well as stigmatization, and particularly impact those that focus on the rights of marginalized groups. Although these attacks on human rights defenders (individuals and their organizations) are not necessarily directly aimed at their right to freedom of association, having to deal with such threats and harms has a devastating impact on the exercise of the right of association of human rights defenders, including a chilling effect. The Inter-American Court of Human Rights in the Case of *García and family v. Guatemala*, recognized the link between the threats against members of the Grupo de Apoyo Mutuo (GAM), an organization founded by women searching for their forcibly disappeared family members, and their exercise of the right to freedom of association and declared that Guatemala had violated the right of freedom of association of the women.¹²⁵

STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

Strategic Lawsuits Against Public Participation (SLAPPs) are a serious threat to human rights organizations, notably land and environmental defenders. SLAPPs is the term used to describe the malicious and abusive use of legal tactics by powerful actors, such as state authorities or corporations, with the aim of intimidating, silencing or punishing critics or those who expose wrongdoing or human rights abuses. They are not a new phenomenon (the term was coined by North American scholars in the late '80s)¹²⁶ but they have received increased attention in recent years due to a concerning rise in their use to stifle criticism and prevent transparency and accountability in key areas, such as climate justice.¹²⁷

SLAPPs aim at stifling the rights to freedom of expression, association and peaceful assembly, as well as the right to defend human rights. SLAPPs can result in exorbitant costs and lengthy legal actions that deplete vital resources of human rights NGOs, grassroots organizations or media outlets, to the point that they can pose an existential threat to the organizations and even lead to their dissolution.¹²⁸ Individuals or organizations targeted by SLAPPs can sometimes also be subjected to harmful PR campaigns or even threats of violence and physical attacks. In many cases, the type of criminal provisions used in the context of SLAPPs carry the risk of pretrial detention and prison sentences. The consequences of SLAPPs will be distinct and often compounded for individuals and groups that face discrimination for belonging to marginalized groups, due to their gender, being racialized, being Indigenous, because of their socio-economic status, or other aspects of their identity. Organizations representing marginalized groups may lack resources and have less access to funding opportunities, and SLAPPs can therefore have a heightened financial impact on them. SLAPPs can often have a chilling effect on the exercise of human rights, not only for those directly targeted but for civil society more broadly, as intimidating individuals, groups or organizations into silence is frequently a central aim of the SLAPP, regardless of whether the legal claim reaches the courts.

SLAPPs are a complex phenomenon that can involve different legal tactics, sometimes in different jurisdictions and whose seeming legitimacy is sometimes difficult to scrutinize and dissect. Civil society actors have stepped up to counter this concerning trend by raising awareness, through solidarity and support for those targeted, and advocating for strong anti-SLAPPs standards and effective mechanisms at national, regional and international levels. Strong anti-SLAPPs legislation should include clear definitions covering all abusive actions and criteria that assist relevant authorities in promptly and effectively identifying potential SLAPPs, and, at a minimum, establish an accelerated early-

¹²⁴ Global Witness, Missing Voices: The Violent Erasure of Land and Environmental Defenders, 2024, p.14. <https://globalwitness.org/en/campaigns/land-and-environmental-defenders/missing-voices/> ; Global Witness, Roots of resistance: Documenting the global struggles of defenders protecting land and environmental rights, 17 September 2025. <https://globalwitness.org/en/campaigns/land-and-environmental-defenders/roots-of-resistance/>

¹²⁵ Corte Interamericana de Derechos Humanos, Caso de García y familiares Vs. Guatemala. Fondo, Reparaciones y Costas. Sentencia de 29 de noviembre de 2012, Serie C No. 258, para. 182. http://www.corteidh.or.cr/docs/casos/articulos/seriec_258_esp.pdf

¹²⁶ See among others George W. Pring, SLAPPs: Strategic Lawsuits against Public Participation, 7 Pace Envtl. L. Rev. 3 (1989). DOI: <https://doi.org/10.58948/0738-6206.1535>

¹²⁷ See for example Business & Human Rights Resource Centre, Vexatious lawsuits: Corporate use of SLAPPs to silence critics, 2023, identifying 437 lawsuits initiated by business actors worldwide (with the highest number identified in Latin America, followed by Asia and the Pacific) that bear the hallmarks of SLAPPs between January 2015 and March 2023. This report highlights a pattern of vexatious litigation by business actors in sectors heavily dependent on natural resources which are also linked to environmental harm and the climate crisis. Three in four of the lawsuits tracked in this report were brought against people raising land rights and/or environmental-related concerns. <https://www.business-humanrights.org/en/from-us/briefings/vexatious-lawsuits-corporate-use-of-slapps-to-silence-critics/>; UNESCO, The 'Misuse' of Judicial System to Attack Freedom of Expression: Trends, Challenges and Responses, 2022 <https://www.unesco.org/en/articles/defamation-laws-and-slapps-increasingly-misused-curtail-freedom-expression>

¹²⁸ In March 2025, a court in North Dakota (United States) ordered three Greenpeace entities to pay USD 660 million to the fossil fuel company Energy Transfer. To date the lengthy and costly legal case is ongoing in the United States and in The Netherlands. <https://www.greenpeace.org/usa/energy-transfer-lawsuit/> . See also: Business and Human Rights Centre. USA: Energy Transfer requests North Dakota Supreme Court to block Greenpeace's lawsuit under EU anti-SLAPP Directive, 12 November 2025. <https://www.business-humanrights.org/en/latest-news/usa-energy-transfer-requests-north-dakota-supreme-court-to-block-greenpeaces-lawsuit-under-eu-anti-slapp-directive/>

dismissal mechanism that places the burden of proof on the SLAPP claimant and stays the main proceedings.¹²⁹ International human rights bodies are also raising the alarm and urging states to take decisive action.¹³⁰

¹²⁹ See for instance: Council of Europe Recommendation CM/Rec(2024)2 of the Committee of Ministers to Member States on Countering the Use of Strategic Lawsuits against Public Participation (SLAPPs), 5 April 2024. The Council of Europe Recommendation, although not perfect, contains progressive measures and mechanisms to counter SLAPPs and includes set of non-exhaustive indicators that can be used to identify them. <https://rm.coe.int/0900001680af2805>

¹³⁰ UN Human Rights Council Resolution, Freedom of opinion and expression, adopted on 10 July 2024, UN Doc. A/HRC/RES/56/7, <https://docs.un.org/en/A/HRC/RES/56/7>; UN Special Rapporteur on the independence of judges and lawyers, Justice is not for Sale, 20 September 2024, UN Doc. A/79/362, <https://documents.un.org/doc/undoc/gen/n24/271/12/pdf/n2427112.pdf>

3. SCOPE OF THE RIGHT

3.1 DEFINITION OF ASSOCIATION

The definition of association for the purpose of the interpretation of Article 22, must be grounded in its nature at the intersection of civil, political and economic, social and cultural rights. It is a civil right, granting protection against arbitrary interference by State and non-state actors with the rights of individuals that have decided to associate with others, a political right, insofar as it is fundamental for the exercise of political participation, human rights advocacy, including in relation to economic, social and cultural rights, and in general for enabling the realization of its pursued goals, by grouping with others. It also includes the traditionally economic right to form and join trade unions (which in itself is both an economic and civil right).¹³¹ This complex nature of the right explains the centrality of grasping the different dimensions of its exercise and the variety of forms that associations may adopt – a direct reflection of the diversity of groups (which often include groups facing discrimination and marginalization) and objectives pursued – and ensuring strong protections grounded in the respect of the autonomy of will of their founders and members and the obligation to facilitate the right accordingly.

3.1.1 IMPORTANCE OF ADOPTING A BROAD DEFINITION OF ASSOCIATION

Article 22 of the ICCPR does not mention types of associations protected, beyond trade unions, or the possible purposes of an association (contrary to Article 16 of the American Convention on Human Rights, ACHR),¹³² but it should be understood to protect equally all sorts of associations pursuing a broad variety of purposes.¹³³ The General Comment 38 should not attempt to exhaustively enumerate the different types of protected association.

3.1.2 FORMAL AND INFORMAL

Article 22 protects both formal and informal associations.¹³⁴ The recognition of *de facto* associations is a fundamental and often neglected aspect. Amnesty International consistently documents how states' overregulation and undue restriction of associations as a form of political and societal control, paired with a lack of explicit legal recognition of the rights of informal associations, leaves little or no space for those associations to exist and operate.¹³⁵ This particularly impacts associations with less access to the required resources to acquire legal personality, and those created by individuals belonging to marginalized groups, or whose purpose concerns the rights and interests of marginalized groups, including LGBTI people, people living in poverty, persons with a disability, migrants, children, racialized people, religious groups, environmental and land defenders, among others.¹³⁶

¹³¹ Manfred Nowak, UN Covenant on Civil and Political Rights. CCPR Commentary (2nd rev. ed.), Kehl am Rhein: Engel, 2005, pp. 496 and 497.

¹³² Article 16.1 ACHR: "Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes."

¹³³ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, 21 May 2012, UN Doc. A/HRC/20/27, paras 51 and 52.

¹³⁴ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report: General principles and guidelines on ensuring the right of civil society organizations to have access to resources, 23 June 2023, UN Doc. A/HRC/53/38/Add.4, para. 6; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, A/HRC/29/25, 28 April 2015, <https://docs.un.org/en/A/HRC/29/25>, para. 59: "The Special Rapporteur has on many occasions emphasized that the right to freedom of association applies to informal associations and does not require that a group be registered...."

¹³⁵ Amnesty International, Egypt: "Whatever security says must be done": Independent NGOs' freedom of association restricted in Egypt, Index: MDE12/0464/2025, 24 November 2025. <https://www.amnesty.org/en/documents/mde12/0464/2025/en/>; Amnesty International, Africa: We are facing extinction: Escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries, Index: AFR 01/7533/2024, 9 January 2024. <https://www.amnesty.org/en/documents/afr01/7533/2024/en/>; Amnesty International, El Salvador: Dizzying descent into a human rights crisis. Submission to the 48th session of the UPR working group, Index: AMR 29/8364/2024, January 2025. <https://www.amnesty.org/en/documents/amr29/8364/2024/en/>; Amnesty International, Kyrgyzstan at a crossroads: Unprecedented crackdown on civil society threatens country's standing on human rights and international cooperation, Index: EUR 58/7684/2024, 8 February 2024. <https://www.amnesty.org/en/documents/eur58/7684/2024/en/>

¹³⁶ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, 21 May 2012, UN Doc. A/HRC/20/27, para. 64: "...The Special Rapporteur recognizes that the formation of associations embracing minority or dissenting views or beliefs may sometimes lead to tensions, but he emphasizes the duty of the State to ensure that everyone can peacefully express their views without any fear. For instance, in Lesotho, the Registrar General registered the first ever lesbian, gay, bisexual and transgender organization in the country called Matrix in November 2010 (after numerous delays)."; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/26/29, 14 April 2014, para. 54: "The process of registering an association may prove to be cumbersome for marginalized groups and exclude groups such [as] minorities or persons with disabilities. For example, the language used to communicate could be inaccessible, and physical access to locations for registration could also be a challenge for those groups. Mandatory registration, particularly where authorities have broad discretion to grant or deny registration, provides an opportunity for the State to refuse or delay registration to groups that do not espouse "favourable" views. Associations formed to defend human rights, engage in civic awareness, and to lobby and advocate are susceptible to such delays and denials, as has reportedly been the case in the Sudan."; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, A/HRC/29/25, 28 April 2015, <https://docs.un.org/en/A/HRC/29/25>, para. 59 (in relation to

Amnesty International would welcome the inclusion in General Comment 38 of a requirement on states to explicitly recognize informal associations and their rights in their legislation, policies and practice.

3.1.3 OFFLINE AND ONLINE

The right to freedom of association must be understood to include the right to associate freely, whether offline or online.¹³⁷ The online dimension of the exercise of the right entails the possibility that an association exists online (or both online and offline) and also that an association has unimpeded access to the technology that it requires to carry out its desired activities.¹³⁸ It will be important for the General Comment 38 to recognize the complex interplay between online and offline associational life. These spaces are interwoven in myriad ways. In like manner, regulatory interventions online – as well as the logics and structural features of specific platforms – are capable of impacting and shaping the possibilities for associational life offline. As such, the General Comment 38 will need to consider forms of private ownership and control that impact on associational activities across offline and online spaces, including different platforms.¹³⁹

The same state obligations to respect, protect and facilitate the right, apply to online associations and the exercise of the right to freedom of association online, including in relation to online stigmatization and harassment and its amplification, blocking of websites,¹⁴⁰ unlawful surveillance, internet shutdowns¹⁴¹ or other tactics to prevent access to and dissemination of information, etc (see section 2.1). Crucially, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association stresses that “...international law protects the rights of freedom of peaceful assembly and of association, whether exercised in person, or through the technologies of today, or through *technologies that will be invented in the future*.”¹⁴²

3.1.4 NON-PROFIT

One of the defining features of associations for the purpose of Article 22, is that their primary purpose does not concern financial gain, this means that the main purpose for which the association is established is other than that of sharing the potential profits from an economic activity.¹⁴³ The not-for-profit character of associations has been systematically included in definitions formulated to support the interpretation of the scope of the right.¹⁴⁴

associations involved in environmental protection): “...If a registration regime is to be established, he favours a “notification” regime for the establishment of associations rather than “authorization”. A notification system has a particular resonance in the context of natural resource exploitation, where lobbying and advocacy is often done through social movements that may not have a formal organizational structure. Authorities and companies may be less inclined to engage with these movements because of their informal nature and may in fact accuse them of being illegal for being unregistered.”

¹³⁷ Human Rights Committee, Concluding observations on the second periodic report of Cambodia, UN Doc. CCPR/C/KHM/CO/2, 27 April 2015, para. 21; UN Human Rights Council, Resolution 38/7, The promotion, protection and enjoyment of human rights on the Internet, UN Doc. A/HRC/RES/38/7, 17 July 2018, para. 8, <https://docs.un.org/en/A/HRC/RES/38/7>; UN General Assembly, Resolution, Promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association, UN Doc. A/RES/73/173, 8 January 2019, para. 4. <https://docs.un.org/en/A/RES/73/173>; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Thematic Report, UN Doc. A/HRC/41/41, 17 May 2019, para. 28.

¹³⁸ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/29/25/Add.1, 27 April 2015, paras 34 and 53.

¹³⁹ By way of comparison, note the reference to this in UN Human Rights Committee, General Comment 37, para. 10.

¹⁴⁰ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Thematic Report, UN Doc. A/HRC/41/41, 17 May 2019, paras 41-42.

¹⁴¹ UN Human Rights Council, Resolution, UN Doc. A/HRC/RES/32/13, 18 July 2016, para. 10: “Also condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and calls upon all States to refrain from and cease such measures.” <https://docs.un.org/en/A/HRC/RES/32/13>; UN Human Rights Council, Resolution 50/17, The rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/RES/50/17, 20 July 2022, preamble, paras 6 and 7.

¹⁴² UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Thematic Report, UN Doc. A/HRC/41/41, 17 May 2019, para. 28 (emphasis added). <https://documents.un.org/doc/undoc/gen/g19/141/02/pdf/g1914102.pdf>

¹⁴³ For a definition of “non-profit” see for example: OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 43: “An association should be not-for-profit, meaning that the generation of income must not be its primary purpose. Further, an association must not distribute any profits that might arise from its activities among its members or founders, but should invest them in the association and use them for the pursuit of the association’s objectives.”; European Parliament resolution of 17 February 2022 with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations (2020/2026(INL)), Article 2, Definitions, a): “‘non-profit’ means not having as a primary aim the generation of a profit, even though economic activities might be carried out. Where a profit is generated by a non-profit organisation, it is invested in the organisation for the pursuit of its objectives, and not distributed among members, founders or any other private parties. The granting of public benefit status pursuant to Article 21 is not a necessary condition for considering an organisation to have a non-profit nature. However, where public benefit status is granted, the purpose of the organisation shall be regarded as non-profit.”

¹⁴⁴ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report: General principles and guidelines on ensuring the right of civil society organizations to have access to resources, UN Doc. A/HRC/53/38/Add.4, 23 June 2023, para. 6: “While these associations can take a wide variety of forms, it is understood that they share some basic commonalities: they are non-governmental, non-profit, non-violent and self-governing entities that pursue common interests and values in various spheres of life, including in political, social, cultural, religious and scientific fields.”; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, 29 June 2017, UN Doc. A/HRC/35/28, paras 10 and 56; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 7: “[A]n association is an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. An association does not have to have legal personality, but does need some institutional form or structure.”; Inter-American Juridical Committee of the Organization of American States, Declaration of Inter-American principles on the creation, operation, financing, and dissolution of nonprofit civil entities, OEA/Ser.Q, CJI/RES. 282 (CII-O/23) rev.3, 15 March 2024., principle 2; African Commission on Human and Peoples’ Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 1: “An association is an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. Such an association may be formal (de jure) or informal (de facto).”

THE RIGHT TO FREEDOM OF ASSOCIATION
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Taking into account the significant variety of formal and informal associations, including complex structures of organization, and the diversity of activities that they carry out, it is important that any definition of associations for the purpose of General Comment 38, does not exclude associations that may carry out some form of economic activity that could be considered as “for profit” under domestic legislation, as long as generating profit does not constitute their primary aim.¹⁴⁵

3.1.5 SOME FORM OF ORGANIZATIONAL STRUCTURE

The definition of association implies some form of organizational structure, both for formal and informal associations.¹⁴⁶ This is a core element to identify when the right to freedom of association is engaged, and to distinguish associations from, for example, groups of people exercising their right to freedom of peaceful assembly for an extended period of time,¹⁴⁷ particularly because peaceful assemblies are not time bound.¹⁴⁸

3.1.6 VOLUNTARY CHARACTER OF ASSOCIATIONS: NEGATIVE DIMENSION OF THE RIGHT, INDEPENDENCE AND EXCLUSION OF PUBLIC LAW ASSOCIATIONS

Similarly to Article 20 of the UDHR, Article 22 formulates the right “to *freedom* (emphasis added) of association with others”, stressing its “voluntary” character both in relation to the creation and the membership of an association.¹⁴⁹ Additionally, this implies that Article 22 also protects a “negative freedom of association” to decide freely whether to belong or not to an association, and whether to withdraw from it (Article 20.2 of the UDHR explicitly states that “No one may be compelled to belong to an association”).¹⁵⁰

The “voluntary” character of associations also explains why organizations or bodies established under public law are not included under Article 22, since their creation is not the result of the will of individuals to group for a common goal as it is the case for “private associations” but of domestic laws or regulations, and are not independent of the control of the state.¹⁵¹

¹⁴⁵ OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 43: “An association should be not-for-profit, meaning that the generation of income must not be its primary purpose...”. Also in the Council of Europe Recommendation CM/Rec(2007)14, NGOs are defined as “voluntary self-governing bodies or organisations established to pursue the *essentially non-profit-making objectives* (emphasis added) of their founders or members” and are recognized the freedom to “engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities”. Council of Europe Recommendation of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, Adopted by the Committee of Ministers on 10 October 2007, CM/Rec(2007)14, paras 1, 14 and 57 <https://search.coe.int/cm?i=09000016805d534d>

¹⁴⁶ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, 21 May 2012, UN Doc. A/HRC/20/27, para. 64: “...Members of associations should be free to determine their statutes, structure and activities and make decisions without State interference ...”;

OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 7: “... An association does not have to have legal personality, but does need some institutional form or structure.”

¹⁴⁷ UN Human Rights Committee, General Comment 37, para. 4: “The right of peaceful assembly protects the non-violent gathering by persons for specific purposes, principally expressive ones. It constitutes an individual right that is exercised collectively. Inherent to the right is thus an associative element.”

¹⁴⁸ UN Human Rights Committee, General Comment 37, para. 54: “Concerning restrictions on the time of assemblies, participants must have sufficient opportunity to manifest their views or to pursue their other purposes effectively. Peaceful assemblies should generally be left to end by themselves...”

¹⁴⁹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report: General principles and guidelines on ensuring the right of civil society organizations to have access to resources, 23 June 2023, UN Doc. A/HRC/53/38/Add.4, para. 6; European Commission of Human Rights of the Council of Europe, *Young, James and Webster v. the United Kingdom*, Applications Nos 7601/76 and 7806/77, 1981, Commission’s report, para. 167: “[...] The Commission observes that the term ‘association’ presupposes a voluntary grouping for a common goal. The relationship between workers employed by the same employer cannot be understood as an association in the sense of Art. 11 because it depends only on the contractual relationship between employee and employer.”

¹⁵⁰ UN Human Rights Council, Resolution, The rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/RES/15/21, 6 October 2010, preamble: “Reaffirming that everyone has the rights to freedom of peaceful assembly and of association and that no one may be compelled to belong to an association”; UN Human Rights Committee Concluding Observations on Azerbaijan 2016 (joining ruling party); UN Human Rights Committee Concluding Observations on Kazakhstan, UN Doc. CCPR/C/KAZ/CO/2, 9 August 2016, para. 53-54 (mandatory affiliation to trade unions)

<https://docs.un.org/en/CCPR/C/KAZ/CO/2>; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, 21 May 2012, UN Doc. A/HRC/20/27, para. 55. On the “withdrawal from an association” as part of the negative aspect of the right to freedom of association, see for instance European Court of Human Rights, *Sigurður A. Sigurjónsson v. Iceland*, 1993, para. 35. Additionally, the European Court of Human Rights has applied the negative aspect of the right to freedom of association to the obligation to contribute financially to an association without formal membership and considered it an interference with the right, see *Vörður Ólafsson v. Iceland*, Application no. 20161/06, 27 April 2010, para. 48; *Geotech Kancev GmbH v. Germany*, Application no. 23646/09, 2 June 2016, para. 53.

¹⁵¹ UN Human Rights Committee, *Wallman v. Austria*, Communication no. 1002/2001, UN Doc. CCPR/C/80/D/1002/2001, 1 April 2004, paras 9.4 and 9.5, <https://juris.ohchr.org/casedetails/1101/en-US>: 9.4 “The Committee observes that the Austrian Chamber of Commerce was founded by law rather than by private agreement, and that its members are subordinated by law to its power to charge annual membership fees. It further observes that article 22 of the Covenant only applies to private associations, including for purposes of membership.” 9.5: “The Committee considers that once the law of a State party establishes commerce chambers as organizations under public law, these organizations are not precluded by article 22 of the Covenant from imposing annual membership fees on its members, unless such establishment under public law aims at circumventing the guarantees contained in article 22. However, it does not appear from the material before the Committee that the qualification of the Austrian Chamber of Commerce as a public law organization, as envisaged in the Austrian Constitution as well as in the Chamber of Commerce Act of 1998, amounts to a circumvention of article 22 of the Covenant...”

This idea is connected to another characteristic feature of associations, which is that of autonomy of will in relation to their self-governance and independence, in particular in relation to the state.¹⁵² This means that as part of the state's negative obligation not to unduly restrict the exercise of the right, "[m]embers of associations should be free to determine their statutes, structure and activities and make decisions without State interference ..."¹⁵³

In relation to the membership of associations, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has clarified that "... associations should be free to choose their members and whether to be open to any membership."¹⁵⁴ The Human Rights Committee has concretely called on states to remove restrictions imposed on the membership of trade unions.¹⁵⁵

3.1.7 INDIVIDUAL AND COLLECTIVE DIMENSION: RIGHTS OF THE ASSOCIATION AS AN ENTITY

The right to freedom of association not only guarantees the right of all individuals without discrimination,¹⁵⁶ to form associations (*"[e]veryone shall have the right to freedom of association with others..."*)¹⁵⁷ and to jointly carry out activities or pursue common goals, but also the collective right of an association to act.¹⁵⁸ This means that associations are also a recognized subject of rights, and thus enjoy rights such as the right to freedom of expression, to privacy, to public participation, to defend human rights, to fair trial, and to an effective remedy.¹⁵⁹

As to the number of people required for the exercise of the right to freedom of association, it will surely be informed in practice by the effective achievement of its purposes, but no legal limitations should exist beyond the need for two people to establish an association.¹⁶⁰

3.2 DEFINITION OF TRADE UNION

Trade unions are explicitly included as a type of association in Article 22 of the ICCPR – meaning the same obligations to respect, protect and fulfil apply – in recognition of the fact that the freedom of trade unions is both an economic and civil right.¹⁶¹ Although Article 22 does not include a definition of "trade union" it should be understood to include the same

¹⁵² UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report: General principles and guidelines on ensuring the right of civil society organizations to have access to resources, 23 June 2023, UN Doc. A/HRC/53/38/Add.4, para. 6; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Report on his mission to Oman, A/HRC/29/25/Add.1, 27 April 2015, para. 47: "Independence from the Government and other institutions is one of the founding aspects of the right to freedom of association. The right is meant to empower individuals to come together and work for their interests, so long as they are doing so for legal and peaceful purposes."; Inter-American Juridical Committee of the Organization of American States, Declaration of Inter-American principles on the creation, operation, financing, and dissolution of nonprofit civil entities, OEA/Ser.Q, CJI/RES. 282 (CII-O/23) rev.3, 15 March 2024, principle 2; African Commission on Human and Peoples' Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, paras 9, 11, 23, 37; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, principle 3 (para. 28) and principle 4 (para. 29).

¹⁵³ UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 64.

¹⁵⁴ UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 55.

¹⁵⁵ Human Rights Committee, Concluding observations on the third periodic report of Monaco, UN Doc. CCPR/C/MCO/CO/3, 28 April 2015, para. 13; Human Rights Committee, Concluding observations on the fourth periodic report of the Republic of Korea, UN Doc. CCPR/C/KOR/CO/4, 3 December 2015, paras 54-55.

¹⁵⁶ Article 22 of the ICCPR must be read together with Article 2 and article 26 of the ICCPR.

¹⁵⁷ Article 22.1 of the ICCPR.

¹⁵⁸ UN Human Rights Committee, General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (26 May 2004), UN Doc. CCPR/C/21/Rev.1/Add. 13, para. 9: "Although, with the exception of article 1, the Covenant does not mention the rights of legal persons or similar entities or collectivities, many of the rights recognized by the Covenant, such as ... the freedom of association (article 22) ... may be enjoyed in community with others." Also, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, 21 May 2012, UN Doc. A/HRC/20/27, para. 51; Inter-American Commission on Human Rights, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.LV/II. March 7, 2006, para. 71; European Court of Human Rights, *Young, James and Webster v. the United Kingdom*, 1981, Commission's report, para. 167; European Court of Human Rights, *Ecodefence and Others v. Russia*, Applications nos. 9988/13 and 60 others, 14 June 2022, para. 123.

¹⁵⁹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, 21 May 2012, UN Doc. A/HRC/20/27, para. 64; United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Adopted by General Assembly Resolution A/RES/53/144, 09 December 1998, notably Articles 1, 5, 6, 7, 8, 9 and 12.

¹⁶⁰ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 54; African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 9; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 78.

¹⁶¹ This idea was central to the debates around the inclusion of the reference to the right to form to join trade unions in Article 22 of the ICCPR. See UN General Assembly, Draft International Covenants on Human Rights: Annotation prepared by the Secretary General, UN Doc. A/2929, 1 July 1955, para. 146: "There was some debate on whether the right to form and to join trade unions should be specifically mentioned in the article. It was recalled that trade union rights were dealt with in article 8 of the draft covenant on economic, social and cultural rights; should trade union rights also be mentioned in the draft covenant on civil and political rights, the right to form and to join trade unions would be subject to two different sets of limitations, i.e., the general limitations clause in article 4 of the draft covenant on economic, social and cultural rights and the limitations clause contained in paragraph 2 of this article. On the other hand, it was emphasized that failure to mention trade union rights in the draft covenant on civil and political rights could lead to an erroneous interpretation that these rights were not civil rights as well as economic or social rights. It was decided that the right to form and to join trade unions should be mentioned in the article."

elements of the general definition of association, for the specific purpose of the “promotion and protection of [workers’] interests”,¹⁶² understanding such “interests” broadly to include civil, political, economic and social rights.¹⁶³

The “negative freedom of association” is also applicable to trade unions¹⁶⁴ and so of course is the collective exercise of the right, which guarantees the right of unions to perform activities to protect the interests of their members.¹⁶⁵

It would be important for the General Comment 38 to explicitly recognise, as other human rights bodies such as the European Committee of Social Rights have done, that trade unions, as well as employer organisations, must be free to organise without prior authorisation, and that any initial formalities (such as declaration and registration) must be simple and easy to apply.¹⁶⁶ If fees are charged for the registration or establishment of an organisation, they must be reasonable and designed only to cover strictly necessary administrative costs.¹⁶⁷

The European Committee of Social Rights has gone on to make clear that trade unions and employers’ organisations must be independent where anything to do with their organisation or functioning is concerned. This includes choosing their own members and representatives and trade union leaders having access to the workplace and union members being able to hold meetings at work in so far as employers’ interests and company requirements permit.¹⁶⁸ The following examples could constitute breaches of this independence: prohibiting the election or appointment of foreign trade union representatives, substantially limiting the use that a trade union can make of its assets and substantially limiting the reasons for which a trade union is entitled to take disciplinary action against its members.¹⁶⁹ Trade unions must be free to form federations and join similar national and international organisations and so States Parties may not limit the degree to which they are authorised to organise.¹⁷⁰

Workers must be free not only to join but also not to join a trade union.¹⁷¹ Domestic law must guarantee the right of workers to join a trade union and include effective punishments and remedies where this right is not respected. Trade union members must be protected from any harmful consequence that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities. Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim.¹⁷²

The primary means of organisations to protect the economic and social interests of their members is through collective bargaining. Therefore, any undue restriction of or interference in collective bargaining should not be permitted.¹⁷³ However, the recognition of one or more trade unions as privileged partners in the collective bargaining process can be permitted provided such recognition should be based on objective, pre-established criteria and subject to suspension and regular review by an independent body, and – other trade unions should enjoy the essential trade union prerogatives.¹⁷⁴

3.2.1 RECOGNITION OF THE RIGHT TO STRIKE

General Comment 38 should take the opportunity to codify a progressive interpretation¹⁷⁵ of the scope of the right to freedom of association under the ICCPR and explicitly recognize the right to strike.

The consideration of the right to strike, inherent to the meaningful exercise of the right to freedom of association, has been repeatedly recognized by the Human Rights Committee,¹⁷⁶ including in a joint statement with the Committee on Economic,

¹⁶² Article 22.1. Note the broader approach to the understanding of “interests” in the ICCPR (following the wording of Article 23.4 of the UDHR) as Article 8.1.a of the UN International Covenant on Economic, Social and Cultural Rights restricts said interests to “economic and social interests.”

¹⁶³ Note the broader approach to the understanding of “interests” in Article 22.1 of the ICCPR (following the wording of Article 23.4 of the UDHR) compared to Article 8.1.a of the UN International Covenant on Economic, Social and Cultural Rights that restricts said “interests” to “economic and social interests.”

¹⁶⁴ UN Human Rights Committee, Concluding Observations on Kazakhstan, UN Doc. CCPR/C/KAZ/CO/2, 9 August 2016, para. 53-54.

<https://docs.un.org/en/CCPR/C/KAZ/CO/2>

¹⁶⁵ For a collection and summary of the decisions of the ILO Governing Body’s Committee on Freedom of Association (CFA) concerning the exercise of the right to freedom of association and related rights by trade unions, see Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (1985 and 1996).

¹⁶⁶ European Committee of Social Rights, Conclusions concerning Georgia, 2010.

¹⁶⁷ European Committee of Social Rights, Conclusions XV-1, United Kingdom, 2000; European Committee of Social Rights, Conclusions XVI-1, United Kingdom, 2002.

¹⁶⁸ See for instance, European Committee of Social Rights, Conclusions concerning Ukraine, 2010, citing European Committee of Social Rights, Conclusions XV-1 concerning France, 2000. <https://hudoc.esc.coe.int/eng/?i=2010/def/UKR/5/EN>

¹⁶⁹ European Committee of Social Rights, Conclusions concerning Georgia, 2010; European Committee of Social Rights, Conclusions XX-3 concerning the United Kingdom, 2014.

¹⁷⁰ European Committee of Social Rights, Conclusions I, Statement of interpretation, Article 5, p. 31.

¹⁷¹ European Committee of Social Rights, Conclusions I, Statement of interpretation, Article 5, p. 31.

¹⁷² European Committee of Social Rights, Conclusions on Bulgaria, 2004, p. 32.

¹⁷³ European Court of Human Rights, *Demir and Baykara v. Turkey*, Grand Chamber, Application no. 34503/97, 12 November 2008, paras 153-154.

¹⁷⁴ International Labour Office, *Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth (revised) edition, Geneva, 2006, para. 346.

¹⁷⁵ In a 1986 controversial decision, the Human Rights Committee found that the right to freedom of association under Article 22 of the ICCPR does not include the right to strike. Human Rights Committee, J.B. et al. V. Canada, UN Doc. CCPR/C/28/D/118/1982, 18 July 1986, para. 6.4.

<https://juris.ohchr.org/casedetails/460/en-US>

¹⁷⁶ For examples see Human Rights Committee Concluding Observations: Macao – China (2022), paras 40 and 41; Germany (2021), para. 50; Chile (2007), para. 14; Lithuania (2004), para. 18.

Social and Cultural Rights where the Committees recalled that “the right to strike is the corollary to the effective exercise of the freedom to form and join trade unions.”¹⁷⁷ In 2022 the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association called on states to “recognize and respect the right of all workers to unionize, engage in collective bargaining and take part in strikes.”¹⁷⁸

Both the European Court of Human Rights and European Committee of Social Rights have held that the right to strike is essential for trade unions and that, without this right, all other rights and freedoms of trade unions would be illusory.¹⁷⁹ In this regard, the Court has emphasized that the right to take industrial action is a key means for a trade union which is not recognised by an employer to persuade the latter to enter into collective bargaining with it on those issues which the union believes are important for its members’ interests.¹⁸⁰ While the right to strike has not been formulated in absolute terms and may be subject to restrictions, numerous recommendations of the ILO’s Committee of Experts on the Application of Conventions and Recommendations, and the ILO Committee on Freedom of Association, as well as judgments of the European Court of Human Rights have clearly stated that a prohibition on the right to strike would not generally be compatible with the guarantees for trade unions laid down in ILO Convention No. 87 and Article 11 of the European Convention on Human Rights, respectively.¹⁸¹

The European Committee of Social Rights has made clear that the right to strike may only be restricted if restrictions are prescribed by law, serve a legitimate purpose and are necessary and proportionate in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.¹⁸² National legislation which prevents *a priori* the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards infringes the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers.¹⁸³

Employers should not have the power to unilaterally determine the minimum service required during a strike.¹⁸⁴ Workers participating in a strike, who are not members of the trade union having called the strike, are entitled to the same protection as trade union members and should not be considered to be in breach of their contract of employment as a consequence of strike action.¹⁸⁵

A summary of ILO principles on the right to strike has been elaborated based on a synthesis of the principles and minimum rules of conduct established by both the ILO Committee of Experts and the ILO Committee on Freedom of Association:¹⁸⁶

- A. Consideration of the right to strike as a fundamental right to be enjoyed by workers and their organizations (trade unions, federations and confederations), which is protected at international level, provided that the right is exercised in a peaceful manner.
- B. General recognition of the right to strike for workers in the public and the private sectors, with the sole possible exceptions being members of the armed and police forces, public servants who exercise authority in the name of the State and workers employed in essential services in the strict sense of the term (the interruption of which could endanger the life, safety or health of the whole or part of the population), or in situations of acute national crisis.
- C. The principles of freedom of association do not cover strikes of a purely political nature, although they do cover those which seek a solution to major issues in economic and social policy.
- D. A blanket ban on sympathy strikes could lead to abuse. Workers should be able to enjoy the right to take such action when the initial strike they are supporting is itself lawful.

¹⁷⁷ Joint statement by the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, Statement on freedom of association, including the right to form and join trade unions, UN Doc. E/C.12/66/5-CCPR/C/127/4, 6 December 2019. <https://docs.un.org/en/E/C.12/66/5>

¹⁷⁸ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Essential role of social movements in building back better, Report to the General Assembly, UN Doc. A/77/171, 15 July 2022, para. 68.

¹⁷⁹ European Committee of Social Rights, Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 140/2016, decision on the merits of 22 January 2019, para. 144; European Court of Human Rights, Demir and Baykara v. Turkey, Grand Chamber, Application no. 34503/97, 12 November 2008, paras 153-154.

¹⁸⁰ European Court of Human Rights, Wilson, National Union of Journalists and Others v. the United Kingdom, Judgment, Applications nos. 30668/96, 30671/96 and 30678/96, 2 July 2002, para. 46.

¹⁸¹ See for instance: International Labour Office, Bernard Gernigon, Alberto Otero and Horacio Guido, *ILO Principles Concerning the Right to Strike*, Geneva, 1 January 2000. <https://www.ilo.org/publications/ilo-principles-concerning-right-strike-0>; European Court of Human Rights, *Veniamin Tymoshenko and Others v. Ukraine*, Judgment, Application no. 48408/12, 2 October 2014, para. 77.

¹⁸² See for instance, European Committee of Social Rights, Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, 3 July 2013, para. 118.

¹⁸³ European Committee of Social Rights, Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, para. 120.

¹⁸⁴ European Committee of Social Rights, Conclusions concerning Serbia, 2018.

¹⁸⁵ European Committee of Social Rights, Conclusions XVIII-1 concerning Denmark, 2006.

¹⁸⁶ International Labour Office, Bernard Gernigon, Alberto Otero and Horacio Guido, *ILO Principles Concerning the Right to Strike*, Geneva, 1 January 2000.

- E. A minimum safety service may be imposed in all cases of strike action when such minimum services are intended to ensure the safety of persons, the prevention of accidents and the safety of machinery and equipment.
- F. A minimum operational service may be established (in the undertaking or institution in question) in the case of strikes in public utility services and in public services of fundamental importance; employers' and workers' organizations and the public authorities should be able to participate in determining this minimum service.
- G. The obligation to give prior notice, the obligation to engage in conciliation, have recourse to voluntary arbitration, comply with a given quorum and obtain the agreement of a given majority where this does not cause the strike to become very difficult or even impossible in practice and the secret ballot method to decide strike action are all acceptable conditions for the exercise of the right to strike.
- H. Restrictions on picketing should be confined to cases in which such action ceases to be peaceful, and picketing should not interfere with the freedom to work of non-strikers.
- I. Requisitioning of the workers of an undertaking or institution in the event of a strike is admissible only in the case of a strike in an essential service or under circumstances of utmost gravity and in situations of acute national crisis.
- J. The hiring of workers to replace strikers seriously impairs the right to strike and is acceptable only in strikes in an essential service or in situations of acute national crisis.
- K. Legal provisions regarding wage deductions for days of strike give rise to no objection.
- L. Appropriate protection should be afforded to trade union officials and workers against dismissal and other detrimental acts at work for organizing or participating in a legitimate strike, in particular through prompt, efficient and impartial procedures, accompanied by sufficiently dissuasive remedies and sanctions.
- M. The protection of freedom of association does not cover abuses in the exercise of the right to strike involving failure to comply with reasonable requirements regarding lawfulness, or consisting of acts of a criminal nature; any sanctions imposed in the event of abuse should not be disproportionate to the seriousness of the violations.

4. STATE OBLIGATIONS AND INTERFERENCES WITH THE RIGHT

Under article 2 paragraph 1 of the ICCPR, States Parties are required to respect and to ensure the rights enumerated in the Covenant to all persons who may be within their territory and to all persons subject to their jurisdiction.¹⁸⁷ In General Comment 37, the Human Rights Committee relied upon this same language to frame the state's overarching obligations in relation to the right of peaceful assembly – i.e. “to respect and ensure its exercise without discrimination.”¹⁸⁸

The Committee's General Comment 31 on the nature of the general legal obligation imposed on States parties to the Covenant further underscores that these obligations extend to all branches of government – legislative, executive and judicial – “and other public or governmental authorities, at whatever level – national, regional or local”, including, for states with a federal structure, “all parts of federal states without any limitations or exceptions.”¹⁸⁹ Moreover, to help ensure the performance of these obligations, adequate training and resources ought to be provided to relevant officials across these different branches and levels of government.¹⁹⁰

Additionally, as the Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasized, “[i]n the digital age, the positive obligation to facilitate the exercise of the rights to freedom of peaceful assembly and of association includes efforts ‘to bridge the digital divides, including the gender digital divide, and to enhance the use of information and communications technology, in order to promote the full enjoyment of human rights for all.’”¹⁹¹

4.1 ENSURING AN ENABLING ENVIRONMENT: PROTECTION OF THE ENTIRETY OF THE LIFE CYCLE OF ASSOCIATIONS AND FACILITATION OF THE RIGHT

Associations, including informal associations, will normally exist for a more or less extended period of time during which (and from their inception) their members, and the associations themselves, will engage in a number of activities to achieve their goals.

Article 22, by virtue of protecting the right to form an association, is engaged from the moment that two or more individuals decide to group and act together to achieve their common purposes. Therefore, its protection extends to any preparatory activities conducive to the establishment of the association, independently of whether they seek or not (or will seek in the future) to become a formal association.

In this regard, the Human Rights Committee has emphasized that the protection afforded by Article 22 extends to all activities of an association – specifically, “that the right to freedom of association relates not only to the right to form an association but also guarantees the right of such an association freely to carry out its statutory activities.”¹⁹² Similarly, the European Court of Human Rights has clarified that the protection of the right to freedom of association is not limited to the founding of an association but that it protects an association for its entire life.¹⁹³

The idea of the protection of these rights throughout the life cycle of the association is strongly connected to the state's positive obligation to facilitate the right by establishing and maintaining an enabling environment in law and in practice.¹⁹⁴

¹⁸⁷ See further, UN Human Rights Committee, General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (26 May 2024), UN Doc. CCPR/C/21/Rev.1/Add. 13, para. 10. <https://digitallibrary.un.org/record/533996?ln=en&v=pdf>

¹⁸⁸ UN Human Rights Committee, General Comment 37, paras 2, 8, 11, 21, 23, 35 and 102 (and further, para. 26 [counter-demonstrations]), para. 28 [a functioning and transparent legal and decision-making system], and para. 74 [law enforcement officials involved in policing assemblies]).

¹⁸⁹ UN Human Rights Committee, General comment 31, The nature of the general legal obligation imposed on States Parties to the Covenant: International Covenant on Civil and Political Rights, 29 March 2004, para. 4.

¹⁹⁰ UN Human Rights Committee, General Comment 37, para. 35: “While all organs of State carry the obligation to respect and ensure the right of peaceful assembly, decisions on assemblies are often taken at the local level. States must therefore ensure adequate training and resources for officials involved in these decisions at all levels of government.”

¹⁹¹ UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/41/41, 17 May 2019, para. 14 <https://documents.un.org/doc/undoc/gen/g19/141/02/pdf/g1914102.pdf>

¹⁹² UN Human Rights Committee, Viktor Korneenko et al. v. Belarus, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006, para. 7.2. <https://uris.ohchr.org/casedetails/1318/en-US>

¹⁹³ European Court of Human Rights, *United Communist Party of Turkey and Others v. Turkey*, Judgment, Grand Chamber, Application Nos. 19392/92, 30 January 1998, para. 33. <https://hudoc.echr.coe.int/eng?i=001-58128>

¹⁹⁴ The Committee has, for example, emphasized that States should “take appropriate measures to guarantee in law and in practice, and to create an environment conducive to, the exercise of the rights to freedom of expression, peaceful association and assembly”, UN Human Rights Committee, Concluding observations on the initial report of Djibouti, UN Doc. CCPR/C/DJI/CO/1, 19 November 2013, para 12(a).

In this regard, General Comment 38 ought to specify a number of general obligations relating to the domestic legal framework and its interpretation. The call upon states to ensure a safe and enabling environment for the exercise of the right to freedom of association has been widely reiterated by the UN General Assembly, the UN Human Rights Committee and UN Special Rapporteurs. This positive obligation has been confirmed to extend to ensuring that civil society actors can operate freely and without fear of threats, intimidation or violence; to the quality of domestic legislation and procedures; to the acquisition of legal personality; and to associations' access to financial resources, among other aspects.¹⁹⁵ The Inter-American Court of Human Rights has stressed the importance of states protecting individuals from violence and the threat of violence to ensure the effective enjoyment of the right.¹⁹⁶ The European Court of Human Rights has further clarified that the positive obligations of the state mean that "it is incumbent upon public authorities to guarantee the proper functioning of an association or political party, even when they annoy or give offence to persons opposed to the lawful ideas or claims that they are seeking to promote."¹⁹⁷

4.2 LEGAL FORM OF ASSOCIATIONS: ENTITLEMENT (WITHOUT OBLIGATION) TO LEGAL PERSONALITY

As explained in section 3.1.2 and illustrated in some of the examples presented above, the explicit recognition of both formal and informal associations is critical to the enjoyment of the right to freedom of association. Many associations will emerge organically and over a period of time, will be linked to social movements seeking structural change, or emerge to respond to shorter term campaigns or consultation processes. Even in incipient phases or in instances where associations decide not to formalize their existence by choice or for fear of negative repercussions,¹⁹⁸ their right to freedom of association must be respected, protected and facilitated without discrimination. This means that informal associations must be allowed to be established free from any official supervision, not face undue restrictions or criminalization resulting from their lack of formal status,¹⁹⁹ must be protected from actions by state and non-state actors, and among other elements of the exercise of the right, they must be allowed to participate in political and public life, and exercise their right to seek, receive and use resources.²⁰⁰

Frequently, however, achieving the objectives of an association requires and is enabled by the acquisition of a legally recognized form, normally legal personality. Therefore, in light of states' obligations to facilitate the right, states are under a positive obligation to provide a legal framework for associations to gain legal personality.²⁰¹ The acquisition of legal personality should be viewed as a right (and not as an obligation)²⁰² and understood through the lens of associations' autonomy of will and the recognition of informal associations: associations must not be obliged to acquire legal personality but should be provided with the option, should they wish to.²⁰³ The Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights summarize these obligations by noting that states "shall not compel associations to register in order to be allowed to exist and to operate freely", that "[i]nformal (de facto) associations shall not be punished or criminalized under the law or in practice on the basis of their lack of formal (de jure) status" and that "[a]ssociations shall have the right to acquire legal personality and consequent benefits."²⁰⁴

¹⁹⁵ UN General Assembly, Resolution, Promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association, UN Doc. A/RES/73/173, 8 January 2019, para. 1; UN Human Rights Council, Resolution 50/17, The rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/RES/50/17, 20 July 2022, para. 9 (on access to financial resources); UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, 21 May 2012, UN Doc. A/HRC/20/27, para. 57 (regarding legal personality) and 63; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, para. 81.a; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/41/41, 17 May 2019, para. 14 (on facilitation of the exercise of the right to freedom of association in the digital age); UN Special Rapporteur on Human Rights Defenders, Report, UN Doc. A/HRC/31/55, 1 February 2016, para. 110.

¹⁹⁶ Inter-American Court of Human Rights, *Huila-Tesce v. Peru*, 3 March 2005, Series C no. 121, para. 77; Inter-American Court of Human Rights, *García y Familiares v. Guatemala*, 29 November 2012, Series C no. 258, para. 117.

¹⁹⁷ European Court of Human Rights, *Ouranio Toxo and Others v. Greece*, Application no. 74989/01, 20 October 2005, para. 37.

¹⁹⁸ See for instance the examples presented above regarding LGBTI associations in Zimbabwe: Amnesty International, Africa: We are facing extinction: Escalating anti-LGBTI sentiment, the weaponization of law and their human rights implications in select African countries, Index: AFR 01/7533/2024, 9 January 2024, pp. 55-56.

¹⁹⁹ See for instance African Commission on Human and Peoples' Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 11; Human Rights Committee, *M.T. v. Uzbekistan*, UN Doc. CCPR/C/114/D/2234/2013, Views of 23 July 2015, paras 7.7-7.8, concerning a violation of Article 22 resulting from the prosecution and imprisonment of a human rights defender for establishing an unregistered public organization. See also, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 56; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/29/25, 28 April 2015, para. 59; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/53/38/Add.4, 23 June 2023, paras 14-16; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, paras 48, 49.

²⁰⁰ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, General principles and guidelines on ensuring the right of civil society organizations to have access to resources, UN Doc. A/HRC/53/38/Add.4, 23 June 2023, Principle 2, para. 15.

²⁰¹ UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 57; European Court of Human Rights, *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, Judgment, 8 April 2014, paras 90 and 91 (in relation to religious associations); Inter-American Juridical Committee of the Organization of American States, Declaration of Inter-American principles on the creation, operation, financing, and dissolution of nonprofit civil entities, OEA/Ser.Q, CJI/RES. 282 (CII-O/23) rev.3, 15 March 2024, principle 3.

²⁰² OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, paras 48, 152.

²⁰³ OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, Principle 3, para. 78.

²⁰⁴ African Commission on Human and Peoples' Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, paras 11 and 12.

4.3 AUTONOMOUS MEANING OF “ASSOCIATION”: SAFEGUARDS AGAINST STATE RESTRICTIONS AND MANIPULATION OF THE LEGAL FORM

Human rights bodies have warned of the risk that state authorities use legislation regulating the legal form of association to impose restrictions or circumvent guarantees included in Article 22 of the ICCPR. It is crucial that the General Comment 38 explicitly recognizes the autonomous meaning of the term “association”, and that full protection is granted on the basis of a given entity fulfilling the definition of “association” under international law, independently of how domestic legislation classifies it.²⁰⁵

4.4 NOTIFICATION AND REGISTRATION: AUTONOMY OF WILL AND INCOMPATIBILITY OF AUTHORIZATION REGIMES

As mentioned above, associations, in exercise of their autonomy of will, must be able to choose whether they wish to acquire legal personality, as well as the legal form that better suits the association’s particular circumstances or that better enables it to achieve its goals.²⁰⁶

In any case, acquiring legal personality must not be conditional upon prior authorization by the authorities.²⁰⁷ Associations must be allowed to obtain recognition of their legal personality through simple processes of notification, which implies that “associations are automatically granted legal personality as soon as the authorities are notified by the founders that an organization was created.”²⁰⁸

The Human Rights Committee has identified and raised concern about the existence of de facto authorisation regimes in instances where in spite of legislation that appears to be compatible with Article 22 of the ICCPR, the authorities in practice impose “a process of prior licensing and control.”²⁰⁹ It would be helpful if the General Comment 38 could further elaborate upon the typical characteristics of de facto authorisation regimes so as to assist in clearly distinguishing these from compulsory registration requirements.

The Human Rights Committee has also addressed the risk of Article 22 violations resulting from compulsory registration for associations to be able to exist legally.²¹⁰ Among other obstacles linked to registration requirements and procedures, such risks arise from unduly restrictive and overly burdensome registration requirements²¹¹ and denial of registration on problematic grounds.²¹²

The registration of associations may nevertheless fulfil a positive function of facilitating the exercise of the right by enabling associations to acquire certain recognized legal forms (which vary depending on the context) that will in turn allow them to

²⁰⁵ Human Rights Committee, *Wallman et al. v. Austria*, Communication No. 1002/2001, U.N. Doc. CCPR/C/80/D/1002/2001, 1 April 2004, paras 9.4 and 9.5: “9.4 The Committee observes that the Austrian Chamber of Commerce was founded by law rather than by private agreement, and that its members are subordinated by law to its power to charge annual membership fees. It further observes that article 22 of the Covenant only applies to private associations, including for purposes of membership. [...] 9.5 The Committee considers that once the law of a State party establishes commerce chambers as organizations under public law, these organizations are not precluded by article 22 of the Covenant from imposing annual membership fees on its members, unless such establishment under public law aims at circumventing the guarantees contained in article 22.”; European Court of Human Rights, *Chassagnou and others v. France*, Application no. 2833/95 and 28443/95, 29 April 1999, para. 100: “However, the question is not so much whether in French law ACCAs are private associations, public or para-public associations, or mixed associations, but whether they are associations for the purposes of Article 11 of the Convention. If Contracting States were able, at their discretion, by classifying an association as ‘public’ or ‘para-administrative’, to remove it from the scope of Article 11, that would give them such latitude that it might lead to results incompatible with the object and purpose of the Convention, which is to protect rights that are not theoretical or illusory but practical and effective.”; European Court of Human Rights, *Schneider v. Luxembourg*, Judgment, Application No. 2113/04, 10 July 2007, para. 70 (original in French): “The term ‘association’ [...] possesses an autonomous meaning; the classification in national law has only relative value and constitutes no more than a starting point”; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 39: “It should be emphasized that, regardless of how legislation classifies a given entity, it is the substance of an entity that determines whether it falls within the protection of the right to freedom of association. Legislation aimed at denying an entity the status of association, or at removing an entity from the scope of freedom of association and the rights associated with it, is not permissible.”

²⁰⁶ OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 49.

²⁰⁷ UN Human Rights Committee, Concluding observation on the second periodic report of Mauritania, UN Doc. CCPR/C/MRT/CO/2, 23 August 2019, paras 46 and 47; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 58; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, para. 17; African Commission on Human and Peoples’ Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 13.

²⁰⁸ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 58; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 154; African Commission on Human and Peoples’ Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 13.

²⁰⁹ UN Human Rights Committee, Concluding Observations. Lebanon, UN Doc. CCPR/C/79/Add.78, 5 May 1997, paras 27-28.

²¹⁰ UN Human Rights Committee, *M.T. v. Uzbekistan*, UN Doc. CCPR/C/114/D/2234/2013, Views of 23 July 2015, paras. 7.7-7.8; UN Human Rights Committee, *Pinchuk v. Belarus*, UN Human Rights Committee, UN Doc. CCPR/C/112/D/2165/2012, Views of 24 October 2014, para. 8.5.

²¹¹ See for instance, UN Human Rights Committee, Concluding observations on the sixth periodic report of Sri Lanka, UN Doc. CCPR/C/LKA/CO/6, 26 April 2023, para. 42; UN Human Rights Committee, Concluding observations on Equatorial Guinea in the absence of its initial report, UN Doc. CCPR/C/GNQ/CO/1, 22 August 2019, para. 56.

²¹² See for instance, UN Human Rights Committee, *Mikhailovskaya and Volchek v. Belarus*, Communication No. 1993/2010, Views adopted by the Committee at its 111th session, (7–25 July 2014), UN Doc. CCPR/C/111/D/1993/2010, 26 July 2014, para. 7.5.

better achieve their objectives or for example, to apply to state funding. When registration processes are in place, they must also operate as a notification regime, (also described as “declaratory system” or “implicit approval” system), as opposed to an authorization regime.²¹³ Moreover, it will be important for the General Comment 38 to expressly establish that *any* compulsory registration requirement constitutes an interference with the right to freedom of association and must thus be subject to human rights scrutiny.

Several human rights bodies have stressed that registration procedures must be simple and non-burdensome, clear – though available laws and regulations that establish the precise requirements – and non-discretionary, easily accessible, expeditious, non-onerous, free of charge, and non-discriminatory.²¹⁴

Moreover, any requirements attached to the registration of associations and any grounds for refusal, must comply with the principles that apply to any restriction under international human rights law (legality, legitimate aim, necessity and proportionality) and must not be misused by the authorities to control or otherwise interfere with the activities of civil society organizations²¹⁵ or be “unduly restrictive”, “burdensome” or “disproportionate”.²¹⁶

States must therefore ensure that any objections to an associations’ registration are communicated promptly and within established timeframes, and that all necessary measures are put in place to guarantee due process. Among other measures, the communication of decisions denying registration (or making it conditional upon additional formalities or the correction of errors) should be in writing and clearly motivated, and adequate complaint and redress mechanisms must be put in place (see section 4.9).²¹⁷

It is worth stressing that compulsory registration, authorization regimes, and other onerous and unjustified restrictions linked to registration, tend to adversely impact human rights defenders, associations advocating for marginalized groups and those that are critical of the authorities or that are perceived as such (see sections 2.3, 4.4 and 4.8).²¹⁸ It is therefore crucial that the General Comment 38 clarifies the incompatibility of compulsory registration and prior authorization registration regimes with the protections granted by Article 22 of the ICCPR. It should also clarify that notification must suffice for an association to acquire legal personality, regardless of any specific requirements that may be attached to the acquisition of specific legal forms. Registration of associations must therefore operate on a notification basis, and any requirements must constitute permissible restrictions under international law and be in all circumstances guided by the obligation to facilitate the exercise of the right, be necessary and proportionate, and non-discriminatory.

4.5 RE-REGISTRATION

Imposing a requirement of re-registration on previously registered associations can lead to abuse by the authorities and will seldom constitute a legitimate measure. For example, the Egyptian 2019 associations law requires all associations to register and re-register (if previously registered under other legal frameworks), or face dissolution. The process involves burdensome requirements, a de facto authorization regime and entails lengthy waits; it enables arbitrary interferences with the associations’ constitution, name, leadership and activities. For organizations that have been operating for years, the process of re-registration has placed them in a situation of prolonged uncertainty and exposed them to risks of sanctions, surveillance, or losing their name (and with that part of their history and identity). These consequences are clearly also damaging for their future activities.²¹⁹

The Human Rights Committee has recognized the serious risks that re-registration brings. In a 2022 case concerning the refusal to re-register an association (a religious minority already facing hostility from the authorities) placing it in a situation of de facto unlawfulness and exposing it to legal measures such as arrests, detentions, interrogations, searches, the Committee concluded that the refusal by the state authorities to re-register the association constituted a violation of Article

²¹³ UN Human Rights Committee, Concluding observation on the second periodic report of Mauritania, UN Doc. CCPR/C/MRT/CO/2, 23 August 2019, paras 46 and 47. <https://docs.un.org/en/CCPR/C/MRT/CO/2> ; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 58; African Commission on Human and Peoples’ Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 13; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, paras 49, 151-154.

²¹⁴ UN Human Rights Council, Resolution, Protecting human rights defenders, UN Doc. A/HRC/RES/22/6, 12 April 2013, para. 8; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 57-58; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, para. 17; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/53/38/Add.4, 23 June 2023, para. 16; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 154; African Commission on Human and Peoples’ Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 13; Inter-American Juridical Committee of the Organization of American States, Declaration of Inter-American principles on the creation, operation, financing, and dissolution of nonprofit civil entities, OEA/Ser.Q, CJI/RES. 282 (CII-O/23) rev.3, 15 March 2024, principles 4 and 5.

²¹⁵ See for instance, UN Human Rights Committee, Concluding Observations, Turkmenistan, UN Doc. CCPR/C/TKM/CO/3, 12 April 2023, para. 47.

²¹⁶ For example, see UN Human Rights Committee, Concluding Observations, Egypt, UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, paras 49-50.

²¹⁷ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, paras 60-61; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 162.

²¹⁸ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/26/29, 14 April 2014, paras 54 and 56; UN Human Rights Committee, Concluding observations of the Human Rights Committee, Ethiopia, UN Doc. CCPR/C/ETH/CO/1, 19 August 2011, para. 25.

²¹⁹ Amnesty International, Egypt: “Whatever security says must be done”: Independent NGOs’ freedom of association restricted in Egypt, Index: MDE12/0464/2025, 24 November 2025, chapter 5. <https://www.amnesty.org/en/documents/mde12/0464/2025/en/>

22 of the ICCPR.²²⁰ The UN Human Rights Council²²¹ and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association have stated that requirements of re-registration imposed on already registered associations should be avoided.²²² The OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association also warn against re-registration of already registered associations²²³ and the African Commission on Human and Peoples' Rights' Guidelines on Freedom of Association and Assembly in Africa state that "[a]ssociations shall not be required to register more than once or to renew their registration."²²⁴

4.6 ACCESS TO RESOURCES, INCLUDING FUNDING

The right to freedom of association protects the right to seek, secure and use resources,²²⁵ including financial resources, from domestic, foreign, and international sources, as inherent to the right to freedom of association and essential to the existence and effective operation of organizations.²²⁶ As mentioned previously, it is important that the General Comment 38 explicitly recognizes that all associations, including those that have no legal status, have the right to access funding and resources.²²⁷

The UN Human Rights Committee, building on the consideration that "the right to freedom of association relates not only to the right to form an association but also guarantees the right of such an association freely to carry out its statutory activities"²²⁸ has repeatedly clarified in Concluding Observations that funding restrictions – such as, bans,²²⁹ restrictions on access to foreign funding,²³⁰ taxation specifically impacting donations to NGOs whose activities are considered as "political",²³¹ or "unreasonable, burdensome and restrictive conditions" imposed on organizations receiving foreign funding,²³² among other examples, constitute an interference with Article 22 of the ICCPR.

Furthermore, Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) expressly provides for an obligation of States to engage in international assistance and cooperation, especially economic and technical, with a view to achieving the full realization of the rights protected under the Covenant.²³³ The Maastricht Principles on Extraterritorial Obligations of States further expand on the obligation to act through international cooperation to fulfil

²²⁰ UN Human Rights Committee, *Adyarkhayev et al. v. Tajikistan*, UN Doc. CCPR/C/135/D/2483/2014, Views of 7 July 2022, para. 9.9.: "In the present case, the State party's authorities have banned the Association and refused its reregistration on the basis of a number of stated reasons (para. 9.4 above). These reasons must be assessed in the light of the consequences that arise for the authors and the Association. The Committee notes that, even though such reasons were prescribed by the relevant law, the State party has not advanced any argument as to why they are necessary in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The Committee also notes that the refusal to reregister the Association led directly to the de facto unlawfulness of its operation on the State party's territory, thus precluding the authors from enjoying their right to freedom of association, with religious activities of Jehovah's Witnesses being perceived as illegal by the authorities of Tajikistan and leading to arrests, detentions, interrogations, searches, beatings, seizures of religious materials, as well as the deportation of a Jehovah's Witness. Accordingly, the Committee concludes that the refusal by the State party's authorities to reregister the Association does not meet the requirements of article 22 (2) of the Covenant in relation to the authors. The authors' rights under article 22 (1) of the Covenant have thus been violated." <https://docs.un.org/en/CCPR/C/135/D/2483/2014>

²²¹ UN Human Rights Council, Resolution 22/6, UN Doc. A/HRC/RES/22/6*, 12 April 2013, para. 8: "Calls upon States to respect, protect and ensure the right to freedom of association of human rights defenders and, in this regard, to ensure, where procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law". <https://docs.un.org/en/A/HRC/RES/22/6>

²²² The Special Rapporteur has stated that "[n]ewly adopted laws should not request all previously registered associations to re-register so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities", UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 62.

²²³ OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 107.

²²⁴ African Commission on Human and Peoples' Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 17.

²²⁵ The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association in his report outlining general principles and guidelines aimed at ensuring the right of civil society organizations to have access to resources, considers "resources" to cover "financial transfers (including donations, grants, contracts, sponsorships and social investments); loan guarantees and other forms of financial assistance; in-kind donations (e.g., goods, services, software, intellectual property, real property); material resources (e.g., office supplies, information technology equipment); and human resources (e.g., paid staff, volunteers)". "Resources" also covers access to international legislation, the ability to travel and communicate without undue interference; and the right to benefit from the protection of the state." UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report: General principles and guidelines on ensuring the right of civil society organizations to have access to resources, 23 June 2023, UN Doc. A/HRC/53/38/Add.4, para. 7.

²²⁶ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report: Access to resources, UN Doc. A/HRC/50/23, 10 May 2022, para. 9. See also, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/23/39, 24 April 2013, paras 8 and 20; Human Rights Council, Resolution 22/6 Protecting human rights defenders, UN Doc. A/HRC/RES/22/6*, 12 April 2013, para. 9(b); Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Adopted by General Assembly Resolution A/RES/53/144, 09 December 1998, Article 13; African Commission on Human and Peoples' Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 38; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, principle 7, para. 32.

²²⁷ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report: General principles and guidelines on ensuring the right of civil society organizations to have access to resources, 23 June 2023, UN Doc. A/HRC/53/38/Add.4, para. 14.

²²⁸ UN Human Rights Committee, *Belyatsky v. Belarus*, UN Doc. CCPR/C/90/D/1296/2004, Views of 24 July 2007, para. 7.2; Human Rights Committee, *Viktor Korneenko et al v. Belarus*, Communication no. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004, 10 November 2006, para. 7.2.

²²⁹ UN Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan, UN Doc. CCPR/C/AZE/CO/4, 16 November 2016, para. 40-41.

²³⁰ UN Human Rights Committee, Concluding observations on the initial report of Bangladesh, UN Doc. CCPR/C/BGD/CO/1, 27 April 2017, paras 27.c and 28.c.

²³¹ UN Human Rights Committee, Concluding observations on the sixth periodic report of Canada, UN Doc. CCPR/C/CAN/CO/6, 13 August 2015, para. 15.

²³² UN Human Rights Committee, Concluding observations on the sixth periodic report of Hungary, UN Doc. CCPR/C/HUN/CO/6, 9 May 2018, paras 53-54.

²³³ UN International Covenant on Economic, Social and Cultural Rights (ICESCR), General Assembly resolution 2200A (XXI), 16 December 1966.

economic, social and cultural rights extraterritorially – while stressing its principles also apply to civil and political rights – and highlight the obligation of states to create an international enabling environment to achieve this end.²³⁴

4.7 PERMISSIBLE RESTRICTIONS

As reiterated by the Human Rights Committee,²³⁵ any restriction on the right to freedom of association must be assessed on a case-by-case basis to determine whether the interference is prescribed by law and pursues one or several of the legitimate aims expressly established in the applicable human rights instruments: the protection of national security, public order, public health or morals, or the rights of others. It must also be assessed on a case-by-case basis whether any such interference is necessary and proportionate to achieve the legitimate aim.²³⁶ Moreover, restrictions must not be discriminatory or impair the essence of the right.²³⁷

The principle of legality requires that any restrictions are set out in domestic laws, that such laws are not arbitrary or unreasonable and that they are clear and accessible to everyone.²³⁸ The principle of legality also requires that the domestic law is accessible to the association or organization concerned, foreseeable as to its effects and sufficiently precise to allow anyone to decide how to regulate their conduct.²³⁹ Such foreseeability and precision are crucial so as not to confer unfettered discretion on those charged with the enforcement of the law.²⁴⁰

Pursuant to these requirements, any law that provides restrictions based on vague and overly broad categories or that improperly identifies risks or harms would violate the requirement of legality. In the context of laws restricting the right to freedom of association, the Human Rights Committee has criticized the vagueness of definitions of terms such as “extremist activity”,²⁴¹ “illegal organizations”,²⁴² “public interest”,²⁴³ “foreign agent” and “political activities”.²⁴⁴ Legislation imposing restrictions should be informed by the state’s obligation to facilitate the right,²⁴⁵ and for that reason authorities should avoid duplicating requirements or creating additional burdens when legislation already exists that addresses any legitimate concerns.²⁴⁶

New legislation creating obligations or imposing any other restrictions on associations must be the result of genuine consultation with civil society.²⁴⁷ In this regard the African Commission on Human and Peoples’ Rights has noted that “[n]ational legislation on freedom of association, where necessary, shall be drafted with the aim of facilitating and encouraging the establishment of associations and promoting their ability to pursue their objectives. Such legislation shall be drafted and amended on the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society.”²⁴⁸

Legislation should also be preceded by an adequate assessment of the risks that it is purported to address and of the impact that the precise measures would have on associations.²⁴⁹ These assessments should take into account all other relevant laws and regulations that associations must already comply with in order to fully understand the impact of the new law and any adverse effects on associations’ rights. We can find examples of the importance of an adequate

²³⁴ Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, 28 September 2011, principles 5, 28, 29 and 32, https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf

²³⁵ UN Human Rights Committee, *Belyatsky v. Belarus*, UN Doc. CCPR/C/90/D/1296/2004, Views of 24 July 2007, para. 7.3.

²³⁶ Article 22.2 of the International Covenant on Civil and Political Rights. See also, Article 10 of the African Charter on Human and Peoples’ Rights; Article 16.2 of the American Convention on Human Rights; Article 11.2 of the European Convention on Human Rights; Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, 1985.

²³⁷ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, 1985, principles 2 and 9.

²³⁸ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, 1985, principles 16 and 17.

²³⁹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/50/23, 10 May 2022, para. 14;

OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 34.

²⁴⁰ OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 34.

²⁴¹ UN Human Rights Committee, Concluding Observations: Russian Federation, 1 December 2003, UN Doc. CCPR/CO/79/RUS, para. 20.

²⁴² UN Human Rights Committee, Concluding Observations: Turkey, 13 November 2012, UN Doc. CCPR/CO/79/TUR, para. 19.

²⁴³ UN Human Rights Committee, Concluding Observations: Tanzania, 6 August 2009, UN Doc. CCPR/CO/79/TZA, para. 23.

²⁴⁴ UN Human Rights Committee, Concluding Observations: Russia, 28 April 2015, UN Doc. CCPR/CO/79/RUS, para. 22.

²⁴⁵ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 2017, paras 7 and 66; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 75.

²⁴⁶ OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, paras 51-53; Inter-American Juridical Committee of the Organization of American States, Declaration of Inter-American principles on the creation, operation, financing, and dissolution of nonprofit civil entities, OEA/Ser.L/V/II.02/Doc.10.1/Rev.1, 15 March 2004, principle 3, p. 8: “Norms must be precise, comprehensive, and published in advance, avoiding to the extent possible dispersion across and overregulation.”

²⁴⁷ See for instance in relation to legislation impacting access to resources: UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report: General principles and guidelines on ensuring the right of civil society organizations to have access to resources, 23 June 2023, UN Doc. A/HRC/53/38/Add.4, paras 46-47. On consultation with civil society, see also: OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, paras 106-107.

²⁴⁸ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 7.

²⁴⁹ For more details on human rights impact assessments, see for instance De Schutter, Olivier, *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, Third Edition, 2019, pp. 858-859.

assessment of the risks and impact of new legislation in relation to measures targeting associations funded from abroad,²⁵⁰ as well as measures against money laundering and terrorism related financing.²⁵¹ states have often used the regulation of foreign funding and the risk of money laundering and terrorism related financing as a pretext to impose limitations on associations in breach of their right to freedom of association.²⁵²

Any interference with the right to freedom of association must **pursue at least one of the established legitimate aims** which are the protection of national security, public order, public health or morals, or the rights of others.²⁵³ It must also be assessed on a case-by-case basis if such interference is **necessary and proportionate to such a legitimate aim**, this involves demonstrating that such limitations are the least intrusive measures among those which might achieve such aim (principle of necessity) and that the impact on the restricted right is smaller than the benefit obtained by the interference.²⁵⁴

With regard to restrictions on the basis of the protection of morals, the Human Rights Committee has noted that “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations ... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.”²⁵⁵ Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination.²⁵⁶ The lack of precision and changing nature of the concept of “morals” (through time, ideology, context) paired with the risk of violations of the right to freedom of expression and the prohibition of discrimination, means that in practice the protection of morals should rarely be regarded as an appropriate basis for restrictions on the right to freedom of association.²⁵⁶

The UN Human Rights Council has warned that “domestic legal and administrative provisions, such as national security and counter-terrorism legislation, and other measures, such as provisions on funding for civil society actors, registration or reporting requirements, or emergency measures, including public health measures, have sought to or have been misused to hinder the work and endanger the safety of civil society.”²⁵⁷ These restrictions are often justified by states as pursuing the objective of protecting state sovereignty,²⁵⁸ fighting against money laundering and the financing of terrorism,²⁵⁹ or ensuring that associations are transparent and accountable in relation to their operations and resources.²⁶⁰

However, for those objectives to constitute permissible restrictions, states must identify and justify which of the legitimate aims accepted under international human rights law would apply to the specific case. International human rights law and standards stress that restrictions must not be applied in an arbitrary manner and that the scope of the legitimate aims shall be narrowly interpreted.²⁶¹ States should base the introduction of new provisions on the identification of real and concrete risks to one of the grounds for limitation and implement targeted responses as opposed to imposing undue restrictions on all NGOs based on hypothetical risks.²⁶² The Human Rights Committee has repeatedly stated that the mere identification

²⁵⁰ OSCE/ODHIR, Opinion no. NGO-GEO/465/2023 [JB], Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards, 25 July 2023, 3.2, paras 32 – 39.

²⁵¹ Financial Action Task Force (FATF), High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards, 2021, pp. 4-5, <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Unintended-Consequences.pdf>; Council of Europe, Expert Council on NGO Law, CONF/EXP(2022)2, Non-governmental organisations and the implementation of measures against money laundering and terrorist financing, 17 May 2022, para. 272.

²⁵² Council of Europe, Expert Council on NGO Law, CONF/EXP(2022)2, Non-governmental organisations and the implementation of measures against money laundering and terrorist financing Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards, 25 July 2023, para. 10.

²⁵³ Article 22.2 of the International Covenant on Civil and Political Rights. See also, Article 10 of the African Charter on Human and Peoples’ Rights; Article 16.2 of the American Convention on Human Rights; Article 11.2 of the European Convention on Human Rights; Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, 1985.

²⁵⁴ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/50/23, 10 May 2022, para. 14: “[t]o meet the condition of necessity, authorities must demonstrate that the measure can truly be effective in pursuing the legitimate aim and be the least intrusive means among those which might achieve the desired objective. The State must also prove that the measure is necessary to avert a real and not a hypothetical threat to one of the grounds for limitation, such as national security or public order.”; UN Human Rights Committee, General comment 31, The nature of the general legal obligation imposed on States Parties to the Covenant: International Covenant on Civil and Political Rights, 29 March 2004, para. 6: “where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights.”

²⁵⁵ UN Human Rights Committee, General Comment 34 – Article 19: Freedom of Opinion and Expression, 12 September 2011, UN Doc CCPR/C/GC/34. ohchr.org/english/bodies/hrc/docs/gc34.pdf, para. 32.

²⁵⁶ See for instance, in relation to the right to freedom of expression and the prohibition of discrimination: European Court of Human Rights, *Bayev and Others v. Russia*, Applications nos. 67667/09, 44092/12, 56717/12, Judgment, 20 June 2017, paras 66-69. <https://hudoc.echr.coe.int/eng?i=001-174422>

²⁵⁷ UN Human Rights Council, Resolution 50/17, 20 July 2022, preamble and para. 7.

²⁵⁸ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/23/39, 24 April 2013, paras 27-34.

²⁵⁹ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report, Impact of counter-terrorism measures on civil society and civic space, and counter-terrorism-based detention, UN Doc. A/78/520, 10 October 2023, para. 28; Council of Europe, Expert Council on NGO Law, CONF/EXP(2022)2, Non-governmental organisations and the implementation of measures against money laundering and terrorist financing, 17 May 2022.

²⁶⁰ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/23/39, 24 April 2013, paras 35-38; OSCE/ODHIR, Opinion no. NGO-GEO/465/2023 [JB], Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards, 25 July 2023.

²⁶¹ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, 1985, principles 1-14; OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, paras 34 and 109.

²⁶² UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report: Access to resources, 10 May 2022, UN Doc. A/HRC/50/23, para. 14; Inter-American Juridical Committee of the Organization of American States, Declaration of Inter-American principles on the creation, operation, financing, and dissolution of nonprofit civil entities, OEA/Ser.Q, CJI/RES. 282 (CII-O/23) rev.3, 15 March 2024, principle 8, in relation to the appropriate control of illicit financing; OSCE/ODHIR, Opinion no. NGO-GEO/465/2023 [JB], Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards, 25 July 2023, 3.2.

or existence of objective justifications is not sufficient on its own and that in such an instance, a State party must prove the precise nature of the threat.²⁶³ In *Lee v. Republic of Korea*, the Human Rights Committee stressed that “the existence of any reasonable and objective justification for limiting the freedom of association is not sufficient. The State Party must further demonstrate that the prohibition of the association and the criminal prosecution of individuals for membership in such organizations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose.”²⁶⁴ In the same vein, UN Special Procedures mandate holders have emphasized that “[w]hen a State invokes national security and protection of public order [...] it must prove the precise nature of the threat and the specific risks posed. It is not sufficient for the State to refer generally to the security situation. National, political or government interest is not synonymous with national security or public order.”²⁶⁵ The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association also analyzed whether the protection of state sovereignty falls within one of the limited legitimate grounds for restriction and concluded that:

“States cannot refer to additional grounds, even those provided by domestic legislation, and cannot loosely interpret international obligations to restrict the right to freedom of association. [...] [S]uch justification cannot reasonably be included under ‘the interests of national security or public safety’ or even ‘public order’. Affirming that national security is threatened when an association receives funding from [a] foreign source is not only spurious and distorted, but also in contradiction with international human rights law.”²⁶⁶

The OSCE/ODIHR, in a 2023 Note drafted in consultation with the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, has addressed the issue of whether legislation imposing restrictions on associations funded from abroad on grounds of ensuring transparency of the funding of the civil society sector fulfilled the legitimate aim requirement. The Note, in accordance with the jurisprudence of the Human Rights Committee, and building on previous legal opinions and reports on similar laws, concludes that restrictions to the freedom of association can only be justified if they are necessary to avert a real, and not only hypothetical danger²⁶⁷ and states that: “enhancing transparency does not by itself constitute a legitimate aim [...] although there may be circumstances where this may be a means in the pursuit of one or more of the legitimate aims recognised as allowing restrictions on this right, such as public order or the prevention of crimes such as corruption, embezzlement, money-laundering or terrorism financing. At the same time, abstract ‘public concern’ and ‘suspicions’ about the legality and honesty of financing of the NGO sector, without pointing to a substantiated concrete risk analysis concerning any specific involvement of the NGO sector in the commission of crimes, [...] cannot constitute a legitimate aim justifying restrictions to this right.”²⁶⁸

4.8 PROHIBITION, SUSPENSION AND DISSOLUTION

An association can be terminated by a decision of its members, because they may have achieved their objectives, decided against its continuation or because the association may be transforming or merging with another entity. Voluntary termination will normally follow the association’s statutes or internal rules (where these exist).²⁶⁹

Involuntary termination, generally through prohibition, temporary suspension or dissolution (although different terms and different definitions may be used in different contexts), constitutes the most severe restriction of the right of freedom of association and will always be considered a measure of last resort.²⁷⁰ Decisions to prohibit an association or to order its temporary suspension or dissolution (and the adequacy of any purported safeguards) merit stringent scrutiny and must be assessed, as is the case with any restriction, against the requirements of legality, pursuit of a legitimate aim, necessity and proportionality.²⁷¹

²⁶³ UN Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, UN Doc. CCPR/C/84/D/1119/2002, 20 July 2005, paras 7.2 and 7.3.; UN Human Rights Committee, *Mikhailovskaya and Volchek v. Belarus*, UN Doc. CCPR/C/111/D/1993/2010, 24 July 2014, para. 7.3.

²⁶⁴ UN Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, UN Doc. CCPR/C/84/D/1119/2002, 20 July 2005, para. 7.2.

²⁶⁵ Joint report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRD/31/66, 4 February 2016, para. 31.

²⁶⁶ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/23/39, 24 April 2013, para. 30.

²⁶⁷ OSCE/ODHIR, Opinion no. NGO-GEO/465/2023 [JB], Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards, 25 July 2023, paras 30 and 56.

²⁶⁸ OSCE/ODHIR, Opinion no. NGO-GEO/465/2023 [JB], Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards, 25 July 2023, paras 51 and 52.

²⁶⁹ OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, para. 242; Inter-American Juridical Committee of the Organization of American States, Declaration of Inter-American principles on the creation, operation, financing, and dissolution of nonprofit civil entities, OEA/Ser.Q, CJI/RES. 282 (CII-O/23) rev.3, 15 March 2024, principle 12 (voluntary and forced dissolution).

²⁷⁰ OSCE/ODIHR-Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, 17 December 2014, paras 35, 114, 234; Inter-American Juridical Committee of the Organization of American States, Declaration of Inter-American principles on the creation, operation, financing, and dissolution of nonprofit civil entities, OEA/Ser.Q, CJI/RES. 282 (CII-O/23) rev.3, 15 March 2024, principle 12; African Commission on Human and Peoples’ Rights (ACHPR), Guidelines on Freedom of Association and Assembly in Africa, 2017, para. 58.

²⁷¹ Article 22 paragraph 2 of the ICCPR.

As to what constitutes a legitimate aim for the suspension or termination of an association, the Human Rights Committee has expressed concern in several Concluding Observations when the sanction lacked justification²⁷² or resulted from vague and broad definitions of the objectives pursued.²⁷³

In *Belyatsky v. Belarus*, the Human Rights Committee considered that “even if ‘Viasna’'s perceived violations of electoral laws were to fall in the category of the ‘repeated commission of gross breaches of the law’, the State party has not advanced a plausible argument as to whether the grounds on which ‘Viasna’ was dissolved were compatible with any of the criteria listed in article 22, paragraph 2, of the Covenant.”²⁷⁴

Additionally, given the severe consequences of the dissolution of an association, the assessment of proportionality of the restriction has often become central. Again in *Belyatsky v. Belarus*, the Committee stated that “[t]aking into account the severe consequences of the dissolution of ‘Viasna’ for the exercise of the author’s and his co-authors’ right to freedom of association, as well as the unlawfulness of the operation of unregistered associations in Belarus, the Committee concludes that the dissolution of the association is disproportionate and does not meet the requirements of article 22, paragraph 2.”²⁷⁵

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association in addressing undue restrictions on grounds of transparency and accountability, has clarified that “if an association fails to comply with its reporting obligations, such minor violation of the law should not lead to the closure of the association or criminal prosecution of its representative; rather, the association should be requested to promptly rectify its situation.”²⁷⁶

In this same vein, the African Commission on Human and Peoples’ Rights *Guidelines on Freedom of Association and Assembly in Africa* establish that “[s]uspension or dissolution of an association by the state may only be applied where there has been a serious violation of national law, in compliance with regional and international human rights law and as a matter of last resort.”²⁷⁷ The OSCE/ODIHR-Venice Commission *Joint Guidelines on Freedom of Association*, also clarify that “any prohibition or dissolution of an association shall always be a measure of last resort, such as when an association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law, and shall never be used to address minor infractions.”²⁷⁸

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has similarly emphasized that “[t]he suspension and the involuntary dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient.”²⁷⁹ The Special Rapporteur has further stressed that the dissolution of an association is a measure of last resort and constitutes a proportionate restriction of the right to freedom of association only in extreme cases, such as those in which an organization promotes racial hatred and engages in harassment and intimidation of minorities.²⁸⁰

Emphasizing that restrictions must never entirely extinguish the right nor deprive it of its essence, and that the least intrusive means should be applied, the Venice Commission in a 2021 Opinion on Turkey noted that “[t]he principle of proportionality is of the utmost importance in the assessment of whether an association may be prohibited or dissolved.”²⁸¹ In explaining how the principle of proportionality should apply to any restrictions on freedom of association, the OSCE/ODIHR-Venice Commission *Joint Guidelines on Freedom of Association* further emphasize that:

“The need for restrictions shall be carefully weighed ... and shall be based on compelling evidence. The least intrusive option shall always be chosen. A restriction shall always be narrowly construed and applied and shall never completely extinguish the right nor encroach on its essence. In particular, any prohibition or dissolution of an association shall always be a measure of last resort, such as when an association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law, and shall never be used to address minor infractions.”²⁸²

²⁷² UN Human Rights Committee, Concluding observations on the situation of civil and political rights in Equatorial Guinea, UN Doc. CCPR/CO/79/GNQ, 13 August 2004, para. 11.

²⁷³ UN Human Rights Committee, Concluding observations on the fifth periodic report of Egypt, UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, paras 51 and 52; UN Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan, UN Doc. CCPR/C/AZE/CO/4, 16 November 2016, paras 40 and 41.

²⁷⁴ UN Human Rights Committee, *Belyatsky v. Belarus*, UN Doc. CCPR/C/90/D/1296/2004, Views of 24 July 2007, para. 7.5; Similarly, in Human Rights Committee, *Viktor Korneenko et al v. Belarus*, Communication no. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004, 10 November 2006, para. 7.5.

²⁷⁵ UN Human Rights Committee, *Belyatsky v. Belarus*, UN Doc. CCPR/C/90/D/1296/2004, Views of 24 July 2007, para. 7.5.

²⁷⁶ UN Human Rights Council, Second Thematic Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, UN Doc. A/HRC/23/39, April 24 2013, para. 38.

²⁷⁷ African Commission on Human and Peoples’ Rights (ACHPR), *Guidelines on Freedom of Association and Assembly in Africa*, 2017, para. 58.

²⁷⁸ OSCE/ODIHR-Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, 17 December 2014, para. 35.

²⁷⁹ UN Special Rapporteur on the rights to freedom of peaceful assembly and association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 75.

²⁸⁰ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/26/29, 14 April 2014, para. 51.

²⁸¹ Venice Commission, Opinion on the compatibility with international human rights standard of law no. 7262 on the prevention of financing of the proliferation of weapons of mass destruction, Opinion No. 1028/2021, CDL-AD(2021)023cor, 6 July 2021, para. 28. See also, OSCE/ODIHR-Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, 17 December 2014, para. 114.

²⁸² OSCE/ODIHR-Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, 17 December 2014, para. 35.

The issue of the proportionality of the restriction has also been addressed by the European Court of Human Rights, which has recognized that where the domestic legal framework provides that dissolution of an association is the only sanction available, without regard to the gravity of the breach, “[g]reater flexibility in choosing a more proportionate sanction could be achieved by introducing into the domestic law less radical alternative sanctions, such as a fine or withdrawal of tax benefits.”²⁸³

An additional concern in relation to restrictions such as prohibition, suspension or dissolution is the availability of review by a court and fair trial safeguards (see also section 4.9). The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has recommended that “[s]uspension or involuntarily dissolution of associations should be sanctioned by an impartial and independent court in case of a clear and imminent danger resulting in a flagrant violation of domestic laws, in compliance with international human rights law.”²⁸⁴ Similarly, the OSCE/ODIHR-Venice Commission *Joint Guidelines on Freedom of Association* state that “involuntary termination of an association, which may take the form of dissolution or prohibition, may only occur following a decision by an independent and impartial court.”²⁸⁵ The African Commission on Human and Peoples’ Rights *Guidelines on Freedom of Association and Assembly in Africa*, emphasize that “[s]uspension may only be taken following court order, and dissolution only following a full judicial procedure and the exhaustion of all available appeal mechanisms. Such judgments shall be made publicly available and shall be determined on the basis of clear legal criteria in accordance with regional and international human rights law.”²⁸⁶

4.9 EFFECTIVE REMEDY: COMPLAINT AND REDRESS MECHANISMS

Under international human rights law there is a general requirement that states provide effective and timely remedies to individuals and groups whose rights have been violated.²⁸⁷ The Human Rights Committee has clarified that Article 2 paragraph 3 of the ICCPR (right to an effective remedy) operates independently, even where a violation of another right of the Covenant has not been established, and that states must ensure that everyone, without discrimination, has accessible and effective remedies to vindicate their rights.²⁸⁸

Bearing in mind that associations as entities are also subject of rights (see section 3.1.7), the right to remedy in relation to violations of the right to freedom of association applies both to individuals exercising the right, and to the association itself. The OSCE/ODIHR-Venice Commission *Joint Guidelines on Freedom of Association* state that “[a]ssociations, their founders and members should have the right to an effective remedy concerning all decisions affecting their fundamental rights, in particular those concerning their rights to freedom of association, expression of opinion and assembly.”²⁸⁹ Moreover, the right to remedy should be understood to also apply to associations that lack legal personality.²⁹⁰

International and regional human rights bodies recognize the right to an effective remedy as integral to the right to freedom of association and stress that it includes the right to a review by a court that fulfils fair trial guarantees.²⁹¹ The Human Rights Committee has repeatedly expressed concern at the lack of review by a court in instances of violations of the right to freedom of association, such as denial of registration or prohibition of associations.²⁹² The European Court of Human Rights in several decisions concerning a violation of the right to freedom of association, stressed that the lack of an adequate review by a court contributed to the violation by not providing the applicant with effective safeguards against “the abusive use of the unchecked discretion granted to the executive, leaving them vulnerable to arbitrary designation [as “undesirable”] without the means for a pre-emptive or meaningful challenge.”²⁹³

²⁸³ European Court of Human Rights, *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, Application No. 37083/03, judgment, 8 October 2009, paras 82 and 43; European Court of Human Rights, *Jehovah's Witnesses of Moscow and Others v. Russia*, Application No. 302/02, 10 June 2010, para. 159.

²⁸⁴ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 100.

²⁸⁵ OSCE/ODIHR-Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, 17 December 2014, para. 244.

²⁸⁶ African Commission on Human and Peoples’ Rights (ACHPR), *Guidelines on Freedom of Association and Assembly in Africa*, 2017, para. 58.

²⁸⁷ Article 8 of the Universal Declaration of Human Rights; Article 2.3 of the ICCPR; Article 25 of the American Convention on Human Rights; Article 13 of the European Convention on Human Rights.

²⁸⁸ UN Human Rights Committee, General comment 31, The nature of the general legal obligation imposed on States Parties to the Covenant: International Covenant on Civil and Political Rights, 29 March 2004, para. 15.

²⁸⁹ OSCE/ODIHR-Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, 17 December 2014, para. 116.

²⁹⁰ OSCE/ODIHR-Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, 17 December 2014, para. 119.

²⁹¹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, paras 61 and 77; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report: General principles and guidelines on ensuring the right of civil society organizations to have access to resources, 23 June 2023, UN Doc. A/HRC/53/38/Add.4, para. 58; Inter-American Juridical Committee of the Organization of American States, Declaration of Inter-American principles on the creation, operation, financing, and dissolution of nonprofit civil entities, OEA/Ser.L/V/II.08 Doc. 10 at 11 (2008), 15 March 2004, principle 11; African Commission on Human and Peoples’ Rights, *Guidelines on Freedom of Association and Assembly in Africa*, 2017, Fundamental principle vii; OSCE/ODIHR-Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, 17 December 2014, Principle 11: Right to an effective remedy for the violation of rights, paras 116–118.

²⁹² UN Human Rights Committee, Concluding observations on the fourth periodic report of Hong Kong, China, UN Doc. CCPR/C/CHN-HKG/CO/4, 11 November 2022, para. 49; UN Human Rights Committee, Concluding observations on the fifth periodic report of Egypt, UN Doc. CCPR/C/EGY/CO/5, 14 April 2023, para. 51.

²⁹³ European Court of Human Rights, *Andrey Rylkov Foundation and Others v. Russia*, Applications nos. 37949/18 and others, 18 June 2024, paras 93 and 94; European Court of Human Rights, *Ecodefence and Others v. Russia*, Applications nos. 9988/13 and 60 others, 14 June 2022, para. 118.

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association has elaborated on some of the elements that effective complaint mechanisms should have. Concretely, the Special Rapporteur has called upon states “[t]o ensure that a detailed and timely written explanation for the imposition of any restriction is provided, and that said restriction can be subject to an independent, impartial and prompt review by a court.”²⁹⁴ Similarly, the Special Rapporteur has stated that effective complaint mechanisms should be “able to independently, promptly and thoroughly investigate allegations of human rights violations or abuses in order to hold those responsible accountable. This not only entails guarantees that the violation be stopped, but also that it will not be repeated in the future. Specific attention must be paid to members of the groups at risk ...”²⁹⁵

In relation to decisions to prohibit, dissolve or suspend the activities of an association which are the most extreme restrictions that can be imposed on the right to freedom of association (see section 4.8), the OSCE/ODIHR-Venice Commission *Joint Guidelines on Freedom of Association* provide that, with the exception of cases where there exists exceptionally strong evidence that the association had committed a crime, an appeal or challenge against a decision to prohibit, dissolve or suspend an association should have suspensive effect on the contested decision. This measure is important to protect the association from irreversible harm by preventing the enforcement of the decision during the appeal period, “since the freezing of accounts and suspension of activities would extinguish the association in practice before the appeal had been heard.”²⁹⁶

Article 2 paragraph 3 also requires that states make reparations to those whose rights have been violated.²⁹⁷ States should ensure that remedies are appropriately adapted so as to take into account the specific risks faced by certain groups.²⁹⁸ The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association also explicitly mentions that states must pay attention to whether victims belong to groups most at risk when determining redress and compensation that will be afforded.²⁹⁹ Additionally, the right to remedy further requires that redress provided to associations, and their founders and/or members, should include fair and adequate compensation for moral and pecuniary loss.³⁰⁰

²⁹⁴ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, para. 81. In relation to registration procedures see UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 61.

²⁹⁵ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 77; see also, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report: General principles and guidelines on ensuring the right of civil society organizations to have access to resources, 23 June 2023, UN Doc. A/HRC/53/38/Add.4, para. 58.

²⁹⁶ OSCE/ODIHR-Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, 17 December 2014, para. 120.

²⁹⁷ UN Human Rights Committee, General comment 31, The nature of the general legal obligation imposed on States Parties to the Covenant: International Covenant on Civil and Political Rights, 29 March 2004, para.16.

²⁹⁸ UN Human Rights Committee, General comment 31, The nature of the general legal obligation imposed on States Parties to the Covenant: International Covenant on Civil and Political Rights, 29 March 2004, para.15.

²⁹⁹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, para. 81; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/26/29, 14 April 2014, para. 74.b.

³⁰⁰ OSCE/ODIHR-Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, 17 December 2014, para. 116; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report, UN Doc. A/HRC/20/27, 21 May 2012, paras 81 and 84.j.

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