



European Center for  
Not-for-Profit Law

**ICNL**  
INTERNATIONAL CENTER  
FOR NOT-FOR-PROFIT LAW

# Relevant Sources of Law on Article 22 ICCPR: Right to Freedom of Association

European Center for Not-for-Profit Law (ECNL)  
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## I. Introduction

This report seeks to inform the UN Human Rights Committee's deliberations respecting the possible development of a General Comment on ICCPR Art. 22, addressing the right to freedom of association. Associational rights, which form the foundation of an enabling environment for civil society, are under intensifying threat around the world; yet freedom of association is the only core civic freedom that has not yet been addressed by the Committee in a General Comment (with the right to freedom of expression and opinion addressed in General Comments Nos. 10 and 34, and the right of peaceful assembly addressed in General Comment No. 37). Development by the Committee of a General Comment on association would provide essential, authoritative guidance to states on their duties and responsibilities under ICCPR Art. 22, and would empower civil society representatives, lawyers, judges, activists, and international actors to advance the effective protection and full exercise of associational rights. Furthermore, as the materials compiled below demonstrate, the Committee could draw on a robust body of jurisprudence and sources of law in developing such a General Comment, including nearly 40 communications and well over a hundred Concluding Observations addressing Article 22.

In this report, we have collected sources of law from the UN Human Rights Committee and other UN bodies and mandate holders relevant to freedom of association, and have presented the holdings or conclusions of these sources, organised according to seven main topics and an array of subsidiary topics (see table of contents on prior two pages). Within each topical section, we have presented different sources of law in the same order of precedence:

- (1) UN Human Rights Committee Communications
- (2) UN Human Rights Committee Concluding Observations
- (3) Universal Periodic Review (UPR) Reports
- (4) UN Human Rights Council Resolutions
- (5) Reports from the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association (UNSR/FOAA)

Where the Committee has not addressed a given topic in its communications or Concluding Observations, we have noted this in the relevant section. We judged that the above sources of law would be of paramount interest to Committee members in considering a possible General Comment on ICCPR Art. 22. However, if it would assist in these deliberations or in the development of such a General Comment, we would be pleased to develop supplementary resource(s) compiling other relevant materials, such as judicial decisions and guidelines from other bodies, including regional treaty bodies, as appropriate.

In this report, we have simply presented the relevant sources of law and their holdings, without further comment or analysis. If it would assist the Committee, we would similarly be pleased to develop additional analyses of gaps and areas for progressive development of norms on association.

The report presents, in narrative and abridged form, information on sources of law relevant to ICCPR Art. 22 that we have also collected, in more extensive form, in an accompanying spreadsheet. Committee members may consult this spreadsheet, which features nearly 600

entries, to seek additional details on the sources referenced here, or to sort and filter these sources according to their own interests.

## II. Relevant Sources of Law on Article 22 ICCPR

### 1. Scope of freedom of association

#### a) What is included in the notion of an association?

The Human Rights Committee has affirmed in its communications that a political party may be an “association” for the purposes of ICCPR Article 22. In *Farah v. Djibouti*, for example, the Committee considered the dissolution of a political party:

Given that political parties are a form of association essential to the proper functioning of democracy, and in the light of the serious consequences that arise for the author in this case, the Committee concludes that the dissolution of the Mouvement amounts to interference with his right to freedom of association.<sup>1</sup>

Similarly, in *Saidov v. Tajikistan*, the Committee found that the author’s right to freedom of association was violated when he was prevented from forming a political party, among other restrictions.<sup>2</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has clarified that an “‘association’ refers 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.”<sup>3</sup> This term encompasses “both formal and informal organizations, national or international ... and can include voluntary groups, clubs, non-profit organizations, cooperatives, foundations, charities, trade unions, as well as advocacy groups.”<sup>4</sup>

#### b) Does an association need to be registered?

In a series of communications arising in Belarus, the Human Rights Committee indirectly addressed the harmful impact of legal requirements for associations to register in order to lawfully operate. These cases focused on the authorities’ refusal to register or decision to dissolve an association. The Committee noted in its reasoning in these communications that the negative consequences of a refusal to register or of dissolution were worsened due to the “unlawfulness of operation of unregistered associations” in Belarus.<sup>5</sup> More directly, in *M.T. v.*

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<sup>1</sup> *Farah v. Djibouti*, Human Rights Committee, UN Doc. CCPR/C/130/D/3593/2019, Views of 4 November 2020, para. 7.2.

<sup>2</sup> *Saidov v. Tajikistan*, Human Rights Committee, UN Doc. CCPR/C/122/D/2680/2015, Views of 4 April 2018, para. 9.9.

<sup>3</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 51. Note that in some instances, especially in Concluding Observations, the Committee has used “association” in a narrower sense, to refer in particular to member-based organisations. Throughout this report, we use “association” in the broader sense described by the Special Rapporteur in the accompanying quotation.

<sup>4</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*, UN Doc. A/HRC/53/38/Add.4, 23 June 2023, para. 6.

<sup>5</sup> *Boris Zvozkov et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1039/2001, 17 October 2006, para. 7.4; *Pinchuk v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/112/D/2165/2012, Views of 24 October 2014, para. 8.5; *Katsora, Sudalenko, and Nemkovich v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/100/D/1383/D/2005, Views of 25 October 2010, para. 8.3.

*Uzbekistan*, the Committee found a violation of ICCPR Article 22(2) where the author had been arrested, convicted, and imprisoned for establishing an unregistered association.<sup>6</sup> Several Committee Concluding Observations have expressed concerns about the imposition in various countries of “unduly restrictive”, “onerous”, “burdensome”, “disproportionate” and “unreasonable” registration requirements that associations or organisations must comply with by law in order to be allowed to operate.<sup>7</sup> These requirements restrict the work of civil society organisations and are often used to control and interfere with their rights.<sup>8</sup> The Committee has repeatedly recommended that limitations on the operation of associations and organisations should not exceed those permitted under Article 22 of the Covenant.<sup>9</sup>

In UPR reports, recommendations have called for the removal of restrictive, burdensome and disproportionate registration processes and requirements<sup>10</sup>, including for associations advocating for minority populations<sup>11</sup> or vulnerable groups, such as sex workers and LGBTQIA+ communities<sup>12</sup>.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that “the right to freedom of association equally protects associations that are not registered” and that individuals “involved in unregistered associations should indeed be free to carry out any activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions.”<sup>13</sup> This is particularly crucial with respect to members of marginalized communities or groups perceived as outside of the political mainstream:

The process of registering an association may prove to be cumbersome for marginalized groups and exclude groups such as minorities or persons with disabilities. For example, the language used to communicate could be inaccessible, and physical access to locations for registration could also be a challenge for those groups. Mandatory registration, particularly where authorities have broad discretion to grant or deny registration, provides an opportunity for the State to refuse or delay registration to groups that do not espouse “favourable” views.<sup>14</sup>

### ***c) Access to legal personality***

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

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<sup>6</sup> *M.T. v. Uzbekistan*, Human Rights Committee, UN Doc. CCPR/C/114/D/2234/2013, Views of 23 July 2015, paras. 7.7-7.8.

<sup>7</sup> E.g., Egypt (2023), paras 49-50; Sri Lanka (2023), para 42; Turkmenistan (2023), para 46; Equatorial Guinea (2019), para 56; Turkmenistan (2017), para 46-47; Uzbekistan (2010), para 25.

<sup>8</sup> E.g.: Turkmenistan (2023), para 47; Uzbekistan (2001), para 22.

<sup>9</sup> E.g.: Lithuania (1997), para 20; Turkmenistan (2012), para 19.

<sup>10</sup> E.g. Cambodia 2019; Equatorial Guinea 2019; Kazakhstan 2020; Lao People's Democratic Republic 2020; Rwanda 2021; Vietnam 2021.

<sup>11</sup> E.g. Morocco 2023.

<sup>12</sup> E.g. Mozambique 2021.

<sup>13</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 56; see also UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/29/25, 28 April 2015, para. 59.

<sup>14</sup> UN Human Rights Council, *Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/26/29, 14 April 2014, para. 54.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has confirmed that entitlement to legal personality is a core element of the right to freedom of association, and has called on States to ensure and facilitate the ability of associations to acquire it.<sup>15</sup>

#### **d) Re-registration under new laws**

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

The Human Rights Council in a 2013 resolution called on States to uphold the freedom of association by, *inter alia*, ensuring that registration procedures for associations are “transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration.”<sup>16</sup>

The right to form and join an association requires that registration procedures not be onerous or unduly time-consuming.<sup>17</sup> As such, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that “[n]ewly adopted laws should not request all previously registered associations to re-register so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities.”<sup>18</sup>

#### **e) Online associations**

The Human Rights Committee has in a Concluding Observation raised specific concerns about provisions included in draft laws on cybercrime and associations/NGOs that would restrict online communication and impose excessive restrictions on such organisations. The Committee recommended avoiding use of vague terminology and overbroad restrictions to ensure compliance with Article 22 of the Covenant.<sup>19</sup>

Notably, since 2019, there has been a significant increase in UPR report recommendations addressing (draft) laws on cybercrime or other type of restrictive laws that regulate the rights to association and have an impact on online civic space.<sup>20</sup> These recommendations call for a guarantee for full respect of freedom of association, including in the online environment.

In line with this approach, the Human Rights Council in a 2018 resolution called on State authorities to “address security concerns on the Internet in accordance with their international human rights obligations to ensure the protection of all human rights online, in

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<sup>15</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 57; see also United Nations Special Rapporteur on the rights to freedom of peaceful Assembly and of association, Maina Kiai, *Amicus curiae before the Constitutional Court of Bolivia*, 30 April 2015, para. 22.

<sup>16</sup> UN Human Rights Council, Resolution 22/6, 12 April 2013, para. 8.

<sup>17</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 57.

<sup>18</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 62.

<sup>19</sup> Cambodia (2015), para 21.

<sup>20</sup> E.g. Belarus 2021; Cambodia 2019; Chile 2019; Eswatini 2022; Fiji 2019; Kazakstan 2020; Kuwait 2022; Tajikistan 2022; Thailand 2021; Vietnam 2021.

particular freedom of opinion and expression, freedom of association and privacy, including through democratic and transparent national institutions, based on the rule of law.”<sup>21</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that “international law protects the rights of freedom of peaceful assembly and of association, whether exercised in person, or through the technologies of today, or through technologies that will be invented in the future.”<sup>22</sup> Website blocking and prohibitions on an individual or organisation from publishing material online are particularly inconsistent with the right to freedom of association.<sup>23</sup>

#### **f) Freedom of association relates to lifecycle of associations**

The Human Rights Committee confirmed in *Korneenko et al. v. Belarus* that the freedom of association relates to the lifecycle of an association in its discussion of the right of organisations to freely operate: “The Committee observes that the right to freedom of association relates not only to the right to form an association but also guarantees the right of such an association freely to carry out its statutory activities.”<sup>24</sup>

Committee Concluding Observations have also questioned various restrictions on the ongoing operations of civil society organisations, including, e.g., prohibiting them from engaging in political or religious advocacy, limiting their access to domestic and foreign funding sources, and granting authorities extensive monitoring powers over CSOs and broad discretion to regulate and dissolve them.<sup>25</sup> The Committee has recommended clarifying vague, broad and open-ended definitions of key terms in laws to ensure that they are not used as tools to curtail freedom of association beyond the narrow restrictions permitted in Article 22(2) of the Covenant.<sup>26</sup>

#### **g) Freedom of association implies right to strike?**

A Human Rights Committee Communication adopted in 1986 found that the freedom of association does not include the right to strike. In *J.B. et al. v. Canada*, the Committee analyzed the ICCPR’s drafting history and concluded that the drafters had not intended to include the right to strike within the scope of Article 22(1)’s protection of “the right to form and join trade unions.” As a result, the Committee found the authors’ Communication inadmissible:

Conclusions to be drawn from the drafting history are corroborated by comparative analysis of ICCPR and ICESCR. Article 8(1)(d) of the ICESCR recognizes the right to strike, in addition to the right of everyone to form and join trade unions for the promotion and

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<sup>21</sup> UN Human Rights Council, Resolution 38/7, 17 July 2018, para. 8.

<sup>22</sup> UN Human Rights Council, *Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/HRC/41/41, 17 May 2019, para. 28; see also UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association: Addendum (Oman)*, UN Doc. A/HRC/29/25/add.1, 27 April 2015, para. 34 (stating that the right to freedom of association applies “both online and offline”).

<sup>23</sup> UN Human Rights Council, *Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/HRC/41/41, 17 May 2019, para. 42.

<sup>24</sup> *Viktor Korneenko et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006, para. 7.2.

<sup>25</sup> E.g.: Egypt (2023), paras 49-50; Kuwait (2016), para 44.

<sup>26</sup> Kuwait (2016), para 45.



protection of his economic and social interests, thereby making it clear that the right to strike cannot be considered as an implicit component of the right to form and join trade unions. Consequently, the fact that the ICCPR does not similarly provide expressly for the right to strike in article 22(1) shows that this right is not included in the scope of this article, while it enjoys protection under the procedures and mechanisms of the ICESCR subject to the specific restrictions mentioned in article 8 of that instrument.<sup>27</sup>

In contrast, the Committee in its Concluding Observations has expressed concerns about continuing restrictions on trade union rights in some countries, including blanket bans on the right to strike or absence of specific rights to protect the right to strike as well as dismissal and replacement of striking workers.<sup>28</sup> The Committee has reiterated that laws and practices should ensure the meaningful exercise of the right to freedom of association, including the right to strike, fully in line with Article 22 of the Covenant.<sup>29</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association in a 2022 report to the General Assembly called on States to “recognize and respect the right of all workers to unionize, engage in collective bargaining and take part in strikes” to protect social movements, which are closely linked with the right to freedom of association.<sup>30</sup>

#### ***h) Status of public law associations under Article 22***

The Human Rights Committee has generally considered that the right to freedom of association applies only to private associations – that is, those that are formed by private individuals wishing to come together for a specific purpose – and not to public associations that are founded, organised by or integrated into the State. In *Wallman v. Austria*, for example, the Committee held that Austria had not violated its citizen’s right to freedom of association where it required his business to join and pay annual dues to a chamber of commerce established for business purposes:

The Committee observes that the Austrian Chamber of Commerce was founded by law rather than by private agreement, and that its members are subordinated by law to its power to charge annual membership fees. It further observes that article 22 of the Covenant only applies to private associations, including for purposes of membership. ... The Committee considers that once the law of a State party establishes commerce chambers as organizations under public law, these organizations are not precluded by article 22 of the Covenant from imposing annual membership fees on its members, unless such establishment under public law aims at circumventing the guarantees contained in article 22. However, it does not appear from the material before the Committee that the qualification of the Austrian Chamber of Commerce as a public law

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<sup>27</sup> *J.B. et al. V. Canada*, Human Rights Committee, UN Doc. CCPR/C/28/D/118/1982, 18 July 1986, para. 6.4.

<sup>28</sup> E.g.: Macao – China (2022), para 40; Germany (2021), para 50; Chile (2007), para 14; Lithuania (2004), para 18.

<sup>29</sup> E.g.: Germany (2021), para 50; Macao – China (2022), para 41.

<sup>30</sup> UN General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule: Essential role of social movements in building back better*, UN Doc. A/77/171, 15 July 2022, para. 68.

organization, as envisaged in the Austrian Constitution as well as in the Chamber of Commerce Act of 1998, amounts to a circumvention of article 22 of the Covenant.<sup>31</sup>

## 2. Membership of associations

### a) *Who has the right to associate?*

The Human Rights Committee has expressed concerns regarding discriminatory restrictions to the right to freedom of association in several Concluding Observations. These have included both restrictions established by law – in some cases even in the Constitution of the country<sup>32</sup> – and those enforced in practice. In particular, the Committee has criticised disproportionate and discriminatory restrictions – including blanket bans on forming or joining associations – that target ethnic and religious minorities,<sup>33</sup> asylum seekers and refugees,<sup>34</sup> LGBT persons,<sup>35</sup> trade unions,<sup>36</sup> public officials,<sup>37</sup> migrant workers,<sup>38</sup> women workers,<sup>39</sup> foreign workers,<sup>40</sup> and foreign or foreign-funded NGOs.<sup>41</sup> In a few cases, the Committee has also raised concerns regarding the refusal to allow registration of NGOs engaging in human rights and democracy related activities, thereby discriminating amongst associations based on their objectives and activities.<sup>42</sup> In all these cases, the Committee recommends reviewing legislation and practices to ensure that any limitations on the right to freedom of association are in strict compliance with Article 22 of the Covenant and are not applied in a discriminatory manner.<sup>43</sup>

Many UPR report recommendations also call for full respect of freedom of association for *all people*, without discrimination, through for example the review of legislation and practices that are not in line with Article 22 of the Covenant and lead to discrimination.<sup>44</sup> Explicitly mentioned groups have included: LGBTQIA+ communities, national and religious minorities, journalists and independent media, activists, human rights defenders and civil society organisations, including those that receive funding from abroad.

The Human Rights Council has similarly stated in a resolution that “everyone” has the right to freedom of association and called on States to protect the rights of “persons espousing minority or dissenting views or beliefs.”<sup>45</sup>

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<sup>31</sup> *Wallman v. Austria*, Human Rights Committee, UN Doc. CCPR/C/80/D/1002/2001, 1 April 2004, para. 9.5.

<sup>32</sup> E.g., Sri Lanka (2023), para 42.

<sup>33</sup> E.g., Sri Lanka (2023), para 42; Sri Lanka (2014), para 22; Togo (2021), para 41.

<sup>34</sup> E.g., Qatar (2022), para 32.

<sup>35</sup> E.g., Russian Federation (2022), para 13; Togo (2021), para 40; Paraguay (2019), para 14; Mongolia (2017), para 11-12; Burundi (2014), para 8.

<sup>36</sup> E.g., Nigeria (2019), para 46; Cape Verde (2019), para 37; Philippines (2012), para 22; Republic of Korea (2006), para 19; El Salvador (2003), para 20; Kuwait (2000), para 22; Costa Rica (1994), para 12.

<sup>37</sup> E.g., Republic of Korea (2015), para 54-55; Lebanon (1997), para 27-28.

<sup>38</sup> E.g., Dominican Republic (2012), para 25.

<sup>39</sup> E.g., Mauritius (1996), para 29; Sri Lanka (1995), para 37.

<sup>40</sup> E.g., Monaco (2015), para 13; Senegal (1997), para 16; Estonia (1995), para 22.

<sup>41</sup> E.g., Russian Federation (2022), para 34; Ethiopia (2011), para 25.

<sup>42</sup> E.g., Ethiopia (2011), para 25; Togo (2002), para 19.

<sup>43</sup> E.g., Sri Lanka (2023), para 43; Qatar (2022), para 33; Togo (2021), para 42; Mongolia (2017), para 12; Ethiopia (2011), para 25.

<sup>44</sup> E.g., Bahrain 2023; Mozambique 2021; Armenia 2020; Greece 2022; Iran 2020; Nicaragua 2019; Venezuela 2022; Zimbabwe 2021; Chile 2019; Eswatini 2022; Indonesia 2023; Kuwait 2020; India 2023.

<sup>45</sup> UN Human Rights Council, Resolution 15/21, 6 October 2010, preamble.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association affirms:

International human rights law stipulates that everyone has the rights to freedom of association. As a result, legislation that does not set any specific limitation on individuals, including children ... and foreign nationals ... complies with international standards.<sup>46</sup>

### ***b) Cross-border collaboration***

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association notes that freedom of association is international in nature, and thus “extends to cross-border or international collaboration between associations and their membership.”<sup>47</sup>

### ***c) Number of people to form association***

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has underlined that everyone has the right to freedom of association. To ensure that even associations with few members have this right, the Special Rapporteur recommends as a best practice “legislation that require no more than two persons to establish an association.”<sup>48</sup>

### ***d) Right not to associate***

The Human Rights Committee in several Concluding Observations has raised concerns about some states’ legal provisions mandating people living in certain areas to join the ruling political party or imposing an obligation for trade unions to be affiliated with regional or sectoral federations.<sup>49</sup> In these instances, the Committee has called on the states to eliminate such obligations.

The Human Rights Council has in a resolution aligned with this approach and affirmed that “no one may be compelled to belong to an association.”<sup>50</sup>

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<sup>46</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 54.

<sup>47</sup> UN Human Rights Council, *Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/26/29, 14 April 2014, para. 61.

<sup>48</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 54.

<sup>49</sup> E.g., Azerbaijan (2016), para 40-41; Kazakhstan (2016), para 53-54.

<sup>50</sup> UN Human Rights Council, Resolution 15/21, 6 October 2010, preamble.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has similarly stated that “an important component of the right to freedom of association is that no one may be compelled to belong to an association.”<sup>51</sup>

### ***e) No criminalisation of membership in an association***

In *Lee v. Republic of Korea*, the Human Rights Committee indicated that a State must demonstrate that any measure entailing the sanctioning of membership in an association is strictly necessary to avert a real danger to one of the legitimate aims a State may protect:

The State Party must further demonstrate that the prohibition of the association and the criminal prosecution of individuals for membership in such organizations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose.<sup>52</sup>

The Committee in some of its Concluding Observations has also criticised cases of crackdowns on membership in an association by means of administrative and criminal sanctions against both individuals and the associations themselves (e.g., fines, freezing of assets, dissolution), considering such restriction as incompatible with the strict requirements of Article 22 of the Covenant.<sup>53</sup>

There are also many UPR report recommendations that call for repeal of criminal and regulatory provisions and practices that criminalise (membership of) associations, explicitly for journalists, human rights defenders and other civil society actors.<sup>54</sup>

### ***f) Harassment for engaging in trade union activities***

In *Lopez Burgos v. Uruguay*, the Human Rights Committee found a violation of Article 22(1) in conjunction with Article 19(1) and (2) because the author’s husband had “suffered persecution,” including harassment, torture, and kidnapping, for his participation in the trade union movement.<sup>55</sup>

Cases of harassment of workers engaging in trade union activities, including civil requisition by government and preventive detention,<sup>56</sup> have also been identified as problematic in several Concluding Observations of the Committee.<sup>57</sup>

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<sup>51</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 55.

<sup>52</sup> *Mr. Jeong-Eun Lee v. Republic of Korea*, Human Rights Committee, UN Doc. CCPR/C/84/D/1119/2002, Views of 20 July 2005, para. 7.2.

<sup>53</sup> E.g., Russian Federation (2022), para 34; Sri Lanka (2023), para 43; Azerbaijan (2016), para 41.

<sup>54</sup> E.g., Algeria 2020; Cambodia 2019; Ecuador 2022; Iran 2020; Indonesia 2023; Kazakhstan 2020; Lao People’s Democratic Republic 2020; Maldives 2021; Oman 2021.

<sup>55</sup> *Lopez Burgos v. Uruguay*, Human Rights Committee, UN Doc. CCPR/C/13/D/52/1979, para. 13.

<sup>56</sup> E.g., Cape Verde (2019), para 37; Swaziland (2017), para 44.

<sup>57</sup> E.g., Philippines (2022), para 47; Colombia (2016), para 38-39; Cambodia (2015), para 22; Belarus (1997), para 19; Nigeria (1996), para 36; Guatemala (1996), para 30; Argentina (1995) para 162.

Furthermore, UPR report recommendations have also called for ceasing all forms of harassment for engaging in trade union activities, in order to ensure freedom of association.<sup>58</sup>

The Human Rights Council has also included trade union activities within the scope of the freedom of association and called on States in a 2010 resolution to fully protect the rights of trade unionists to “associate freely.”<sup>59</sup>

### ***g) Free determination of membership***

In *Arenz et al v. Germany*, the Human Rights Committee ruled in favour of the freedom of a political party not to associate with Scientologists over the latter’s desire to associate with them. The applicants in the case were Scientologists who were expelled from one of Germany’s major political parties, the Christian Democratic Union (CDU), on the basis of their religion. The expulsions arose after the CDU adopted a resolution, which determined that Scientology was incompatible with CDU membership. The authors challenged their expulsions in court without success. The German courts had found that the CDU’s decision was not arbitrary and that they would not interfere with the political party’s autonomy over its membership. The Committee ultimately took the position that it could not interfere with the German courts’ findings regarding the balance of interests between the authors and the members of the party.<sup>60</sup>

In some Concluding Observations the Committee has also expressed concern at examples of legislation imposing specific criteria for the composition or membership of trade unions based on nationality and employment conditions.<sup>61</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that “associations should be free to choose their members and whether to be open to any membership.”<sup>62</sup>

### ***h) Charging of membership fees***

In *Wallman v. Austria*, the Human Rights Committee found that an association established under public law, such as a regional chamber of commerce, does not violate Article 22 by charging membership fees.<sup>63</sup>

## **3. State obligations concerning association**

### ***a) Positive duty of the State to promote and protect freedom of association***

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<sup>58</sup> E.g., Cambodia 2019; Fiji 2019; Côte d’Ivoire 2019.

<sup>59</sup> UN Human Rights Council, Resolution 15/21, 6 October 2010, para. 1.

<sup>60</sup> *Arenz, Paul; Röder, Thomas and Dagmar v. Germany*, Human Rights Committee, UN Doc. CCPR/C/80/D/1138/2002, 24 March 2004.

<sup>61</sup> E.g., Monaco (2015), para 13; Republic of Korea (2015), para 54.

<sup>62</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 55.

<sup>63</sup> *Wallman v. Austria*, Human Rights Committee, UN Doc. CCPR/C/80/D/1002/2001, 1 April 2004, para. 9.5.

The Committee has noted with concern in several Concluding Observations that the positive duty to promote and protect freedom of association is not adequately reflected in the constitutions of some countries, with vaguely worded restrictions on the formation of associations pertaining, e.g., to the need to preserve “racial and religious harmony” or to prohibit associations whose activities are “contrary to public order and to the unity and cohesion of the people.”<sup>64</sup>

To illustrate the current state of affairs regarding this positive duty of States in numbers: 44 UPR outcome reports between 2019 and April 2023 include one or more recommendations regarding the positive duty of the State to promote and protect freedom of association.<sup>65</sup> Almost all of these recommendations are a response to the lack of effective laws and practices of the States concerned that ought to guarantee and protect this freedom in their countries.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that “[t]he right to freedom of association obliges States to take positive measures to establish and maintain an enabling environment.”<sup>66</sup> Further, “[i]n the digital age, the positive obligation to facilitate the exercise of the rights to freedom of peaceful assembly and of association includes efforts ‘to bridge the digital divides, including the gender digital divide, and to enhance the use of information and communications technology, in order to promote the full enjoyment of human rights for all.’”<sup>67</sup>

### ***b) Proactive measures: Enabling legal framework***

The Human Rights Committee has in a number of Concluding Observations described framework legislation pertaining to associations that the Committee has found incompatible with Article 22 of the Covenant. Examples include vaguely worded definitions (e.g., “undesirable organisations”, “normal activities”, “extremism”, “political activities”);<sup>68</sup> unreasonable and burdensome requirements for the establishment and registration of associations, NGOs and political parties;<sup>69</sup> arbitrary closures of organisations considered as “foreign agents” or whose activities are not considered in line with those declared in their

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<sup>64</sup> E.g., Sri Lanka (2023), para 42; Central African Republic (2020), para 35.

<sup>65</sup> E.g., Algeria 2023; Bahrain 2023; Belarus 2021; Bolivia 2020; Bosnia and Herzegovina 2020; Brazil 2023; Brunei Darussalam 2019; Chile 2019; Congo 2019; Egypt 2020; Equatorial Guinea 2019; Eswatini 2022; Fiji 2019; Guinea 2020; Indonesia 2023; Iran 2020; Iraq 2020; Kazakhstan 2020; Kenya 2020; Kuwait 2020; Kyrgyzstan 2020; Maldives 2021; Morocco 2023; Mozambique 2021; Nicaragua 2019; Niger 2021; North-Macedonia 2019; Oman 2021; Philippines 2022; Qatar 2019; Rwanda 2021; Samoa 2022; South-Sudan 2022; Spain 2020; Tajikistan 2022; Tanzania 2021; Thailand 2021; Togo 2022; Tunisia 2022; Türkiye 2020; Uganda 2022; Venezuela 2022; Vietnam 2021; Zimbabwe 2021.

<sup>66</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 65.

<sup>67</sup> UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/41/41, 17 May 2019, para. 14.

<sup>68</sup> E.g., Uzbekistan (2020), para 20; Russian Federation (2023), para 34; Hong-Kong – China (2022), para 49.

<sup>69</sup> E.g., Qatar (2022), para 40; Uzbekistan (2020), para 20-21; Burundi (2014), para 20; Angola (2013), para 22; Kazakhstan (2011), para 27; Syria (2005), para 12; Uzbekistan (2005), para 21; Egypt (2003), para 22; VietNam (2002), para 20; Azerbaijan (2001), para 23; Kuwait (2000), para 23; Algeria (1998), para 17.

statutes;<sup>70</sup> restrictions on NGOs considered to be “foreign”, including restricted access to funding;<sup>71</sup> and norms undermining the independence of NGOs.<sup>72</sup>

In other cases, the Committee has observed the absence of legislation on the exercise of freedom of association altogether,<sup>73</sup> the lack of specific laws to prohibit the establishment of associations that instigate hatred and racist propaganda<sup>74</sup> or lack of an environment encouraging the establishment of non-governmental human rights organisations.<sup>75</sup> In all these cases, the Committee has consistently recommended promoting an enabling legal environment for the exercise of the freedom of association in conformity with Article 22 of the Covenant and the principles of legal certainty, predictability and proportionality and subject to appropriate safeguards.

The recommendations in UPR outcome reports between 2019 and April 2023 also address legislation and administrative measures and/or the lack of such measures that in effect impose restrictions incompatible with Article 22.<sup>76</sup> Although most of these recommendations call for general legislative and administrative measures in order to create an enabling legal environment for the freedom of association in the States concerned, several recommendations also explicitly mention the types of specific beneficiaries these actions should address. Most mentioned are journalists, human rights defenders and civil society organisations.<sup>77</sup> Noteworthy also are recommendations made in the context of registration and funding of civil society organisations<sup>78</sup> and (internally) displaced persons<sup>79</sup>.

The Human Rights Council has in several resolutions specified measures States should take to ensure an enabling framework for civil society. For example, the Council in a 2022 resolution called on states to support the diversity of civil society participation “with particular emphasis on underrepresented parts of civil society, including women, children, youth, human rights defenders, older persons, persons with disabilities, persons belonging to ethnic, religious, national, linguistic and racial minorities, migrants, refugees, indigenous peoples and others not associated with or organized in nongovernmental organisations, such as peaceful social movements.”<sup>80</sup> The Council also stressed the important role access to justice and digital technologies play in supporting an enabling framework, and called on States to ensure that their efforts to address security concerns on the internet accord “with their international human rights obligations to ensure the protection of all human rights online, in particular freedom of [...] association.”<sup>81</sup> In a 2013 resolution, the Council called on States to protect the

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<sup>70</sup> E.g., Russian Federation (2023), para 34; Bolivia (2022), para 40; Nicaragua (2022), para 33; Cambodia (2022), para 36; Equatorial Guinea (2004), para 11.

<sup>71</sup> E.g., Russian Federation (2023), para 34; Ethiopia (2011), para 25; Egypt (2003), para 21.

<sup>72</sup> E.g., Tunisia (1995), para 90.

<sup>73</sup> E.g., Georgia (1997), para 33.

<sup>74</sup> E.g., Bosnia Herzegovina (2012), para 20.

<sup>75</sup> E.g., Portugal – Macau (1999), para 16.

<sup>76</sup> E.g., Algeria 2023; Angola 2020; Bolivia 2020; Cambodia 2019; Congo 2019; Ecuador 2022; Equatorial Guinea 2019; Indonesia 2023; Libya 2021; Mauritania 2021; Morocco 2023; Myanmar 2021; Oman 2021; Rwanda 2021; Tajikistan 2022; Tanzania 2021; Togo 2022; Venezuela 2022; Vietnam 2021.

<sup>77</sup> E.g., Algeria 2023; Congo 2019; Mauritania 2021; Morocco 2023; Tajikistan 2022; Vietnam 2021.

<sup>78</sup> E.g., Vietnam 2021; Togo 2022.

<sup>79</sup> E.g., Myanmar 2021.

<sup>80</sup> UN Human Rights Council, Resolution 50/17, 20 July 2022, preamble.

<sup>81</sup> UN Human Rights Council, Resolution 50/17, 20 July 2022, preamble and para. 11; UN Human Rights Council, Resolution 47/16, 26 July 2021, para. 13.

freedom of association by ensuring that national legislation on the registration of associations and other matters conforms to international human rights law.<sup>82</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that the obligation to take positive measures under ICCPR Article 22 requires States to “establish and maintain an enabling environment in which associations can operate effectively, including fostering and facilitating their access to financial resources.”<sup>83</sup>

### ***c) Proactive measures: Enabling legal framework (online)***

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

Several UPR recommendations from different country outcome reports call explicitly for an enabling legal framework that extends to the online environment.<sup>84</sup>

Similarly, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that the obligation of state authorities to ensure an enabling legal framework extends to online associational activities:

... [i]n the digital age, the positive obligation to facilitate the exercise of the rights to freedom of peaceful assembly and of association includes efforts ‘to bridge the digital divides, including the gender digital divide, and to enhance the use of information and communications technology, in order to promote the full enjoyment of human rights for all. The obligation to protect requires that positive measures be taken to prevent actions by non-State actors, including businesses, that could unduly interfere with the rights to freedom of peaceful assembly and of association.’<sup>85</sup>

### ***d) Freedom from fear, threats, attacks and intimidation***

The Human Rights Committee has noted, in numerous Concluding Observations, threats, attacks and intimidation committed against individuals or groups exercising their right to freedom of association. Cases brought to the attention of the Committee include, among others, harassment, profiling, arrests and killings of trade union members by official authorities;<sup>86</sup> excessive use of force in dispersing workers;<sup>87</sup> harassment, intimidation, stigmatisation, arrests, arbitrary detention and prosecution of journalists, human rights organisations, NGOs and members of political opposition parties;<sup>88</sup> and high levels of violence

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<sup>82</sup> UN Human Rights Council, Resolution 22/6, 12 April 2013, para. 8.

<sup>83</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*, UN Doc. A/HRC/50/23, 10 May 2022, para. 12.

<sup>84</sup> E.g., Belarus 2021; Cambodia 2019; Egypt 2020; Eswatini 2022; Fiji 2019; Kazakhstan 2020; Kuwait 2020; Tajikistan 2022; Thailand 2021; Vietnam 2021.

<sup>85</sup> UN Human Rights Council, *Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/HRC/41/41, 17 May 2019, para. 14.

<sup>86</sup> E.g., Philippines (2022), para 47; Colombia (2016), para 38; Nigeria (1996), para 36; Guatemala (1996), para 30; Cambodia (2015), para 21; Argentina (1995), para 162.

<sup>87</sup> E.g., Philippines (2022), para 47.

<sup>88</sup> E.g., Egypt (2023), para 49; Djibouti (2013), para 12; Angola (2013), para 22; Tunisia (2008), para 20; Algeria (2007), para 25; Honduras (2017), para 40-42; Sudan (2007), para 29; Syria (2005), para 12.



and assaults, verbal and physical attacks, enforced disappearances and extrajudicial killings of human rights defenders and community leaders.<sup>89</sup>

Several UPR recommendations made between 2019 and April 2023 also concern calls for action by said States to ensure an enabling environment that is free from fear threats, attacks and intimidation. The most frequently mentioned affected groups are journalists and (independent) media workers, human rights defenders, civil society organisations and religious (minority) institutions.<sup>90</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that “[i]t is crucial that individuals exercising [the right to freedom of association] are able to operate freely without fear that they may be subjected to any threats, acts of intimidation or violence, including summary or arbitrary executions, enforced or involuntary disappearances, arbitrary arrest or detention, torture or cruel, inhuman or degrading treatment or punishment, a media smear campaign, travel ban or arbitrary dismissal, notably for unionists.”<sup>91</sup>

#### **e) Protection from third parties**

The Human Rights Committee has also noted, in Concluding Observations, restrictions to freedom of association imposed by third parties in some countries. Specific examples include obstacles posed by employers and supervisors to workers’ right to form associations and trade unions, organise meetings and participate in collective bargaining processes.<sup>92</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that “[t]he obligation to protect requires that positive measures be taken to prevent actions by non-State actors, including businesses, that could unduly interfere with the rights to freedom of peaceful assembly and of association.”<sup>93</sup> Further, “States must establish in law and policy safeguards that protect individuals and communities against harassment by private companies.”<sup>94</sup> The positive duty to prevent violations includes, for example, “establish[ing] in law and policy safeguards that protect individuals and communities against harassment by private companies (i.e., extractive industries).”<sup>95</sup>

#### **f) Duty to investigate**

The Human Rights Committee has reiterated in several Concluding Observations that State parties should conduct systematic investigations into all reported instances of infringements

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<sup>89</sup> E.g., Peru (2023), para 14; Thailand (2005), para 19; Guatemala (1996), para 30; Uzbekistan (2010), para 22

<sup>90</sup> E.g., Equatorial Guinea 2019; Togo 2022; Nicaragua (2019); Eritrea 2019; Gambia 2019; Tunisia 2022; Rwanda 2021; North-Macedonia 2019; Venezuela 2022; Côte d’Ivoire 2019; Iraq 2020; South-Sudan 2022; Tanzania 2021; Uganda 2022.

<sup>91</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 63.

<sup>92</sup> E.g., Dominican Republic (2017), para 31-32; Costa Rica (1999), para 17.

<sup>93</sup> UN Human Rights Council, *Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/HRC/41/41, 17 May 2019, para. 14.

<sup>94</sup> UN General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/74/349, 11 September 2019, para. 16.

<sup>95</sup> UN General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/74/349, 11 September 2019, para. 16.

of individuals' rights to exercise their right to freedom of association<sup>96</sup> and when appropriate, prosecute and institute proceedings against perpetrators of such acts.<sup>97</sup>

In several UPR outcome reports, recommendations also address the duty to investigate such reported infringements.<sup>98</sup>

## 4. Restrictions on the right to freedom of association

### a) Conditions for legitimate restrictions

The Human Rights Committee explained the scope of ICCPR Article 22(2), regarding restrictions on associational rights, in *Belyatsky v. Belarus*. It clarified that restrictions on the right to freedom of association must meet the following three requirements: (1) prescription by law; (2) the law may be imposed solely to protect national security or public safety, public order, public health or morals, or the rights and freedoms of others; and (3) the restrictions must be “necessary in a democratic society.”<sup>99</sup>

Furthermore, as the Committee stated in *Lee v. Republic of Korea*, when a State party invokes a legitimate aim as a reason to restrict the right to association, the State party must prove the precise nature of the threat.<sup>100</sup> Justifications for restrictions need to be specific; they cannot be made *in abstracto* or by indicating general, unspecified risks. In several communications, the Committee found a violation on the basis that no pertinent information or no information at all was given by the State to justify a restriction based on any of the legitimate aims.<sup>101</sup>

The Committee has further clarified in its communications that the State must demonstrate that the restrictions placed on the right to freedom of association are in fact necessary to avert a real and not only a hypothetical danger.<sup>102</sup> “The mere existence of reasonable and objective justifications for limiting the right to freedom of association is not sufficient.”<sup>103</sup> In other words, the State measure must pursue a pressing need, and it must be the least severe (in

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<sup>96</sup> E.g., Philippines (2022), para 47; Cambodia (2015), para 21; Thailand (2005), para 19; Tunisia (2008), para 20.

<sup>97</sup> E.g., Colombia (2016), para 39; Cambodia (2015), para 21; Uzbekistan (2010), para 22.

<sup>98</sup> E.g., Bahrain 2023; Equatorial Guinea 2019; Iraq 2020; Kenya 2020; Lao People's Democratic Republic 2020; Nicaragua 2019; Qatar 2019; Rwanda 2021.

<sup>99</sup> *Aleksander Belyatsky et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/90/D/1296/2004, 24 July 2007, para. 7.3.

<sup>100</sup> *Mr. Jeong-Eun Lee v. Republic of Korea*, Human Rights Committee, UN Doc. CCPR/C/84/D/1119/2002, Views of 20 July 2005, para. 7.3.

<sup>101</sup> See, e.g., *Aleksander Belyatsky et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/90/D/1296/2004, 24 July 2007, para. 7.5; *Pinchuk v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/112/D/2165/2012, Views of 24 October 2014, para. 8.5; *Viktor Korneenko et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006, para. 7.6; *Katsora, Sudalenko, and Nemkovich v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/100/D/1383/D/2005, Views of 25 October 2010, para. 8.3; *Boris Zvozkov et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1039/2001, 17 October 2006, para. 7.4; *Romanovsky v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/115/D/2011/2010, Views of 29 October 2015, paras. 7.3-7.5; *Kalyakin v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/112/D/2153/2012, Views of 10 October 2014, para. 9.3; see also *Malakhovsky and Pikul*, Human Rights Committee, UN Doc. CCPR/C/84/D/1207/2003, Views of 26 July 2005, paras 7.6-7.7 (the Committee found that the authors' right to the freedom of religion under ICCPR Article 18 was violated as the State did not provide arguments as to why certain restrictions on a religious organisation were necessary and therefore did not analyze the related Article 22 claims).

<sup>102</sup> *Aleksander Belyatsky et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/90/D/1296/2004, Views of 24 July 2007, para 7.3.

<sup>103</sup> *Mr. Jeong-Eun Lee v. Republic of Korea*, Human Rights Committee, UN Doc. CCPR/C/84/D/1119/2002, Views of 20 July 2005, para 7.2.

range, duration and applicability) option available to the public authority in meeting that need.<sup>104</sup>

The Committee applied these principles in *Lee v. Republic of Korea* and found a violation of Article 22 where the State Party had failed to show the specific threat to its national security and democratic order that would justify banning an organisation and criminalising its members. At issue was the conviction of a student, Mr. Jeong Eun Lee, under South Korea's National Security Law for his membership in Hanchongnyeon. Hanchongnyeon was a student union, which the Supreme Court of South Korea had banned under the same national security law on the basis that its objectives appeared to align with those of the government of North Korea and as such were a threat to South Korea's national security and democratic order. The Committee found that the State had failed to show that the conviction was necessary to protect national security because it had not shown that it was necessary to avert a real danger to either:

the existence of any reasonable and objective justification for limiting the freedom of association is not sufficient. The State Party must further demonstrate that the prohibition of the association and the criminal prosecution of individuals for membership in such organizations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose.<sup>105</sup>

The Committee has expressed similar concerns in Concluding Observations respecting several countries, where restrictions on the right to freedom of association have not been strictly compatible with those listed in Article 22 of the Covenant. Examples include, among others, the arbitrary use of counter-terrorism norms and measures as a basis to restrict the legitimate exercise of the right to freedom of association;<sup>106</sup> the adoption of overbroad national frameworks on emergencies, including those relating to the protection of public health;<sup>107</sup> disproportionate restrictions of the right to strike of civil servants;<sup>108</sup> and restrictions on registration of NGOs and human rights organisations, on trade union organisations and on educational institutions<sup>109</sup> as well as overly broad prohibitions on activities of associations and organisations in general.<sup>110</sup>

Noteworthy also are UPR recommendations calling for an end to broad restrictions to the freedom of association and/or bringing them in line with Article 22.<sup>111</sup> At the same time, UPR recommendations also note certain type of restrictions that are not considered in line with

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<sup>104</sup> *Mr. Jeong-Eun Lee v. Republic of Korea*, Human Rights Committee, UN Doc. CCPR/C/84/D/1119/2002, Views of 20 July 2005, para 7.2.

<sup>105</sup> *Mr. Jeong-Eun Lee v. Republic of Korea*, Human Rights Committee, UN Doc. CCPR/C/84/D/1119/2002, Views of 20 July 2005, para. 7.2.

<sup>106</sup> E.g., Turkmenistan (2023), para 20; Kyrgyzstan (2022), para 20; Nicaragua (2022), para 15; Philippines (2022), para 13

<sup>107</sup> E.g., Germany (2021), para 37.

<sup>108</sup> E.g., Estonia (2010), para 15.

<sup>109</sup> E.g., Cameroon (2010), para 26; Algeria (2007), para 25; Chile (2007), para 14; Hungary (2018), para 51-52.

<sup>110</sup> E.g., Mexico (2019), para 43; Cape Verde (2019), para 38; Turkmenistan (2017), para 46; Hong Kong – China (2000), para 20; Lithuania (1997), para 20).

<sup>111</sup> E.g., Belarus 2021; Bosnia and Herzegovina 2020; Eswatini 2022; Iran 2020; Madagascar 2020; Maldives 2021; Oman 2021; Tajikistan 2022; Thailand 2021, Venezuela 2022; Vietnam 2021.

Article 22, such as: general restrictions on international funding,<sup>112</sup> on meetings of political societies,<sup>113</sup> and respecting registration processes.<sup>114</sup>

The Human Rights Council in a 2022 resolution described in detail certain types of legal and policy restrictions that raise concerns regarding the freedom of association and noted that:

domestic legal and administrative provisions, such as national security and counter-terrorism legislation, and other measures, such as provisions on funding for civil society actors, registration or reporting requirements, or emergency measures, including public health measures, have sought to or have been misused to hinder the work and endanger the safety of civil society, and recognizing the urgent need to address the use or misuse of such provisions, and to review and, where necessary, amend any relevant provisions in order to ensure their compliance with international human rights law and, where applicable, international humanitarian law.<sup>115</sup>

Based on these concerns, the Council called on States to “take all measures necessary to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association, including imposed during states of emergency, are in accordance with their obligations under international human rights law.”<sup>116</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that “[a] restriction does not meet the legality requirement simply because it is formally enacted as a national law. The laws concerned must be accessible and sufficiently precise to allow members of the society to decide how to regulate their conduct (foreseeability) and may not confer unfettered or sweeping discretion on those who enforce them.”<sup>117</sup> Further, “[t]o meet the condition of necessity, authorities must demonstrate that the measure can truly be effective in pursuing the legitimate aim and be the least intrusive means among those which might achieve the desired objective. The State must also prove that the measure is necessary to avert a real and not a hypothetical threat to one of the grounds for limitation, such as national security or public order.”<sup>118</sup>

### ***b) Conditions for legitimate restrictions: Impact on minority groups***

The Human Rights Committee does not appear to have addressed this topic specifically with respect to the freedom of association in its communications or Concluding Observations. However, in *Fedotova v. Russian Federation*, the Committee found that “a restriction on the right to freedom of expression in relation to ‘propaganda of homosexuality’” was not based on “reasonable and objective criteria” and therefore did not accomplish legitimate aims, such as

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<sup>112</sup> E.g., Algeria 2023.

<sup>113</sup> E.g., Bahrein 2023.

<sup>114</sup> E.g., Equatorial Guinea 2019.

<sup>115</sup> UN Human Rights Council, Resolution 50/17, 20 July 2022, preamble.

<sup>116</sup> UN Human Rights Council, Resolution 50/17, para. 7.

<sup>117</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*, UN Doc. A/HRC/50/23, 10 May 2022, para. 14.

<sup>118</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*, UN Doc. A/HRC/50/23, 10 May 2022, para. 14.

“morals, health, rights and legitimate interests of minors,” which may also be relevant in the context of the freedom of association.<sup>119</sup>

Some UPR recommendations also call for an end to arbitrary restrictions, measures and practices respecting the freedom of association,<sup>120</sup> and for ensuring that relevant association laws are not applied in a discriminatory manner against certain groups (e.g. religious communities).<sup>121</sup>

Similarly, the Human Rights Council has in multiple resolutions called on States to respect and uphold the right to freedom of association of persons espousing minority or dissenting views, as well as the rights of individuals and associations working to defend the rights of such persons.<sup>122</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that “any limitations to rights protected by the International Covenant on Civil and Political Rights, when permitted by the Covenant, may not be imposed for discriminatory purposes or applied in a discriminatory manner. Therefore, provisions restricting or prohibiting the right to freedom of association of a specific group on discriminatory grounds, such as sexual orientation or gender identity, is not permitted under the Covenant and must be reviewed with a view to repeal.”<sup>123</sup>

### **c) Notion of “democratic society”**

In *Lee v. Republic of Korea*, the Human Rights Committee found that certain measures banning an association and criminalising its members in South Korea violated the right to freedom of association. In this communication, the Committee recognized that the freedom of association is essential to maintaining the plurality that is a core characteristic of democratic societies:

the existence and functioning of a plurality of associations, including those which peacefully promote ideas not favorably received by the government or the majority of the population, is one of the foundations of a democratic society.<sup>124</sup>

This articulation of the value of the freedom of association to democracy in promoting plurality has been re-iterated throughout subsequent Committee jurisprudence, which has described the plurality of associations as either a “foundation” (the language from *Lee*) or a “cornerstone” of democratic society.<sup>125</sup>

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<sup>119</sup> *Irina Fedotova v. Russia*, Human Rights Committee, U.N.Doc. CCPR/C/106/D/1932/2010, para. 10.8 As noted, this was a freedom of expression case, but the legitimate aims it examines are also relevant to association rights.

<sup>120</sup> E.g., Cambodia 2019; Nicaragua 2019.

<sup>121</sup> E.g., Algeria 2023.

<sup>122</sup> UN Human Rights Council, Resolution 15/21, 6 October 2010, para. 1; UN Human Rights Council, Resolution 22/6, 12 April 2013, para. 11(h).

<sup>123</sup> UN Human Rights Council, *Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/26/29, 14 April 2014, para. 64.

<sup>124</sup> *Mr. Jeong-Eun Lee v. Republic of Korea*, Human Rights Committee, UN Doc. CCPR/C/84/D/1119/2002, Views of 20 July 2005, at para.7.2.

<sup>125</sup> See, e.g., *Aleksander Belyatsky et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/90/D/1296/2004, Views of 24 July 2007, at para. 7.3; *Korneenko, et. al v. Belarus*, Human Rights Committee, CCPR/C/88/D/1274/2004, Views of 31 October 2006, at para.7.3.

#### **d) Determining objectives and activities of an association**

Freedom of association requires that an association be free to determine its own objectives, regardless of what these objectives may be, provided that they are not unlawful under international law.

The UN Human Rights Committee clearly stated this in the case of *Victor Korneenko et al v Belarus*, explaining that:

[...] the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by Article 22 extends to all activities of an association [...].<sup>126</sup>

The Committee has expressed severe concerns in Concluding Observations regarding state parties where the establishment of associations is conditional upon compliance with vaguely defined principles<sup>127</sup> or where associations can be held criminally responsible for carrying out legitimate activities deemed to incite dissent or “social, national, clan, class or religious discord.”<sup>128</sup> The Committee has also expressed its concern that some definitions such as “extremist activities” should be narrowly and precisely defined in order to protect individuals and associations from arbitrary application.<sup>129</sup>

UPR recommendations similarly reaffirm that States ought to ensure that the rights to freedom of association can be exercised without undue interference by authorities<sup>130</sup> and freely<sup>131</sup>.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has recognized that “States have a negative obligation not to unduly obstruct the exercise of the right to freedom of association. Members of associations should be free to determine their statutes, structure and activities and make decisions without State interference.”<sup>132</sup>

#### **e) Requirement to align association with government priorities**

The Human Rights Committee has expressed grave concerns in its Concluding Observations about examples where the establishment of associations is conditional upon compliance with religious principles espoused by the State party.<sup>133</sup> In that regard, the Committee called for the right to freedom of association to be granted to all individuals without discrimination.

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<sup>126</sup> *Victor Korneenko et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006.

<sup>127</sup> E.g., Iran (2011), para 26.

<sup>128</sup> E.g., Kuwait (2016), para 44; Kazakhstan (2016), para 53.

<sup>129</sup> E.g., Russian Federation (2003), para 20.

<sup>130</sup> E.g., Cambodia 2019; Fiji 2019; Hungary 2022; Nicaragua 2019; Venezuela 2022; Vietnam 2021.

<sup>131</sup> E.g., Bahrein 2023; Côte d'Ivoire 2019; Congo 2019; Lebanon 2021, Maldives 2021; Myanmar 2021; Tajikistan 2022; Thailand 2021; Uganda 2022.

<sup>132</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 64.

<sup>133</sup> E.g., Iran (2011), para 26.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has more broadly affirmed that:

[De]liberate misinterpretations by Governments of ownership or harmonization principles to require associations to align themselves with Governments' priorities contradict one of the most important aspects of freedom of association, namely that individuals can freely associate for any legal purpose. Hence, Governments which restrict funding in the name of aid effectiveness violate the key democratic principles of "pluralism, tolerance and broadmindedness" and therefore unduly restrict freedom of association.<sup>134</sup>

***f) Objectives and activities of an association: Lawfulness under international law***

The Human Rights Committee has accepted as permissible in some cases restrictions imposed due to the objectives or activities of association, notably in cases where the associations' objectives demonstrated the purpose of overthrowing a democratic government and/or inciting racial and ethnic violence.

In *M.A. v. Italy*, the Committee found a communication submitted on behalf of a detained, self-avowed fascist to be inadmissible on several grounds, including the failure to show that the prohibition on the reformation of the Italian fascist party under Italian national law was a violation of its ICCPR obligations. Instead, the Committee noted that the acts for which the petitioner was convicted were removed from the protection of the ICCPR by Article 5 (acts aimed at the destruction of rights) and were justifiably prohibited as legitimate restrictions on, amongst others, Article 22 rights.<sup>135</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that "only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 of the Covenant on Civil and Political Rights) or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law (art. 5) should be deemed unlawful."<sup>136</sup>

***g) Can one create an association with the same objective as an already existing association?***

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association addressed this question following his visit to the Sultanate of Oman. In expressing concern that the executive branch has unbridled discretion over who can form and operate an

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<sup>134</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/23/39, 24 April 2013, para. 41.

<sup>135</sup> *M.A. v Italy*, Human Rights Committee, U.N. Doc. Supp. No. 40 (A/39/40) at 190, Decision on Inadmissibility of 10 April 1984.

<sup>136</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 18; see also UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/23/39, 24 April 2013, para. 18.

association and on what issues associations can focus, the Special Rapporteur specifically highlighted a number of cases where organisations had been denied registration because their work was “already covered” by other associations.<sup>137</sup> The Special Rapporteur re-emphasized the importance of independence from the Government as a foundational aspect of the right to freedom of association, stating:

[t]he right is meant to empower individuals to come together and work for their interests, so long as they are doing so for legal and peaceful purposes. The Special Rapporteur urges the Government to accord civil society actors the same freedom to establish themselves as businesses, even where they are working on the same issues. It is unlikely ... that the Government would prohibit, for example, the establishment of a hotel because another was established in the same area. There is no justifiable reason to distinguish between civil society and business sector organizations, both of which are non-State actors.<sup>138</sup>

#### ***h) Can an association be forced to expand or limit its activities to a particular region?***

The freedom of an association to determine its own activities includes the freedom of an association to choose where to conduct its activities.

The Human Rights Committee addressed this question in *Kungurov v Uzbekistan*, where the Uzbekistan Ministry of Justice had refused to register an organisation by the name of “Democracy and Rights,” asserting that the organisation’s application materials failed to demonstrate that the organisation was physically present in every region of Uzbekistan, which the State argued was required for public associations. In its ruling, the Human Rights Committee concluded that such a requirement did not meet the strict standards necessary for the limitation of freedom of association:

the State party’s authorities did not specify to be granted a national status, authorising it to disseminate information in all parts of the country. The Committee considers that even if these and other restrictions were precise and predictable and were indeed prescribed by law, the State party has not advanced any argument as to why such restrictions would be necessary, for purposes of Article 22, paragraph 2, to condition the registration of an association on ... the existence of regional branches of “Democracy and Rights.”<sup>139</sup>

#### ***i) Can an association defend the rights of people who are not members of the association?***

As a general matter, associations may defend the rights of people who are not members of the associations. In *Zvozkov v Belarus*, the key issue before the Human Rights Committee was whether Belarus violated the applicants’ rights to freedom of association by refusing to register the organisation “Helsinki XXI” because it sought to represent and defend the rights

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<sup>137</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to Oman, A/HRC/29/25/Add.1, 27 April 2015, para. 43.

<sup>138</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to Oman, A/HRC/29/25/Add.1, 27 April 2015, para. 47.

<sup>139</sup> *Nikolay Kungurov v. Uzbekistan*, Human Rights Committee, CCPR/C/102/D/1478/2006, Views of 20 July 2011, para 8.5.



of vulnerable citizens who were not “members” of the organisation, which was prohibited by Belarus law.

The Committee concluded that refusing to recognize an organisation that defended the rights of third parties was an impermissible restriction on the right to freedom of association:

[The Committee] considers that even if such restrictions were indeed prescribed by law, the State party has not advanced any argument as to why it would be necessary, for purposes of article 22, paragraph 2, to condition the registration of an association on a limitation of the scope of its activities to the exclusive representation and defence of the rights of its own members. Taking into account the consequences of the refusal of registration, i.e. the unlawfulness of operation of unregistered associations on the State party's territory, the Committee concludes that the refusal of registration does not meet the requirements of article 22, paragraph 2.<sup>140</sup>

When a person or association formally represents another person, however, consent is needed.<sup>141</sup>

#### ***j) Restrictions during election periods***

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that the “freedom of associations to engage in activities related to the electoral process should therefore be guaranteed to all associations, whether they are apolitical in their means and operations, partially or totally supportive of the Government or express criticism of Government policies.”<sup>142</sup> Further, “[i]n the context of elections ... the test threshold [for restrictions] should be raised to a higher level. It is therefore, not sufficient for a State to invoke the protection of the integrity of the election process, the need to ensure non-partisan and impartial elections, the need to preserve peace or security to limit these rights, insofar as the context of elections is a critical time when individuals have a say about the fate of their country.”<sup>143</sup>

#### ***k) Criminal sanction for operating an unregistered public organisation***

In *Pinchuk v. Belarus*, the Committee examined a case in which the sanctions were assessed for acting on behalf of an unregistered association:

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<sup>140</sup> *Boris Zvozskov et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1039/2001, 17 October 2006, para. 7.4.

<sup>141</sup> See, e.g., *Boris Zvozskov et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1039/2001, 17 October 2006, finding the petitioner had standing to bring the complaint on his own behalf and on behalf of those individuals from whom he had submitted letters authorising him to do so and refusing the submissions concerning the remaining named individuals in the complaint, from whom he had no such authorisation.

<sup>142</sup> UN General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/68/299, 7 August 2013, para. 46.

<sup>143</sup> UN General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/68/299, 7 August 2013, para. 46; see also *id.* paras. 47, 58(f).

The Committee notes the author's allegations that after the State party had repeatedly obstructed the registration of the association, the Office of the Procurator-General issued an official warning to her husband that he risked prosecution for engaging in activities on behalf of an unregistered association; that subsequently he was prosecuted on tax charges; those tax charges arose from the fact that he had maintained a bank account in his own name on behalf of the association because the refusal of the State party to register the association prevented him from opening accounts in the association's name; that in his trial the court did not take into account evidence that the funds were received and spent for the legitimate purposes of the association; that he had been convicted and sentenced to four and a half years of incarceration, and had had financial sanctions imposed; and that the courts did not explain how those measures were consistent with his right to freedom of association, in particular, how the conviction and sentence were proportionate to any of the goals stated in article 22(2). In the absence of a reply from the State party, the Committee concludes that the facts described disclose a violation of the author's husband's right to freedom of association.<sup>144</sup>

In *M.T. v. Uzbekistan*, the Committee found a violation of the author's rights under ICCPR Article 22 where she had been convicted for establishing an unregistered public association.<sup>145</sup>

The Committee in some Concluding Observations has expressed concern at severe penalties imposed for operating an unregistered organisation, calling into question their compatibility with Article 22 of the Covenant.<sup>146</sup>

### ***l) Interference with governance/operations of association***

In *Victor Korneenko et al v. Belarus*, the Human Rights Committee clearly stated that the freedom of association requires that an association be free to determine its own objectives, regardless of what these objectives may be, provided that they are not unlawful under international law:

[...] the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by Article 22 extends to all activities of an association [...].<sup>147</sup>

The Committee in some Concluding Observations has highlighted worrying interferences exercised by state parties in the activities of NGOs. Such interferences include cases of authorities arrogating to themselves full discretion in appointing leadership of NGOs, as well as undue control over NGO activities and their internal functioning.<sup>148</sup> The Committee has also

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<sup>144</sup> *Pinchuk v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/112/D/2165/2012, Views of 24 October 2014, para. 8.6.

<sup>145</sup> *M.T. v. Uzbekistan*, Human Rights Committee, UN Doc. CCPR/C/114/D/2234/2013, Views of 23 July 2015, paras. 7.7-7.8.

<sup>146</sup> E.g., Tanzania (2009), para 23.

<sup>147</sup> *Viktor Korneenko et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006, para. 7.2.

<sup>148</sup> E.g., Jordan (2010), para 16; Rwanda (2016), para 41-42; Tajikistan (2019), para 52.

expressed concerns, in Concluding Observations, regarding the lack of full independence of trade unions and interference by authorities in free elections of union leaders.<sup>149</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that State authorities:

must ... respect the right of associations to privacy as stipulated in article 17 of the Covenant on Civil and Political Rights. In this connection, authorities should not be entitled to: condition any decisions and activities of the association; reverse the election of board members; condition the validity of board members' decisions on the presence of a Government representative at the board meeting or request that an internal decision be withdrawn; request associations to submit annual reports in advance; and enter an association's premises without advance notice.<sup>150</sup>

### ***m) Interference with associations representing minority views***

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

The Human Rights Council in a 2010 resolution recognized the right to freedom of association “free of restrictions, subject only to the limitations imposed by international law” and emphasized that it is particularly crucial with respect to persons “where individuals may espouse minority or dissenting religious or political beliefs.”<sup>151</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that “the formation of associations embracing minority or dissenting views or beliefs may sometimes lead to tensions, but he emphasizes the duty of the State to ensure that everyone can peacefully express their views without any fear.”<sup>152</sup>

### ***n) Online restrictions***

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

The UN General Assembly affirmed in a 2018 resolution that the freedom of association applies both online and offline and called on State authorities to:

ensure that the same rights that individuals have offline, including the rights to freedom of expression, of peaceful assembly and of association, are also fully protected online, in

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<sup>149</sup> E.g., Venezuela (2001), para 27.

<sup>150</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 65; see also UN Human Rights Council, *Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, UN Doc. A/HRC/26/29, 14 April 2014, para. 58.

<sup>151</sup> UN Human Rights Council, Resolution 15/21, 6 October 2010, preamble.

<sup>152</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 64.

accordance with human rights law, particularly by refraining from Internet shutdowns and content restrictions on the Internet that violate international human rights law.<sup>153</sup>

The Human Rights Council in a 2022 resolution similarly emphasized “the importance for all States to promote, free, open, interoperable, reliable and secure use of and access to the Internet by facilitating international cooperation aimed at the development of media and information and communications facilities in all countries, by respecting and protecting human rights, including to freedom of [...] of association and to privacy, and by refraining from undue restrictions, such as Internet shutdowns, arbitrary or unlawful surveillance or online censorship.”<sup>154</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that the framework to analyze restrictions to the freedom of association applies to various online restrictions, including, *inter alia*, network shutdowns, limitations on publishing material online, and private companies’ content moderation decisions and responses to government requests.<sup>155</sup>

### ***o) Surveillance***

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

The Human Rights Council has recognized that invasive surveillance represents a threat to the freedom of association and emphasized that:

in the digital age, technical solutions to secure and protect the confidentiality of digital communications, including measures for encryption and anonymity, can be important to ensure the enjoyment of human rights, in particular the rights to privacy, to freedom of expression and to freedom of peaceful assembly and association.<sup>156</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that:

[t]he use of surveillance techniques for the indiscriminate and untargeted surveillance of those exercising their right to peaceful assembly and association, in both physical and digital spaces, should be prohibited. Surveillance against individuals exercising their rights of peaceful assembly and association can only be conducted on a targeted basis, where there is a reasonable suspicion that they are engaging in or planning to engage in

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<sup>153</sup> UN General Assembly, Resolution 73/173, 8 January 2019, para. 4.

<sup>154</sup> UN Human Rights Council, Resolution 50/17, 20 July 2022, preamble; see also UN Human Rights Council, Resolution 47/23, 16 July 2021, preamble (recognizing “the risks that new and emerging digital technologies may have for the protection, promotion and enjoyment of human rights, including but not limited to the right to equality and non-discrimination, the right to freedom of opinion and expression, the rights to freedom of peaceful assembly and freedom of association”).

<sup>155</sup> UN Human Rights Council, *Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/HRC/41/41, 17 May 2019, paras. 42, 52, 64.

<sup>156</sup> UN Human Rights Council, Resolution 38/7, 17 July 2018, preamble; see also *Id.* paras. 9, 17.

serious criminal offences, and under the very strictest rules, operating on principles of necessity and proportionality and providing for close judicial supervision.<sup>157</sup>

#### **p) National security and terrorism**

In *Lee v. Republic of Korea*, the Human Rights Committee examined a case involving the author's arrest under the Republic of Korea's National Security Law for membership in an "enemy-benefitting group." The Committee noted that the onus was on the State to show that this restriction was "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 this purpose." The Committee found that the State failed to demonstrate this and that the author's right to freedom of association under ICCPR Article 22 had been violated.<sup>158</sup>

The Committee in several Concluding Observations has reiterated concerns about the imprecise, vague and ambiguous definition of "terrorism" in national legislation and its abusive application to activities of individuals and groups, in particular civil society and political parties, engaged in the legitimate exercise of the right to freedom of association.<sup>159</sup> It has also pointed with concern to the practice of some state parties to exercise undue surveillance and control on organisations for national security purposes.<sup>160</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that "States have a responsibility to address money-laundering and terrorism, but this should never be used as a justification to undermine the credibility of the concerned association, nor to unduly impede its legitimate work. In order to ensure that associations are not abused by terrorist organizations, States should use alternative mechanisms to mitigate the risk, such as through banking laws and criminal laws that prohibit acts of terrorism."<sup>161</sup> Similarly, the Special Rapporteur on the promotion and protection of human rights while countering terrorism has stated that "[p]roscribing associations which have as their aim the destruction of the State through terrorist means, or banning public demonstrations which call for the use of terrorist means to destroy the State may be covered by the limitation clauses of ICCPR. The Special Rapporteur underlines, however, that Governments must not use these aims/purposes as smokescreens for hiding the true purpose of the limitations."<sup>162</sup>

#### **q) Imposition of restrictions on "illegal" groups and organisations**

In some of its Concluding Observations the Human Rights Committee has expressed concern about potentially overbroad restrictions to freedom of association deriving from norms

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<sup>157</sup> UN Human Rights Council, *Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/HRC/41/41, 17 May 2019, para. 57; see also *Id.* para. 77.

<sup>158</sup> *Mr. Jeong-Eun Lee v. Republic of Korea*, Human Rights Committee, UN Doc. CCPR/C/84/D/1119/2002, Views of 20 July 2005, para. 7.2; see also *Aleksander Belyatsky et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/90/D/1296/2004, Views of 7 August 2007, para. 7.3.

<sup>159</sup> E.g., Israel (2022), para 48; Equatorial Guinea (2019), para 22; Kyrgyzstan (2022), para 19; Sri Lanka (2014), para 11;

<sup>160</sup> E.g., Egypt (2023), para 51; Japan (2022), para 16; Hong-Kong – China (2022), para 12.

<sup>161</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 70; see also *Id.*, para. 21.

<sup>162</sup> UN General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism*, UN Doc. A/61/267, 16 August 2006, para. 20; see also *Id.* para. 53.

criminalising illegal groups, associations and organisations. These norms include, among others, a vague definition of “illegal organisations”, the imposition of disproportionate penalties for the establishment of groups, associations and organisations based on a political ideology contrary to the principles of the state, but also the use of counter-terrorism legislation to criminalise work of civil society organisations and their members.<sup>163</sup> The Committee has called on such states to review criminal norms and abolish these legal provisions in light of Article 22 of the Covenant.

## 5. Imposition of obligations on associations

### a) Notification versus authorisation procedures

In Concluding Observations, the Human Rights Committee has raised concerns about the existence of a *de facto* authorisation rather than notification procedure in order to obtain the registration of associations, particularly for NGOs and human rights organisations<sup>164</sup> or even to allow political parties to organise events.<sup>165</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that where States require prior authorisation in order for an association to secure registration or legal personality – as opposed to mere notification – they must take great care to avoid arbitrary requirements or lengthy delays in approvals. The Special Rapporteur has thus called on States to follow best practices to allow for such procedures to be simple, easily accessible, non-discriminatory, non-onerous or free of charge.<sup>166</sup>

### b) Registration procedures

The Human Rights Committee has repeatedly expressed concerns about obstacles to the registration of associations and NGOs in several Concluding Observations throughout the years. Restrictive rules criticised include, e.g., stringent registration requirements for public associations, NGOs, trade unions or religious organisations and political parties;<sup>167</sup> sweeping grounds for denial of registration; suspension or permanent closure of organisations for alleged irregularities in registration;<sup>168</sup> and heavy penalties for violations of the relevant legislation.<sup>169</sup>

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<sup>163</sup> E.g.: Israel (2022), para 48; Turkey (2013), para 18; El Salvador (2018), para 37; Lybia (2007), para 24.

<sup>164</sup> E.g., Mauritania (2019), para 46; Lebanon (1997), para 27-28.

<sup>165</sup> E.g., Kuwait (2011), para 29.

<sup>166</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*, UN Doc. A/HRC/53/38/Add.4, 23 June 2023, para. 16. See also, UN Human Rights Council, *First Thematic Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 57; see also UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/23/39, 24 April 2013, para. 17.

<sup>167</sup> E.g., Azerbaijan (2016), para 11; Belarus (1997), para 19; Iraq (1997), para 21; Moldova (2016), para 37; Rwanda (2016), para 41; Tajikistan (2013), para 23; Turkmenistan (2012), para 19; VietNam (2002), para 20; Ethiopia (2011), para 25.

<sup>168</sup> E.g., Azerbaijan (2016), para 11; Russian Federation (2023), para 34; Uzbekistan (2015), para 25; Israel (2014), para 22.

<sup>169</sup> E.g., Azerbaijan (2016), para 11; Belarus (1997), para 19; ; Russian Federation (2023), para 34; Egypt (2003), para 21; Tanzania (2009), para 23.

UPR recommendations have called for eliminating unnecessary obstacles for registration of civil society organisations; making registration procedures transparent, non-discriminatory, expeditious and inexpensive; and ensuring such procedures are in conformity with international law.<sup>170</sup>

The Human Rights Council in a 2013 resolution similarly affirmed that registration procedures must conform to international standards and called on States to:

ensure, where procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law.<sup>171</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that

where a registration regime exists, requirements should be framed such that no one is disadvantaged in the formation of her or his association, either by burdensome procedural requirements or unjustifiable limitations to substantive activities of associations. The State has an obligation to take positive measures to overcome specific challenges that confront marginalized groups, such as indigenous peoples, minorities, persons with disabilities, women and youth, in their efforts to form associations.<sup>172</sup>

### ***c) Registration of foreign associations***

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that “the formation of branches of associations, foreign associations or unions or networks of associations, including at the international level, should be subject to the same notification procedure” as domestic associations.<sup>173</sup>

### ***d) Refusal to register and/or grant legal personality***

In several Human Rights Committee communications, the impact of the refusal to register an association has been a key feature in deciding whether there was a violation of Article 22.<sup>174</sup>

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<sup>170</sup> E.g., Angola 2010/2014; Azerbaijan 2013; Belarus 2010/2015; Brunei Darussalam 2010; Egypt 2010; Ethiopia 2010; Laos 2015; Mozambique 2011; Oman 2011; Panama 2011; Qatar 2014; Rwanda 2011/2015; Turkmenistan 2013; Uganda 2011; Uzbekistan 2013.

<sup>171</sup> UN Human Rights Council, Resolution 22/6, 12 April 2013, para. 8.

<sup>172</sup> UN Human Rights Council, *Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/26/29, 14 April 2014, para. 56.

<sup>173</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 59.

<sup>174</sup> *Katsora, Sudalenko, and Nemkovich v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/100/D/1383/D/2005, Views of 25 October 2010, para. 8.3; *Pinchuk v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/112/D/2165/2012, Views of 24 October 2014, para. 8.5; *Boris Zvozkov et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1039/2001, Views of 17 October 2006, para. 7.4.

In *Romanovsky v. Belarus*, the Human Rights Committee found that the impact of the refusal to register was severe as it meant, under Belarusian law, that all operations of the association were unlawful. The case concerned a group of retirees who, following an assembly, decided to form and register an organisation. The Ministry of Justice denied their application asserting that the assembly was not held legitimately and that all decisions taken during it were therefore void. The Human Rights Committee found the State Party had not provided any arguments as to why the refusal to register was necessary or proportionate, noting the severe impact:

The Committee notes the author's submission that registration of the association was refused on the basis of a number of reasons given by the State party, which must be assessed in the light of the consequences arising for the author and his association. The Committee also notes that, even though the reasons stated are prescribed by the relevant law, as it follows from the material before it, the State party has not attempted to advance any arguments as to why they are necessary in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, nor why the refusal to register the association was a proportionate response in the circumstances. The Committee further notes that, in the decisions of the domestic authorities that were made available, no explanation was given by the authorities, particularly the Supreme Court, as to why it was necessary to restrict the author's right to freedom of association, further to article 22(2) of the Covenant.

The Committee notes that the refusal to register the association led directly to the operation of the association in the territory of the State party being unlawful and directly precluded the author from enjoying his right to freedom of association.<sup>175</sup>

The Committee has also found that the refusal to re-register an association may violate Article 22(2) where the authorities have failed to provide evidence that the refusal is necessary in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.<sup>176</sup>

In contrast, the Committee concluded in *V.B. et al. v. Belarus* that the refusal of state authorities to register a human rights association due to errors and missing information in the association's registration application did not violate Article 22. The Committee found that the obligation to provide correct information in the registration application did not constitute an unlawful interference with the association's rights, especially given the opportunity to correct and resubmit the application. The Committee therefore found the authors' complaint to be inadmissible as to Article 22:

The Committee considers that putting in place requirements to obtain a state registration for purposes of functioning of a public association, when those requirements are not accompanied by unreasonable conditions, cannot be seen as constituting by itself an unlawful interference with the freedom of association under article 22(2) of the Covenant ... The Committee notes in particular ... that nothing

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<sup>175</sup> *Romanovsky v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/115/D/2011/2010, Views of 29 October 2015, paras. 7.3-7.5

<sup>176</sup> *Adyarkhayev et al. v. Tajikistan*, UN Human Rights Committee, UN Doc. CCPR/C/135/D/2483/2014, Views of 7 July 2022, para. 9.9.



precluded the authors from remedying the errors and resubmitting their application for registration ...<sup>177</sup>

In Concluding Observations, the Committee has frequently expressed concerns when state parties grant their governments the power to refuse to register an association or a political party<sup>178</sup> or when the refusal to register or grant legal personality is done in an arbitrary or discriminatory way. There have been several reports concerning State parties that maintain unjustified distinctions amongst associations, including those specifically disfavoured NGOs and non-governmental human rights organisations;<sup>179</sup> are unwilling to recognize certain trade unions;<sup>180</sup> or deny registration and participation for opposition political parties in elections.<sup>181</sup>

UPR recommendations affirm that States ought to allow inclusive and official registration to obtain a legal status for associations, including those claiming minority group status and those working on human rights issues, and for States to put in place measures that limit government's ability to deny an organisation's legal status for political, religious or arbitrary reasons.<sup>182</sup>

### *e) Delays in registering*

In Concluding Observations the Human Rights Committee has expressed concern that burdensome administrative processes for registration often cause significant delays – even of years – before associations can obtain their registration.<sup>183</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has similarly stated that:

The procedure to establish an association as a legal entity varies from one country to another, but it is vital that Government officials act in good faith, in a timely and non-selective manner. The Special Rapporteur considers as best practice procedures which are simple, non-onerous or even free of charge ... and expeditious.<sup>184</sup>

The Special Rapporteur has further stated that “[u]nder both notification and prior authorisation regimes, registration bodies must be bound to act immediately and laws should set short time limits to respond to submissions and applications respectively ... During this period associations should be presumed to be operating legally until it is proven otherwise.”<sup>185</sup>

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<sup>177</sup> *V.B. et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/133/D/2709/2015, Inadmissibility Decision of 27 January 2022 (the Committee found that there was no unlawful interference with the authors' rights and that their claims were insufficiently substantiated. The communication was therefore inadmissible under article 2 of the Optional Protocol to the ICCPR).

<sup>178</sup> E.g., Azerbaijan (1994), para 19.

<sup>179</sup> E.g., Togo (2002), para 19; Jamaica (2016), para 2016; Syria (2005).

<sup>180</sup> E.g., Republic of Korea (2006), para 19; Argentina (2010), para 22.

<sup>181</sup> E.g., Uzbekistan (2015), para 26.

<sup>182</sup> E.g., Cuba 2013; Greece 2016; Saudi Arabia 2013; Algeria 2012; Azerbaijan 2013; Burundi 2009; Morocco 2012; Syria 2012; Turkmenistan 2009.

<sup>183</sup> E.g., Turkmenistan (2012), para 19; Mozambique (2013), para 22.

<sup>184</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 57.

<sup>185</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 60.

## **f) Reporting Requirements**

Unreasonable, onerous and disproportionate reporting requirements are some of the most frequent concerns raised by the Human Rights Committee in its Concluding Observations on state parties. The cases consistently highlighted by the Committee include, among others, stricter reporting obligations for foreign funding, and having to provide overdetailed information on sources of funding, use and disposal of property, directions of expenditures, and other financial subjects. These obligations are also often imposed in a discriminatory way against NGOs and non-profit and human rights organisations, e.g., under the pretense of preventing money laundering or the financing of terrorism via NGOs.<sup>186</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has similarly expressed concern regarding:

frequent, onerous and bureaucratic reporting requirements, which can eventually unduly obstruct the legitimate work carried out by associations. Controls need therefore to be fair, objective and non-discriminatory, and not be used as a pretext to silence critics ... if an association fails to comply with its reporting obligations, such minor violation of the law should not lead to the closure of the association ... or criminal prosecution of its representative ... rather, the association should be requested to promptly rectify its situation.<sup>187</sup>

## **g) Access to judicial review**

The Human Rights Committee has raised concerns, in its Concluding Observations, about the lack of legal redress or judicial review on merits concerning an array of administrative decisions, including refusal to grant organisational registration; dissolution of organisations; and the prevention of specific individuals from holding official positions in organisations (e.g., trade unions).<sup>188</sup> The Committee has also expressed concerns about the lack of safeguards to ensure the effective independence of judicial bodies involved in decisions concerning registration and dissolution of organisations.<sup>189</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that where the State denies registration, it must provide clear reasoning and ensure access to judicial review:

Any decision rejecting the submission or application must be clearly motivated and duly communicated in writing to the applicant. Associations whose submissions or applications have been rejected should have the opportunity to challenge the decision before an independent and impartial court."<sup>190</sup>

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<sup>186</sup> E.g., Russian Federation (2023), para 34; Kyrgyzstan (2022), para 49, para 49; Philippines (2022), 47; Tajikistan (2019), para 51;

<sup>187</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/23/39, 24 April 2013, para. 38.

<sup>188</sup> E.g., Hong-Kong – China (2022), para 49; Senegal (1997), para 16.

<sup>189</sup> E.g., Egypt (2023), para 51.

<sup>190</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 61.

Similarly, the Special Rapporteur on the situation of human rights defenders has emphasized that judicial review is vital in ensuring that refusal of registration is not used to limit freedom of association:

States should guarantee the right of an association to appeal against any refusal of registration. Effective and prompt recourse against any rejection of application and independent judicial review regarding the decisions of the registration authority is necessary to ensure that the laws governing the registration process are not used as obstacles to the right to freedom of association.<sup>191</sup>

## 6. Access to resources

### a) Constraints on access to resources

Over the years, the Human Rights Committee has acknowledged a concerning trend of regulations restricting associations' access to resources. Examples in several Concluding Observations include, among others, blanket bans on foreign funding (with heavy penalties for their violation);<sup>192</sup> limited access to foreign funding for NGOs and human rights organisations,<sup>193</sup> including via the establishment of a centralised authority regulating the allocation of such funds to public associations;<sup>194</sup> an unfavourable tax regime on donations to NGOs with charitable status but whose activities are vaguely considered as “political”;<sup>195</sup> mandatory public disclosure of foreign funds received by any association and public identification of their foreign supporters;<sup>196</sup> mandatory registration as “foreign agents” or “foreign-supported organisations”<sup>197</sup> of not-for-profit organisations receiving foreign funding and/or engaging in vaguely specified political activities (under threat of closure in case of violation).<sup>198</sup> The Committee in all these cases has recommended that legal provisions regulating access to both domestic and foreign funding should not put at risk the effective operation of associations and NGOs because of limited access to resources, thus negatively affecting the legitimate exercise of their right to freedom of association.

The Human Rights Council in a 2013 resolution affirmed these principles and broadly called on States to

ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration referred to in paragraph 3 above, other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency

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<sup>191</sup> UN General Assembly, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*, UN Doc. A/64/226, 4 August 2009, para. 113.

<sup>192</sup> E.g., Azerbaijan (2016), para 40-41.

<sup>193</sup> E.g., Bangladesh (2017), para 27-28; Ethiopia (2011), para 25.

<sup>194</sup> E.g., Kazakhstan (2016), para 53-54.

<sup>195</sup> E.g., Canada (2015), para 15.

<sup>196</sup> E.g., Israel (2014), para 22; Hungary (2018), para 53-54.

<sup>197</sup> E.g., Hungary (2018), para 53-54

<sup>198</sup> E.g., Russian Federation (2015), para 22; Venezuela (2015), para 20.

and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto.<sup>199</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that “[t]he right of associations to freely access human, material and financial resources – from domestic, foreign, and international sources – is inherent in the right to freedom of association and essential to the existence and effective operations of any association.”<sup>200</sup> The Special Rapporteur has cited the Human Rights Committee’s statement in *Korneenko et al. v. Belarus* that the freedom of association “guarantees the right of such an association freely to carry out its statutory activities” to support the proposition that States must not unduly restrict activities such as the receipt of foreign funding and the use of equipment received as foreign aid.<sup>201</sup> Both registered and unregistered associations have the right to seek, receive, and use funding<sup>202</sup> and State authorities should not be empowered to approve or reject whether an association receives funding.<sup>203</sup>

Additionally, the Special Rapporteur has clarified that the term “resources” is broadly understood to cover financial transfers (e.g. donations, grants, contracts, sponsorships, social investments, etc.); loan guarantees and other forms of financial assistance; in-kind donations (e.g. contributions of goods, services, software and other forms of intellectual property, real property, etc.); material resources (e.g. office supplies, IT equipment, etc.); human resources (e.g. paid staff, volunteers, etc.); access to international solidarity; ability to travel and communicate without undue interference; and the right to benefit from the protection of the state.<sup>204</sup>

## **b) Reporting requirements**

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that “associations should be accountable to their donors, and at most, subject by the authorities to a mere notification procedure of the reception of funds and the submission of reports on their accounts and activities.”<sup>205</sup>

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<sup>199</sup> UN Human Rights Council, Resolution 22/6, 12 April 2013, para. 9(b).

<sup>200</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*, UN Doc. A/HRC/50/23, 10 May 2022, para. 9.

<sup>201</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*, UN Doc. A/HRC/50/23, 10 May 2022, para. 9.

<sup>202</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*, UN Doc. A/HRC/53/38/Add.4, 23 June 2023, para. 14.

<sup>203</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*, UN Doc. A/HRC/50/23, 10 May 2022, para. 20.

<sup>204</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*, UN Doc. A/HRC/53/38/Add.4, 23 June 2023, para. 7.

<sup>205</sup> UN Human Rights Council, *Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/23/39, April 24, 2013, para. 37; see also *Id.* para. 82(e) and UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 65.

### ***c) Countering terrorism limitations on funding***

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has noted that restrictions on funding which purport to address terrorism or national security concerns often fall afoul of international standards on the freedom of association:

In order to meet the proportionality and necessity test, restrictive measures must be the least intrusive means to achieve the desired objective and be limited to the associations falling within the clearly identified aspects characterizing terrorism only. They must not target all civil society associations, as is regrettably the case in a new law against organized crime in Venezuela. Laws drafted in general terms limiting, or even banning funding under the justification of counter-terrorism do not comply with the requisites of “proportionality” and “necessity.”<sup>206</sup>

### ***d) Restrictions on foreign funding***

In *Korneenko et al. v. Belarus*, the Human Rights Committee assessed a government order to dissolve an association based on two alleged violations of domestic law, including the “improper use of equipment, received through foreign grants, for the production of propaganda materials and the conduct of propaganda activities.”<sup>207</sup> Although the Committee did not analyze the dissolution order as a restriction on foreign funding, it found that the order violated the author’s right to freedom of association, in part, because the State party had not advanced any argument as to why the domestic legal prohibition on the improper use of equipment was necessary for the purposes of ICCPR Article 22(2).<sup>208</sup>

UPR recommendations have called States to eliminate obstacles to receiving foreign funding by civil society organisations, whether this is through regulation (explicit and broad bans) or heavy administrative hurdles that make it difficult in practice to receive and spend funds received from abroad.<sup>209</sup>

The Human Rights Council affirmed in a 2013 resolution that restrictions on foreign funding may violate international standards where it called on States to ensure that they “do not discriminatorily impose restrictions on potential sources of funding other than those

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<sup>206</sup> UN Human Rights Council, *Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/23/39, April 24, 2013, para. 23; see also UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule*, UN Doc. A/HRC/50/23, 10 May 2022, paras. 33-34 (analysing efforts by the Financial Action Task Force, the intergovernmental money laundering and terrorism financing watchdog, to revise its standards to provide a more enabling environment for non-profit organisations.”

<sup>207</sup> *Viktor Korneenko et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006, para. 7.4.

<sup>208</sup> *Viktor Korneenko et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006, para. 7.5.

<sup>209</sup> E.g., Algeria 2012/2023; Azerbaijan 2013; Belarus 2015; Egypt 2010; Ethiopia 2014; Jordan 2014; Kenya 2015; Kyrgyzstan 2015; Russia 2013; Turkmenistan 2013; Vietnam 2021; Oman 2016; Cambodia 2019.

ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability.<sup>210</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that “[l]aws that restrict foreign funding, including ‘foreign agent laws,’ generally fail to establish with sufficient degree of foreseeability what funding and what sources of funding would qualify as ‘foreign funding’ for the purposes of registration as a ‘foreign agent’ and allow for and overbroad and unpredictable interpretation of the law in practice.”<sup>211</sup> Further, “[t]o be lawful any restriction must protect only those interests enumerated in article 22 (2): 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 [...] Restrictions to foreign funding based on the protection of State sovereignty, which is not listed as a legitimate ground for restrictions under the Covenant, generally fails to meet this requirement.”<sup>212</sup>

## 7. Suspension and dissolution, and remedies for violations

### a) Requirement of proportionality

The Human Rights Committee has highlighted in several communications the particularly “severe consequences” of organisational dissolution and has taken this severity into account when assessing the proportionality of the restrictive measure:

Taking into account the severe consequences of the dissolution of “Viasna” for the exercise of the author’s and his co-authors’ right to freedom of association, as well as the unlawfulness of the operation of unregistered associations in Belarus, the Committee concludes that the dissolution of the association is disproportionate.<sup>213</sup>

In *Korneenko et al. v. Belarus*, the Human Rights Committee assessed the dissolution of the association “Civil Initiatives,” which was based in part on alleged deficiencies in the association’s documentation.<sup>214</sup> The Committee found that dissolution was disproportionate and therefore violated the authors’ right to freedom of association under Article 22:

the parties disagree over the interpretation of domestic law and the State party’s failure to advance arguments as to which of the three deficiencies in the association’s documentation triggers the application of the restrictions spelled out in article 22, paragraph 2, of the Covenant. Even if “Civil Initiatives” documentation did not fully

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<sup>210</sup> UN Human Rights Council, Resolution 22/6, 12 April 2013, para. 9(b).

<sup>211</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Clément Nyaletsossi Voule, UN Doc. A/HRC/53/38/Add.4, 23 June 2023, paras. 24.

<sup>212</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Clément Nyaletsossi Voule, UN Doc. A/HRC/53/38/Add.4, 23 June 2023, paras. 25-26.

<sup>213</sup> *Belyatsky v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/90/D/1296/2004, Views of 24 July 2007, para. 7.5; see also *Korneenko v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006, para. 7.7.

<sup>214</sup> *Viktor Korneenko et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006, para. 7.4.

comply with the requirements of domestic law, the reaction of the State party's authorities in dissolving the association was disproportionate.<sup>215</sup>

In contrast, the Committee in *Lee and 388 Others v. Republic of Korea* found that the dissolution of a political party was not disproportionate when it was based on substantial evidence of the "repeated, concrete and imminent threat" posed by the party's leaders to the democratic order:

Regarding the issue of proportionality, the Committee notes that the Court considered that the repeated, concrete and imminent threat posed by leading members of the Party justified its dissolution for the protection of the fundamental democratic order. The Committee notes that the authors failed to demonstrate that the Party unequivocally condemned the violent statements made at the May meetings ... [The Committee has] ascertained that the Court based its decision on a very significant body of evidence. Recalling that the dissolution of a political party is always an ultima ratio decision, the Committee concludes that ... in view of the very serious circumstances and criminal facts ascertained by the domestic judicial authorities, the State party has adequately justified the dissolution in the light of the need to ensure public safety and the maintenance of the constitutional order.<sup>216</sup>

In its Concluding Observations, the Human Rights Committee has also repeatedly expressed concerns about arbitrary cases of suspension or permanent closure/dissolution of associations and NGOs both in law and in practice. Worrying examples include, among others, broad or ambiguous legal grounds for dissolution of NGOs<sup>217</sup> or of political parties<sup>218</sup> and unjustified bans or closures of associations, trade unions and human rights organisations in practice.<sup>219</sup> In these cases, the Committee has recommended that State parties take measures to ensure that any restrictions on the right to freedom of association strictly comply with the requirements of Article 22(2) of the Covenant, including the criteria of necessity and proportionality.

On the application of a proportionality test, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that "The suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient."<sup>220</sup>

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<sup>215</sup> *Viktor Korneenko et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006, para. 7.5.

<sup>216</sup> *Lee and 388 Others v. Republic of Korea*, Human Rights Committee, UN Doc. CCPR/C/130/D/2776/2016, Views of 23 October 2020, para. 7.7.

<sup>217</sup> E.g., Azerbaijan (2016), para 40; Ecuador (2016), para 31; Bangladesh (2017), para 27.

<sup>218</sup> E.g., Egypt (2023), para 51; Kazakhstan (2016), para 53-54; Republic of Korea (2015), para 50-51; Tanzania (2009), .

<sup>219</sup> E.g., Equatorial Guinea (2014), para 11; Tajikistan (2013), para 28; Nigeria (1996), para 36.

<sup>220</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 75; see also UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/23/39, 24 April 2013, para. 38.

## ***b) Requirement of necessity***

The Human Rights Committee has examined several cases where the State improperly dissolved or suspended an association. In a series of communications arising in Belarus, it has found violations of the right to freedom of association where the State arbitrarily used its laws on association to dissolve or suspend organisations.

In *Korneenko et al v. Belarus*, the applicants' NGO had been dissolved for failing to comply with national law regarding the use of foreign funds, equipment purchased with foreign funds and for apparent flaws in its official documents. The Human Rights Committee found the State Party had violated the applicants' rights to freedom of association because it failed to show: (1) that the restrictions on the use of foreign funds were necessary to any legitimate State interest, or (2) that the dissolution of an organisation was proportionate to any technical failings in its attempts to comply with Belarussian law. The Committee reasoned that:

In the present case, the court order dissolving 'Civil Initiatives' is based on two types of perceived violations of the State party's domestic law: (1) improper use of equipment, received through foreign grants, for the production of propaganda materials and the conduct of propaganda activities; and (2) deficiencies in the association's documentation. These two groups of legal requirements constitute *de facto* restrictions and must be assessed in the light of the consequences which arise for the author and 'Civil Initiatives'.

On the first point, the Committee notes that the author and the State party disagree on whether 'Civil Initiatives' indeed used its equipment for the stated purposes. It considers that even if 'Civil Initiatives' used such equipment, the State party has not advanced any argument as to why it would be necessary, for purposes of Article 22, paragraph 2, to prohibit its use 'for the preparation of gatherings, meetings, street processions, demonstrations, pickets, strikes, production and the dissemination of propaganda materials, as well as the organization of seminars and other forms of propaganda activities'.

On the second point, the Committee notes that the parties disagree over the interpretation of domestic law and the State party's failure to advance arguments as to which of the three deficiencies in the association's documentation triggers the application of the restrictions spelled out in Article 22, paragraph 2, of the Covenant. Even if 'Civil Initiatives'' documentation did not fully comply with the requirements of domestic law, the reaction of the State party's authorities in dissolving the association was disproportionate.<sup>221</sup>

In *Belyatsky v. Belarus*, the Human Rights Committee found that Belarus violated the applicants' right to freedom of association where it dissolved an NGO, Viasna, for its monitoring of Belarus' 2001 national elections. Viasna raised questions about the legitimacy of the elections. It was dissolved by court order soon after for violating the laws on elections by sending monitors to election committee meetings and polling stations, and for violating the

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<sup>221</sup> *Viktor Korneenko et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006, paras. 7.2-7.4.



law governing public associations by paying third party observers in addition to relying on “members” of the association.<sup>222</sup> The Human Rights Committee held that Belarus had again failed to show that the dissolution of the organisation was in pursuit of a legitimate aim or was necessary or proportionate to any such State interest. Instead, the Committee took the opportunity to remind the State Party that “the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society.”<sup>223</sup>

Similarly, in *Mikhailovskaya and Volchek v. Belarus*, the Committee evaluated the order to dissolve a legal aid association for allegedly providing legal assistance without a legal license and violating registration rules. The Committee found that the government had failed to show why dissolution was necessary under ICCPR Article 22 even assuming the truth of the allegations, noting that this was “especially so in light of the author’s assurances that they have rectified all of the alleged deficiencies in the operation of the existing NGO, and the affirmation by the Constitutional Court of the right of all citizens in Belarus to receive legal assistance, including by non-lawyers.”<sup>224</sup>

In *Farah v. Djibouti*, the Committee considered whether the dissolution of a political party had violated the author’s right to freedom of association. The Committee first noted that “political parties are a form of association essential to the proper functioning of democracy.”<sup>225</sup> Further, the domestic authorities, including the courts, had failed to provide the author with adequate notice or to demonstrate that the allegations underlying the dissolution order were substantiated. The Committee concluded that the dissolution order was not necessary to advance one of the legitimate aims under ICCPR Article 22:

The Committee finds that the national courts’ consideration of whether the dissolution decree was effectively notified in full and the brevity with which those courts ruled on the claims made by the party do not, in view of the issue, which is particularly important for a democratic society, meet the requirements for a careful examination of the rights in question. In addition, the five years it took the Supreme Court to notify the author’s lawyer of the final judgment of 19 May 2013 is manifestly unreasonable. As a result, the Committee is persuaded that the State party has failed to prove that the Mouvement, the party founded by the author, was dissolved to address a real threat to national security, public safety or public order or to protect public health or morals or the rights and freedoms of others. In the circumstances, the Committee concludes that the author, as President of the dissolved party, was a victim of a violation of article 22 of the Covenant.<sup>226</sup>

Failing to comply with administrative obligations enshrined in national law is not a sufficient ground for dissolution. The Special Rapporteur on the rights to freedom of peaceful assembly

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<sup>222</sup> *Aleksander Belyatsky et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/90/D/1296/2004, Views of 7 August 2007, para. 7.5.

<sup>223</sup> *Aleksander Belyatsky et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/90/D/1296/2004, Views of 7 August 2007, para. 7.3.

<sup>224</sup> *Mikhailovskaya and Volchek v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/111/D/1993/2010, Views of 24 July 2014, paras. 7.4-7.5.

<sup>225</sup> *Farah v. Djibouti*, Human Rights Committee, UN Doc. CCPR/C/130/D/3593/2019, Views of 4 November 2020, para. 7.2.

<sup>226</sup> *Farah v. Djibouti*, Human Rights Committee, UN Doc. CCPR/C/130/D/3593/2019, Views of 4 November 2020, para. 7.8.

and of association has specifically clarified that should an association fail to meet its reporting obligations, such a violation should not lead to involuntary dissolution, closure of association, or prosecution of its members. Instead, the association should be given an opportunity to rectify the situation.<sup>227</sup>

### **c) Only by a judicial body**

The Human Rights Committee does not appear to have addressed this topic in its communications or Concluding Observations.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that “[s]uspension or involuntarily dissolution of associations should be sanctioned by an impartial and independent court in case of a clear and imminent danger resulting in a flagrant violation of domestic laws, in compliance with international human rights law.”<sup>228</sup>

### **d) Remedies**

The Human Rights Committee has, in an array of cases, addressed the appropriate remedies in case of violations of associational rights under ICCPR Article 22.

The Committee considered a series of cases arising in Belarus where infringement of the right to freedom of association took the form of improper refusal to register an association. In this situation, the authorities may be required to reconsider the association’s registration application.<sup>229</sup> For example, in *Romanovsky v. Belarus*, the Committee found that the authorities had failed to justify their refusal to register an association as necessary or proportionate under international law. The Committee noted that “the State party is under an obligation to provide the author with an effective remedy. That obligation requires the State party to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obliged to, inter alia, reconsider the application to register the ... association ... based on criteria that complies with the requirements of article 22 of the Covenant.”<sup>230</sup>

In two communications involving the unjustified dissolution of an association, the Committee found that the association was entitled to remedies, including “re-registration”<sup>231</sup> or “establishment”<sup>232</sup> of the dissolved association.

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<sup>227</sup> UN Human Rights Council, *Second Thematic Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, UN Doc. A/HRC/23/39, April 24 2013, para 38(e).

<sup>228</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 100.

<sup>229</sup> *Boris Zvozkov et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1039/2001, 17 October 2006; *Katsora, Sudalenko, and Nemkovich v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/100/D/1383/D/2005, Views of 25 October 2010; *Pinchuk v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/112/D/2165/2012, Views of 24 October 2014; *Mikhailovskaya and Volchek v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/111/D/1993/2010, Views of 24 July 2014; *Kalyakin v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/112/D/2153/2012, Views of 10 October 2014.

<sup>230</sup> *Romanovsky v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/115/D/2011/2010, Views of 29 October 2015, para. 9.

<sup>231</sup> *Aleksander Belyatsky et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/90/D/1296/2004, 24 July 2007, para. 9.

<sup>232</sup> *Viktor Korneenko et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006, para. 9.

In cases where an author's right to freedom of association has been violated, a State may be required to amend a law to bring it into conformity with ICCPR Article 22. For example, in *Lee v. Republic of Korea* the Committee found that the author's arrest under the State party's National Security Law, and the designation of an association as an "enemy-benefitting group," violated Article 22. Consequently, the Committee recommended that "the State party amend article 7 of the National Security Law, with a view to making it compatible with the Covenant. The State party is under an obligation to ensure that similar violations do not occur in the future."<sup>233</sup>

The Committee has also explicitly recommended in its Concluding Observations that the relevant state parties should take steps to amend specific legislation affecting the right to freedom of association, in order to clearly define the concepts therein and ensure compatibility with the Covenant (e.g., amendment of legislation on national security).<sup>234</sup>

Broadly, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that "Where the rights to freedom of peaceful assembly and of association are unduly restricted, the victim(s) should have the rights to obtain redress and to fair and adequate compensation."<sup>235</sup> The Special Rapporteur has also stated:

States have an obligation to establish accessible and effective complaints mechanisms that are able to independently, promptly and thoroughly investigate allegations of human rights violations or abuses in order to hold those responsible accountable. This not only entails guarantees that the violation be stopped, but also that it will not be repeated in the future.<sup>236</sup>

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<sup>233</sup> *Mr. Jeong-Eun Lee v. Republic of Korea*, Human Rights Committee, UN Doc. CCPR/C/84/D/1119/2002, Views of 20 July 2005, para. 9.

<sup>234</sup> E.g., Republic of Korea (2015), para 50-51, 54-55.

<sup>235</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 81.

<sup>236</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/20/27, 21 May 2012, para. 77.

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