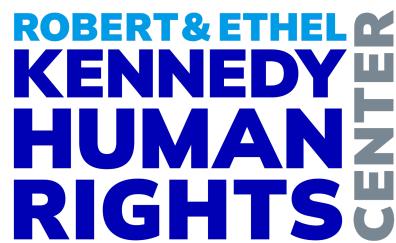


**Submission before the Human Rights Committee with regards to the Call for Input
for General Comment No. 38 on Article 22 of the International Covenant on Civil
and Political Rights**

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I. Introduction

This written contribution constitutes the submission of the Robert and Ethel Kennedy Human Rights Center (Kennedy Human Rights Center)¹ in response to the Human Rights Committee's (the Committee) call for inputs aiming to inform the development of General Comment No. 38 on article 22 of the International Covenant on Civil and Political Rights (freedom of association). The Robert and Ethel Kennedy Human Rights Center is a nonprofit organization created in 1968 to carry on Senator Robert F. Kennedy and Ethel Skakel Kennedy's work in pursuit of a more just and peaceful world. The Kennedy Human Rights Center advocates for human rights and social justice, engages in public education and pursues strategic litigation to hold governments accountable in the United States and around the world. Drawing on our longstanding work to protect civic space and defend the rights of human rights defenders globally, this submission seeks to contribute a comparative and practice-based analysis of contemporary challenges to the exercise of the freedom of association. Furthermore, the submission hopes to assist the Committee in developing clear and authoritative guidance regarding the scope and content of article 22 by highlighting relevant international and regional legal standards, with a particular focus on developments in Africa and the Americas.

Associations play a key role for democracy, a fact that has long been acknowledged by international instruments that establish and seek to ensure the right to freedom of association.² More specifically, the right to freedom of association is enshrined in international human rights law under Article 20 of the Universal Declaration of Human Rights as well as Article 22 of the International Covenant on Civil and Political Rights ("ICCPR" or "the Covenant"). The Human Rights Committee has issued a variety of communications addressing matters related to the application of ICCPR Article 22 rights, although, compared to Article 21 (freedom of peaceful assembly), Article 22 has been the subject of a significantly lower number of Committee communications.³ In addition, the right to freedom of association is reaffirmed by other international treaties, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁴ as well as other instruments which recognize the right to freedom of

¹ Nefeli Poulopatis, Paulina Macías Ortega and Wilson Rowe from the Kennedy Human Rights Center worked on this submission.

² OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Council of Europe's Commission for Democracy Through Law (Venice Commission), *Guidelines on Freedom of Association*, 14 December, 2014, para. 1, <https://www.osce.org/sites/default/files/f/documents/3/b/132371.pdf>.

³ Office of the High Commissioner for Human Rights, Jurisprudence Database, 2025, <https://juris.ohchr.org>.

⁴ International Covenant on Economic, Social and Cultural Rights 1966, Article 8.

association of particular persons or groups, such as refugees,⁵ women⁶, children,⁷ migrant workers and members of their families,⁸ persons with disabilities⁹ and others.

Regional human rights mechanisms have also recognized and developed standards regarding the right to freedom of association. Within the Inter-American Human Rights System, Article 16 of the American Convention on Human Rights establishes that all persons have the right to freely associate for ideological, religious, political, economic, labor, social, cultural, sporting, or any other lawful purpose.¹⁰ Additionally, Article XXII of the American Declaration on the Rights and Duties of Man establishes that every person has the right to associate with others in order to promote, exercise, and protect their legitimate interests, whether political, economic, religious, social, cultural, professional, labor union, or of any other nature.¹¹ This right has been interpreted by the Inter-American Court of Human Rights (IACtHR) in its judgments, which are binding on all States that have recognized the Court's contentious jurisdiction. In parallel, the Inter-American Commission on Human Rights (IACHR) has expanded the scope of this right through its thematic reports and pronouncements, which function as soft-law standards within the system.

Within the African Union (AU) human rights framework, freedom of association is primarily protected by Article 10 of the African Charter on Human and Peoples' Rights (African Charter).¹² Article 10(1) states that "every individual shall have the right to free association provided that he abides by the law," while Article 10(2) qualifies this right, stating that "subject to the obligation of solidarity provided for in Article 29 [setting out an individual's duties of solidarity under the African Charter] no one may be compelled to join an association."¹³ The African Commission on Human and Peoples' Rights (African Commission) has played the main role in interpreting Article 10 of the African Charter through its decisions and the issuance of soft law instruments, while the African Court on Human and Peoples' Rights (African Court) has developed the right to freedom of association to a lesser degree.

This submission will initially provide an in-depth assessment of the current issues and concerns regarding the exercise of the right to freedom of association, focusing on their prevalence in countries of Africa and the Americas. More specifically, Section II will address the abuse of registration laws, the widespread use of foreign agent laws, and the utilization of national security and counterterrorism laws, with a particular focus on practices in Africa and

⁵ 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees, Article 15.

⁶ Convention on the Elimination of All Forms of Discrimination Against Women 1979, Article 7.

⁷ UN Convention on the Rights of the Child 1989, Article 15.

⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990, Article 26.

⁹ Convention on the Rights of Persons with Disabilities 2006, Article 29.

¹⁰ American Convention on Human Rights, Article 16.

¹¹ American Declaration on the Rights and Duties of Man, Article XXII.

¹² African Union, African Charter on Human and People's Rights (1981), Article 10.

¹³ African Union, African Charter on Human and People's Rights (1981), Article 10.

Latin America. Section III, which is split in three main parts, aims to provide an overview of the current legal standards set out by international and regional mechanisms. Namely, this section will focus on (a) the scope of the right to freedom of association (addressing in particular the notion of an association, political parties and the right not to associate); (b) State obligations in ensuring freedom of association; (c) the bounds of States' ability to restrict freedom of association; and (d) the connection between freedom of association and other rights and protections. With regards to regional mechanisms, this submission will focus on the jurisprudence of the African and Inter-American systems.

General Comments of the Human Rights Committee have historically been vital in elucidating issues concerning the application of rights under the ICCPR and reaffirming key legal standards, generating a positive impact on respect of these rights. It is our hope that this General Comment will continue this tradition, and constitute a comprehensive, authoritative and globally applicable explanation of key issues surrounding the right to freedom of association.

II. Current Issues in Freedom of Association

This submission identifies three dominant practices that States have employed to limit freedom of association: the abuse of registration laws; the implementation of “foreign agent laws”; and the expansive use of counterterrorism and national security laws. These trends have become increasingly prominent in the Americas and Africa regions and are the most significant formal tools States use to clamp down on civil society organizations (CSOs). However, these trends do not constitute an exhaustive list of State practices in this area. It should be further highlighted that the three aforementioned practices do not operate in isolation; rather, States often employ several of these approaches at the same time, creating a “package” of restrictions in order to interfere with the exercise of freedom of association and civic space more broadly.¹⁴

Additionally, it is important to note that recent reductions in funding for civil society and transnational organizations, from both international and domestic sources, has only exacerbated the effects of these restrictions. International aid has dropped drastically since 2024, with the Group of Seven countries who account for about three-quarters of all development assistance having cut their spending 28 percent for 2026 compared to their 2024 levels.¹⁵ In addition to these international funding cuts, access to local funding for CSOs is becoming “increasingly

¹⁴ Amnesty International, *Laws Designed to Silence: The Global Crackdown on Civil Society Organizations*, (February 21 2019), p. 2, <https://www.amnesty.org/en/documents/act30/9647/2019/en/>; United Nations General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Gina Romero (A/80/219), paras. 35-36.

¹⁵ Nicholas Larsen. *Why Massive Cuts in Funding for International Aid Will Prove Devastating for the Developing World* (8 October 2025), <https://internationalbanker.com/news/why-massive-cuts-in-funding-for-international-aid-will-prove-devastating-for-the-developing-world/>.

limited and deliberately restricted.”¹⁶ The local funding that is available for civil society is often “instrumentalized … to co-opt and control civil society, providing funding to those actors aligned with government agendas.”¹⁷ These funding cuts have forced many CSOs to shut down, while many others have been pressured into “respond[ing] to donor priorities rather than to community needs.”¹⁸ The restrictions analyzed in this submission have thus become only more potent in light of the harsh funding environment, enabling increased governmental control and restriction of freedom of association.¹⁹ This dynamic in relation to funding contextualizes the state of freedom of association today, and the General Comment should endeavor to address concerns around the funding of CSOs in addition to highlighting the legal measures State stake to limit freedom of association.

A. Abuse of Registration Laws

States have increasingly used registration laws to restrict the activities of CSOs, including the using such laws to shut down organizations. While registration laws can be helpful to ensure legal recognition of associations and promote transparency and accountability, many States have developed registration laws and practices that exceed what is permissible under international law and necessary for governing associations.

As it will be elaborated on below, international law does not require associations to register under the law to exist. However, registration, and the acquisition of legal personality that accompanies registration, is usually required for associations to “enter into contracts, make payments for goods and services procured, and own assets and property, as well as to take legal action to protect the rights and interest of associations.”²⁰ As such, it is common, and reasonable, that States implement registration or notification requirements for organizations to fulfil their legal capacities.²¹ “Notification procedures” automatically grant organizations legal personality as soon as authorities are notified by the organization’s founders that an association has been founded.²² This regime is generally considered good practice.²³ “Prior authorization procedure” regimes, however, are more problematic, as they require the approval of State authorities to

¹⁶ United Nations General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Gina Romero (A/80/219), para. 20.

¹⁷ United Nations General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Gina Romero (A/80/219), para. 23.

¹⁸ United Nations General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Gina Romero (A/80/219), paras. 1, 25.

¹⁹ United Nations General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Gina Romero (A/80/219), para. 73.

²⁰ Venice Commission, *Guidelines on Freedom of Association*, December 14, 2014, para. 151, <https://www.osce.org/sites/default/files/f/documents/3/b/132371.pdf>.

²¹ Venice Commission, *Guidelines on Freedom of Association*, December 14, 2014, para. 151, <https://www.osce.org/sites/default/files/f/documents/3/b/132371.pdf>.

²² Venice Commission, *Guidelines on Freedom of Association*, December 14, 2014, para. 154, <https://www.osce.org/sites/default/files/f/documents/3/b/132371.pdf>.

²³ Venice Commission, *Guidelines on Freedom of Association*, December 14, 2014, para. 154, <https://www.osce.org/sites/default/files/f/documents/3/b/132371.pdf>.

establish an association with a legal personality, which can give authorities more discretion under certain variants of this regime.²⁴ While the prior authorization procedure regime may be compatible with international human rights law if certain conditions are met (see Section III.C.1), it is increasingly the case that governments use prior authorization to control the establishment of organizations and deny registration to CSOs that challenge or criticize them.²⁵

Moreover, following the adoption of new legislative frameworks, a number of States have required existing CSOs to undergo re-registration, a requirement that has been used to effectively control NGOs critical of governmental policies. This practice has led to withdrawal of legal status from many organizations that were already lawfully registered. Additionally, NGOs are frequently required to re-register after minor administrative changes, creating unnecessary delays and diverting resources from human rights work. While major structural changes may justify re-registration, the Special Representative of the Secretary-General on human rights defenders has suggested that minor changes (e.g. in address, membership, management, rules of procedure etc.) should be addressed through simple notification procedures.²⁶

The abuse of registration laws is explored in more detail below in the context of Uganda, Nicaragua and Venezuela.

1. Examples of Abuse of Registration Laws

Uganda

Uganda has used its Non-Governmental Organizations Act, 2016 (NGO Act 2016)²⁷, which requires organizations to register with the State's NGO Bureau, to suspend numerous NGOs in the country and violate Ugandans' freedom of association as protected under international law and Article 29 of Uganda's Constitution.²⁸ Article 29 of the NGO Act 2016 requires all associations ("any person or group of persons incorporated as an organization") to register with the NGO Bureau via an application, which the Bureau can reject if the association fails to comply with the requirements set out in the NGO Act, including where the "objectives of the organisation as specified in its constitution are in contravention of the laws of Uganda" or

²⁴ Venice Commission, *Guidelines on Freedom of Association*, December 14, 2014, para. 154, <https://www.osce.org/sites/default/files/f/documents/3/b/132371.pdf>.

²⁵ Human Rights House Foundation, *Freedom of Association*, <https://humanrightshouse.org/we-stand-for/freedom-of-association/>; Amnesty International, *Laws Designed to Silence: The Global Crackdown on Civil Society Organizations* (21 February 2019), pp. 2, 8, <https://www.amnesty.org/en/documents/act30/9647/2019/en/>.

²⁶ Report of the Special Representative of the Secretary-General on Human Rights Defenders, A/59/401, para. 61, <https://docs.un.org/en/A/59/401>.

²⁷ Parliament of Uganda. Non-Governmental Organisations Act (3 March 2016), Uganda Gazette 14 <https://faolex.fao.org/docs/pdf/uga163576.pdf>.

²⁸ Article 19. Uganda: Stop Intimidating NGOs (26 Aug. 2021), <https://www.article19.org/resources/uganda-stop-intimidating-ngos/>.

“where the applicant has given false or misleading information in any material particular.”²⁹ Without a permit granted by the NGO Bureau, an organization cannot operate within Uganda.³⁰ The length of time a permit lasts is up to the Bureau, but the period may not exceed five years at a time.³¹ After this period, the organization must renew the permit and the Bureau has discretion to grant the renewal depending on whether the organization complied with the requirements of the permit.³² The NGO Bureau may also revoke a permit of an organization if the organization “does not operate in accordance with its constitution” or if it “contravenes any of the conditions or directions specified in the permit.”³³

Uganda’s registration requirements exemplify the issues with prior authorization registration regimes. The Act gives the NGO Bureau excessive levels of discretion to approve permits, and the Bureau asks for significant amounts of information, such as funding sources, members of the board, and staff members, information that can easily be abused by authorities.³⁴ These issues have played out in practice. In 2019, more than 12,000 NGOs were suspended under the NGO Act pending their compliance with the Act, effectively purging civil society in the country.³⁵ Another emblematic example of the Act’s ability to restrict freedom of association is the refusal to register Sexual Minorities Uganda (SMUG), an organization that works to protect the human rights of LGBTQ Ugandans.³⁶ SMUG’s attempt to register was first rejected in 2012 under a previous version of Uganda’s registration regime on the ground that their name was against public policy, and the organization was also deemed a criminal organization for referencing “sexual minorities” in their name and engaging with work with people whose sexual

²⁹ Parliament of Uganda. Non-Governmental Organisations Act (3 March 2016), Uganda Gazette 14, arts. 29-30 <https://faolex.fao.org/docs/pdf/uga163576.pdf>.

³⁰ Parliament of Uganda. Non-Governmental Organisations Act (3 March 2016), Uganda Gazette 14, art. 31 <https://faolex.fao.org/docs/pdf/uga163576.pdf>.

³¹ Parliament of Uganda. Non-Governmental Organisations Act (3 March 2016), Uganda Gazette 14, art. 31 <https://faolex.fao.org/docs/pdf/uga163576.pdf>.

³² Parliament of Uganda. Non-Governmental Organisations Act (3 March 2016), Uganda Gazette 14, art. 32 <https://faolex.fao.org/docs/pdf/uga163576.pdf>.

³³ Parliament of Uganda. Non-Governmental Organisations Act (3 March 2016), Uganda Gazette 14, art. 33(1) <https://faolex.fao.org/docs/pdf/uga163576.pdf>.

³⁴ Alon Mwesiga. *Uganda Bans Thousands of Charities in ‘Chilling’ Crackdown* (21 November 2019), https://www.theguardian.com/global-development/2019/nov/21/uganda-bans-thousands-of-charities-in-chilling-crackdown?utm_source=Media+Review+for+November+21%2C+2019&utm_campaign=Media+Review+for+November+21%2C+2019&utm_medium=email.

³⁵ Alon Mwesiga. *Uganda Bans Thousands of Charities in ‘Chilling’ Crackdown* (21 November 2019), https://www.theguardian.com/global-development/2019/nov/21/uganda-bans-thousands-of-charities-in-chilling-crackdown?utm_source=Media+Review+for+November+21%2C+2019&utm_campaign=Media+Review+for+November+21%2C+2019&utm_medium=email; Article 19. *Uganda: Stop Intimidating NGOs* (26 August 2021), <https://www.article19.org/resources/uganda-stop-intimidating-ngos/>.

³⁶ Alon Mwesiga. *Uganda Bans Thousands of Charities in ‘Chilling’ Crackdown* (21 November 2019), https://www.theguardian.com/global-development/2019/nov/21/uganda-bans-thousands-of-charities-in-chilling-crackdown?utm_source=Media+Review+for+November+21%2C+2019&utm_campaign=Media+Review+for+November+21%2C+2019&utm_medium=email; Daniele Paletta. *Uganda: Denying NGO Registration Fails Democratic Principles* (15 March 2024), <https://ilga.org/news/uganda-denying-smug-ngo-registration/>.

activities are criminalized, a decision which was upheld in June 2018.³⁷ SMUG then brought an action to compel the government to register the group, which was rejected again on the grounds that the organization's name was against the "public interest."³⁸ Without registration, SMUG was shut down in August 2022 for failing to comply with the NGO Act 2016.³⁹ An appeals court rejected SMUG's appeal of the decision in 2024.⁴⁰ SMUG's experience is a textbook example of how registration laws can be used to target associations that engage in work of which governments do not approve.

Nicaragua

In Nicaragua, the mass cancellation of the legal status of thousands of CSOs, representing a clear expression of the Government's intent to fully dismantle civic and democratic space in the country, constitutes another example of abuse of registration laws. According to data from the IACtHR, between April 18, 2018, and August 31, 2023, the Government revoked the legal status of 3,390 organizations out of a total of 7,227 organizations legally registered in the country in 2018.⁴¹ Of this total, the Inter-American Commission has noted that 48 organizations were closed under the formal designation of "voluntary dissolution."⁴²

In November 2024, the legal status of an additional 1,500 CSOs was revoked, including at least 700 organizations of a religious nature.⁴³ The stated grounds for the cancellations were the failure to submit financial statements for periods ranging from one to thirty-five years. Further, the Interior Ministry ordered all assets from the targeted organizations to be transferred to the Office of the Attorney General for their registration in the name of the State.⁴⁴

Moreover, on August 16, 2024, the Vice President of the Republic announced the introduction of legislative initiatives to establish a new operating model for non-governmental

³⁷ Larissa Kojoué. *Ugandan Appeals Court Shuts LGBT Rights Group* (21 March 2024), <https://www.hrw.org/news/2024/03/21/ugandan-appeals-court-shutters-lgbt-rights-group>.

³⁸ Larissa Kojoué. *Ugandan Appeals Court Shuts LGBT Rights Group* (21 March 2024), <https://www.hrw.org/news/2024/03/21/ugandan-appeals-court-shutters-lgbt-rights-group>.

³⁹ Larissa Kojoué. *Ugandan Appeals Court Shuts LGBT Rights Group* (21 March 2024), <https://www.hrw.org/news/2024/03/21/ugandan-appeals-court-shutters-lgbt-rights-group>.

⁴⁰ Larissa Kojoué. *Ugandan Appeals Court Shuts LGBT Rights Group* (21 March 2024), <https://www.hrw.org/news/2024/03/21/ugandan-appeals-court-shutters-lgbt-rights-group>.

⁴¹ IACtHR. Closure of civic space in Nicaragua. OEA/Ser.L/V/II. Doc. 212/23, September 23, 2023, https://www.oas.org/en/iachr/jsForm/?File=en/iachr/media_center/preleases/2023/262.asp, para. 70.

⁴² IACtHR. Closure of civic space in Nicaragua. OEA/Ser.L/V/II. Doc. 212/23, September 23, 2023, https://www.oas.org/en/iachr/jsForm/?File=en/iachr/media_center/preleases/2023/262.asp, para. 72.

⁴³ IACtHR. IACtHR condemns massive closure of civil society and religious organizations in Nicaragua (2024), https://www.oas.org/en/iachr/jsForm/?File=en/iachr/media_center/preleases/2024/189.asp; Francesca Robles. *Nicaragua cierra 1500 grupos sin ánimo de lucro, muchos de ellos iglesias*, NY Times (2024), <https://www.nytimes.com/es/2024/08/19/espanol/nicaragua-ong-ortega.html>.

⁴⁴ IACtHR. IACtHR condemns massive closure of civil society and religious organizations in Nicaragua (2024), https://www.oas.org/en/iachr/jsForm/?File=en/iachr/media_center/preleases/2024/189.asp.

organizations, referred to as “Association Partnerships.”⁴⁵ Under this model, all civil society projects and programs would be required to be carried out in collaboration with State institutions and subject to prior approval by either the Ministry of the Interior or the Ministry of Foreign Affairs.⁴⁶ The situation in Nicaragua illustrates how noncompliance with registration laws is taken advantage of by States, which respond disproportionately by resorting to the dissolution of CSOs, in their efforts to suppress dissent.

Venezuela

Similarly to Uganda, the use of a prior authorization process regime in Venezuela has also significantly restricted freedom of association and the activity of civil society. On November 15, 2024, the Venezuelan government enacted a regressive law tightening state control over non-governmental organizations. Popularly referred to as the “Anti-NGO” law, the Law on Oversight, Regularization, Operation, and Financing of Non-Governmental and Non-Profit Social Organizations requires NGOs to be authorized by the government to operate.⁴⁷ The law grants authorities broad powers to dissolve organizations accused of promoting “fascism” or of engaging in “activities inherent to political parties or organizations with political purposes”.⁴⁸ Given that the Venezuelan government routinely labels political opposition as “fascist,” these provisions grant authorities broad discretion to apply the law against organizations whose work or advocacy is perceived as contrary to the interests of the ruling party.⁴⁹

Venezuela’s anti-NGO laws must be read together as part of a single, coordinated legal framework aimed at weakening civil society and restricting its operational space. This framework includes, *inter alia*, the so called “Law Against Hate”, the Simón Bolívar Law, and recent legislative initiatives⁵⁰ targeting so-called “fascism” and “foreign cooperation,” which together contribute to an increasingly hostile regulatory environment.

⁴⁵ IACHR. IACHR condemns massive closure of civil society and religious organizations in Nicaragua (2024), https://www.oas.org/en/iachr/jsForm/?File=en/iachr/media_center/preleases/2024/189.asp.

⁴⁶ IACHR. IACHR condemns massive closure of civil society and religious organizations in Nicaragua (2024), https://www.oas.org/en/iachr/jsForm/?File=en/iachr/media_center/preleases/2024/189.asp.

⁴⁷ WOLA. *Venezuela’s New NGO Law and U.S. Funding Freeze Are a Death Blow to the Country’s Civil Society*. (2 April 2025), <https://www.wola.org/analysis/venezuelas-new-ngo-law-and-u-s-funding-freeze-are-a-death-blow-to-the-countrys-civil-society/>; Asamblea Nacional. Ley de Fiscalización, Regularización, Actuación y Financiamiento de las Organizaciones No Gubernamentales y Organizaciones Sociales sin fines de lucro. Gaceta Oficial, https://www.wola.org/wp-content/uploads/2025/03/gaceta_oficial_6855_15_11_2024.pdf.

⁴⁸ Asamblea Nacional. Ley de Fiscalización, Regularización, Actuación y Financiamiento de las Organizaciones No Gubernamentales y Organizaciones Sociales sin fines de lucro. Gaceta Oficial, https://www.wola.org/wp-content/uploads/2025/03/gaceta_oficial_6855_15_11_2024.pdf.

⁴⁹ WOLA. *Venezuela’s New NGO Law and U.S. Funding Freeze Are a Death Blow to the Country’s Civil Society*. (2 April 2025), <https://www.wola.org/analysis/venezuelas-new-ngo-law-and-u-s-funding-freeze-are-a-death-blow-to-the-countrys-civil-society/>.

⁵⁰ Bill. Ley Contra el Fascismo, neofascismo y expresiones similares (2024), <https://www.observatoriodeconflictos.org.ve/oc/wp-content/uploads/2024/05/Ley-antifascismo-Venezuela.pdf>.

For instance, in November 2017, the National Constituent Assembly promulgated the Constitutional Law Against Hatred, for Tolerance and Peaceful Coexistence (also known as “Law Against Hate”). The law prohibits all propaganda and messaging in favor of war and any advocacy of national hatred, and establishes prison sentences of ten to twenty years for anyone who incites hatred or violence through any electronic means, including social media.⁵¹ The law further requires intermediaries to remove, within six hours of dissemination, any content deemed to constitute war propaganda or to promote national, racial, religious, political, or other forms of hate speech.⁵² The high level of discretion granted to authorities by the Law Against Hate, therefore, exemplifies how Venezuela uses legal tools to stifle civil society.

Years later, in November 2024, the Simón Bolívar Law was enacted, criminalizing any form of advocacy or support for international sanctions against the government of Nicolás Maduro. The law provides for penalties of up to thirty years’ imprisonment, further classifies international sanctions as crimes against humanity and establishes a national registry of individuals allegedly involved in promoting such sanctions.⁵³

B. Foreign Agent Laws

So-called “foreign agent laws” or “foreign agents laws” have spread around the globe, among both authoritarian governments and countries maintaining political competition and an organized civil society, reflecting an increasing opportunism amongst governments to restrict civic space.⁵⁴

Foreign agent laws target CSOs that receive international funding, claiming that these laws will “promote accountability and transparency about international support for domestic organisations.”⁵⁵ Usually, foreign agent laws require organizations engaging in political activities (or activities deemed political) and receiving a defined amount of foreign support to register as

⁵¹ Asamblea Nacional. Ley Constitucional Contra el Odio, por la Convivencia Pacífica y la Tolerancia. Gaceta Oficial, Articles 13, 20 (2017), <https://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-constitucional-contra-el-odio-por-la-convivencia-pacifica-y-la-tolerancia-20220215163238.pdf>.

⁵² Asamblea Nacional. Ley Constitucional Contra el Odio, por la Convivencia Pacífica y la Tolerancia. Gaceta Oficial, Article 22, <https://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-constitucional-contra-el-odio-por-la-convivencia-pacifica-y-la-tolerancia-20220215163238.pdf>.

⁵³ Asamblea Nacional. Ley Orgánica Libertador Simón Bolívar contra el Bloqueo Imperialista y en Defensa de la República Bolivariana de Venezuela, (29 November 2024). Gaceta Oficial, https://sumate.org/documentos/Gaceta_Ley_Simon_Bolivar_291124.pdf. BBC. Venezuela aprueba una severa ley para castigar hasta con 30 años de prisión a quienes apoyen las sanciones internacionales contra el país. November 29, 2024, <https://www.bbc.com/mundo/articles/cd7n114yn9no>.

⁵⁴ Freedom House, *Foundations of Freedom: Civic Space*, October 2025, <https://freedomhouse.org/article-foundations-freedom-civic-space>.

⁵⁵ CIVICUS, *Cutting Civil Society’s Lifeline: The Global Spread of Foreign Agents Laws*, October 2025, p. 5, https://civicus.org/downloads/Foreign-agents-laws-report_EN.pdf.

“foreign agents” or “organizations serving foreign interests.”⁵⁶ Communications from registered entities are then obligated to add labels of “foreign origin” to their communications, websites, and publications, and such organizations often also must submit to audits and additional reporting requirements, beyond that of a non-labelled association.⁵⁷ Failure to comply can lead to fines and closure.⁵⁸ States usually leave what is defined as “political activity” under the law vague, allowing for discretionary enforcement and targeting.⁵⁹

These foreign agent laws “stigmatise civil society and independent media by forcing them to register as paid agents of foreign interests,” and in some ways are an extension of the previously mentioned category of registration laws.⁶⁰ These laws pose a major challenge to the right of freedom of association by imposing overly stringent requirements on associations deemed “foreign agents” and undermine such organizations’ work by creating a perception that these organizations are “outsiders.” While claiming to promote accountability and transparency, these laws instead restrict civic space and facilitate the ability of States to crack down on critical voices. Foreign agent laws have quickly spread across the global stage in the last decade, posing a serious threat to civil society and leading to condemnations from many international organizations and human rights bodies. In particular, a group of human rights experts, including the United Nations Special Rapporteur on the rights of freedom of peaceful assembly and of association, the Special Rapporteur on Freedom of Expression of the IACtHR, the Commissioner Rapporteur for Human Rights Defenders of the IACtHR, and the Special Rapporteur on Human Rights Defenders and focal point on reprisals in Africa of the African Commission, released a joint declaration in September 2024 asserting that foreign agent laws “introduce unnecessary, disproportionate and discriminatory obligations, restrictions or prohibitions on associations falling within the definition of ‘foreign influence’” and calling on States to repeal or refrain from adopting such legislation.⁶¹

The imposition of foreign agent laws and their ramifications will be explored below in the context of Zimbabwe, Nicaragua, Perú and El Salvador.

⁵⁶ CIVICUS, *Cutting Civil Society’s Lifeline: The Global Spread of Foreign Agents Laws*, October 2025, p. 5, https://civicus.org/downloads/Foreign-agents-laws-report_EN.pdf.

⁵⁷ CIVICUS, *Cutting Civil Society’s Lifeline: The Global Spread of Foreign Agents Laws*, October 2025, p. 5, https://civicus.org/downloads/Foreign-agents-laws-report_EN.pdf.

⁵⁸ CIVICUS, *Cutting Civil Society’s Lifeline: The Global Spread of Foreign Agents Laws* (October 2025), p. 5, https://civicus.org/downloads/Foreign-agents-laws-report_EN.pdf.

⁵⁹ CIVICUS, *Cutting Civil Society’s Lifeline: The Global Spread of Foreign Agents Laws* (October 2025), p. 5, https://civicus.org/downloads/Foreign-agents-laws-report_EN.pdf.

⁶⁰ CIVICUS, *Cutting Civil Society’s Lifeline: The Global Spread of Foreign Agents Laws* (October 2025), p. 5, https://civicus.org/downloads/Foreign-agents-laws-report_EN.pdf.

⁶¹ United Nations Special Rapporteur on the Rights of Freedom of Peaceful Assembly and of Association et al. Joint Declaration on Protecting the Right to Freedom of Association in Light of “Foreign Agents”/”Foreign Influence” Laws (13 September 2024), p. 6, 8, <https://www.ohchr.org/sites/default/files/documents/issues/association/statements/2024-09-13-statement-sr-foaa.pdf>.

1. Examples of Foreign Agents Laws

Zimbabwe

Zimbabwe has enacted a foreign agent law in everything but name in the form of its Private Voluntary Organizations (PVO) Act, signed into law in April 2025 and imposing foreign agent-style restrictions on CSOs.⁶² The law was implemented on the basis of national security, international money laundering and anti-terrorism justifications, as well as amidst an environment in which NGOs were accused of meddling in political affairs.⁶³

The law imposes strict reporting requirements and government oversight on associations with international ties.⁶⁴ CSOs must “ensure that books, accounts and records are kept to the satisfaction of the [Office of the Registrar of Private Voluntary Organisations]”,⁶⁵ they must be audited every year,⁶⁶ and the Minister of Public Service, Labour and Social Welfare (the Minister) may appoint an officer to “inspect any aspect of the affairs or activities of any private voluntary organization and to examine all documents relating thereto” and “examine the books, accounts, and other documents relating to the financial affairs” of associations.⁶⁷ CSOs must refuse donations from “illegitimate” sources and must not “conduct themselves in any politically partisan manner.”⁶⁸ These requirements impose a significant burden on CSOs and create a “chilling effect” on civil society.⁶⁹ The vague notion of an “illegitimate” source is particularly problematic, as it forces associations to reconsider and reexamine their international funding sources.

⁶² CIVICUS, *Cutting Civil Society’s Lifeline: The Global Spread of Foreign Agents Laws* (October 2025), p. 23, https://civicus.org/downloads/Foreign-agents-laws-report_EN.pdf.

⁶³ CIVICUS, *Cutting Civil Society’s Lifeline: The Global Spread of Foreign Agents Laws* (October 2025), p. 23, https://civicus.org/downloads/Foreign-agents-laws-report_EN.pdf; Christopher Mahove. Zimbabwe’s New NGO Law Threatens to Turn Civil Society Watchdogs into “Lapdogs” (24 November 2025), <https://www.equaltimes.org/zimbabwe-s-new-ngo-law-threatens>.

⁶⁴ CIVICUS, *Cutting Civil Society’s Lifeline: The Global Spread of Foreign Agents Laws* (October 2025), p. 23, https://civicus.org/downloads/Foreign-agents-laws-report_EN.pdf.

⁶⁵ Parliament and President of Zimbabwe. Private Voluntary Organizations Amendment Act, 2025 (11 April 2025), Government Gazette No. 24, Art. 15, https://www.veritaszim.net/sites/veritas_d/files/Private%20Voluntary%20Organisations%20Act%20Cap%2017%2C%20%28Consolidated%20to%202025.04.11%29.pdf.

⁶⁶ Parliament and President of Zimbabwe. Private Voluntary Organizations Amendment Act, 2025 (11 April 2025), Government Gazette No. 24, Art. 19, https://www.veritaszim.net/sites/veritas_d/files/Private%20Voluntary%20Organisations%20Act%20Cap%2017%2C%20%28Consolidated%20to%202025.04.11%29.pdf.

⁶⁷ Parliament and President of Zimbabwe. Private Voluntary Organizations Amendment Act, 2025 (11 April 2025), Government Gazette No. 24, Art. 20(1), https://www.veritaszim.net/sites/veritas_d/files/Private%20Voluntary%20Organisations%20Act%20Cap%2017%2C%20%28Consolidated%20to%202025.04.11%29.pdf.

⁶⁸ Parliament and President of Zimbabwe. Private Voluntary Organizations Amendment Act, 2025 (11 April 2025), Government Gazette No. 24, Art. 20(1), https://www.veritaszim.net/sites/veritas_d/files/Private%20Voluntary%20Organisations%20Act%20Cap%2017%2C%20%28Consolidated%20to%202025.04.11%29.pdf.

⁶⁹ CIVICUS, *Cutting Civil Society’s Lifeline: The Global Spread of Foreign Agents Laws* (October 2025), p. 23, https://civicus.org/downloads/Foreign-agents-laws-report_EN.pdf.

If the Minister claims there are grounds to believe that “the organisation has ceased to operate in furtherance of the objects in specified in its constitution”; that the organisation is “involved in any illegal activities”; or that “it is necessary or desirable to do so in the public interest,” the Minister may make an application to the High Court of Zimbabwe to appoint one or more persons as trustees to run the affairs of the organisation for a limited period or suspend any or all members of the executive committee of the PVO.⁷⁰ Allowing authorities to take over CSOs if it is “in the public interest” gives the government excessive leeway to impose its own interests on civil society.

Furthermore, Article 22(2) of the PVO Act allows the Minister to designate associations as “high risk of or vulnerable to misuse for purposes of funding terrorism, terrorist organizations, and terrorist causes” and may prescribe additional or special requirements, obligations, or measures that apply to these designated high risk associations.⁷¹ Failure to comply with further limitations and regulations may lead to the Minister revoking or suspending the association’s registration or order the removal of its director, trustee, employee or other office holder.⁷² The discretion given to authorities to prescribe further regulations and restrictions on associations based on vague notions of organizations being “vulnerable to misuse” is overly broad and risks being abused by authorities to target associations. The Act also gives the President or the Minister the ability to share information on CSOs “of concern” with foreign governments on the grounds of “combating … transnational abuse of private voluntary organisations form [sic] criminal purposes” and for the “monitoring of the quality of the assistance given.”⁷³ This provision effectively gives the government the ability to “track, regulate and potentially restrict civil society grounds based on their foreign connections.”⁷⁴

Despite only being in force for roughly eight months, the PVO Act has had a serious negative impact on Zimbabwean civil society. Many CSOs have shut down or limited human

⁷⁰ Parliament and President of Zimbabwe. Private Voluntary Organizations Amendment Act, 2025 (11 April 2025), Government Gazette No. 24, Art. 21

https://www.veritaszim.net/sites/veritas_d/files/Private%20Voluntary%20Organisations%20Act%20Cap%2017%2C%05%20%28Consolidated%20to%202025.04.11%29.pdf

⁷¹ Parliament and President of Zimbabwe. Private Voluntary Organizations Amendment Act, 2025 (11 April 2025), Government Gazette No. 24, Art. 22(2)

https://www.veritaszim.net/sites/veritas_d/files/Private%20Voluntary%20Organisations%20Act%20Cap%2017%2C%05%20%28Consolidated%20to%202025.04.11%29.pdf

⁷² Parliament and President of Zimbabwe. Private Voluntary Organizations Amendment Act, 2025 (11 April 2025), Government Gazette No. 24, Art. 22(8)

https://www.veritaszim.net/sites/veritas_d/files/Private%20Voluntary%20Organisations%20Act%20Cap%2017%2C%05%20%28Consolidated%20to%202025.04.11%29.pdf

⁷³ Parliament and President of Zimbabwe. Private Voluntary Organizations Amendment Act, 2025 (11 April 2025), Government Gazette No. 24, Art. 22C

https://www.veritaszim.net/sites/veritas_d/files/Private%20Voluntary%20Organisations%20Act%20Cap%2017%2C%05%20%28Consolidated%20to%202025.04.11%29.pdf

⁷⁴ CIVICUS, *Cutting Civil Society’s Lifeline: The Global Spread of Foreign Agents Laws* (October 2025), p. 23, https://civicus.org/downloads/Foreign-agents-laws-report_EN.pdf.

rights and civic space monitoring.⁷⁵ CSOs that depend on foreign grants have been hit particularly hard due to new costs and paperwork imposed by the Act.⁷⁶ As such, the PVO Act demonstrates the risk of foreign agent and foreign agent-like legislation, which can turn essential foreign support into a liability for CSOs.

Nicaragua

Nicaragua provides one of the most extreme examples of how a foreign agent law can be deployed as part of a comprehensive legal architecture of repression aimed at dismantling civil society.⁷⁷ Between October 2020 and January 2021, Daniel Ortega's regime adopted a series of repressive laws, including Law No. 1040 on the Regulation of Foreign Agents of October 15, 2020, which have severely undermined the ability to associate and other fundamental freedoms for Nicaraguan CSOs.⁷⁸

Article 1 of Law No. 1040 establishes its purpose as regulating the legal framework applicable to natural or legal persons of any nationality who, responding to foreign interests and receiving foreign funding, use such resources to carry out activities that result in interference by foreign governments, organizations, or individuals in Nicaragua's internal and or external affairs, allegedly threatening national independence, self determination, sovereignty, and economic and political stability.⁷⁹ In practice, the law assigns the status of "foreign agent" to all individuals and legal entities that work with or receive foreign funds, unless they fall within a narrow set of exceptions. These include productive or commercial companies, religious legal entities, individuals receiving remittances, and certain humanitarian intergovernmental organizations or entities operating under agreements with international or regional organizations.⁸⁰

⁷⁵ Christopher Mahove. Zimbabwe's New NGO Law Threatens to Turn Civil Society Watchdogs into "Lapdogs" (24 November 2025), <https://www.equaltimes.org/zimbabwe-s-new-ngo-law-threatens>.

⁷⁶ Christopher Mahove. Zimbabwe's New NGO Law Threatens to Turn Civil Society Watchdogs into "Lapdogs" (24 November 2025), <https://www.equaltimes.org/zimbabwe-s-new-ngo-law-threatens>.

⁷⁷ CIVICUS, *Cutting Civil Society's Lifeline: The Global Spread of Foreign Agents Laws* (October 2025), https://civicus.org/downloads/Foreign-agents-laws-report_EN.pdf, p. 18.

⁷⁸ FIDH, *Laws against "foreign agents": the multi-functional tool of authoritarian regimes* (2021), <https://www.google.com/url?q=https://www.fidh.org/en/issues/business-human-rights-environment/laws-against-foreign-agents-the-multi-functional-tool-of&sa=D&source=docs&ust=1765908864360492&usg=AOvVaw1L4IX4pybvWKy6WgW13SFD>.

⁷⁹ Colectivo de Derechos Humanos. Nicaragua Nunca +, *Consideraciones sobre la Ley No. 1040, Ley de Regulación de Agentes Extranjeros* (2020), <https://colectivodhnicaragua.org/wp-content/uploads/2020/11/121120An%C3%A1lisis-de-la-Ley-de-Regulaci%C3%B3n-de-Agentes-Extranjeros.pdf>, p. 2; Asamblea Nacional de la República. Ley No. 1040, Ley de Regulación de Agentes Extranjeros. (October 15, 2020) La Gaceta. Diario Oficial, legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/3306286cd4e82c5f06258607005fdf6b.

⁸⁰ Colectivo de Derechos Humanos. Nicaragua Nunca +, *Consideraciones sobre la Ley No. 1040, Ley de Regulación de Agentes Extranjeros* (2020), <https://colectivodhnicaragua.org/wp-content/uploads/2020/11/121120An%C3%A1lisis-de-la-Ley-de-Regulaci%C3%B3n-de-Agentes-Extranjeros.pdf>, p. 2.

Under the law, designation as a foreign agent entails extensive reporting obligations before the regulatory authority. These include prior notification of any direct or indirect transfer of funds or assets used to carry out activities as a foreign agent, including detailed information on the use and destination of the funds and the identities of the recipients, with such information made public. Registered “agents” must also submit monthly reports detailing expenses, payments, disbursements, contracts, and other activities related to their work, supported by documentation and verification. In addition, they are required to provide any information requested by the competent authority.⁸¹

As noted by the IACtHR, the administrative implementation of this law includes disproportionate sanctions, such as the cancellation of the legal personality of organizations designated as foreign agents, as well as fines that may reach nearly half a million US dollars. The framework also establishes specific mechanisms of criminalization that enable administrative authorities to request the intervention of prosecutorial bodies on the basis of the presumed commission of crimes against “state security”. Moreover, the law prohibits individuals and organizations registered as foreign agents from financing or participating in vaguely defined “political” activities, under threat of severe sanctions.⁸²

Perú

In April 2025, the Peruvian government enacted Law No. 32301, amending the regulatory framework of the Peruvian Agency for International Cooperation (APCI), the body responsible for overseeing, monitoring, and supervising international technical cooperation managed by the State.⁸³ The law authorizes APCI to approve the implementation of plans, programs, or projects carried out by organizations that receive international technical cooperation.⁸⁴ It also classifies the use of international funds to advise or assist in administrative, judicial, or other proceedings against the Peruvian State at the national or international level as a

⁸¹ Colectivo de Derechos Humanos. Nicaragua Nunca +, *Consideraciones sobre la Ley No. 1040, Ley de Regulación de Agentes Extranjeros* (2020), <https://colectivodhnicaragua.org/wp-content/uploads/2020/11/121120An%C3%A1lisis-de-la-Ley-de-Regulaci%C3%B3n-de-Agentes-Extranjeros.pdf>, p. 7.

⁸² Colectivo de Derechos Humanos. Nicaragua Nunca +, *Consideraciones sobre la Ley No. 1040, Ley de Regulación de Agentes Extranjeros* (2020), <https://colectivodhnicaragua.org/wp-content/uploads/2020/11/121120An%C3%A1lisis-de-la-Ley-de-Regulaci%C3%B3n-de-Agentes-Extranjeros.pdf>, p. 7.

⁸³ Congreso de la República. Ley No. 32301 (15 April 2025), El Peruano, https://cdn.www.gob.pe/uploads/document/file/8656766/7165995-ley-n-32301_ley-que-modifica-la-ley-27692.PDF?v=1757951457. IACtHR. Peru: IACtHR expresses serious concern over articles of the law modifying the international cooperation agency, May 12, 2025, https://www.oas.org/en/iachr/jsForm/?File=en/iachr/media_center/preleases/2025/098.asp.

⁸⁴ Congreso de la República. Ley No. 32301 (15 April 2025), El Peruano, art. 4, https://cdn.www.gob.pe/uploads/document/file/8656766/7165995-ley-n-32301_ley-que-modifica-la-ley-27692.PDF?v=1757951457.

very serious offense.⁸⁵ In this regard, the IACtHR expressed concern about the law's potential impact on human rights defense activities, including the risk of organizations losing their legal representation.⁸⁶

El Salvador

Under President Nayib Bukele's administration, the Legislative Assembly, dominated by the ruling party, adopted its own Foreign Agents Law on May 20, 2025. The law requires natural or legal persons receiving foreign funding to register as "foreign agents" in a Foreign Agents Registry administered by the Ministry of Governance and Territorial Development. While framed as a transparency measure, the law effectively grants the government broad authority to control, stigmatize, and sanction human rights organizations and independent media outlets that receive international support.⁸⁷

The law defines a foreign agent as any natural or legal person that "responds to foreign interests, is controlled by, or financed, directly or indirectly, by a foreign principal." The notion of "foreign principal" is defined expansively to include any person or organization from a foreign country, including governments, political parties, and organizations, as well as "persons that the Foreign Agents Registry determines fall within that category." Failure to register exposes individuals and organizations to sanctions, including fines and the suspension or cancellation of legal personality. The law also imposes a thirty percent tax on all foreign funding, including donations, payments, or other financial contributions⁸⁸.

In addition, the law prohibits registered foreign agents from engaging in activities "for political or other purposes" that allegedly aim to "alter public order" or "threaten the social and political stability of the country." It bans anonymous donations and requires prior authorization to modify the use of funds. Organizations receiving foreign funding are further required to include labels on their materials stating that the information they disseminate is "transmitted on behalf of a foreign principal" or "financed" by foreign sources⁸⁹.

⁸⁵ Congreso de la República. Ley No. 32301 (15 April 2025), El Peruano, art. 21, https://cdn.www.gob.pe/uploads/document/file/8656766/7165995-ley-n-32301_ley-que-modifica-la-ley-27692.PDF?v=1757951457.

⁸⁶ IACtHR. Peru: IACtHR expresses serious concern over articles of the law modifying the international cooperation agency, May 12, 2025, https://www.oas.org/en/iachr/jsForm/?File=en/iachr/media_center/preleases/2025/098.asp.

⁸⁷ HRW. *El Salvador: La Ley de Agentes Extranjeros amenaza a la sociedad civil y medios de comunicación* (2025), <https://www.hrw.org/es/news/2025/05/23/el-salvador-la-ley-de-agentes-extranjeros-amenaza-la-sociedad-civil-y-medios-de-#:~:text=El%2020%20de%20mayo%20de,independientes%20que%20reciben%20apoyo%20internacional>.

⁸⁸ HRW. *El Salvador: La Ley de Agentes Extranjeros amenaza a la sociedad civil y medios de comunicación* (2025), <https://www.hrw.org/es/news/2025/05/23/el-salvador-la-ley-de-agentes-extranjeros-amenaza-la-sociedad-civil-y-medios-de-#:~:text=El%2020%20de%20mayo%20de,independientes%20que%20reciben%20apoyo%20internacional>.

⁸⁹ Asamblea Legislativa de la República de El Salvador. Decreto No. 308 de 2025. Ley de Agentes Extranjeros, May 20, 2025, <https://www.refworld.org/es/leg/legis/pleg/2025/es/150145>; HRW. *El Salvador: La Ley de Agentes Extranjeros amenaza a la sociedad civil y medios de comunicación* (2025),

These examples illustrate that the imposition of foreign agent laws by States restricts CSOs in practically all their activities, interfering with their exercise of freedom of association.

C. National Security and Counterterrorism Laws

Another frequent manner in which States are restricting freedom of association is through the expansive use of national security and counterterrorism laws, often in the form of labelling associations “terrorist” groups or “threats to national security.”

While national security laws can serve legitimate purposes and are permitted under international legal standards to restrict human rights in certain situations, they are nonetheless often deployed in a way that unduly limits dissent, media freedom, and the ability of non-conforming groups to associate.⁹⁰ The language of national security laws is often vague and sweeping, allowing governments to crack down on groups and individuals who cover or work on sensitive topics, such as corruption, human rights, and military conflict, or those who offer dissenting voices in society.⁹¹ This vagueness of legislative language corresponds with the vagueness of the concept of “national security” itself as interpreted by States based on their own interests in protecting the public order of their societies (again, as defined by States), which in turn allows States to “justify any action within that paradigm.”⁹² This interpretation of “national security” is often in violation of international law, as explored below in section III.C.

Counterterrorism, or anti-terrorism, laws are a subset of national security laws that are purportedly focused on combating specifically terrorist threats. These laws usually include offenses such as “praising or glorifying terrorism,” “spreading terrorist ideas or terrorist propaganda,” or “supporting/communicating with/harboring terrorist organizations.”⁹³ Recent trends across the globe indicate that countries have increased penalties associated with these laws and have expanded such legislation with new vaguely-worded offenses, allowing for further crackdowns on civil society.⁹⁴ The lack of a universally accepted definition of terrorism exacerbates the risk of abusing counterterrorism legislation, a risk that is further compounded by the fact that counterterrorism laws are often passed as emergency laws, with limited transparency

<https://www.hrw.org/es/news/2025/05/23/el-salvador-la-ley-de-agentes-extranjeros-amenaza-la-sociedad-civil-y-mecdios-de#:~:text=El%2020%20de%20mayo%20de,independientes%20que%20reciben%20apoyo%20internacional>.

⁹⁰ Thomas Reuters and Tow Center Report. *Weaponizing the Law: Attacks on Media Freedom* (2023), p. 24 <https://www.trust.org/wp-content/uploads/legacy/weaponizing-law-attacks-media-freedom-report-2023.pdf>.

⁹¹ Thomas Reuters and Tow Center Report. *Weaponizing the Law: Attacks on Media Freedom* (2023), p. 24 <https://www.trust.org/wp-content/uploads/legacy/weaponizing-law-attacks-media-freedom-report-2023.pdf>.

⁹² Morris, “National Security and Human Rights in International law,” *Groningen J. of Int’l L.*, 123, 124.

⁹³ Thomas Reuters and Tow Center Report. *Weaponizing the Law: Attacks on Media Freedom* (2023), p. 34 <https://www.trust.org/wp-content/uploads/legacy/weaponizing-law-attacks-media-freedom-report-2023.pdf>.

⁹⁴ Thomas Reuters and Tow Center Report. *Weaponizing the Law: Attacks on Media Freedom* (2023), p. 34 <https://www.trust.org/wp-content/uploads/legacy/weaponizing-law-attacks-media-freedom-report-2023.pdf>.

and public consultation, and thus facilitate human rights violations.⁹⁵ “Terrorists,” under a vague notion of counterterrorism, can become a category of enemy “against whom everything is permitted, in the name of national security.”⁹⁶

The dual-hydra of vagueness of legislation and the urgency of the justification of national security and counterterrorism laws poses a serious threat to international human rights norms if not checked. Freedom of association is no exception, as organizations, if they target sensitive issues or engage in dissent, can quickly be marked as “enemies” under both regimes and targeted for repression. The Special Rapporteur on freedom of peaceful assembly and of association has noted the significant misuse of counter-terrorism and national security measures to “stifle civic activism,” remarking that the mandate holder had “participated in 249 communications concerning at least 69 States, related to counter-terrorism laws and laws on countering the financing of terrorism that unnecessarily or disproportionately restrict fundamental freedoms” between 2011 and 30 June 2024.⁹⁷ The Special Rapporteur affirmed how this legislation stigmatizes civil society, movements and activists, causing a “serious impact on their lives, well-being, family life and economic situation,” silencing activists and organizations, and “lead[ing] to the defunding of associations and their unlawful dissolution.”⁹⁸

The impacts of the misuse of national security and counterterrorism laws are examined in the context of Egypt, Nicaragua and Venezuela below.

1. Examples of Misuse of National Security and Counterterrorism Laws

Egypt

Egypt uses its counterterrorism legislation, namely its Anti-Terrorism Law (Law 94 of 2015)⁹⁹ and its Terrorism Entities Law (Law 8 of 2015)¹⁰⁰, extensively to crack down on freedom of association. The Anti-Terrorism and the Terrorist Entities Law contain vague and undefined

⁹⁵ American Bar Association. *Balancing Act: Navigating National Security and Human Rights Across Jurisdictions*, <https://www.americanbar.org/content/dam/aba/administrative/global-programs/event-recap-navigating-national-security-and-human-rights-across-jurisdictions.pdf> (last visited Dec. 18, 2025).

⁹⁶ Citroni, “What Does a State Secure Make?...”, in Trends and Challenges in International Law, 49, 63-64, <https://api-istex-fr.scpo.idm.oclc.org/ark:/67375/DW4-ZMT329B3-K/fulltext.pdf>

⁹⁷ United Nations General Assembly, Protecting the rights to freedom of peaceful assembly and of association from stigmatization, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Gina Romero (A/79/263), para. 32 <https://docs.un.org/en/A/79/263>.

⁹⁸ United Nations General Assembly, Protecting the rights to freedom of peaceful assembly and of association from stigmatization, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Gina Romero (A/79/263), para. 37 <https://docs.un.org/en/A/79/263>.

⁹⁹ Presidency of the Arab Republic of Egypt, Anti-Terrorism Law (15 August 2015), Official Gazette No. 33 (bis) https://www.atlanticcouncil.org/wp-content/uploads/2015/09/Egypt_Anti-Terror_Law_Translation.pdf.

¹⁰⁰ Presidency of the Arab Republic of Egypt, Law Organizing the Lists of Terrorists and Terrorist Entities (17 February 2015), Official Gazette No. 7 (bis), <https://menarights.org/sites/default/files/2016-11/EGY%20-%20Law%208%20of%202015%20-%20Organizations%20lists%20of%20terrorist%20entities%20and%20terrorists%20-%202002.2015%20%28EN%29.pdf>.

terms to define “terrorism” and to label entities and individuals terrorists, violating basic principles of international human rights law that require laws to be precisely drafted and understandable and exceeding the UN Security Council’s definition of terrorism.¹⁰¹ Acts that justify the “terrorist” label under the Terrorist Entities Law include “infringing the public order, endangering the safety, interests or security of society, obstructing provisions of the constitution and law, or harming national unity, social peace, or national security,” as well as engaging in acts “the purpose of which is advocating [for the mentioned acts] by any means,” thus allowing authorities to label even peaceful actions as terrorist acts.¹⁰² Furthermore, under this law courts can label organizations as “terrorists” using a temporary court order at the request of the authorities, a label that lasts for up to three years and can be renewed without additional evidence, case-files, a conviction of a terrorism crime or witness examination.¹⁰³ Organizations labelled terrorists can be dissolved and have their assets frozen, demonstrating the threat the overbroad definition of crimes under Egypt’s counterterrorism legislation, as well as its application, has on freedom of association.¹⁰⁴

An exceptional example of this counterterrorism legislation being used to crush freedom of association is Case No. 1552 of 2018, which targeted the human rights organization Egyptian Coordination for Rights and Freedoms and sentenced 31 members of the group to non-appealable prison sentences based on their human rights work and peaceful dissent.¹⁰⁵

¹⁰¹ Human Rights Watch, *Egypt: Counterterrorism Law Erodes Basic Rights* (19 August 2015), <https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights>; Cairo Institute for Human Rights Studies, *Law on Terrorist Entities Allows Rights Groups and Political Parties to be Designated Terrorists* (28 February 2015) <https://cihrs.org/law-on-terrorist-entities-allows-rights-groups-and-political-parties-to-be-designated-terrorists/?lang=en>.

¹⁰² Euro-Med Rights, *Egypt - Finding Scapegoats: Crackdown on Human Rights Defenders and Freedoms in the Name of Counter-terrorism and Security*, February 2018, p. 13, <https://euromedrights.org/wp-content/uploads/2018/03/EuroMed-Rights-Report-on-Counter-terrorism-and-Human-Rights.pdf>; Presidency of the Arab Republic of Egypt, Law Organizing the Lists of Terrorists and Terrorist Entities (17 February 2015), Official Gazette No. 7 (bis), art. 1, <https://menarights.org/sites/default/files/2016-11/EGY%20-%20Law%208%20of%202015%20-%20Organizations%20lists%20of%20terrorist%20entities%20and%20terrorists%20-%2002.2015%20%28EN%29.pdf>.

¹⁰³ Euro-Med Rights, *Egypt - Finding Scapegoats: Crackdown on Human Rights Defenders and Freedoms in the Name of Counter-terrorism and Security*, February 2018, p. 13, <https://euromedrights.org/wp-content/uploads/2018/03/EuroMed-Rights-Report-on-Counter-terrorism-and-Human-Rights.pdf>; Presidency of the Arab Republic of Egypt, Law Organizing the Lists of Terrorists and Terrorist Entities (17 February 2015), Official Gazette No. 7 (bis), arts. 3-4, <https://menarights.org/sites/default/files/2016-11/EGY%20-%20Law%208%20of%202015%20-%20Organizations%20lists%20of%20terrorist%20entities%20and%20terrorists%20-%2002.2015%20%28EN%29.pdf>.

¹⁰⁴ Euro-Med Rights, *Egypt - Finding Scapegoats: Crackdown on Human Rights Defenders and Freedoms in the Name of Counter-terrorism and Security*, February 2018, p. 13, <https://euromedrights.org/wp-content/uploads/2018/03/EuroMed-Rights-Report-on-Counter-terrorism-and-Human-Rights.pdf>.

¹⁰⁵ Egyptian Initiative for Personal Rights, *On the Second Anniversary of their Prison Sentences .. EIPR Calls for Members of the Egyptian Coordination for Rights and Freedoms’s Release* (6 March 2025) <https://eipr.org/en/press/2025/03/second-anniversary-their-prison-sentences-eipr-calls-members-egyptian-coordination>; Amnesty International, *Egypt: Drop Bogus Case Against Egyptian Human Rights Group* (1 March 2023) <https://www.amnesty.org/en/latest/news/2023/03/egypt-drop-bogus-case-against-egyptian-human-rights-group/>.

Members of the organization were accused, and found guilty, of joining and financing a terrorist group, possessing publications and recordings to promote a terrorist group, and using websites to spread false news.¹⁰⁶ In the aftermath of the arrest of its members, Egyptian Coordination for Rights and Freedoms closed, and Egyptian authorities targeted “anyone deemed affiliated with the group.”¹⁰⁷ The case is representative of Egypt’s abuse of its counterterrorism legislation to attack those deemed threats to the regime.

Egypt’s application of its counterterrorism legislation has been criticized by other States and CSOs alike, with a group of 31 States condemning Egypt’s use of its counterterrorism legislation to stifle human rights in a 12 March 2021 joint statement at the 46th session of the United Nations Human Rights Council.¹⁰⁸

Nicaragua

In Nicaragua, national security laws, seemingly neutral in their face, have been used by the State to curb dissent. The National Assembly adopted Law No. 1055 on the Defense of the Rights of the People to Independence, Sovereignty, and Self Determination for Peace in December 2020. The law designates individuals whose actions allegedly “harm the supreme interests of the nation” as “traitors to the homeland” and prohibits them from running for or holding public office.¹⁰⁹ The law employs extremely vague language to define who qualifies as a traitor, including those who “undermine independence, sovereignty, and self-determination” or “damage the supreme interests of the nation,” without specifying how such determinations are made or by whom.¹¹⁰

¹⁰⁶ Egyptian Initiative for Personal Rights. *On the Second Anniversary of their Prison Sentences .. EIPR Calls for Members of the Egyptian Coordination for Rights and Freedoms’s Release* (6 March 2025) <https://eipr.org/en/press/2025/03/second-anniversary-their-prison-sentences-eipr-calls-members-egyptian-coordination>.

¹⁰⁷ Amnesty International. *Egypt: Drop Bogus Case Against Egyptian Human Rights Group* (1 March 2023) <https://www.amnesty.org/en/latest/news/2023/03/egypt-drop-bogus-case-against-egyptian-human-rights-group/>.

¹⁰⁸ H.E. Ambassador Kirsti Kauppi, Finland. General Debate Item 4: Human Rights Situations that Require the Council’s Attention: Joint Statement on Egypt (12 March 2021), <https://cihrs.org/wp-content/uploads/2021/03/HRC46-JST-on-Egypt-item-4.pdf>; For an NGO condemnation of the practice, *see* Lead on Joint Action to Address the Human Rights Crises in Egypt at the 46th Session of the UN Human Rights Council (9 December 2020), <https://cihrs.org/wp-content/uploads/2021/02/HRC-46-Egypt-Joint-NGO-Letter-WITHOUT-SIGNATORIES.pdf>.

¹⁰⁹ Grupo de Expertos de Derechos Humanos sobre Nicaragua del ACNUDH, Conclusiones Detalladas (March 2023), p. 67, <https://reliefweb.int/report/nicaragua/conclusiones-detalladas-del-grupo-de-expertos-en-derechos-humanos-sobre-nicaragua-ahrc52crp5>.

¹¹⁰ HRW. *Arremetida contra críticos. Persecución y detención de Opositores, defensores de derechos humanos y periodistas de cara a las elecciones en Nicaragua* (22 June 2021), https://www.hrw.org/es/report/2021/06/22/arremetida-contra-criticos/persecucion-y-detencion-de-opositores-defensores-de#_ftn20.

This law has also been implemented through the judicial system. On September 9, 2024, the Supreme Court of Nicaragua issued a ruling revoking the nationality of 135 released political prisoners and ordering the confiscation of their assets.¹¹¹ The ruling relied on Law No. 1055 and Special Law No. 1145, which regulates the loss of Nicaraguan nationality. According to the Court, the individuals had been convicted of criminal acts allegedly undermining Nicaragua's sovereignty, independence, and self-determination. They were accused of inciting violence, hatred, terrorism, and economic destabilization, thereby disrupting peace, security, and constitutional order.¹¹²

Venezuela

In Venezuela, counter-terrorism laws are being deployed by the State in a way that severely restricts the exercise of freedom of association. Administrative Provision No. 001 2021, implemented in May 2021, requires all non-profit organizations to register in the Unified Registry of Obligated Subjects under the authority of the National Office Against Organized Crime and Terrorist Financing.¹¹³ The regulation also extends its scope to individuals and entities engaged in non-financial activities that are subject to supervision due to their alleged potential for use in money laundering, terrorist financing, or the proliferation of weapons of mass destruction.¹¹⁴ As part of the registration requirements, organizations must disclose their donor organizations and identify beneficiaries of their activities, including individuals who may be victims of human rights violations.¹¹⁵ The regulation further authorizes on-site inspections by public officials to verify the accuracy of submitted documentation.¹¹⁶

III. Legal Standards

A. Scope of the Right to Freedom of Association

1. The Notion of an “Association”

¹¹¹ CIVICUS. *135 Political Prisoners expelled from Nicaragua; closure of 1,500 CSOS within one month* (2024), <https://monitor.civicus.org/explore/135-political-prisoners-expelled-from-nicaragua-closure-of-1500-csos-within-one-month/>.

¹¹² CIVICUS. *135 Political Prisoners expelled from Nicaragua; closure of 1,500 CSOS within one month* (2024), <https://monitor.civicus.org/explore/135-political-prisoners-expelled-from-nicaragua-closure-of-1500-csos-within-one-month/>.

¹¹³ IACHR. Third Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II Doc. 119/25 April 15, 2025, para. 214.

¹¹⁴ CEPAZ, *Providencia Administrativa No. 0001-20221, un nuevo cerco al espacio cívico* (2021), <https://cepaz.org/providencia-administrativa-no-001-2021-un-nuevo-cerco-al-espacio-civico/>

¹¹⁵ IACHR. Third Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II Doc. 119/25 April 15, 2025, para. 214.

¹¹⁶ CEPAZ, *Providencia Administrativa No. 0001-20221, un nuevo cerco al espacio cívico* (2021), <https://cepaz.org/providencia-administrativa-no-001-2021-un-nuevo-cerco-al-espacio-civico/>.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has described “associations” as referring to “any groups of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests”.¹¹⁷ He noted that they include, among others, civil society organizations, clubs, cooperatives, NGOs, religious associations, trade unions, foundations or even online associations.¹¹⁸ The Human Rights Committee has clarified that article 22 of the ICCPR applies only to private associations (including for purposes of membership) and that the qualification of an entity as an “association” within the meaning of article 22 has to be determined on the basis of international standards, regardless of labeling under national law.¹¹⁹ Overall, the Committee has consistently adopted a broad understanding of an “association”, highlighting that registration is not a prerequisite for an association to exist or to be protected under article 22 - akin to the approach regional human rights systems have taken in this area.¹²⁰

The 2017 Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples’ Rights (2017 Guidelines) similarly define an association as “an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose”.¹²¹ Significantly, the 2017 Guidelines also acknowledge that an association may be formal, i.e. with legal personality, or informal, i.e. without legal personality but with some institutional form or structure, which means that registration of associations cannot be a prerequisite for their existence and free operation, as elaborated on below.¹²²

Likewise, within the Inter-American Human Rights System, an association is understood as any form of collective organization, whether formal or informal, through which individuals freely come together to pursue a common lawful purpose. Article 16 of the American Convention on Human Rights recognizes the right of all persons to freely associate for ideological, religious, political, economic, labor, social, cultural, sporting, or any other lawful purpose. Interpreting this provision, the IACtHR has consistently held that freedom of association enables individuals to create or participate in entities or organizations in order to act collectively toward the achievement of a wide range of legitimate aims¹²³.

¹¹⁷ UN General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai (A/HRC/20/27), para. 51.

¹¹⁸ UN General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai (A/HRC/20/27), para. 52.

¹¹⁹ *Wallmann et al. v. Austria* (CCPR/C/80/D/1002/2001), para. 9.3.

¹²⁰ See *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004) and *Katsora v. Belarus* (CCPR/C/99/D/1388/2005).

¹²¹ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 1

<https://achpr.au.int/index.php/en/soft-law/guidelines-freedom-association-and-assembly-africa>.

¹²² African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 11.

¹²³ Inter-American Court of Human Rights. *Case of Members of the Single Union of Workers v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 6, 2024. Series C No. 526, para. 200. *Case of Baena Ricardo and Others Vs. Panama*. Merits, Reparations, and Costs. Judgment of February 2, 2001. Serie C No. 72,

2. The Notion of “Political Parties”

In its Guidelines on Political Party Regulation, the Venice Commission has defined a political party as a “free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections”.¹²⁴ Moreover, according to these Guidelines, “political parties are collective platforms for the expression of individuals’ fundamental rights to association and expression and have been recognized by the European Court of Human Rights as integral players in the democratic process. Further, they are the most widely utilized means for political participation and exercise of related rights”.¹²⁵

Freedom of association is critical in the context of political parties, and includes the ability to freely establish such parties. The Human Rights Committee has noted that the inability of political parties as such “to register, contest elections, field candidates or otherwise participate in the formation of a Government” constitutes a violation of, among others, Article 22 of the Covenant.¹²⁶

Moreover, the Human Rights Committee has highlighted, in the context of other ICCPR articles, that State parties are required to adopt positive and effective measures to protect authors against discrimination by private persons and organizations, including political parties. In *Arenz et al. v. Germany*, the State party argued that it could not be held responsible for the exclusion of the authors from a political party, as this constituted a decision of a private association, not one of its organs. The Human Rights Committee responded to this argument by noting that under article 2(1) of the Covenant, the State party was under an obligation not only to respect but also to ensure to all individuals within its territory and subject to its jurisdiction, all the rights recognized in the Covenant, without distinction of any kind.¹²⁷

Likewise, Article 5 of the Inter-American Democratic Charter affirms that strengthening political parties and other political organizations is a priority for democracy.¹²⁸ Within the Inter-American System, the functioning of political parties is protected under Article 16(1) of the ACHR, which recognizes the right of all persons to freely associate for political purposes, among

para. 156. *Case of Kawas Fernández V. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, para. 143. *Case of Fleury et al. V. Haiti*. Merits and Reparations. Judgment of November 23, 2011. Serie C. No. 236, para. 99.

¹²⁴ Office for Democratic Institutions and Human Rights, *Guidelines on Political Party Regulation*, 19 May 2011, para. 9 (<https://odihr.osce.org/odihr/77812?download=true>).

¹²⁵ Office for Democratic Institutions and Human Rights, *Guidelines on Political Party Regulation*, 19 May 2011, para. 10 (<https://odihr.osce.org/odihr/77812?download=true>).

¹²⁶ Concluding Observations on Swaziland in the Absence of a Report (CCPR/C/SWZ/CO/1), 23 August 2018, para. 5.2.

¹²⁷ *Arenz et al. v. Germany* (CCPR/C/80/D/1138/2002), para. 8.5.

¹²⁸ Inter-American Democratic Charter, Article 5.

others.¹²⁹ In line with the aforementioned instruments, the IACtHR and the IACHR have consistently recognized political parties as essential forms of association for the development and strengthening of democracy,¹³⁰ with the IACHR noting that modern democracy rests on political parties.¹³¹ The IACtHR has further emphasized that political parties must pursue purposes compatible with respect for the rights and freedoms enshrined in the American Convention.¹³²

In contrast, the instruments of the African Union have not explicitly asserted that political parties are covered by freedom of association. However, several African Commission decisions have protected the right to freedom of association of political parties,¹³³ and the 2014 Report of the Study Group on Freedom of Association & Assembly in Africa (2014 Report) notes that political parties are covered under legal regimes regulating associations broadly, thus implying that freedom of association covers political parties under the African human rights framework.¹³⁴

Section III.D.1 goes into further detail on the intersection between freedom of association, political parties and democracy.

3. The Right Not to Associate

Participation in an association is voluntary¹³⁵, as indicated in Article 20(2) of the Universal Declaration of Human Rights which states that “no one may be compelled to belong to an association”. Therefore, freedom of association includes both the right to join or not to join, and the freedom of natural persons and legal entities to collaborate without government intervention, with the purpose of realizing a mutual goal.¹³⁶

The African Commission has also affirmed this right to not associate. In the 2017 Guidelines, the Commission affirms that “individuals shall not be compelled to join associations, and shall always be free to leave them,” an opinion that reflects recommendations made in the

¹²⁹ American Convention on Human Rights, Article 16.

¹³⁰ IACtHR. *Case of Yatama V. Nicaragua*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 23, 2005. Serie C No. 127, para. 215. IACHR. Resolution No. 26/88. Case 10109. September 13, 1988, para. 10.

¹³¹ IACHR. Resolution No. 26/88. Case 10109. September 13, 1988, para. 10.

¹³² IACtHR. *Case of Yatama V. Nicaragua*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 23, 2005. Serie C No. 127, para. 216.

¹³³ Lawyers for Human Rights v. Swaziland, Communication 251/02, African Commission on Human and Peoples’ Rights (11 May 2025), para. 62; Sir Dawda K. Jawara v. Gambia (the), Communication 147/95-149/96, African Commission on Human and Peoples’ Rights (11 May 2000), para. 68.

¹³⁴ African Commission on Human and Peoples’ Rights, Report on the Study Group on Freedom of Association & Assembly in Africa, April 2014, p. 69. <https://achpr.au.int/en/special-mechanisms-reports/report-study-group-freedom-association-assembly-africa>.

¹³⁵ Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 614.

¹³⁶ Venice Commission of the Council of Europe, *Opinion on the Compatibility with Universal Human Rights Standards of Article 193-1 of the Criminal Code on the Rights of Non-Registered Associations of the Republic of Belarus*, 18 October 2011, paras. 67-68.

Commission's 2014 Report.¹³⁷ The 2017 Guidelines also assert that "the state shall not stipulate by law the existence of particular or exclusive regional or national federations of associations," nor shall "the law ... stipulate mandatory state membership of particular federations" for associations.¹³⁸

The African Court on Human and Peoples' Rights' fleshed out this right not to associate in its *Tanganyika Law Society & the Legal and Human Rights Centre v. Tanzania* decision.¹³⁹ The issue in the case was a law passed by the Tanzanian National Assembly requiring that "any candidate for Presidential, Parliamentary and Local Government elections ... be a member of, and be sponsored by, a political party."¹⁴⁰ The Court affirmed that the "freedom of association is negated if an individual is forced to associate with others" and is "also negated if other people are forced to join up with the individual," in other words, that the "freedom of association implies freedom to associate and freedom not to associate."¹⁴¹ Thus, the law passed by the National Assembly violated Tanzanians' right to freedom of association by compelling individuals to join or form an association before seeking elective positions.¹⁴²

As far as the Inter-American system is concerned, the Inter-American Court of Human Rights has also clarified that freedom of association includes the freedom not to associate, meaning that each person must be able to determine, without coercion, whether or not to join an association.¹⁴³ In *Baena Ricardo and Others v. Panama*, the IACtHR further held that this right entails the ability to form a group free from pressure or interference that could alter or distort its purpose.¹⁴⁴

Lastly, the European Court of Human Rights (ECtHR) has addressed the topic of compulsion to join an association which is militated against by a conscience aspect. For instance, in *Young, James and Webster v. United Kingdom*, a closed-ship agreement forced union membership on employees against their conscience. The ECtHR highlighted that the protection

¹³⁷ African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 8; African Commission on Human and Peoples' Rights, Report on the Study Group on Freedom of Association & Assembly in Africa, April 2014, p. 72.

¹³⁸ African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, paras. 52-53.

¹³⁹ *Tanganyika Law Society & The Legal and Human Rights Centre v. Tanzania*, No. 009/2011-011/2011, Judgment, African Court on Human and Peoples' Rights (14 June 2013).

¹⁴⁰ *Tanganyika Law Society & The Legal and Human Rights Centre v. Tanzania*, No. 009/2011-011/2011, Judgment, African Court on Human and Peoples' Rights (14 June 2013), para. 67.

¹⁴¹ *Tanganyika Law Society & The Legal and Human Rights Centre v. Tanzania*, No. 009/2011-011/2011, Judgment, African Court on Human and Peoples' Rights (14 June 2013), para. 113.

¹⁴² *Tanganyika Law Society & The Legal and Human Rights Centre v. Tanzania*, No. 009/2011-011/2011, Judgment, African Court on Human and Peoples' Rights (14 June 2013), para. 114.

¹⁴³ IACtHR. *Case of Baena Ricardo and Others Vs. Panama*. Merits, Reparations, and Costs. Judgment of February 2, 2001. Serie C No. 72, para. 156.

¹⁴⁴ IACtHR. *Case of Baena Ricardo and Others Vs. Panama*. Merits, Reparations, and Costs. Judgment of February 2, 2001. Serie C No. 72, para. 156. *Case of Lagos del Campo V. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Serie C No. 340, para. 156.

of freedom of thought, conscience and religion is one of the purposes of freedom of association, and thus it strikes at the substance of this freedom to exert pressure in order to compel someone to join an association contrary to their convictions.¹⁴⁵ Judge Fischbach, in a separate opinion in *Chassagnou v. France*, reached a similar conclusion, asserting that it is not legitimate in the context of Article 9 of the European Convention on Human Rights (freedom of thought, conscience and religion) to oblige individuals to take party in an activity incompatible with their beliefs, which serves essentially private interests.¹⁴⁶

B. State Obligations

1. UN Standards

According to the Special Rapporteur on the Rights to Freedom of Assembly and of Association, the obligations of States to promote and protect freedom of association under international law are twofold: there is a negative obligation not to interfere with rights, and a positive obligation upon the State to facilitate the exercise of the right.¹⁴⁷

As far as the former is concerned, States have a negative obligation not to unduly restrict or obstruct the exercise of the right to freedom of association. The right to form and join an association is an inherent part of the right to freedom of association.¹⁴⁸ Moreover, it includes the right to form and join trade unions for the protection of one's interests. The Human Rights Committee has clarified that freedom of association does not only include the right to form an association, but extends to all activities of an association.¹⁴⁹ Furthermore, the Special Rapporteur on the Rights to Freedom of Assembly and of Association has stressed that members of associations should be free to determine their statutes, structure and activities without State interference.¹⁵⁰ As a result, dissolution of an association must satisfy the requirements of Article 22(2) in order not to amount to a violation of Article 21(1), as elaborated on below in section II(C). Significantly, as elaborated on in Section III(C), States have a duty to ensure the right to freedom of association can be exercised by everyone without discrimination of any kind, which includes the formation of associations embracing minority or dissenting views/beliefs.

¹⁴⁵ European Court of Human Rights, *Young, James and Webster v. the United Kingdom* (application Nos. 7601/76 and 7806/77), judgment of 13 August 1981, para. 57.

¹⁴⁶ European Court of Human Rights, *Chassagnou v. France* (application Nos. 25088/94, 28331/95 and 28443/95), judgment of 29 April 1999, Separate Opinion of Judge Fischbach Concerning Article 9.

¹⁴⁷ Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai (A/HRC/20/27), paras. 63-66.

¹⁴⁸ UN General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai (A/HRC/20/27), para. 53.

¹⁴⁹ *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004), para. 7.2.

¹⁵⁰ Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai (A/HRC/20/27), paras. 64.

Furthermore, States are required to respect the right of associations to privacy, as set out in Article 17 of the ICCPR.¹⁵¹ Therefore, authorities must not be entitled to, among others, condition any decisions/activities of the organization, reverse the elections of board members, and enter association's premises without advance notice.¹⁵² Moreover, the examination of associations by any independent bodies should not be arbitrary and must respect the principle of non-discrimination and the right to privacy.¹⁵³

As noted above and underscored by the Special Rapporteur on the Rights to Freedom of Assembly and of Association, international human rights treaties and soft law establish that States also have positive obligations to respect, protect, and enable the right to freedom of association. States are obliged to uphold these human rights not only within their national jurisdiction, but also when they act in the international arena, whether individually, bilaterally or multilaterally.¹⁵⁴ More specifically, States are obliged to take positive measures in order to establish and maintain an enabling environment for the exercise of the right to freedom of association free from fear and intimidation.¹⁵⁵ Similarly to States' negative obligations, their positive obligations are not restricted to associations' formation but also encompass the ability of associations to carry out all their activities for which they were established. On that note, the ECtHR has noted that the protection afforded by the right to freedom of association lasts for an association's entire life.¹⁵⁶ The ECtHR has also highlighted that performance of the aforementioned positive obligation is necessary to render the exercise of the right to freedom of association practical and effective.¹⁵⁷ The range of measures State Parties to the ICCPR are obliged to adopt in this context are laid out in Article 2, and include the need to pass relevant supporting legislation. Moreover, the joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association specify the standards for legislation and regulations in order to fulfill a State's obligation, such as the requirement that legal provisions are clear, precise and certain, and adopted through a participatory and inclusive process.¹⁵⁸

¹⁵¹ Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai (A/HRC/20/27), para. 65.

¹⁵² Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai (A/HRC/20/27), para. 65.

¹⁵³ Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai (A/HRC/20/27), para. 65.

¹⁵⁴ UN General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai (A/69/365), para 16.

¹⁵⁵ Human Rights Council, Report of the Special rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai (A/HRC/20/27), paras 63.

¹⁵⁶ European Court of Human Rights, *United Communist Party of Turkey and Others v. Turkey* (application No. 133/1996/752/951), judgment of 30 January 1998, para. 33.

¹⁵⁷ European Court of Human Rights, *Ouranio Toxo and Others v. Greece* (application No. 74989/01), judgment of 20 October 2005, para 37.

¹⁵⁸ OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Council of Europe's Commission for Democracy Through Law (Venice Commission), *Guidelines on Freedom of Association*, 14 December, 2014, para. 22, <https://www.osce.org/sites/default/files/f/documents/3/b/132371.pdf>.

Significantly, the Special Rapporteur on the Rights to Freedom of Assembly and of Association has emphasized that at the heart of the right to freedom of association is the obligation of States to create and ensure environments in which civil society can exist and thrive.¹⁵⁹ With regard to non-governmental organizations, the Human Rights Committee has expressly recognized their free functioning as “essential for the protection of human rights and dissemination of information in regard to human rights among the people”, concluding that State parties have the obligation to provide for the “establishment and free operation [of such NGOs] [...] in accordance with article 22 of the Covenant”.¹⁶⁰

Creating an enabling environment free from fear, threats and intimidation in order to enable the exercise of the right to freedom of association is particularly pivotal in the context of human rights defenders. The Declaration on Human Rights Defenders expressly recognizes the “prime responsibility and duty” of States to create all conditions necessary to ensure all persons under their jurisdiction, individually *and* in association with others, can enjoy all rights and freedom in practice.¹⁶¹ States are, therefore, required to ensure the protection of everyone, individually or in association with others, against any violence, threats, retaliation, discrimination, pressure or other arbitrary action as a consequence of their legitimate exercise of their rights as human rights defenders.¹⁶² Building upon the 1998 UN Declaration on Human Rights Defenders, a coalition of 18 international and regional human rights organizations embarked on a project resulting in Declaration +25, which reinforces and articulates the rights of human rights defenders and the obligations of States under international law. Declaration +25 provides a comprehensive assessment of obligations States are required to fulfill in order to ensure a safe and enabling environment for human rights defenders acting individually or in association with others. These include, among others: (i) ensuring the investigation and effective implementation of clearly defined sanctions for public officials that undermine the right to defend human rights, through action or omission and (ii) establishing, maintaining and adequately resourcing effective protection policies and mechanisms for human rights defenders at risk, in consultation with them.¹⁶³

As mentioned above, association rights must be upheld at both the national and international levels. This conclusion regarding the latter is endorsed by the United Nations Charter which acknowledges that the Economic and Social Council “may make suitable arrangements for consultation with non-governmental organizations which are concerned with

¹⁵⁹ UN General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai (A/69/365), para. 14.

¹⁶⁰ Concluding Observations: Belarus, CCPR/C/79/Add.86, 19/11/97, para. 19.

¹⁶¹ Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Rights and Fundamental Freedoms, A/RES/53/144 (1999), article 2.

¹⁶² Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Rights and Fundamental Freedoms, A/RES/53/144 (1999), article 12.

¹⁶³ Declaration on Human Rights Defenders +25, (2024), p. 12, <https://ishr.ch/wp-content/uploads/2024/06/20240619-DeclarationPlus25-ISHR.pdf>.

matters within its competence".¹⁶⁴ Similarly, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms acknowledges the right of everyone, individually and in association with others, at the national and international levels, to communicate with non-governmental and intergovernmental organizations.¹⁶⁵ Accordingly, as the Special Rapporteur on the Rights to Freedom of Assembly and of Association noted, the aforementioned organizations have an implicit corresponding obligation to take action on communications by civil society.¹⁶⁶

Consequently, protection of the right to freedom of association at the multilateral level requires securing the effective participation of civil society.¹⁶⁷ To this effect, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has previously expressed concern over the uneven level of civil society engagement and participation among various UN bodies.¹⁶⁸ As, for instance, ECOSOC resolution 1996/31 points out, in considering applications for consultative status with the UN, the Committee (and international organizations more broadly) "should ensure, to the extent possible, participation of non-governmental organizations from all regions and particularly from developing countries, in order to help to achieve a just, balanced, effective and genuine involvement of non-governmental organizations from all regions and areas of the world."¹⁶⁹

2. *Inter-American Human Rights System*

The right to exercise freedom of association, and the corresponding obligations of States in this area, have been interpreted by the IACtHR through its judgments, which are binding on all States that have recognized the Court's contentious jurisdiction. In parallel, the IACHR has developed the scope and content of this right through its thematic reports and statements, which operate as authoritative soft-law standards within the system.

The IACtHR has held that freedom of association enables individuals to create or participate in entities or organizations for the purpose of acting collectively to achieve various ends.¹⁷⁰ As established by the Court, and similarly to UN jurisprudence, the protection of

¹⁶⁴ Charter of the United Nations, 1 UNTS XVI, Article 71.

¹⁶⁵ Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Rights and Fundamental Freedoms, A/RES/53/144 (1999), Article 5(c).

¹⁶⁶ Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, A/69/365, para. 17.

¹⁶⁷ Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, A/69/365, para. 38.

¹⁶⁸ Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, A/69/365, para. 39.

¹⁶⁹ ECOSOC Resolution 1996/31, *Arrangements for Consultations with Non-Governmental Organizations*, Part I(5).

¹⁷⁰ Inter-American Court of Human Rights (IACtHR). *Case of Members of the Single Union of ECASA Workers V. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 6, 2024. Serie C No. 526, para. 200.

freedom of association imposes both negative and positive obligations on States. The primary negative obligation consists of refraining from arbitrary interference in the exercise of the right. This requires State authorities to abstain from actions that limit, obstruct, or distort the formation, functioning, and activities of associations.¹⁷¹ In practical terms, States must not dissolve organizations without a legitimate basis, impose disproportionate legal barriers to their creation, or coerce individuals into associating against their will.

Beyond this duty of non-interference, freedom of association entails positive obligations. In the Inter-American system, States must ensure the legal and factual conditions necessary for its effective exercise,¹⁷² including preventing undue restrictions on the ability to associate, protecting those who do so, and investigating violations of this freedom.¹⁷³

The IACtHR has also emphasized (as explored in more detail below) that States must guarantee that human rights defenders are able to freely exercise their freedom of association without fear of violence. Failure to do so can weaken the capacity of groups to organize in defense of their interests, which are ultimately interests of society as a whole.¹⁷⁴ In fact, the Court has gone further by clarifying that these positive obligations are not limited to conduct by State agents. In certain circumstances, they must also be adopted in the sphere of relations between private individuals, where the State knew or should have known of the risk and failed to act with due diligence.¹⁷⁵

Moreover, according to the IACtHR's jurisprudence, freedom of association has a dual dimension. On the one hand, it protects the individual right to associate freely and to use appropriate means to exercise that freedom.¹⁷⁶ On the other hand, it protects the collective dimension, namely the right of members of a group to pursue common goals together and to benefit from the collective exercise of the right.¹⁷⁷

¹⁷¹ IACtHR. *Advisory Opinion 27/21*, Judgement of May 5, 2021. Serie A No. 27, para. 121.

¹⁷² IACtHR. *Case of Huilcamán Paillama et al. V. Chile*. Merits, Reparations, and Costs. Judgment of June 18, 2024. Serie C No. 527, para. 243.

¹⁷³ IACtHR. *Case of Former Employees of the Judiciary V. Guatemala*. Preliminary Objections, Merits, and Reparations. Judgment of November 17, 2021. Series C No. 445, para. 111.

¹⁷⁴ IACtHR. *Case Human of Rights Defender et al. V. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Serie C No. 283, para. 128; *Case of Escaleras Mejía and Others V. Honduras*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2018. Serie C No. 361, para. 64.

¹⁷⁵ IACtHR. *Case of Huilca Tecse V. Peru*. Merits, Reparations, and Costs. Judgment of March 3, 2005. Serie C No. 121, para 121; IACtHR. *Case of Kawas Fernández V. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, para. 144.

¹⁷⁶ IACtHR. *Case of Huilca Tecse V. Peru*. Merits, Reparations, and Costs. Judgment of March 3, 2005. Serie C No. 121, paras. 70-2; IACtHR. *Case of Cantoral Huamani and García Santa Cruz V. Peru*, Preliminary Objections, Merits, Reparations, and Costs. Judgment of August, Judgment of July 10, 2007. Serie C No. 167, para. 148.

¹⁷⁷ IACtHR. *Case of Chitay Nech et al. V. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Serie C No. 212, párr. 115; IACtHR. *Case of Lagos del Campo V. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Serie C No. 340, para. 162.

In addition, rights arising from the representation of collective interests have a dual nature. They affect both the individual who exercises a mandate or representation and the collective that is being represented.¹⁷⁸ As a result, a violation of the representative's rights may simultaneously entail a violation of the rights of the group.

Freedom of Association and Participation in Public Affairs

The IACtHR has also held that freedom of association protects participation in public affairs by organizations other than political parties, particularly where such organizations enable legitimate and necessary political expression for groups of citizens who might otherwise be excluded from that participation.¹⁷⁹ In this regard, it has specifically addressed the relationship between freedom of association and certain groups and organizational forms, such as trade unions, human rights defenders. Its jurisprudence has examined freedom of association in connection with the defense of labor rights and trade union freedom, the work of human rights defenders and participation in civil society organizations, indigenous peoples and community associations, as well as in the context of social protest and the collective exercise of the right of peaceful assembly.

In the *Deras García v. Honduras* case, the IACtHR examined the persecution and extrajudicial execution of a Communist Party leader trade union activist targeted for his political and union activities.¹⁸⁰ The Court found that raids on his home, the persecution of him and his family, and his killing were intended to silence his opposition and end his activism,¹⁸¹ subjecting him to profound fear and a real, imminent risk to his life at the hands of State agents.¹⁸² The Court further concluded that such human rights violations also instill fear within the organizations to which victims belong, weakening their collective capacity to organize and defend their interests, particularly in contexts of impunity¹⁸³.

Similarly, in the *Case of González Méndez et al. v. Mexico*, the Court held that the enforced disappearance of an indigenous leader linked to the Zapatista Army of National Liberation, in a context of paramilitary persecution and State negligence, constituted a violation

¹⁷⁸ IACtHR. *Case of Huilca Tecse V. Peru*. Merits, Reparations, and Costs. Judgment of March 3, 2005. Serie C No. 121, paras. 70-2; IACtHR. *Case of Cantoral Huamani and García Santa Cruz V. Peru*, Preliminary Objections, Merits, Reparations, and Costs. Judgment of August, Judgment of July 10, 2007. Serie C No. 167, para. 148.

¹⁷⁹ IACtHR. *Case of Yatama V. Nicaragua*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 23, 2005. Serie C No. 127, para. 217.

¹⁸⁰ IACtHR. *Case of Deras García et al V. Honduras*. Merits, Reparations, Costs and Expenses. Judgment of August 25, 2022, para. 78

¹⁸¹ IACtHR. *Case of Deras García et al V. Honduras*. Merits, Reparations, Costs and Expenses. Judgment of August 25, 2022, para. 79

¹⁸² IACtHR. *Case of Deras García et al V. Honduras*. Merits, Reparations, Costs and Expenses. Judgment of August 25, 2022, para. 80.

¹⁸³ IACtHR. *Case of Deras García et al V. Honduras*. Merits, Reparations, Costs and Expenses. Judgment of August 25, 2022, para. 79.

of freedom of association.¹⁸⁴ The Court recognized that enforced disappearance can amount to a violation of freedom of association and can have a chilling effect on organizations, reducing their capacity to organize in defense of their interests, particularly in contexts of impunity.¹⁸⁵

Through this line of cases, the Court has clarified that freedom of association protects organizational forms that enable effective political participation, particularly for historically excluded groups, and that restrictions imposing organizational models alien to their identity or traditions may constitute unjustified limitations incompatible with a democratic society.

Freedom of Association and Human Rights Defenders

The IACtHR has repeatedly affirmed that Article 16 of the American Convention protects the right of all persons to freely form and participate in non-governmental organizations aimed at monitoring, reporting, and promoting human rights.¹⁸⁶ In this regard, violations of freedom of association often arise directly from human rights defense work.¹⁸⁷

The Court has therefore established that States have a duty to facilitate the necessary means for human rights defenders to freely carry out their activities, to protect them when they are subject to threats, to refrain from imposing obstacles that hinder their work, and to seriously and effectively investigate violations committed against them, combating impunity.¹⁸⁸

Furthermore, the Court has underscored that freedom of association can only be exercised fully in a context where human rights are respected and guaranteed, particularly the rights to life and personal integrity.¹⁸⁹ Accordingly, when an attack against a person's life or physical integrity is attributable to the State and is motivated by the legitimate exercise of freedom of association, such conduct may also constitute a violation of Article 16(1) of the American Convention.¹⁹⁰

In the *Case of Kawas Fernández v. Honduras*, the Court examined the murder of Blanca Kawas, an environmental activist and president of an ecological foundation, who was killed

¹⁸⁴ IACtHR. *Case of Gonzalez Mendez and Others V. Mexico*. Preliminary Exceptions, Merits, Reparations and Costs. Ruling of August 22, 2024. Serie C No. 532, paras. 180-4.

¹⁸⁵ IACtHR. *Case of Gonzalez Mendez and Others V. Mexico*. Preliminary Exceptions, Merits, Reparations and Costs. Ruling of August 22, 2024. Serie C No. 532, para. 181.

¹⁸⁶ IACtHR. *Case of Kawas Fernández V. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, para. 146.

¹⁸⁷ IACtHR. *Case of Kawas Fernández V. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, para. 145.

¹⁸⁸ IACtHR. *Case of Kawas Fernández V. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, para. 145. IACtHR. *Case of Nogueira de Carvalho and Other V. Brazil*. Preliminary Objections and Merits. Judgment of November 28, 2006. Serie C No. 161, párr. 77. IACtHR. *Case of Fleury et al. V. Haiti*. Merits and Reparations. Judgment of November 23, 2011. Serie C. 236, para. 99.

¹⁸⁹ IACtHR. *Case of Huilca Tecse V. Peru*. Merits, Reparations, and Costs. Judgment of March 3, 2005. Serie C. No 121, para. 76; IACtHR. *Case of Members and Militants of the Patriotic Union V. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 27, 2022. Serie C. No. 4555, para. 316.

¹⁹⁰ IACtHR. *Case of García Santa Cruz and Sanchez Silvestre V. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2013, para. 147.

because of her work defending the environment.¹⁹¹ The Court held that her death clearly resulted in a deprivation of her right to freely associate and declared Honduras internationally responsible not only for failing to protect her life but also for violating her freedom of association.¹⁹² The Court further noted that her murder had an intimidating effect on other individuals engaged in environmental defense in Honduras, an effect that was exacerbated by the persistence of impunity.¹⁹³

Similarly, in the *Case of Fleury et al. v. Haiti*, the Court examined the case of Lysias Fleury, a lawyer and human rights defender with the organization Justice and Peace who was illegally detained, tortured, and threatened by police in 2002 in retaliation for his human rights work.¹⁹⁴ The Court found Haiti responsible for multiple human rights violations, including the violation of Fleury's freedom of association, noting that the abuse explicitly targeted him in his capacity as a human rights defender.¹⁹⁵ As a result of these acts, Mr. Fleury was forced into hiding and ultimately fled the country, preventing him from continuing his work and participation in the organization.¹⁹⁶ The Court concluded that the State failed to guarantee his freedom of association because the violations were linked to his work as a human rights defender.¹⁹⁷

In *Members of the José Alvear Restrepo Lawyers' Collective v. Colombia*, the Court examined a pattern of attacks and delegitimization against human rights defenders in Colombia between 2003 and 2009, particularly targeting the José Alvear Restrepo Lawyers' Collective (CAJAR).¹⁹⁸ The Court found that the State carried out arbitrary intelligence operations against the alleged victims to discredit and weaken the collective because of their human rights work and critical stance toward government policies.¹⁹⁹ These actions disrupted the organization's activities and forced its members to divert time and resources to address security risks, thereby impairing their freedom of association.²⁰⁰ The Court found that Colombian authorities

¹⁹¹ IACtHR. *Case of Kawas Fernández V. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, paras. 152-5

¹⁹² IACtHR. *Case of Kawas Fernández V. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, paras. 152-5

¹⁹³ IACtHR. *Case of Kawas Fernández V. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, para. 153.

¹⁹⁴ IACtHR. *Case of Fleury et al. V. Haiti*. Merits and Reparations. Judgment of November 23, 2011. Serie C. 236, para. 100.

¹⁹⁵ IACtHR. *Case of Fleury et al. V. Haiti*. Merits and Reparations. Judgment of November 23, 2011. Serie C. 236, para. 100.

¹⁹⁶ IACtHR. *Case of Fleury et al. V. Haiti*. Merits and Reparations. Judgment of November 23, 2011. Serie C. 236, para. 100.

¹⁹⁷ IACtHR. *Case of Fleury et al. V. Haiti*. Merits and Reparations. Judgment of November 23, 2011. Serie C. 236, para. 102.

¹⁹⁸ IACtHR. *Case of Members of José Alvear Restrepo Lawyers' Collective V. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 18, 2023, para. 961.

¹⁹⁹ IACtHR. *Case of Members of José Alvear Restrepo Lawyers' Collective V. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 18, 2023, para. 961.

²⁰⁰ IACtHR. *Case of Members of José Alvear Restrepo Lawyers' Collective V. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 18, 2023, para. 963.

deliberately sought to neutralize and limit the Collective's work and its members' freedom of association, both individually and collectively, through surveillance, stigmatization, threats, and intimidation.²⁰¹

3. African Human Rights System

The African system has fleshed out States' obligations regarding freedom of association through the African Commission decisions, as well as soft law instruments such as the 2017 Guidelines on Freedom of Association and Assembly in Africa,²⁰² the African Commission's Resolution 475 from 2021 (Resolution 475),²⁰³ and the African Commission's 2014 Report of the Study Group on Freedom of Association & Assembly in Africa.²⁰⁴ The 2017 Guidelines were "aimed at crystallising human rights standards" and were developed by the African Commission to be used by stakeholders.²⁰⁵ Resolution 475 came amidst the COVID-19 pandemic, a global trend towards the reduction of civic space, the adoption of laws and regulations restricting the activities of civil society organizations in Africa, and crackdowns on protests and peaceful demonstrations by several countries on the continent, a context which frames its clarifications on freedom of association.²⁰⁶

On the scope of the right of freedom of association, the African Commission's decisions affirm, similarly to the Inter-American human rights system's jurisprudence, that the right is "both an individual and collective right which allows individuals to join together to pursue and further collective interests in groups."²⁰⁷ The 2017 Guidelines further indicate that every person has the right to establish an association with another, without any limitations violating the right to equality and the guarantee of nondiscrimination.²⁰⁸

According to African Commission decisions, freedom of association is "first and foremost a duty for the State to abstain from interfering with the free formation of associations" and affirms that "there must always be a general capacity for citizens to join, without State

²⁰¹ IACtHR. *Case of Members of José Alvear Restrepo Lawyers' Collective V. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 18, 2023, paras. 961-4.

²⁰² African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017.

²⁰³ African Commission on Human and Peoples' Rights, Resolution on the Need to Protect Civic Space and Freedom of Association and Assembly, ACHPR/Res. 475 ([EXTOS/XXXI](#)) 2021 (10 March 2021).

²⁰⁴ African Commission on Human and Peoples' Rights, Report on the Study Group on Freedom of Association & Assembly in Africa, April 2014.

²⁰⁵ African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, Foreword.

²⁰⁶ African Commission on Human and Peoples' Rights, Resolution on the Need to Protect Civic Space and Freedom of Association and Assembly, ACHPR/Res. 475 ([EXTOS/XXXI](#)) 2021 (10 March 2021).

²⁰⁷ Monim Elgak and Others v. Sudan, Communication 379/09, African Commission on Human and Peoples' Rights (14 March 2014), para. 118.

²⁰⁸ African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 9.

interference, in associations in order to attain various ends.”²⁰⁹ In this way, as the Commission has noted, the right is twofold, having a positive character, which entails the obligation of States to “secure the effective enjoyment of the right [of freedom of association],” in addition to the negative obligation to “refrain from arbitrary interference with the exercise of the right.”²¹⁰ As such, the 2017 Guidelines affirm that “national 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” and should be developed and amended “on the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society.”²¹¹ The 2014 Report adds that “law or regulation should not dictate the internal organization of associations, which is a matter for the associations themselves.”²¹²

Following the initial formation of associations, States must continue to take steps to protect freedom of association and organizations established within the country. The African Commission has found 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.”²¹³ Additionally, it has held that the right to freedom of association “includes a prohibition against physical attack based on affiliation with any association.”²¹⁴ The 2017 Guidelines reflect this idea, specifying that States must respect the right of associations to carry out their activities “without threats, harassment, interference, intimidation or reprisals of any kind,” and that States must “protect associations... from threats, harassment, interference, intimidation or reprisals by third parties and non-state actors.”²¹⁵ The African Commission has recently expanded the interpretation of this obligation to mean that States have a duty to “establish an environment conducive to exercising this right without fear and encumbrances,” which includes ensuring that people are free to form associations and engage independently in activities without interference from non-state actors, in addition to the State.²¹⁶

²⁰⁹ Civil Liberties Organisation v. Nigeria, Communication 101/93, African Commission on Human and Peoples’ Rights (29 July 2014), para. 15.

²¹⁰ Dr. Amin Mekki Medani and Mr. Farouq Abu Eissa v. Sudan, Communication 511/15, African Commission on Human and Peoples’ Rights (9 November 2022), para. 264.

²¹¹ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 7.

²¹² African Commission on Human and Peoples’ Rights, Report on the Study Group on Freedom of Association & Assembly in Africa, April 2014, p. 71.

²¹³ Dr. Amin Mekki Medani and Mr. Farouq Abu Eissa v. Sudan, Communication 511/15, African Commission on Human and Peoples’ Rights (9 November 2022), para. 264 (Citing Ouranio Toxo and Others v. Greece in the European Court of Human Rights).

²¹⁴ Robert F. Kennedy Human Rights and Institute for Human Rights in Africa v. Ethiopia, Communication 599/16, African Commission on Human and Peoples’ Rights (9 November 2023), para. 199 (citing Gabriel Shumba v. Zimbabwe).

²¹⁵ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, paras. 29-30.

²¹⁶ Robert F. Kennedy Human Rights and Institute for Human Rights in Africa v. Ethiopia, Communication 599/16, African Commission on Human and Peoples’ Rights (9 November 2023), paras. 197, 201; Jennifer Williams and

Resolution 475 expanded on States' obligations during the COVID-19 pandemic and provides guidance for similar emergency situations. The Resolution asked States to "refrain from using the State of Emergency Declarations related to COVID-19 or the fight against terrorism to justify the introduction of repressive measures to restrict the freedoms that constitute the civic space," and "[called] upon states to ensure that the right to a civic space for populations and all individuals is always protected in all situations of crisis."²¹⁷

Regarding the activities and funding of associations, the 2017 Guidelines state that associations must be able to determine their purposes and activities freely and be able to "engage in the political, social and cultural life of their societies, and to be involved in all matters pertaining to public policy and public affairs."²¹⁸ Furthermore, associations "shall be self-governing and free to determine their internal management structures, rules for selecting governing officers, internal accountability mechanisms and other internal governance matters."²¹⁹ According to the Guidelines, associations also have the right to "seek, receive and use funds freely in compliance with non-for-profit aims," and have the right to "seek and receive funds from local private sources, the national state, foreign states, international organizations, transnational donors and other external entities."²²⁰ States may not "require associations to obtain authorization prior to receipt of funding."²²¹ States also should "provide tax benefits, and public support where possible, to not-for-profit associations."²²²

When overseeing associations, States have further obligations. The 2014 Report notes that oversight bodies regulating associations should be "impartial and apolitical" and created "in accordance with clear criteria laid out by law and with sharply constrained discretion."²²³ These bodies should not be given "excessive powers of oversight relative to associations."²²⁴ The 2017 Guidelines note that "[authorities] shall respect the right to privacy of associations and shall not

²¹⁷ Others v. Zimbabwe, Communication 446/13, African Commission on Human and Peoples' Rights (25 February 2021), para. 124.

²¹⁸ African Commission on Human and Peoples' Rights, Resolution on the Need to Protect Civic Space and Freedom of Association and Assembly, ACHPR/Res. 475 ([EXTOS/XXXI](#)) 2021 (10 March 2021), paras. 2, 4.

²¹⁹ African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, paras. 23, 25.

²²⁰ African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 36.

²²¹ African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, paras. 37-38.

²²² African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 41.

²²³ African Commission on Human and Peoples' Rights, Report on the Study Group on Freedom of Association & Assembly in Africa, April 2014, p. 71.

²²⁴ African Commission on Human and Peoples' Rights, Report on the Study Group on Freedom of Association & Assembly in Africa, April 2014, p. 71.

subject them to undue surveillance.”²²⁵ The African Commission has also clarified that states must not convict members and employees of organizations of crimes based on their association with an organization (guilt by association).²²⁶

The African Commission’s decisions highlight several particular situations amounting to a violation of states’ obligations regarding the right to freedom of association. In *Dr. Amin Mekki Medani and Mr. Farouq Abu Eissa v. Sudan*, authorities’ raid of the offices of Sudanese human rights defenders and their temporary detention and confiscation of documents and laptops constituted an interference with their freedom of association, as it “[aimed] to intimidate the Victims, and deter other associations from openly expressing on highly controversial issues affecting Sudan.”²²⁷ In *John D. Ouko v. Kenya*, the Commission found that the repeated political persecution (mainly in the form of detention by authorities) of a student leader, causing him to flee the country, amounted to a violation of his right to freedom of association.²²⁸ The Commission also found in *Amnesty International v. Zambia* that the deportation of two men denied them the right to freedom of association because they could no longer associate with their colleagues and participate in activities of a political party.²²⁹

C. Restrictions on the Exercise of the Freedom of Association

International law and standards affirm that freedom of association may be restricted in certain limited circumstances, as detailed in this subsection.

1. Human Rights Committee Jurisprudence

In accordance with Article 22 paragraph 2 of the ICCPR, any restriction on the right to freedom of association, to be valid, must cumulatively meet the following conditions: (a) it must be provided by law; (b) it may only be imposed for one of the purposes set out in paragraph 2; and (c) it must be “necessary in a democratic society” for achieving one of these purposes.²³⁰ The purposes set out in Article 22(2) include the following: national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

²²⁵ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 35.

²²⁶ International PEN and Others v. Nigeria, Communication 137/94-139/94-154/96-161/97, African Commission on Human and Peoples’ Rights (31 October 1998), para. 108.

²²⁷ Dr. Amin Mekki Medani and Mr. Farouq Abu Eissa v. Sudan, Communication 511/15, African Commission on Human and Peoples’ Rights (9 November 2022), para. 265.

²²⁸ John D. Ouko v. Kenya, Communication 232/99, African Commission on Human and Peoples’ Rights (6 November 2000), paras. 29-30.

²²⁹ Amnesty International v. Zambia, Communication 212/98, African Commission on Human and Peoples’ Rights (5 May 1999), para. 57.

²³⁰ Article 22(2) ICCPR. See also e.g. *Lee v. Republic of Korea* (CCPR/C/84/D/1119/2002), para. 7.2.

(a) Prescribed by Law

Under Article 22(2), any restriction placed on the exercise of the right to freedom of association must be “prescribed by law”. In General Comment No. 22, the Human Rights Committee offered some guidance on the ‘prescribed by law’ formula shared by Articles 18 and 22, to the effect that ‘[l]imitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed’.²³¹ Academic commentary suggests that “prescribed by law” may be said to differ from “in conformity with the law”, which is found, for instance, in context of Article 21 (Freedom of Assembly).²³² The latter serves a particular purpose with regard to Article 21, namely to allow administrative decisions as an expedient in appropriate circumstances.²³³ Moreover, to satisfy the ‘prescribed by law’ standard, a restriction must not be unduly vague and must be clear enough that ordinary persons can understand what is required of them.²³⁴

With regards to the granting of discretion to officials, the Human Rights Committee has not yet developed significant Article 22 jurisprudence.²³⁵ However, it has made remarks on such objectionable grants in the closely related area of freedom of expression. More specifically, the Committee has highlighted, in the similar context of freedom of expression, that laws vesting effectively unfettered discretion in officials as to their application (such as certain registration or licensing regimes for the media)²³⁶ cannot satisfy the “prescribed by law” standard.

(b) Necessary in a Democratic Society

As the Human Rights Committee has clarified, the “mere existence of reasonable and objective justifications for limiting the right to freedom of association is not sufficient” in order for a restriction to the right not to result in a violation.²³⁷ The relevant State party must also demonstrate that the prohibition of an association is necessary “to avert a real and not only hypothetical danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose.”²³⁸ As far as the reference to ‘democratic society’ in Article 22(2) is concerned, the Committee has explained in multiple instances that, in

²³¹ CCPR General Comment No 22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add/4, 30 July 1993, para. 8.

²³² Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 620.

²³³ Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 620.

²³⁴ By analogy to General Comment No. 27: Freedom of Movement (Article 12), HRI/GEN/1/Rev.9 (Vol. I), para. 13 and General Comment No. 34: Freedoms of Opinion and Expression (Article 19), CCPR/C/GC/34, 12 September 2011, para. 25.

²³⁵ *Kungurov v. Uzbekistan* (CCPR/C/102/D/1478/2006), para. 3.8.

²³⁶ Concluding Observations: Lesotho, CCPR/C/79/Add. 106, 08/04/1999, para. 23.

²³⁷ *Belyatsky v. Belarus* (CCPR/C/84/D/1119/2002), para. 7.3

²³⁸ *Lee v. Korea* (CCPR/C/84/D/119/2002), para 7.2.

its opinion, this reference indicates that the “existence and operation of associations, including those which promote ideas not necessarily favourably viewed by the government or the majority of the population, is a cornerstone of a democratic society.”²³⁹ This clarification ensures respect for the principle of pluralism in a democratic society.

Dissolution of an association or denial of their legal existence represents the most extreme forms of restriction under Article 22.²⁴⁰ Total prohibition has been described as permissible “only when milder measures for restricting the sphere of activities are insufficient,” with total prohibition reserved for “State-threatening organisations,” i.e. those “violating Art. 20 or others whose activities aim at the destruction of the rights of the Covenant within the meaning of Art. 5(1).”²⁴¹ The Committee has noted that *de facto* restrictions which amount to dissolution have to be assessed in light of the consequences which arise for the authors and the relevant association.²⁴²

As far as denial of registration applications is concerned, this must also satisfy the requirements under Article 22(2). Laws requiring civil society organizations to register do not necessarily violate freedom of expression; however, these laws must be “transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration..., and [be] in conformity with international human rights law.”²⁴³ Furthermore, they should not be compulsory and organizations should be able to exist without having to register “if they so wish.”²⁴⁴ Decisions to reject applications for registration should be “clearly motivated and duly communicated in writing to the applicant,” and associations whose registrations have been rejected should have the opportunity to challenge the decision.²⁴⁵ Unregistered associations should be allowed to carry out their activities, and governmental insistence that all groups must register “reflects the intention to control [associations’] activities and filter groups that are critical of government policies.”²⁴⁶ Similarly, the ECtHR has found reasons employed for the denial of registration application which are not reasonably foreseeable to be problematic.²⁴⁷

²³⁹ Zvozskov *et al.* (CCPR/C/88/D/1039/2001), para 7.2.

²⁴⁰ Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 622.

²⁴¹ Manfred Nowak, *CCPR Commentary*, 2nd rev. edn. (Engel 2005), p. 505-506.

²⁴² Korneenko *et al. v. Belarus* (CCPR/C/88/D/1274/2004) para. 7.4.

²⁴³ Human Rights Council, Resolution Adopted by the Human Rights Council: Protecting Human Rights Defenders (A/HRC/RES/22/6), para. 8.

²⁴⁴ UN General Assembly, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekagya (A/64/226) para. 59.

²⁴⁵ Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai (A/HRC/20/27), para. 61.

²⁴⁶ UN General Assembly, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekagya (A/64/226), para. 60.

²⁴⁷ European Court of Human Rights, *Gaweda v. Poland* (application No. 26229/95), judgment of 14 March 2002 (which concerned showing physical presence in all regions). *Kungurov v. Uzbekistan* (CCPR/C/102/D/1478/2006), para. 3.9.

The Human Rights Committee has consistently challenged States over the compatibility with Article 22 of laws requiring prior authorization for exercising the right to freedom of association. For instance, the Committee noted with concern that freedom of association and peaceful assembly could not be exercised without prior authorization in Chad.²⁴⁸ Moreover, in relation to Egypt, the Committee stated that the State party “should review its legislation and practice in order to enable non-governmental organizations to discharge their functions without impediments which are inconsistent with the provisions of art. 22 of the Covenant, such as prior authorisations [...].”²⁴⁹ The Committee has recognized how “innocent-seeming” registration regimes can be operated by officials in a manner as to effectively amount to prior authorization regimes; for instance, in relation to Lebanon, the Committee noted that “while legislation governing the incorporation and status of associations is on its face compatible with article 22... *de facto* State party practice has restricted the right to freedom of association through a process of prior licensing and control.”²⁵⁰

The compatibility of the following State measures with Article 22 has also been challenged by the Human Rights Committee: imposition of penalties for operating unregistered associations,²⁵¹ lack of a right to appeal against a refusal, impediments when applying for registration and vague grounds for cancelling registrations.

c) Legitimate Aim

According to Article 22(2), the legitimate aims for which a restriction to the exercise of the right to freedom of association can be imposed include the following: national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. An argument that the Human Rights Committee has previously foreclosed concerned the imposition of restrictions to the functioning of a human rights organization due to the fact that the human rights activities proposed by an association are within the remit of certain State entities.²⁵² This has not been recognized as a legitimate aim within the context of Article 22(2) by the Committee.

With regards to national security, it may only be invoked in response to a specific threat, not some hypothetical danger.²⁵³ In *Jeong-Eun Lee v. Korea*, the author suffered criminal sanctions due to his membership in Hanchongnyeon, a nationwide student association pursuing

²⁴⁸ Concluding Observations: Chad, CCPR/C/TCD/CO/1, 11 August 2009, para. 29.

²⁴⁹ Concluding Observations: Egypt, CCPR/CO/76/EGY, 28/11/2002, 31 October 2002, para. 21.

²⁵⁰ Concluding Observations: Lebanon, CCPR/CO/79/Add.78, 01/04/1997, 5 May 1997, para. 27.

²⁵¹ Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 625.

²⁵² *Kungurov v. Uzbekistan* (CCPR/C/102/D/1478/2006), para. 3.9.

²⁵³ Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 623.

the objectives of democratization of Korean society and national reunification, which the State declared to be an “enemy benefiting group.”²⁵⁴ The national security law enacted in the Republic of Korea provided for the prohibition of support for association which ‘may’ endanger the existence and security of the State and its democratic order. In this case, the Committee found that the State party had invoked national security as a legitimate aim for the restriction but had not shown that punishing the author for his membership in the group was necessary to avert a real danger to the national security and democratic order of the State party.²⁵⁵ This indicates that the precise nature of the threat posed by exercise of the right to freedom of association in question must be specified by the State party. These principles were reaffirmed in *Saidov v. Tajikistan*, where a prohibition against a prominent centrist politician starting a political party on the grounds of national security was found to be disproportionate, and the Committee highlighted that the State party should have further demonstrated that the prohibition of the association was necessary to avert a real danger to national security or public order.²⁵⁶

As far as public order is concerned, it may serve as a legitimate aim for restrictions in the case of strikes, where the perceived harm concerns primarily economic damage to the State party.²⁵⁷ Public-order related aims have been referenced by States also in the context of registration procedures for associations, such as requiring the filing of documents disclosing the purpose and objects of the relevant entity.²⁵⁸ However, similarly to the principle established in *Jeong-Eun Lee v. Korea*, the State party must demonstrate the compatibility of the restriction with all the Article 22(2) criteria, including the necessity to avert a real and not only hypothetical danger. As a result, dissolution of a human rights organization by the State party due to public order-related domestic law was found by the Committee to be disproportionate, in view of the severe consequences of dissolution.²⁵⁹

Protection of public health and morals is also a legitimate aim that has been invoked by State parties in the context of registration requirements. For instance, in *Malakhovsky and Pikul v. Belarus*, domestic law required an approved legal address as a precondition for registration, which had to satisfy health and fire safety standards suitable for purposes such as religious ceremonies.²⁶⁰ Given that the Committee conducted an analysis under Article 18, finding a violation, it did not consider this matter under Article 22. However, presumably the Committee would conduct a proportionality analysis in this context (in a similar fashion as previously done

²⁵⁴ *Lee v. Korea* (CCPR/C/84/D/119/2002), para. 2.2.

²⁵⁵ *Lee v. Korea* (CCPR/C/84/D/119/2002), para. 7.3.

²⁵⁶ *Saidov v. Tajikistan* (CCPR/C/122/D/2680/2015), para. 9.9

²⁵⁷ Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 623.

²⁵⁸ See *Kungurov v. Uzbekistan* (CCPR/C/102/D/1478/2006) and *Mikhailovskaya and Volchek v. Belarus* (CCPR/C/111/D/1993/2010).

²⁵⁹ *Belyatsky et al. v. Belarus* (CCPR/C/90/D/1296/2004), para 9.2.

²⁶⁰ *Malakhovsky and Pikul v. Belarus* (CCPR/C/84/D/1207/2003).

in relation to national security and public order) in order to determine whether the restriction imposed was necessary to address a real danger.

2. *Inter-American Human Rights System*

Article 16 of the American Convention on Human Rights, which enshrines freedom of association, also establishes the conditions under which this right may be restricted, similar to the ones set out in the ICCPR. Article 16(2) of the Convention provides that freedom of association “may be subject only to the restrictions prescribed by law that are necessary in a democratic society, in the interests of national security, public order, or for the protection of public health or morals or the rights and freedoms of others.” The IACtHR has consistently affirmed this principle, emphasizing the clarity of the Convention in permitting only restrictions that are lawful, necessary, and aimed at protecting fundamental democratic interests.²⁶¹

In a similar manner to Article 22 ICCPR, the IACtHR has established that any restriction on human rights must be clearly prescribed by law. Such law must be adopted “in accordance with the procedures and by the organs established in the Constitution of each State Party”.²⁶² The Court has further clarified that the restrictive measure must be provided for by law in both a formal and a material sense. This means that it must derive from a legal norm adopted through the ordinary legislative process of the State and must be sufficiently clear and accessible to those subject to it.²⁶³

The Court has also held that the expression “laws,” as used in Article 30 of the Convention, cannot be interpreted as synonymous with any legal norm whatsoever. To do so would amount to accepting that fundamental rights may be restricted solely by a determination of public authority, without any formal limitation other than the adoption of general provisions. Instead, the requirement of law must be understood as a necessary limitation on the interference of public power in the sphere of human rights and fundamental freedoms.²⁶⁴ In this regard, the Court has emphasized that the Convention does not merely require the existence of a law for restrictions on rights and freedoms to be legally permissible, but also demands that such laws be enacted for reasons of general interest and for the purposes for which they were established.²⁶⁵

²⁶¹ IACtHR. *Case of Baena Ricardo and Others V. Panama*. Merits, Reparations, and Costs. Judgment of February 2, 2001. Serie C No. 72, para. 168.

²⁶² IACtHR. *Advisory Opinion OC-6/86. The word “Laws” in article 30 of the American Convention on Human Rights*. Judgment of May 9, 1986, paras. 27, 32.

²⁶³ IACtHR. *Advisory Opinion OC-6/86. The word “Laws” in article 30 of the American Convention on Human Rights*. Judgment of May 9, 1986, paras. 27, 32.

²⁶⁴ IACtHR. *Case of Baena Ricardo and Others V. Panama*. Merits, Reparations, and Costs. Judgment of February 2, 2001. Serie C No. 72, para. 169.

²⁶⁵ IACtHR. *Case of Baena Ricardo and Others V. Panama*. Merits, Reparations, and Costs. Judgment of February 2, 2001. Serie C No. 72, para. 170.

In *Yatama V. Nicaragua*, the IACtHR examined the arbitrary exclusion of members of the indigenous political organization YATAMA from municipal elections based on discriminatory legal requirements. The Court recognized that YATAMA enabled legitimate and necessary political expression for groups of citizens who would otherwise be excluded from participation in public affairs.²⁶⁶ It further held that the requirement that candidates participate through a political party imposed a form of organization that was alien to the customs, traditions, and practices of the indigenous communities represented by YATAMA, as a condition for exercising the right to political participation.²⁶⁷ The IACtHR found that the State failed to justify this restriction as necessary to satisfy a compelling public interest and concluded that it unlawfully obstructed the rights of YATAMA members to be elected and to participate in public affairs.²⁶⁸

Another example is *Baena Ricardo et al. V. Panama*, where the IACtHR examined the mass dismissal of 270 public employees, many of whom were trade union leaders, through the retroactive application of a law, Law No. 25, following their participation in protests against the government. The Court observed that the employees were dismissed for acts that did not constitute grounds for dismissal under the legislation in force at the time of the events, that the law applied was enacted fifteen days after the facts occurred, that the legal framework protecting trade union immunity was not observed, and that additional measures were adopted, including the obstruction of union premises and the freezing of bank accounts.²⁶⁹ In light of these factors, the Court found that the measures adopted by the State were not necessary to safeguard public order in the context of the events, nor were they compatible with the principle of proportionality.²⁷⁰ Accordingly, the Court concluded that the measures failed to meet the requirement of necessity in a democratic society.²⁷¹

In *Escher et al. v Brazil*, the IACtHR examined the interception and disclosure of telephone communications of members of two rural workers' associations, COANA and ADECON, carried out by the military police.²⁷² Although the State claimed that the purpose of the interceptions were for criminal investigations, the Court found no evidence that the stated objectives were actually pursued.²⁷³ The information presented to the judge authorizing the

²⁶⁶ IACtHR. *Case of Yatama V. Nicaragua*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 23, 2005. Serie C No. 127, para. 217.

²⁶⁷ IACtHR. *Case of Yatama V. Nicaragua*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 23, 2005. Serie C No. 127, para. 217.

²⁶⁸ IACtHR. *Case of Yatama V. Nicaragua*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 23, 2005. Serie C No. 127, para. 218.

²⁶⁹ IACtHR. *Case of Baena Ricardo and Others V. Panama*. Merits, Reparations, and Costs. Judgment of February 2, 2001. Serie C No. 72, para. 160.

²⁷⁰ IACtHR. *Case of Baena Ricardo and Others V. Panama*. Merits, Reparations, and Costs. Judgment of February 2, 2001. Serie C No. 72, para. 172.

²⁷¹ IACtHR. *Case of Baena Ricardo and Others V. Panama*. Merits, Reparations, and Costs. Judgment of February 2, 2001. Serie C No. 72, para. 172.

²⁷² IACtHR. *Case of Escher et al. V. Brazil*. Preliminary objection, merits, reparations and costs. Judgment of July 6, 2009. Serie C No. 200, para. 174.

²⁷³ IACtHR. *Case of Escher et al. V. Brazil*. Preliminary objection, merits, reparations and costs. Judgment of July 6, 2009. Serie C No. 200, para. 174.

surveillance did not relate to the alleged crimes, and the recorded excerpts bore no connection to any legitimate investigative purpose.²⁷⁴ The IACtHR concluded that the interceptions failed to meet the legal requirements and did not pursue a legitimate aim, instead resulting in the surveillance of the association members' activities.²⁷⁵

3. African Human Rights System

Several of the African Commission's decisions spell out the scope of restrictions of freedom of association in the African human rights system. These decisions are further buttressed by the previously mentioned 2017 Guidelines on Freedom of Association and Assembly in Africa and the African Commission's 2014 Report of the Study Group on Freedom of Association & Assembly in Africa.

In regards to restricting and regulating the right to freedom of association, African Commission decisions have clarified that States have the right to "regulate, through their national legislation," freedom of association.²⁷⁶ However, authorities "should not enact provisions which would limit the exercise of this freedom," nor should they "override constitutional provisions or undermine fundamental rights guaranteed by the Constitution [of States] and international human rights standards."²⁷⁷ According to the Commission, international obligations "should always have precedence over national legislation."²⁷⁸

Similarly to the the Inter-American framework and the Human Rights Committee's jurisprudence, the African Commission's decisions and the 2017 Guidelines make it clear that restrictions of the freedom of association must be prescribed by law, justified under Article 27 of the African Charter, absolutely necessary to achieve the stated objective, and a "proportionate means of achieving that purpose within a democratic society"; otherwise, the limitations will be considered arbitrary.²⁷⁹ Justifications for a restriction of freedom of association given under

²⁷⁴ IACtHR. *Case of Escher et al. V. Brazil*. Preliminary objection, merits, reparations and costs. Judgment of July 6, 2009. Serie C No. 200, para. 176.

²⁷⁵ IACtHR. *Case of Escher et al. V. Brazil*. Preliminary objection, merits, reparations and costs. Judgment of July 6, 2009. Serie C No. 200, para. 178.

²⁷⁶ Interights and Others v. Mauritania, Communication 242/01, African Commission on Human and Peoples' Rights (4 June 2004), para. 76.

²⁷⁷ Civil Liberties Organisation v. Nigeria, Communication 101/93, African Commission on Human and Peoples' Rights (29 July 2014), para. 16; *see also* Gabriel Shumba v. Zimbabwe, Communication 288/04, African Commission on Human and Peoples' Rights (2 May 2012), para. 186; Lawyers for Human Rights v. Swaziland, Communication 251/02, African Commission on Human and Peoples' Rights (11 May 2025), para. 60.

²⁷⁸ Interights and Others v. Mauritania, Communication 242/01, African Commission on Human and Peoples' Rights (4 June 2004), para. 77.

²⁷⁹ Monim Elgak and Others v. Sudan, Communication 379/09, African Commission on Human and Peoples' Rights (14 March 2014), para. 118; *see also* Huri Laws v. Nigeria, Communication 225/98, African Commission on Human and Peoples' Rights (6 November 2000), para. 48; Interights and Others v. Mauritania, Communication 242/01, African Commission on Human and Peoples' Rights (4 June 2004), para. 78; African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 24.

Article 27 of the African Charter are “due regard to rights of others, collective security, morality and common interest.”²⁸⁰ As per the African Commission’s 2014 Report, these restrictions prescribed by law must comply with the principle of legality, meaning “any limitations must not be overly broad or vague,” a similar requirement to that under Article 22 of the ICCPR.²⁸¹

Many of the African Commission’s cases serve as examples of what is deemed a disproportionate or unnecessary restriction. In *Huri Laws v. Nigeria* the Commission affirmed that arrests and detentions of an organization’s staff, in addition to raids and searches of an organization’s offices, constituted a disproportionate regulation of the right to freedom of association.²⁸² In *Law Offices of Ghazi Suleiman v. Sudan*, the Commission found that preventing human rights defenders from gathering with others to discuss human rights issues was a violation of the right to freedom of association.²⁸³ In *Momin Elgak & Others v. Sudan*, because Sudan was unable to identify any information indicating that the activities of an organization endangered national security, morality, or the rights of other people, the Commission found that freezing the organization’s bank accounts, forcefully closing the organization and intimidating its members were “unjustifiable and arbitrary.”²⁸⁴ On suspension and dissolution, the 2017 Guidelines add 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.”²⁸⁵

The African Commission considers general prohibitions on the right to associate in all places (without special permission from the authorities) “disproportionate to the measures required by the government to maintain public order, security, and safety.”²⁸⁶ Its 2014 Report reflects this position against “blanket restrictions,” and further asserts that associations should be “expressly permitted, *inter alia*, to engage on matters relating to politics, public policy, and human rights, as well as to conduct fundraising activities.”²⁸⁷

Regarding labelling organizations “criminal” organizations, the African Commission has held that “any law on associations should include an objective description that makes it possible

²⁸⁰ African Union, African Charter on Human and People’s Rights (1981), Article 27(2).

²⁸¹ African Commission on Human and Peoples’ Rights, Report on the Study Group on Freedom of Association & Assembly in Africa, April 2014, p. 71.

²⁸² *Huri Laws v. Nigeria*, Communication 225/98, African Commission on Human and Peoples’ Rights (6 November 2000), paras. 3-4, 48-49.

²⁸³ *Law Offices of Ghazi Suleiman v. Sudan*, Communication 228/99, African Commission on Human and Peoples’ Rights (29 May 2003), para. 56.

²⁸⁴ *Monim Elgak and Others v. Sudan*, Communication 379/09, African Commission on Human and Peoples’ Rights (14 March 2014), para. 116-19.

²⁸⁵ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 58.

²⁸⁶ *Amnesty International and Others v. Sudan*, Communication 48/90-50/91-52/91-89/93, African Commission on Human and Peoples’ Rights (15 November 1999), para. 82.

²⁸⁷ African Commission on Human and Peoples’ Rights, Report on the Study Group on Freedom of Association & Assembly in Africa, April 2014, p. 71.

to determine the criminal nature of a fact or organisation.”²⁸⁸ States also should not impose criminal sanctions in the context of laws governing not-for-profit associations, although associations may be sanctioned criminally under a penal code.²⁸⁹ Sanctions generally “shall be applied only in narrow and lawfully prescribed circumstances, shall be strictly proportionate to the gravity of the misconduct in question, and shall only be applied by an impartial, independent and regularly constituted court.”²⁹⁰ According to the 2017 Guidelines, when an association is rightfully sanctioned for breaching regulations, “monetary penalties shall be avoided to the extent possible,” and rather the desirable sanction should be compliance with the requirement.²⁹¹

Registration requirements fall under the proportionality umbrella within the African human rights framework, as demonstrated in the 2017 Guidelines and the 2014 Report. The 2017 Guidelines affirm that “States shall not compel associations to register to be allowed to exist and to operate freely,” and that informal associations “shall not be punished or criminalized under the law or in practice on the basis of their lack of formal (de jure) status.”²⁹² Both the 2014 Report and 2017 Guidelines state that registration regimes should be a notification rather than an authorization regime, with the 2017 Guidelines clarifying that registration procedures should be “simple, clear, non-discriminatory and non-burdensome, without discretionary components.”²⁹³ According to the 2017 Guidelines, associations should not be required to register more than once or renew their registration.²⁹⁴ The law should not limit the names of associations, “unless they are misleading ... or where they violate the prohibition of hate speech as defined by regional and international human rights law.”²⁹⁵ Additionally, while registration fees are permissible, the fee must be “modest” and cannot “have the effect of deterring associations from registering in practice.”²⁹⁶ The 2017 Guidelines and the 2014 Report recommend that there should be only one body tasked with registering associations, and it must “perform its functions impartially and

²⁸⁸ Malawi African Association and Others v. Mauritania, Communication 54/91-61/91-96/93-98/93-164/97-196/97-210/98, African Commission on Human and Peoples’ Rights (11 May 2000), para. 107.

²⁸⁹ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 55.

²⁹⁰ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 56.

²⁹¹ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 59.

²⁹² African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 11.

²⁹³ African Commission on Human and Peoples’ Rights, Report on the Study Group on Freedom of Association & Assembly in Africa, April 2014, p. 70; African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 13

²⁹⁴ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 17.

²⁹⁵ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 15.

²⁹⁶ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 18.

fairly.”²⁹⁷ The procedure and the decisions of this body must be accessible and transparent.²⁹⁸ Lastly, registration procedures should be the same throughout a country.²⁹⁹

Reporting requirements similarly fall under this proportionality calculus. According to the 2017 Guidelines, when reporting is required, the requirements must be simple and shall not be “overly burdensome.”³⁰⁰ These reporting requirements “shall be constructed on the basis of the presumed lawfulness of associations and their activities, and shall not interfere with the internal management or activities of associations.”³⁰¹ Reporting requirements should not “require extensive details, but shall rather be aimed at ensuring financial propriety,” and they must be “proportionate to the size and scope of the organization and shall be facilitated to the extent possible, *inter alia*, through the provision of templates, information technology tools, and other measures.”³⁰² These requirements are not supposed to be used as a means to limit or target associations, for example, by using the information provided by these reports to condemn associations, and the reporting and auditing requirements should not “be so burdensome as to significantly diminish the substantive activities of a not-for-profit association.”³⁰³

D. Intersections between Freedom of Association and Other Rights and Protections

The importance of freedom of association lies not only in the right in isolation, but also the manner in which freedom of association intersects with and strengthens other human rights and facilitates a vital functioning democracy. Due to the implications of the aforementioned intersections and the need to ensure consistency, it would be vital for General Comment No. 38 to address this topic.

1. Political Parties and Democracy

The indispensable role of freedom of association in any democratic system has been described as self-evident; freedom of association enables the very existence of political parties,

²⁹⁷ African Commission on Human and Peoples’ Rights, Report on the Study Group on Freedom of Association & Assembly in Africa, April 2014, p. 70; African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 21.

²⁹⁸ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 22.

²⁹⁹ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 19.

³⁰⁰ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 48.

³⁰¹ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 47.

³⁰² African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 48.

³⁰³ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, paras. 48-49.

allows pluralist expression in a multi-party system and offers choice in popular representation.³⁰⁴ As noted by a previous UN Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, freedom of association is “at the heart of an active civil society and a functioning democracy.”³⁰⁵ Associations have been recognized as a vehicle for facilitating participation of citizens in the conduct of public affairs.³⁰⁶

The Human Rights Committee has interpreted article 22 of the Covenant as an “essential adjunct to the rights protected by article 25,” highlighting the vital role of political parties and membership in parties in the conduct of public affairs and the election process.³⁰⁷ Indeed, without freedom of association, “political parties would not be freely constituted and form their crucial part in any electoral system.”³⁰⁸ Certain Article 22 restrictions impact on Article 25 rights, such as obstacles to, among others, the registration of political parties, contesting elections, fielding candidates and participating in the formation of a government.³⁰⁹

The role of freedom of association as an essential element to any democratic society has also been emphasized by the IACHR, which has recognized this freedom as a core component of civic space.³¹⁰ It empowers individuals and communities that have historically faced discrimination by ensuring that their voices, values, perspectives, and demands can be integrated into public life.³¹¹ Freedom of association is also a mechanism through which individuals can participate in public affairs and act collectively on matters that affect or concern them. Accordingly, the Commission has emphasized that freedom of association, together with freedom of expression and the right to peaceful assembly, constitutes a fundamental pillar of democracy and an essential component of civic space.³¹²

³⁰⁴ Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 610.

³⁰⁵ UN General Assembly, Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani (A/59/401), para 47.

³⁰⁶ General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, 12 July 1996, CCPR/C/21/Rev.1/Add.7 (GC 25), para. 8.

³⁰⁷ General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, 12 July 1996, CCPR/C/21/Rev.1/Add.7 (GC 25), para. 26.

³⁰⁸ Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 611.

³⁰⁹ Concluding Observations on Swaziland in the Absence of a Report (CCPR/C/SWZ/CO/1), 6 September 2019, para. 52.

³¹⁰ IACHR. Closure of Civic Space in Nicaragua. OEA/Ser.L/V/II. Doc. 212/23, September 23, 2023, para. 46.

³¹¹ IACHR. Closure of civic space in Nicaragua. OAS/Ser.L/V/II. Doc. 212/23, September 23, 2023, para. 46; IACHR, Public Policies with a Human Rights Approach, OAS/Ser.L/V/II. Doc. 191, September 15, 2018, paras. 54–62.

³¹² IACHR. Third Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II Doc. 119/25 April 15, 2025, para. 197.

Similarly, the African Charter on Democracy, Elections and Governance highlights the importance of freedom of association in building democracy, with Article 12 of the Charter stating that State Parties shall “create conducive conditions for civil society organizations to exist and operate within the law,” a policy that the Charter notes “promote[s] democratic principles and practices as well as consolidate[s] a culture of democracy and peace.”³¹³ Article 27 of the same document also notes that State Parties must commit to “fostering popular participation and partnership with civil society organizations” in order to “advance political, economic and social governance.”³¹⁴ On political parties, Article 27 also notes that State parties must commit themselves to “strengthening the capacity of parliaments and legally recognized political parties to perform their core functions.”³¹⁵ The African Charter on Democracy, Elections and Governance also establishes that States must “[recognise] the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.”³¹⁶ The African Commission’s 2017 Guidelines further state that “associations shall be able to engage in the political, social and cultural life of their societies, and to be involved in all matters pertaining to public policy and public affairs, including, *inter alia*, human rights, democratic governance, and economic affairs, at the national, regional and international levels.”³¹⁷

The decisions of the African Commission have highlighted the intersection of freedom of association and freedom of expression in the context of political parties, affirming that these two freedoms play an “essential role for the maintenance of pluralism and the proper functioning of democracy.”³¹⁸ The African Commission has found bans on political parties a violation of the right to freedom of association (*Lawyers for Human Rights v. Swaziland; Sir Dawda K. Jawara v. Gambia*),³¹⁹ and has also found that a State’s decision to dissolve a political party based on that party’s behavior, based on the justification that the behavior was in violation of domestic law and causing disorder, was a disproportionate sanction (*Interights & Others v. Mauritania*).³²⁰ The Commission has also noted the danger of governmental interference in civil society organizations, finding in *Civil Liberties Organisation v. Nigeria* that the creation of a new governing body of the Nigerian Bar Association, “dominated by representatives of the

³¹³ African Union, African Charter on Democracy, Elections and Governance (2007), Art. 12(3).

³¹⁴ African Union, African Charter on Democracy, Elections and Governance (2007), Art. 27(2).

³¹⁵ African Union, African Charter on Democracy, Elections and Governance (2007), Art. 27(1).

³¹⁶ African Union, African Charter on Democracy, Elections and Governance (2007), Art. 3(11).

³¹⁷ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 25.

³¹⁸ *Interights and Others v. Mauritania*, Communication 242/01, African Commission on Human and Peoples’ Rights (4 June 2004), para. 80.

³¹⁹ *Lawyers for Human Rights v. Swaziland*, Communication 251/02, African Commission on Human and Peoples’ Rights (11 May 2025), para. 62; *Sir Dawda K. Jawara v. Gambia* (the), Communication 147/95-149/96, African Commission on Human and Peoples’ Rights (11 May 2000), para. 68.

³²⁰ *Interights and Others v. Mauritania*, Communication 242/01, African Commission on Human and Peoples’ Rights (4 June 2004), paras. 81-85.

government” and holding “wide discretionary powers,” was an unlawful interference with the freedom of association of Nigerian lawyers.³²¹

As far as European standards are concerned, the Human Rights Committee has noted that article 11(1) of the European Convention on Human Rights (ECHR), as interpreted by the Strasbourg organs, is “sufficiently proximate” to article 22(2) of the Covenant.³²² The European Court of Human Rights (ECtHR), in the context of Article 11, has “on numerous occasions affirmed the direct relationship between democracy, pluralism and the freedom of association”³²³. In fact, the ECtHR has noted that “the way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned”³²⁴. In its case law, the ECtHR has highlighted that citizen participation in the democratic process is largely realized through belonging to associations in which individuals may integrate with each other and work together toward shared goals.³²⁵ The associations recognized by the ECtHR as important to the proper functioning of democracy have not been limited to political parties; the Court has expressly acknowledged the vital role, in this context, of associations formed for other purposes too, including “those protecting cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming/teaching religion, seeking an ethnic identity or asserting a minority consciousness.”³²⁶ The Court has noted that this is pivotal given that pluralism is built on the “genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts.”³²⁷ Overall, the ECtHR has highlighted that “the principle of pluralism is impossible to achieve without an association being able to express freely its ideas and opinions.”³²⁸

³²¹ Civil Liberties Organisation v. Nigeria, Communication 101/93, African Commission on Human and Peoples’ Rights (29 July 2014), paras. 15-16.

³²² *Communication 1002/2001 Franz Wallmann, Rusella Wallman and Hotel zum Hirschen Josef Wallmann v. Austria, Views of 1 April 2004*, para. 8.4

³²³ European Court of Human Rights, Guide on Article 11 of the European Convention on Human Rights: Freedom of Assembly and Association, 31 August 2025, para. 118 (https://ks.echr.coe.int/documents/d/echr-ks/guide_art_11_eng).

³²⁴ European Court of Human Rights, Guide on Article 11 of the European Convention on Human Rights: Freedom of Assembly and Association, 31 August 2025, para. 118 (https://ks.echr.coe.int/documents/d/echr-ks/guide_art_11_eng).

³²⁵ European Court of Human Rights, *The Moscow Branch of the Salvation Army v. Russia* (application No. 72881/01), judgment of 5 October 2006, para. 61. European Court of Human Rights, *Gorzelik and Others v. Poland* (application no. 44158/98), judgment of 17 February 2004, para. 92.

³²⁶ European Court of Human Rights, Guide on Article 11 of the European Convention on Human Rights: Freedom of Assembly and Association, 31 August 2025, para. 119, (https://ks.echr.coe.int/documents/d/echr-ks/guide_art_11_eng).

³²⁷ European Court of Human Rights, *Gorzelik and Others v. Poland* (application No. 44158/98), judgment of 17 February 2004, para. 92.

³²⁸ European Court of Human Rights, *Gorzelik and Others v. Poland* (application No. 44158/98), judgment of 17 February 2004, para. 91; European Court of Human Rights, *Zhechev v. Bulgaria*, 2007 (application No. 57045/00), judgment of 21 September 2007, para. 36.

2. Freedom of Expression

Claims have been made by authors before the Human Rights Committee concerning violations of Article 22 in conjunction with Article 19 (freedom of expression).³²⁹ This has given the Human Rights Committee the opportunity to highlight that the freedom of association rights of individuals are implicated in their efforts to communicate through associations and are thus protected by article 19.³³⁰ For example, in *Kungurov v. Uzbekistan*, the Human Rights Committee noted that the application of the procedure of registration of the relevant association did not enable the author to exercise his right to freedom of association, and more specifically to seek, receive and impart information as ideas.³³¹ Therefore, the Committee found that the author's right under article 22(1), read together with article 19(2) of the Covenant had been violated.

A similar analysis and conclusion was reached, in their individual concurring opinion in *Korneenko et al. v. Belarus*, by Committee members Mr. Gerald L. Neuman and Walter Kälin. Although the main opinion found that the author's rights under article 22 were violated, these Committee members noted (among others) that the violation in that case concerned article 22 "in conjunction with" article 19, as the author was personally fined and their equipment was confiscated from the association "precisely because the equipment was used by the association in activities that are protected by article 19."³³² Therefore, they concluded that "the author's exercise, in association with others, of the right to seek, receive and impact information and ideas provoked sanctions directed partly at the author and partly at the association". A close nexus between article 22 and article 19 was also found by the Committee in *Katsora v. Belarus*, where it was noted that laws which prohibited engaging in certain activities by unlawful associations, including the distribution of leaflets, can constitute obstacles to the exercise of the freedom to impart information (article 19(2)).³³³ Consequently, a high level of justification is required for an interference under Article 19(3) to be justified, in the absence of which it is possible for a violation of article 22(1) to be found, read together with article 19(2).³³⁴

On multiple occasions, the Inter-American Court has also examined violations of freedom of association in conjunction with violations of freedom of expression and the right of peaceful assembly. The Court has emphasized the close relationship between political rights,

³²⁹ See for e.g. *Lopez Burgos* (CCPR/C/13/D/52/1979) and *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004), Individual Opinion by Committee Members Mr. Gerald L. Neuman and Mr Walter Kälin (concurring).

³³⁰ *Sister Immaculate Joseph et al. v. Sri Lanka*, CCPR/C/85/D/1249/2004, para. 7.2.

³³¹ *Kungurov v. Uzbekistan* (CCPR/C/102/D/1478/2006), paras 8.8-8.9.

³³² *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004), Individual Opinion by Committee Members Mr. Gerald L. Neuman and Mr Walter Kälin (concurring), para. 2.

³³³ *Katsora v. Belarus* (CCPR/C/99/D/1388/2005), para. 7.2.

³³⁴ *Kungurov v. Uzbekistan* (CCPR/C/102/D/1478/2006), paras 8.8-8.9. See also Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 625.

freedom of expression, the right of assembly, and freedom of association, noting that these rights, taken together, make the democratic process possible.³³⁵

The IACtHR has explained that this relationship becomes particularly evident in situations involving a breakdown of constitutional order, such as following a coup d'état. In such contexts, the simultaneous exercise of freedom of expression, assembly, and association is often aimed at protesting actions by public authorities that contravene constitutional principles and at demanding the restoration of democracy.³³⁶ The Court has stressed that protests and expressions in defense of democracy must receive the highest level of protection and may implicate one or more of these rights depending on the circumstances.³³⁷

In *López Lone et al. v. Honduras*, the IACtHR examined the case of a group of judges who were members of the Association of Judges for Democracy and were dismissed after expressing opposition to the 2009 *coup d'état*. The judges had participated in peaceful protests and expressed critical opinions as citizens. As a result of these actions, they were removed from office. The Court held that prohibitions on judges' participation in political activities must not be interpreted broadly so as to prevent judges from engaging in any discussion of a political nature.³³⁸ It further recognized that, in certain circumstances, judges may have a moral duty to speak out. It concluded that, in moments of grave democratic crisis, as in this case, ordinary limitations on judicial political participation do not apply to actions taken in defense of the democratic order. Preventing judges from denouncing a coup would be incompatible with judicial independence, freedom of expression and the State's international obligations.³³⁹

The African Commission has similarly noted the overlap between freedom of association and freedom of expression. In *Interights and Others v. Mauritania*, the Commission asserted that "freedom of expression and the right to association are closely linked because the protection of opinions and the right to express them freely constitute one of the objectives of the right of association."³⁴⁰ The African Commission's 2017 Guidelines reflect this idea, affirming that the right to freedom of association protects the expression of associations.³⁴¹ The Commission has also found that violations of freedom of association may implicitly violate freedom of expression

³³⁵ IACtHR. *Case of Lopez Lone et al. V. Honduras*. Preliminary objection, merits, reparations and costs. Judgment of October 5, 2015, para. 160; Case of Castañeda Gutman V. Mexico. Preliminary objections, merits, reparations and costs, Judgment of August 6, 2008, para. 140.

³³⁶ IACtHR. *Case of Lopez Lone et al. V. Honduras*. Preliminary objection, merits, reparations and costs. Judgment of October 5, 2015, para. 160.

³³⁷ IACtHR. *Case of Lopez Lone et al. V. Honduras*. Preliminary objection, merits, reparations and costs. Judgment of October 5, 2015, para. 160.

³³⁸ IACtHR. *Case of Lopez Lone et al. V. Honduras*. Preliminary objection, merits, reparations and costs. Judgment of October 5, 2015, para. 172.

³³⁹ IACtHR. *Case of Lopez Lone et al. V. Honduras*. Preliminary objection, merits, reparations and costs. Judgment of October 5, 2015, para. 174.

³⁴⁰ Interights and Others v. Mauritania, Communication 242/01, African Commission on Human and Peoples' Rights (4 June 2004), para. 80.

³⁴¹ African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 28.

because of the close relationship between the two rights.³⁴² On this point, the Commission has held that convicting members of an association for their opinions, as expressed through their work at an association founded to communicate the views of people in a certain region, was a violation of freedom of association which implicitly violated freedom of expression.³⁴³

3. Discrimination and Protected Groups

The word ‘everyone’ in Article 22 implies that the beneficiaries of freedom of association are all individuals in their collective pursuits, including those that are religious, ethnic, linguistic, cultural, economic, industrial, commercial or sporting.³⁴⁴ As has been clarified, “it does not matter how trivial the collective purpose may be, as protection does not depend on any beneficial, public welfare, democratic or other outcome.”³⁴⁵ In fact, the inclusion of protection for freedom of association within many international and regional instruments, including specialised international conventions, demonstrates the significance of this freedom in supporting the interests of ethnic, religious or linguistic minorities, racial minorities, children, the disabled, workers, including migrant workers, refugees, stateless persons and those suffering gender inequality.³⁴⁶

Moreover, certain instruments have underscored the importance of securing the protection of women’s right to exercise the freedom of association. Notably, Declaration +25 highlights that States are required, in the context of ensuring a safe and enabling environment for human rights defenders, to give special attention to the risks and challenges faced by women defenders and those working on women’s rights and gender issues, acting individually or in association with others.³⁴⁷

Regarding people with disabilities and children, treaties within the African Union human rights framework concretize the right to freedom of association for those groups. Article 22(c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa furthers the protection of this right for those with disabilities, stating that persons with disabilities have the right to “form and participate in the activities of

³⁴² Safia Ishaq Mohammed Issa v. Sudan, Communication 443/13, African Commission on Human and Peoples’ Rights (2 August 2022), para. 179.

³⁴³ International PEN and Others v. Nigeria, Communication 137/94-139/94-154/96-161/97, African Commission on Human and Peoples’ Rights (31 October 1998), paras. 107-110.

³⁴⁴ Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 611.

³⁴⁵ Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 611.

³⁴⁶ Paul M. Taylor, *A Commentary On the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights*, Cambridge University Press 2020, p. 611.

³⁴⁷ Declaration on Human Rights Defenders +25, (2024), p. 12, <https://ishr.ch/wp-content/uploads/2024/06/20240619-DeclarationPlus25-ISHR.pdf>.

nongovernmental organizations and other associations.³⁴⁸ Article 8 of the African Charter on the Rights and Welfare of the Child protects the right to freedom of association for children.³⁴⁹

The African Commission's 2017 Guidelines further note that the freedom of association protects the right of associations to advocate for the "advancement of the rights of discriminated-against, marginalized and socially vulnerable communities, including the rights of women and children."³⁵⁰ The African Commission and the African Court on Human and Peoples' Rights have not covered this intersection in their jurisprudence.

The ECtHR has recognized that freedom of association is of particular significance for persons belonging to minorities, including national and ethnic minorities. The ECtHR has described the formation of associations for the purposes of expressing and promoting the identity of a minority as "instrumental" in helping said groups preserve and uphold their rights.³⁵¹ As mentioned above, the formation of an association for the purpose of asserting a minority consciousness has been considered by the ECtHR to be significant to the proper functioning of democracy.³⁵²

Similarly to international and other regional standards, in the Inter-American System, article 1(1) of the American Convention establishes the obligation of States Parties to respect and ensure the full and free exercise of the rights and freedoms recognized therein without discrimination of any kind. Any treatment that may be considered discriminatory with respect to the exercise of Convention rights is, in itself, incompatible with the Convention. Failure by the State to comply with its general obligation to respect and ensure human rights through discriminatory treatment that lacks a legitimate aim or is unnecessary or disproportionate gives rise to international responsibility.³⁵³

The IACtHR has repeatedly examined violations of freedom of association in connection with the principle of equality and non discrimination. In the *Huilcamán Paillama et al. v. Chile* case, concerning the criminalization of peaceful social protest by the Council of All Lands, an organization representing the Mapuche People, the Court found that the State engaged in discrimination based on ethnic origin, driven in part by bias and the use of ethnic stereotypes.³⁵⁴

³⁴⁸ African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (2018), Article 22(c).

³⁴⁹ African Union, African Charter on the Rights and Welfare of the Child (1990), Article 8.

³⁵⁰ African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 22 May 2017, para. 28.

³⁵¹ European Court of Human Rights, *Gorzelik and Others v. Poland* (application No. 44158/98), judgment of 17 February 2004, para. 93.

³⁵² European Court of Human Rights, *Association Rhino and Others v. Switzerland* (application No. 48848/07), judgment of 11 October 2011, para. 61.

³⁵³ IACtHR. *Advisory Opinion 27/21*, Judgement of May 5, 2021. Serie A No. 27, párr. 154.

³⁵⁴ IACtHR. *Case of Huilcamán Paillama and others V. Chile*. Merits, Reparations and Costs. Judgment of June 18, 2024. Serie C No. 527, para. 238.

In this case, the impairment of freedom of association stemmed from the arbitrary, biased, and discriminatory conduct of judicial authorities, who, without any legal basis and through an excessive use of criminal law, deemed the Council's formation and activities illegitimate and unlawful.³⁵⁵ Relying on stereotyped reasoning, the authorities classified the organization as an "illicit association" solely because of its composition and activities.³⁵⁶

The IACtHR observed that ethnic and racial stereotypes permeated the case from the outset, as both the complainant and the authorities involved in the investigation and adjudication of the case considered it illegitimate, or even unlawful, for indigenous persons to organize to assert a distinct identity and claim inherent rights, including ancestral lands.³⁵⁷ Based on these preconceived notions, actions such as expressing dissent, creating symbols of identity such as flags and emblems, maintaining independent newspapers and radio stations, or engaging with or receiving funding from national and international organizations were improperly construed as indicators of criminality.³⁵⁸ As a result, the victims were subjected to the application of criminal law rather than recognition that they were exercising protected human rights, including their right to freedom of association.³⁵⁹

Likewise, the Inter-American Human Rights System has developed a robust body of jurisprudence on the rights of human rights defenders, as outlined in Section III.B.2. The IACHR has defined a human rights defender as any person who, individually or collectively, acts or seeks to act to promote, protect, or strive for the protection and realization of human rights and fundamental freedoms at the local, national, regional, or international level.³⁶⁰ This includes anyone who, individually or collectively, in a personal or professional capacity, and in a peaceful manner, seeks to promote and protect human rights.³⁶¹

³⁵⁵ IACtHR. *Case of Huilcamán Paillama and others V. Chile*. Merits, Reparations and Costs. Judgment of June 18, 2024. Serie C No. 527, para. 244.

³⁵⁶ IACtHR. *Case of Huilcamán Paillama and others V. Chile*. Merits, Reparations and Costs. Judgment of June 18, 2024. Serie C No. 527, para. 244.

³⁵⁷ IACtHR. *Case of Huilcamán Paillama and others V. Chile*. Merits, Reparations and Costs. Judgment of June 18, 2024. Serie C No. 527, para. 240.

³⁵⁸ IACtHR. *Case of Huilcamán Paillama and others V. Chile*. Merits, Reparations and Costs. Judgment of June 18, 2024. Serie C No. 527, para. 240.

³⁵⁹ IACtHR. *Case of Huilcamán Paillama and others V. Chile*. Merits, Reparations and Costs. Judgment of June 18, 2024. Serie C No. 527, para. 239, 242

³⁶⁰ IACHR. Third Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II Doc. 119/25 April 15, 2025, para. 29.

³⁶¹ IACHR. Third Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II Doc. 119/25 April 15, 2025, para. 29.

In this context, the IACtHR has on multiple occasions recognized human rights defenders as a distinct group facing specific and heightened risks.³⁶² In doing so, the Court has increasingly applied an intersectional approach in its analysis of the threats and violations faced by this group.

4. Freedom of Information

The intersection between freedom of association and freedom of information has been addressed by the Special Rapporteur on the Freedom of Peaceful Assembly and Association, who highlighted that by “in order to provide robust protection to civic engagement at the multilateral level it must be recognized that freedom of assembly and of association are inextricably intertwined with [...] the right of access to information and other relevant rights, such as articles 25 and 19 of the International Covenant”³⁶³.

Additionally, the African Commission’s 2014 Report of the Study Group on Freedom of Association & Assembly in Africa notes that the bodies responsible for associations should ensure access to information relative to associations, “including ensuring that information on all procedures relating to associations is available to all, clear and easy to understand, and that information is collected and publicly available on all decisions relating to associations.”³⁶⁴

³⁶² IACtHR. *Case of Kawas Fernández V. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, para. 147-9; *Case of the Human Rights Defender et al. V. Guatemala*. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014. Series C No. 283, para. 129; *Case of Nogueira de Carvalho et al. v. Brazil*, Preliminary objections and merits. Judgment of November 28, 2006. Series C No. 161, para. 77; *Case of Digna Ochoa and family members V. Mexico*. Preliminary objections, merits, reparations and costs. Judgment of November 25, 2021. Series C No. 447, para. 125. *Advisory Opinion AO-32/25. Climate emergency and human rights*. Judgment of May 29, 2025, paras. 571-7.

³⁶³ Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, (A/69/365), para. 15.

³⁶⁴ African Commission on Human and Peoples’ Rights, Report on the Study Group on Freedom of Association & Assembly in Africa, April 2014, p. 74.

IV. Conclusion

This submission has sought to provide an overview of the state of freedom of association today across the globe, although mainly focusing on the standards developed by the regional human rights systems in Africa and the Americas, in order to help provide guidance to the Human Rights Committee on its forthcoming General Comment on Article 22.

Section II of this submission focused on the major contemporary issues facing freedom of association and provided regional examples of the problem. Section II.A looked at registration laws, which governments have used to limit the ability of associations critical of the government to operate legally within a country. Section II.B focused on foreign agent laws, an increasingly popular strategy among governments that stigmatizes and restricts civil society organizations that have foreign support or connections. Section II.C covered national security and counterterrorism laws, a common tactic that takes advantage of vague and discretionary legislative standards to attack groups working on sensitive topics or that are critical of the government.

Section III of the submission has aimed to provide an in-depth analysis of the legal standards in the jurisprudence of international and regional mechanisms on the freedom of association. In Section III.A, the broad definition of “association” was highlighted, which encompasses formal and informal associations as well as political parties, and the recognition, by international and regional mechanisms, of the right not to compel one’s association. In Section III.B, the negative and positive obligations of States in the context of the freedom of association were set out; the former concern the obligation to not unduly obstruct the formation and carrying out of all activities of associations, while the latter encompass, among others, the obligation to ensure a safe and enabling environment for the exercise of the right to freedom of association. Section III.C detailed the circumstances in which States can restrict freedom of association, and when these restrictions are disproportionate or arbitrary under international human rights law. The intersection of freedom of association with other rights and protections was explored in more detail in Section III.D, more specifically in relation to the protection of democracy, the freedom of expression, and protection against discrimination.

Freedom of association lies at the very core of democratic life and of individuals’ ability to come together, organize collectively, and work toward shared goals as part of groups and associations that extend beyond the individual. It is through these collective forms of organization that democratic systems gain vitality and meaning. This right enables the existence of robust civil societies capable of expressing social demands, articulating collective needs, and seeking accountability from governments. It also underpins the defense of workers’ rights through trade unions and labor organizations, and has long been central to the protection and promotion of human rights. In other contexts, freedom of association has allowed political organizations and movements to emerge, collaborate, and generate new synergies to advance

human rights agendas and ensure the representation of minorities and historically excluded groups.

At the same time, as demonstrated throughout this submission, the right to freedom of association is currently at the center of a wide range of challenges, restrictions, and emerging threats across the globe. These trends underscore the urgent need for clear guidance and a human rights framework that can be applied and replicated across different regional contexts. The analysis further shows that regional human rights systems have developed robust standards aimed at protecting freedom of association within their respective mandates, which should be considered during the development of a new international human rights framework.

Against this backdrop, the primary objective of this submission is to offer a comparative perspective on how freedom of association has been interpreted and protected at the international and interregional levels. By bringing together these standards and experiences, we hope to contribute to the development of a General Comment that reaffirms key legal principles and generates a positive impact on the respect and protection of this right worldwide. It is our hope that this General Comment will build upon existing jurisprudence and practice and will articulate clear, authoritative, and globally applicable guidance on the scope, content, and protection of the right to freedom of association.

We remain at the Committee's disposal for any further comments, exchanges, or participation that may be required in the ongoing development and drafting of General Comment No. 38.