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Warsaw, 19 December 2025  
Opinion-Nr.: NGO-ALL/566/2025 [NR]

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## **ODIHR NOTE IN CONTRIBUTION TO THE DRAFT CCPR GENERAL COMMENT NO. 38 ON ARTICLE 22 OF THE ICCPR (RIGHT TO FREEDOM OF ASSOCIATION)**

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This Note has benefited from contributions made by Mr. Jeremy McBride, Barrister, Monckton Chambers, London and a Member of the ODIHR Panel of Experts on Freedom of Assembly and Association; and Mr. Jonathan Peters, Media Law Professor at the University of Georgia School of Law and member of the ODIHR Panel of Experts on Freedom of Assembly and Association.

It was also peer reviewed by the other members of the [ODIHR Panel of Experts on Freedom of Assembly and Association](#).

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## EXECUTIVE SUMMARY

This Note is provided in response to the call of the United Nations (UN) Human Rights Committee for contribution to the development of the draft General Comment on Article 22 of the International Covenant on Civil and Political Rights (ICCPR) on the right to freedom of association. The Note only addresses certain aspects of the right to freedom of association, though ODIHR may provide further substantive comments and elaboration on the topics addressed below or any of the other topics identified in the Concept Note or that may be covered in the draft General Comment no. 38 in the future.

ODIHR's contribution draws on relevant ODIHR publications and legal reviews on the right to freedom of association, primarily the [ODIHR-Venice Commission Joint Guidelines on Freedom of Association](#) (2015) and the [ODIHR Guidelines on the Protection of Human Rights Defenders \(2014\)](#), as well as ODIHR-Venice Commission joint guidelines addressing specific categories of associations, including [political parties](#) and [religious or belief organizations](#). At the same time, the Note does not seek to restate *in extenso* what is stated therein but rather aims to reflect on subsequent developments and emerging challenges since their publication, as also reflected in the numerous [ODIHR legal reviews on freedom of association](#) published during the past decade. As the work on the General Comment no. 38 progresses, ODIHR aims to provide further analysis, also offering more comprehensive review of issues pertinent to political parties and religious or belief organizations, which are specific types of associations.

The right to freedom of association constitutes a fundamental pillar of a vibrant, pluralistic, and participatory democratic society. It enables individuals to act collectively in pursuit of shared interests, whether for the benefit of their members, specific segments of the public, or society at large. Associations play a significant role in advancing objectives in the public interest and are widely recognized at the international and regional levels, particularly in times of crisis, when they frequently act as frontline responders and compensate for gaps in state action.

Freedom of association is also an indispensable prerequisite for the effective exercise of other fundamental rights and freedoms, including freedom of expression, freedom of peaceful assembly, freedom of religion or belief, and the right to participate in public life, and it is closely interconnected with the right to freedom of peaceful assembly. While not an absolute right, freedom of association may be subject to limitations or derogations only in accordance with the strict conditions prescribed by international human rights law.

At the outset it is important for the General Comment to address the scope of the freedom of association in a comprehensive manner, including by providing a clear and elaborate definition of what constitutes an association (including highlighting the particular nature of political parties and religious or belief organizations), the types of associations the right covers, including online/digital associations, members and membership as well as legal personality of associations, underlining that a *de jure* registration should not be a requirement, but a possibility. Furthermore, the key elements of the freedom of associations should address the independence (free from external influence in both internal and external actions) and the internal autonomy (freedom to manage its own internal affairs without interference from the state or external actors) of associations – although given the fundamental role of political parties in the democratic process, the balance between internal autonomy of parties and external regulation to create a minimum of democratic and equal participation within parties may lead to the adoption of legislative measures to ensure greater gender balance in political parties, with a view to ultimately contribute to more balanced or diverse representation in political and public life generally. Special emphasis should be put on the presumption in favour of the lawful formation, objectives, and activities of associations. It would also be essential for the General Comment to distinguish interest representation activities like lobbying from civil dialogue and public participation. In view of the legitimacy of associations advocating changes in law and public policy and seeking to secure the transparency and accountability of public authorities, it ought to be underlined in the General Comment that there is no justification for assertions that such activities are “political” and, as such can either not be undertaken by them at all or only could do so, should they become political parties.

A fundamental aspect in highlighting the obligations of States, is the provision of financial and other types of support for associations and the way in which this is regulated, as this is of crucial importance for both their existence and operation. In this respect, it will be vital to underline that the receipt of funding or other type of support from foreign sources (public or private) should not be seen as inherently impermissible and as entailing the conclusion that the recipient associations are acting in the interests of those providing them with it.

In noting the permissible restrictions and the parameters within which such restrictions may be applied, it is of fundamental importance to clarify or reiterate the exhaustive nature of the grounds for imposing restrictions listed in Article 22 (2) of the ICCPR and that they should be narrowly interpreted. In that respect, pursuing transparency as such is not a legitimate aim under Article 22 of the ICCPR; transparency, openness, or publicity of funding within the civil society

sector must be assessed in light of the fact that non-governmental organizations are already subject to numerous legal obligations comparable to those applicable to other private entities. While transparency alone does not constitute a legitimate aim under relevant international instruments, it may, in certain circumstances, serve as a means to pursue legitimate aims recognized under international or regional standards, such as the maintenance of public order or the prevention of crimes.

Two aspects that reinforce the freedom of association and should be addressed are the equal enjoyment of the right and the intersection with other rights. It is of particular importance to highlight the impact of stigmatization and criminalization of associations as the negative stereotyping of associations pursuing legitimate goals can lead to undue discrimination or other forms of unfavourable treatment. **It is further suggested that the General Comment highlights access to complaint and redress mechanisms and the role of associations in public decision-making and lawmaking processes.**

***As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.***

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## I. INTRODUCTION AND SCOPE

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1. On 29 October 2025, the United Nations (UN) Human Rights Committee published a call for contribution to the development of the draft General Comment on Article 22 of the International Covenant on Civil and Political Rights (ICCPR) on the right to freedom of association.<sup>1</sup>
2. A Concept Note identifying areas for input was published along with the call.<sup>2</sup>
3. The present Note was prepared by ODIHR in response to the above request to provide written contribution, within the framework as established by relevant OSCE human dimension commitments,<sup>3</sup> which also calls upon ODIHR to enhance its co-operation with other international organizations active in the human dimension,<sup>4</sup> and in view of ODIHR's extensive experience in this field. It offers, for consideration, some input with the aim of contributing to the consultation process for the development of the General Comment no. 38.
4. Building on ODIHR's long-standing expertise in legislative assistance, the Note aims to provide some views on selected aspects pertaining to the right to freedom of association as outlined in the Concept Note in view of applicable and relevant international and regional human rights standards and recommendations, as well as OSCE human dimension commitments. It draws on the relevant OSCE/ODIHR publications and legal reviews on the right to freedom of association,<sup>5</sup> primarily the OSCE/ODIHR-Venice Commission Joint [Guidelines on Freedom of Association](#) (2015 (hereafter Joint Guidelines on Freedom of Association)) and the OSCE/ODIHR [Guidelines on the Protection of Human Rights Defenders](#) (2014), as well as OSCE/ODIHR-Venice Commission joint guidelines addressing specific categories of associations, including political parties and religious or belief organizations.<sup>6</sup> At the same time, the present Note aims to reflect on subsequent developments and new challenges that have emerged since the publication of these guidelines, as also reflected in the numerous ODIHR legal reviews<sup>7</sup> that have been published during the past decade. The present submission also refers to the OSCE/ODIHR Report on OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic (2020)<sup>8</sup> and the recommendations made during various OSCE human dimension meetings, especially with respect to the exercise of the right to freedom of association in times of crisis.<sup>9</sup>

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1 OHCHR | Call for input - Draft General Comment No. 38 on Article 22 (Freedom of Association) of the International Covenant on Civil and Political Rights. The UN Human Rights Committee, in accordance with Article 40 (4) of the International Covenant on Civil and Political Rights (ICCPR), and Rule 76 of its Rules of Procedure, is mandated to prepare general comments on the various articles and provisions of the Covenant with a view to assisting States parties in fulfilling their obligations under the Covenant. The Human Rights Committee decided at its 144th session (13 June to 17 July 2025) to develop a General Comment on Article 22 ICCPR, in the light of experience obtained in the review of State reports and communications on this right.

2 See <<https://www.ohchr.org/sites/default/files/documents/hrbodies/ccpr/cfis/gc38-22/en-gc38-concept-note.docx>>.

3 In particular, CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 29 June 1990, para. 9.3; and Charter of Paris for a New Europe (1990), where the OSCE participating states affirmed that "...without discrimination, every individual has the right to (...) freedom of association." See also OSCE, *Istanbul Document 1999*, para. 27, where OSCE participating States committed to "enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms".

4 See in particular, CSCE/OSCE, *Budapest Document 1994 Towards a Genuine Partnership in a New Era*, para. 9.

5 See an overview of ODIHR's legal reviews on freedom of association here: [Legal reviews | LEGISLATIONLINE](#).

6 See OSCE/ODIHR and Venice Commission, [Guidelines on Political Party Regulation](#) (2nd edition, 2020); [Guidelines for Review of Legislation Pertaining to Religion or Belief](#) (2004) and the [Joint Guidelines on the Legal Personality of Religious or Belief Communities](#) (2014).

7 Available at: [Legal reviews | Freedom of Association | LEGISLATIONLINE](#).

8 See [OSCE/ODIHR Report on OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic \(2020\)](#).

9 Especially during the Supplementary Human Dimension Meeting (SHDM) On the Role of Civil Society in the Promotion and Protection of International Human Rights Law and International Humanitarian Law, 22-23 April 2024 (see [here](#)) and the SHDM On The Functioning of Democratic Institutions in Times of Crisis, 16-17 May 2022 (see [here](#)).

5. At the same time, the present Note does not aim to cover in details all the aspects identified in the Concept Note. Given that a future draft of the General Comment no. 38 may be subject to further consultations in the months to come, ODIHR may provide further substantive comments and elaboration on the topics addressed below or any of the other topics identified in the Concept Note or that may be covered in the draft General Comment no. 38. Thus, the content of this Note is without prejudice to written input, analyses and/or recommendations that ODIHR may provide in the future.

## II. LEGAL ANALYSIS

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6. The right to freedom of association is a cornerstone of a vibrant, pluralistic and participatory democracy and underpins the exercise of a broad range of other human rights.<sup>10</sup> The right to freedom of association is about the ability of persons to act collectively in pursuit of common interests, which may be those of the members of associations themselves, of the public at large or of certain sectors of the public.<sup>11</sup> Associations often play an important and positive role in achieving goals that are in the public interest, as recognized at the international and regional levels,<sup>12</sup> including and especially in time of crisis where they often serve as frontline responders and tend to fill the gaps left by state authorities (see also Sub-Section 9 *infra*).<sup>13</sup>
7. Freedom of association is also an essential prerequisite for the exercise of other fundamental freedoms, such as the freedom of expression, but also, for example, the freedom of peaceful assembly, freedom of religion or belief, the right to participate in public life, etc. Freedom of association is also closely interlinked with the right to freedom of peaceful assembly<sup>14</sup> as for instance, associations often organize assemblies to express opinions and influence public debate, while public assemblies can eventually give rise to the establishment of new associations.<sup>15</sup> Although the right to freedom of association is not an absolute right, it can be limited, or derogated from, only under the strict conditions stipulated in international human rights instruments.
8. In light of the above, the importance of the right to freedom of association should be highlighted as a crucial tenet for the functioning of a vibrant, pluralistic and participatory democracy, as well as an essential prerequisite for the exercise of other fundamental freedoms.
9. At the OSCE level, the OSCE participating States committed “*to ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and*

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10 See ODIHR and Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, paras. 1 and 8. See also European Court of Human Rights (European Court of Human Rights), *Gorzelik v. Poland*, no. 44158/98, 17 February 2004, para. 92, where the European Court of Human Rights underlined that associations formed for different purposes, including advocating for political agendas, but also “protecting cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness, are also important to the proper functioning of democracy”, also emphasizing that: “The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.”

11 See ODIHR and Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, paras. 47 and 76.

12 See ODIHR and Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, para. 9.

13 See e.g., SHDM on The Functioning of Democratic Institutions in Times of Crisis, 16-17 May 2022, Annotated Agenda and Final Report (see [here](#)).

14 UN Human Rights Committee, General Comment No. 37 on the Right to Peaceful Assembly, CCPR/C/GC/37, 17 September 2020, para 112.

15 See for instance: *Solidarnosc*, History in dates (accessed on 9 May 2023) and *Gilets Jaunes in France: Journal Officiel - Annonce 861*, 15 March 2022 (accessed on 11 May 2023).

*protection of human rights and fundamental freedoms”* (1990 Copenhagen Document).<sup>16</sup> In addition, in the 1990 Paris Document, they affirmed that “...*without discrimination, every individual has the right to (...) freedom of association.*”<sup>17</sup> The OSCE participating States have also committed themselves to “*recognize as non-governmental organisations those which declare themselves as such, according to existing national procedures, and to facilitate the ability of such organizations to conduct their national activities freely on their territories*” (1991 Moscow Document)<sup>18</sup> and to “*enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms*” (1999 Istanbul Document).<sup>19</sup>

## 1. SCOPE OF THE RIGHT AND DEFINITION

10. It is important to provide a clear and comprehensive definition of what constitutes an association. The Joint Guidelines on Freedom of Association define an association as “...*an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose...*”<sup>20</sup>
11. The Concept Note provides a comprehensive definition of associations and an overview of the broad range of activities they may carry out. At the same time, the formulation of the first two paragraphs of the Concept Note may give the impression that the right to freedom of association is limited to certain types of activities, such as advocacy, dissemination of information, provision of assistance and protest. The significance of such activities is not to be underestimated and indeed the need for some reinforcement of their importance is noted in the context of the interlinkage with Sustainable Development Goal 16. Nonetheless, it is important that the formulation of a definition of associations and of their activities does not lead to either the freedom of association’s role in securing the transparency and accountability of public authorities being overlooked or the importance of associations as a means of personal fulfilment, for instance through education, leisure or sport, being ignored. An aspect that could be underlined more is also that associations shall have the right to participate in matters of political and public debate, in policy or law-making processes and an inherent aspect of their activities can definitely consist of directly attempting to influence and change politics or state policy.<sup>21</sup> Further, it should be underlined that the freedom of association is concerned with the “...*right to form or be affiliated with a group or organisation pursuing particular aims*”.<sup>22</sup>
12. Although the sort of associations covered in the first two paragraphs of the Concept Note are the ones that most often encounter difficulties in pursuing their objectives and thus potentially giving rise to violations of Article 22 ICCPR, some care needs to be taken in the General Comment when highlighting the role that they play so that this does not feed in to the negative tendency to ignore the legitimacy of such associations and to portray them as anti-governmental.

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16 CSCE/OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, Section 10.3.

17 CSCE/OSCE, Charter of Paris for a New Europe, 21 November 1990, p. 3.

18 CSCE/OSCE, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 3 October 1991, Section 43.

19 OSCE, Istanbul Document, 19 November 1999, para. 27.

20 ODIHR and Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, para 7.

21 See, e.g., OSCE/ODIHR, *Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards* (2023), paras. 91-93 and references therein.

22 ECHR, *Guide on Article 11 of the Convention – Freedom of assembly and association*, as of 31 August 2022, para. 122.

13. Further, particular care should be applied to defining political parties and restrictions that may be applied to their right to freedom of association. The ODIHR-Venice Commission Guidelines on Political Party Regulation define a political party as “...a free association of individuals, one of the aims of which is to express the political will of the people by seeking to participate in and influence the governing of the public life of a country, *inter alia*, through the presentation of candidates in elections”.<sup>23</sup> In general, as with other types of associations, states should create an enabling environment. At the same time, the very nature and activities of political parties may warrant separate approaches when it comes to registration, membership, internal autonomy or funding and other types of public or private support, among other aspects. In this regard, it noted that not all OSCE participating States require the registration of political parties; however, it is also acknowledged that political parties may obtain certain legal privileges (such as public funding and support), based on their legal status, that are not available to other associations; hence it is reasonable to require the registration of political parties with a state authority.<sup>24</sup> Where registration as a political party is required to take part in elections or to obtain certain benefits, substantive registration requirements and procedural steps for registration should be reasonable. Such registration requirements should be carefully drafted to achieve legitimate aims, but not overly restrictive. With regards to internal autonomy, given the fundamental role of political parties in the democratic process, the balance between internal autonomy of parties and external regulation to create a minimum of democratic and equal participation within parties may lead to the adoption of legislative measures to ensure greater gender balance in political parties, with a view to ultimately contribute to more balanced or diverse representation in political and public life generally. As to financing for example, foreign funding may be prohibited by legislation, unlike in the case of other types of associations. Other aspects to address in this respect are membership and other restrictions states may apply to political parties. These and other aspects pertaining to the regulation of political parties are further elaborated in the ODIHR-Venice Commission Guidelines on Political Party Regulation.
14. Another aspect to be highlighted is that the freedom of association, and the possibility to acquire legal personality should they so wish, is particularly important to religious or belief communities and essential for the exercise of freedom of religion or belief, particularly in relation to the freedom to manifest one’s religion or beliefs in community with others.<sup>25</sup>
15. As regards the legal personality of associations, the General Comment should underline that a *de jure* registration should not be a requirement, but a possibility. It could further be recognized that certain associations, such as political parties, may be required to establish some institutional form or structure, in order to carry out certain activities or to benefit from public benefit status; yet that it can also be *ad hoc* and temporary. As noted in the ODIHR-Venice Commission Guidelines, it should be made clear that an association does not have to have legal personality, and that an unregistered association also benefits from the protection conferred by Article 22 of the ICCPR; it is thus important that legislation recognizes both informal and formal associations or, at a minimum, permit the former to operate without this being considered unlawful.<sup>26</sup>
16. A focus on members and membership is important as it is not only the very basis for establishing associations but it may also serve to underline that the right is enjoyed by

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23 ODIHR and Venice Commission, [Guidelines on Political Party Regulation](#) (2nd ed.), 2020, para 11.

24 See also ODIHR and Venice Commission, [Guidelines on Political Party Regulation](#), para. 85.

25 ODIHR and Venice Commission, [Guidelines on the Legal Personality of Religious or Belief Communities](#), 2014. See also: ODIHR, [Guidelines for Review of Legislation Pertaining to Religion or Belief](#), 2004.

26 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), para. 44.

both natural and legal persons (and even groups of persons).<sup>27</sup> The latter form of member should not be overlooked as associations of associations can be important vehicles for both the activities of entities pursuing the matters referred to in the first two paragraphs of the Concept Note but also for those pursued by trade unions. It is also important to make clear that a person should be free to choose whether or not to belong to an association,<sup>28</sup> not only with respect to non-membership in a trade union as mentioned in para. 12 of the Concept Note.

17. It would also be useful to address the types of associations that are protected by Article 22 ICCPR, which should include, in addition to the non-governmental organizations, informal associations, advocacy groups, digital/online associations. In respect of the latter, the Joint Guidelines on Freedom of Association provide that: “*Legislation should ensure that an association can exist online or, at the very least, can conduct many of its activities online. On the other hand, states must be wary of the fact that persons may be associated online without their express consent and not of their own volition. Such involuntary associations or memberships should not lead to legal consequences for the persons concerned.*” Moreover, “*... restrictions relating to the online activities of associations are subject to the same principles of proportionality, legality and necessity in a democratic society as any other limitations. [...]*” and “*...states should be wary of stifling the exercise of any of these rights by restricting Internet access or by using new technologies and media to reprimand, target or punish those who exercise their rights. Their positive obligation extends also to ensuring that third parties do not interfere with the exercise of the rights of individuals to associate or of the rights of associations themselves.*”<sup>29</sup>
18. Undoubtedly, the increasing significance of digital space for associations needs to be fully recognized in the General Comment. There are various aspects of this space that should be highlighted. In the first place, digital space can provide the very basis for some associations to exist since those establishing and belonging to them may do so solely online. This is rightly referred to in paragraphs 11-12 of the Concept Note but the General Comment should explicitly indicate, as the Joint Guidelines on Freedom of Association do, that legislation should ensure that an association can exist online or, at the very least, can conduct many of its activities online.<sup>30</sup> Secondly, digital space is an increasingly important means through which associations can undertake their activities, whether through communication with their members, interaction with public authorities both for the purpose of complying with regulatory requirements and responding to consultation exercises and other forms of public participation. Furthermore, digital space can be the simplest and speediest means by which associations can fulfil the requirements to obtain legal personality<sup>31</sup> (see also below with respect to the challenges associated with online space).

## 2. KEY ELEMENTS OF THE RIGHT TO FREEDOM OF ASSOCIATION

19. The General Comment should acknowledge each and every element that constitutes the exercise of freedom of association, whether that is the right to form, or to join, to define the association’s objectives and activities (within the limits provided for by laws that

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27 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), paras. 38, 40 and 48.

28 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), para. 45. Article 20 of the Universal Declaration of Human Rights (10 December 1948), which states that “No one may be compelled to belong to an association”.

29 Joint Guidelines paras. 261-264.

30 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), para. 261.

31 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), Sub-Section I.

- comply with international standards),<sup>32</sup> to operate – including cross-border (see Sub-Section 9 below) or to terminate and dissolve one.
20. Other key aspects are the independence (free from undue external influence in both internal and external actions), and the internal autonomy or self-governing nature (freedom to manage its own internal affairs without interference from the state or external actors) of an association.<sup>33</sup> As the Joint Guidelines on Freedom of Association provide, “[a]n association must be independent and free from undue interference of the state or of other external actors. An association is not independent if decisions concerning its activities and operations are taken by anyone other than the members of the association or a body designated by its members to do so. The fact of having a single or a primary funder does not automatically result in the loss of an association’s independence. An association that is openly comprised of businesses and that promotes their interests is a legitimate association and should enjoy protection of the right to freedom of association. [...]. Certain types of associations do not fall within the scope of international guarantees of the right to freedom of association, owing to their lack of independence, as described above. However, it is the *de facto* status of the organization that should be assessed in order to ascertain whether or not it is independent rather than any label that may be attached to it by a legislative provision. Legislation and regulations may classify certain entities differently, where those entities do not demonstrate such independence.”<sup>34</sup>
  21. The European Court of Human Rights uses certain criteria to assess whether an entity is public or private. These are: (1) whether it was founded by individuals or by the legislature; (2) whether it remained integrated within the structures of the State; (3) whether it was invested with administrative, rule-making and disciplinary power; and (4) whether it pursued an aim which was in the general interest.<sup>35</sup> More generally, the General Comment should emphasize that the independence of associations means that it would not be appropriate for public authorities to attempt to make them effectively agencies working under their control.<sup>36</sup>
  22. In underscoring the independence of associations from governmental bodies, there is a need also for the General Comment to reinforce a cornerstone principle underpinning the right to freedom of association, namely, that the founders and members of associations should be free to determine their objectives and activities, including their governance arrangements, subject only to the need for these to be consistent with the requirements of a democratic society and not be contrary to generally applicable criminal offences (except where such offences are themselves inconsistent with international human rights standards) or with the prohibition of discrimination.
  23. As regards an association’s objectives and activities, it will be crucial to clearly enshrine in the General Comment the presumption in favour of the lawful formation, objectives, and activities of associations.<sup>37</sup> The latter also applies to associations imparting information or ideas contesting the established order or advocating for a peaceful change of the Constitution<sup>38</sup> or legislation by, for example, advocating for the decriminalization

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32 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), para. 29.

33 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), paras. 40-41, 169-170.

34 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), paras. 40-41.

35 See ECHR, Guide on Article 11 of the Convention – Freedom of assembly and association, as of 31 August 2022, para 125.

36 As was found to have occurred in European Court of Human Rights, [Sigurdur A. Sigurjónsson v. Iceland](#), no. 16130/90, 30 June 1993 or to interfere with their choice of its leaders or representatives (as was found to have occurred in European Court of Human Rights, [Hasan and Chaush v. Bulgaria](#) [GC], no. 30985/96, 26 October 2000.

37 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), Principle 1. As a comparison, see the reference to the presumption in favour of considering assemblies to be peaceful in UN Human Rights Committee, [General Comment no. 37 on Article 21 of the ICCPR](#), para. 17.

38 ECtHR, [Refah Partisi \(the Welfare Party\) and Others v Turkey](#) [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgment of 13 February 2003).

of abortion,<sup>39</sup> asserting a minority consciousness,<sup>40</sup> protecting the human rights of LGBTI persons,<sup>41</sup> calling for regional autonomy, or even requesting secession of part of the country's territory.<sup>42</sup> It will also be particularly important to underline that any action taken against associations with respect to their objectives or activities should be evidence-based rather than in reliance on mere supposition.<sup>43</sup> The reasons adduced by the national authorities to justify interference should be relevant and sufficient, with evidence of a sufficiently imminent risk to the public interest at stake.<sup>44</sup>

24. It will also be important for the General Comment to make clear the members of an association should ultimately be the ones determining who carries out its management even though they should also be free to delegate – on a revocable basis – the task to an intermediary body, which may be especially desirable where the membership is particularly large.
25. It will be important to also underline that beyond Article 22 ICCPR, various other international and regional human rights instruments also specifically recognize the right to freedom of association of particular persons or groups, such as refugees (the *Convention and Protocol Relating to the Status of Refugees*),<sup>45</sup> women (the *Convention on the Elimination of All Forms of Discrimination against Women*),<sup>46</sup> children (the *Convention on the Rights of the Child*),<sup>47</sup> migrant workers and members of their families (the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*),<sup>48</sup> persons belonging to national minorities (the *Council of*

39 ECtHR, *Women on Waves v. Portugal* (Application no. 31276/05, judgement of 3 February 2009).

40 ECtHR, *Sidiropoulos and others v. Greece* (Application no. 26695/95, judgement of 10 July 1998), paras 44-45.

41 ECtHR, *Genderdoc-M v. Moldova* (Application no. 9106/06, judgement of 12 June 2012), paras 44-45. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, para. 64, <[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A\\_HRC\\_26\\_29\\_ENG.DOC](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC)>.

42 ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (Applications nos. 29221/95 and 29225/95, judgment of 2 October 2001), para. 97, which states that “the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security. [...] In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means.”

43 See, e.g., European Court of Human Rights, *Exteberria and Others v. Spain*, no. 35579/03, 30 June 2009. It should also be made clear that it is legitimate to seek changes in the law (including the constitution); see, e.g., *Socialist Party and Others v. Turkey* [GC], no. 21237/93, 25 May 1998.

44 See UN Human Rights Committee, *Mikhailovskaya and Volchek v. Belarus*, CCPR/C/111/D/1993/2010 (July 2014), para. 7.3; *Lee v. Republic of Korea*, CCPR/C/84/D/1119/2002 (July 2005), para. 7.2; Communication No. 2001/2010, *Q v. Denmark*, Views adopted on 1 April 2015, para. 7.3. See e.g., European Court of Human Rights, *Partidul Comunistilor (Nepeceeristi) and Ungureanu v. Romania*, no. 46626/99, 3 February 2005, para. 48; and *Gorzelik and Others v. Poland*, no. 44158/98, 17 February 2004, paras. 95-96. The CJEU also underlined the need to establish “a genuine, present and sufficiently serious threat to a fundamental interest of society” (see e.g., Court of Justice of the European Union (CJEU), *Commission v. Hungary* Case C-78/18, 18 June 2020, para. 91). As ODIHR and the Venice Commission have observed, “[a]bstract ‘public concern’ and ‘suspicions’ about the legality and honesty of financing of NGO sector, without pointing to a substantiated concrete risk analysis concerning any specific involvement of the NGO sector in the commission of crimes, such as corruption or money-laundering cannot constitute a legitimate aim justifying restrictions to this right” (see OSCE/ODIHR, *Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards* (2023), para. 30; and Venice Commission, Report on Funding of Associations, CDL-AD(2019)002, para. 81.

45 UN General Assembly, *Convention and Protocol Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 15, <<http://www.unhcr.org/3b66c2aa10.html>>.

46 UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13 (hereafter: UN CEDAW), Article 7, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>>, which states that “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right [...] (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.”

47 UN General Assembly, *Convention on the Rights of the Child* (hereafter: UN CRC), 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Article 15, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>>.

47 UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 18 December 1990, United Nations, Treaty Series, vol. 2220, p. 3, Article 29, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>>.

48 *Ibid.*, Article 26.

*Europe Framework Convention for the Protection of National Minorities*)<sup>49</sup> and persons with disabilities (the *Convention on the Rights of Persons with Disabilities*).<sup>50</sup>

26. With respect to children in particular (i.e., individuals below the age of eighteen years unless majority is attained earlier), Article 15 of the Convention of the Rights of the Child (CRC) expressly vests children with the fundamental rights to freedom of association and assembly. While certain restrictions in terms of the legal capacity of children to form and join associations may be justified, any such restrictions must be based in law, serve a legitimate aim recognized by international standards and be proportionate to that aim, as required for other restrictions on the right to freedom of association.<sup>51</sup> Due account should be taken of the stipulation in Article 5 of the CRC<sup>52</sup> regarding the possibility of appropriate direction and guidance being given by parents, members of the extended family or community and legal guardians or other persons legally responsible for children in the exercise of the rights recognized in that Convention. However, in doing so, it should also be emphasized that any such direction and guidance must be exercised in a manner consistent with the evolving capacities of the child. Generally, there is unlikely to be any justification for preventing children from forming or joining informal associations in which only other children are involved.<sup>53</sup>
27. In any case, in view of the legitimacy of associations advocating changes in law and public policy and seeking to secure the transparency and accountability of public authorities, it ought to be underlined in the General Comment that there is no justification to equate such activities with lobbying (see sub-section 5.2.1), or for assertions that such activities are “political” and, as such can either not be undertaken by them at all or only should they become political parties.<sup>54</sup>

### 3. FUNDAMENTAL RIGHTS OF ASSOCIATIONS

28. At the outset, it should be emphasized that the right to freedom of association is a right that has been recognized as capable of being enjoyed by individual members or by the association itself in the performance of activities and in pursuit of the common interests of its founders and members.<sup>55</sup> The General Comment would also benefit from highlighting the fundamental rights that associations as such enjoy. In particular, attention should be devoted to the associational right to privacy. According to the Joint Guidelines

49 Council of Europe, *Framework Convention for the Protection of National Minorities*, 1 February 1995, ETS 157, Articles 7 and 8, <<http://conventions.coe.int/Treaty/en/Treaties/html/157.htm>>.

50 UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, United Nations, Treaty Series, vol. 2515, p. 3, Article 29, <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>>.

51 See ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), paras. 142-143. The CRC Committee has, for instance, expressed concern about legislation that precludes children and adolescents from the right to join political associations (Costa Rica (CRC/C/CR/CO/4, 3 August 2011, paras. 37 and 38), as well as the requirement that children under 18 obtain parental consent before joining an association (Japan - CRC/C/15/Add.231, 26 February 2004, paras. 29 and 30). See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, paras. 49-50, <[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A\\_HRC\\_26\\_29\\_ENG.DOC](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC)>.

52 UN CRC, Article 5, which states that “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention”.

53 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), paras. 152-153.

54 See, e.g., European Court of Human Rights. *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007.

55 See, for example, European Court of Human Rights, *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003), paras. 87-88. See also European Court of Human Rights, *National Union of Belgian Police v. Belgium*, Application no. 4464/70, 27 October 1975, paras. 39-40; and Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, 10 October 2007, para. 5 which states that “NGOs should enjoy the right to freedom of expression and all other universally and regionally guaranteed rights and freedoms applicable to them.” See also Inter-American Court of Human Rights, *Huilca-Tesce v. Peru*, 3 March 2005, Series C no. 121, paras. 69-71, <[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_121\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_121_ing.pdf)>.

on Freedom of Association, “*the right to privacy applies to an association*” and “[l]egislation should contain safeguards to ensure the respect of the right to privacy of the clients, members and founders of the associations, as well as provide redress for any violation in this respect”.<sup>56</sup> The right to privacy has become particularly pertinent in the context of so-called “foreign agents” legislation and the increased surveillance of associations.<sup>57</sup>

29. The “foreign agents” and similar laws have the potential to unduly interfere with the right to privacy due to their extensive reporting and/or public disclosure requirements,<sup>58</sup> which at times compel associations designated as “foreign agents” to publicly disclose additional information about themselves, their members, employees, donors, beneficiaries, and/or supporters.<sup>59</sup> The UN Special Rapporteur also noted that “*Public disclosure requirements may include confidential and human rights sensitive information, unduly impinging on fundamental privacy rights, in violation of applicable privacy laws, and may expose individuals to serious risks of reprisals*”.<sup>60</sup>
30. The obligation to report should be balanced by considerations for the right to security of beneficiaries, employees, members, etc. and respect for their private lives and confidentiality. Any interference with privacy and confidentiality must adhere to the principles of necessity and proportionality.<sup>61</sup> In certain circumstances, disclosing the names of certain beneficiaries or employees of public associations<sup>62</sup> could potentially endanger their safety (for instance those who deal with certain issues such as anti-corruption, protection of victims of domestic violence or non-discrimination on the basis of gender, sexual orientation and gender identity) and could risk them being subjected to harassment.<sup>63</sup> Regarding donors specifically, in some circumstances, exposure of donors and contractors of associations could potentially affect donors’ readiness to continue their support for and co-operation with these associations if they were publicly identified.<sup>64</sup>
31. Moreover, regardless of whether reporting and/or disclosure obligations follow a legitimate aim or not, there is no apparent “pressing need” for the public to obtain detailed information with respect to private funding sources of the activities of all associations receiving funding from foreign, but *prima facie* legitimate sources.<sup>65</sup> Although under certain circumstances, it may be legitimate to require associations to disclose the identity of the main sponsors, revealing the identity and residence of all sponsors, including minor ones, is excessive and unnecessary. Legal provisions would not only interfere with the donors’ personal privacy, protected by Articles 17 of the ICCPR and Article 8 of the

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56 ODIHR and Venice Commission, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, paras 228 and 231.

57 See, e.g., OSCE/ODIHR, [Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards](#) (2023), paras. 101-102.

58 A “reporting obligation” constitutes an obligation to report to the relevant authorities, while in contrast, a “public disclosure obligation” consists of making public certain information; see Venice Commission, Report on Funding of Associations, CDL-AD(2019)002, para. 83.

59 See e.g., [ODIHR Urgent Opinion on the Law of the Slovak Republic Amending Act No. 213/1997 Coll. on Non-profit Organizations providing Public Benefit Services and Amending Other Acts \(print 245, adopted on 16 April 2025\)](#), Sub-Section 4.2.

60 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Letter OL RUS 16/2022 dated 30 November 2022 addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012 and subsequent amendments, p. 3.

61 Explanatory Memorandum to the Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, para. 116.

62 For instance, the Draft Law on Non-Governmental Organisations of the Kyrgyz Republic (November 2022) was requiring, inter alia a list of 10 employees with the highest salaries would have to be made public.

63 ODIHR and Venice Commission, Ukraine - Joint Opinion on Draft Law No. 6674 “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance” and on Draft Law No. 6675 “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance” (16 March 2018), para. 47.

64 ODIHR, Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organisations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic (12 December 2022), para. 66.

65 Council of Europe, Fundamental Principles on the Status of Non-governmental Organisations in Europe and Explanatory Memorandum, para. 67.

ECHR,<sup>66</sup> but may also not be compliant with international personal data protection standards.<sup>67</sup> The UN Special Rapporteur on freedom of peaceful assembly and association has reiterated that “*Legal obligations to publicly disclose the sources of funding may constitute an unjustified interference with the rights to privacy and association and generally should be discouraged*” and that “*If adopted, disclosure requirements should be narrowly tailored to specific, enumerated purposes and sufficient procedural safeguards should be in place to protect the privacy and safety of civil society organizations, donors, and beneficiaries.*”<sup>68</sup>

32. Certainly, as the Concept Note recognizes, the activities of associations can be threatened or undermined by unjustified surveillance activities,<sup>69</sup> which also unduly interfere with the association’s privacy. There is a need, therefore, for the General Comment, to underline that such surveillance and interference, including where it concerns the exercise of the freedom online, should only be possible where there are well-founded grounds for taking such measures compatible with the legitimate grounds and requirements for restrictions laid out in the ICCPR, including effective judicial control over them.<sup>70</sup> It should make clear that surveillance violates the right to privacy of association and discourages people from becoming members and may have deterring effect. The only surveillance that is permissible is pursuant to a judicial decision, such as a court issued search warrant (or something similar), based on serious ground, such as the association engaging in activities in violation of criminal law, providing that such domestic law is itself compliant with international human rights standards.

#### 4. STATE OBLIGATIONS, SAFE AND ENABLING ENVIRONMENT AND PRESUMPTION OF LAWFULNESS OF ASSOCIATIONS

33. The full implementation of the negative and positive obligations of States regarding the right to freedom of association are fundamental for its effective enjoyment and a number of points should be particularly emphasized. In addition to laying out the general obligations of State Parties to respect, protect, facilitate, enable, and guarantee the freedom of association, the General Comment should highlight the importance of a safe and enabling environment entailing, amongst other, the securing of civil society space, providing protection, precluding of surveillance and preventing stigmatization. In this respect, legislation that governs the exercise of the right to freedom of association should be drafted with the purpose of facilitating the establishment of associations and safe and enabling them to pursue their objectives.<sup>71</sup>
34. In the first place, it should be made clear that the ability to establish informal associations – i.e., those without legal personality – does not require any form of official approval or authorization or even the need for any authority to be notified that this has occurred since their establishment has, in itself, no legal consequences and regulation would only be required in respect of activities subsequently undertaken by them. Secondly, there is a need to underline that the right to act collectively would be deprived of any meaning

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66 Venice Commission, Hungary, Opinion on Draft Law on the Transparency of Organisations Receiving Support from Abroad, CDL-AD(2017)015, paras. 52 and 53.

67 Such as Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108), 28 January 1981, and Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data; and the EU General Data Protection Regulation (GDPR) – Official Legal Text (gdpr-info.eu).

68 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *2022 Report on Access to resources*, A/HRC/50/23, 10 May 2022, para. 64(f) and supplementary guidelines: General principles and guidelines on ensuring the right to civil society organisations to have access to resources, HRC/53/38/Add.4, 23 June 2023, para. 53.

69 See, e.g., European Court of Human Rights, *Segerstedt-Wiberg and Others v. Sweden*, no. 62332/00, 6 June 2006 and on the denial of access to websites see, e.g., European Court of Human Rights, *Cengiz and Others v. Turkey*, no. 48226/10, 1 December 2015.

70 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), paras. 265-272.

71 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 20.

without the possibility of creating a legal entity in order to pursue the objectives of those establishing the organization concerned.<sup>72</sup>

35. Moreover, it should be emphasized that where an association wishes to register to acquire legal personality, procedures for doing so should not be burdensome, but should be simple and swift to facilitate the process; submitting a notification of establishment to the authorities should be sufficient for the purpose of obtaining legal personality, rather than approval or formal confirmation by the authorities.<sup>73</sup> Furthermore,<sup>74</sup> legal personality should only be refused where there has been a failure to submit all the clearly (reasonably necessary) prescribed documents required, a name has been used that is patently misleading or is not adequately distinguishable from that of an existing natural or legal person in the State concerned or there is an objective in the statutes which is clearly inconsistent with the requirements of a democratic society.
36. Also, a reasonable time limit should be prescribed for taking a decision to grant or refuse legal personality, and there should be a genuine opportunity to correct errors in an application and the repeated discovery of errors that ought to have been apparent at the first examination should not be used to prolong the decision-making process.<sup>75</sup> Similar considerations should equally apply to requirements for approval to undertake particular activities involving co-operation with public authorities, irrespective of the type of activities being envisaged by the association, such as the provision of assistance to migrants, asylum-seekers or refugees.
37. The “foreign agents” laws or similar legislative initiatives generally require associations funded from abroad to register in a separate, special public register, in addition to the general registration that may be applicable to all associations.<sup>76</sup> In this respect, ODIHR and the Venice Commission have questioned the necessity and added value of establishing such an additional registration mechanism,<sup>77</sup> also underlying the risk of stigmatization that such a separate registration may trigger.<sup>78</sup> This was also reiterated in the Joint Declaration issued by the Special Rapporteur, with ODIHR and other regional human rights mechanisms.<sup>79</sup>
38. The provision of financial and other types of support for associations and the way in which this is regulated needs to be seen as of crucial importance for both their existence and operation.<sup>80</sup> It would be important to explicitly mention in the General Comment that

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72 See European Court of Human Rights, *Sidiropoulos and Others v. Greece*, no. 26695/95, 10 July 1998.

73 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), paras. 49, 151 and 154.

74 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), para. 162, which provides: “The responsible state agency should be required to provide a detailed written statement of reasons for a decision to refuse the registration of an association. Such reasons should not go beyond what is specified in the applicable law. The reasons set out in law should be compatible with international human rights standards; the rejection of a registration should be exclusively based on non-compliance with the prescribed formalities, or the existence of inadmissible names or objectives, in cases where these do not comply with international standards or with legislation that is consistent with such standards”.

75 See, Section IV B of Recommendation CM/Rec(2007)14; see also ECtHR, *Church of Scientology of St Petersburg and Others v. Russia*, no. [47191/06](#), 2 October 2014; *Abdullayev and Others v. Azerbaijan*, no. [69466/14](#), 20 May 2021 and *Mariya Alekhina and Others v. Russia (No. 2)*, no. [10299/15](#), 28 November 2023.

76 As a “foreign agent” (Russian Federation), “non-profit organisation” (Draft Law of Republika Srpska), “foreign representatives” (2022-2023 Draft Amendments of the Kyrgyz Republic), “organisation pursuing the interest of a foreign power (Article 2 of the Georgian Law on Transparency of Foreign Influence, defined as a) a non-entrepreneurial legal entity, b) a broadcaster c) a legal entity that has ownership in a print media outlet d) a legal entity that has ownership in or uses an internet domain or internet hosting intended for disseminating mass information in the Georgian language).

77 ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations*, 12 June 2023, para. 50. See also: See ODIHR, [Urgent Opinion on the Law “On Transparency of Foreign Influence” of Georgia](#), 30 May 2024 and ODIHR, [Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards](#), 25 July 2023.

78 Venice Commission, Hungary, Opinion on Draft Law on the Transparency of Organisations Receiving Support from Abroad, CDL-AD(2017)015, para. 47.

80 As underlined in, e.g., by the European Court of Human Rights in *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022 and in Principle 7 of the Joint Guidelines

the ability of an association to solicit, receive and use funding and other types of support in order to be able to promote and defend its cause constitutes an integral part of the right to freedom of association. There should, therefore, be encouragement for the provision of public support to associations, whether directly or indirectly (such as through tax exemptions and incentives to donate). In particular, it needs to be emphasized that this is part of the obligation to put in place a safe and enabling environment for the establishment and operation of associations.

39. At the same time, it will be vital to underline that the receipt of funding or other type of support from foreign sources (public or private) should not be seen as inherently impermissible and as entailing the conclusion that the recipient associations are acting in the interests of those providing them with it. The "foreign agent" laws and similar legislations target associations receiving financial or other forms of assistance from abroad. Each country's regulations approach this issue differently: in some cases, any amount of foreign funding is sufficient to designate an entity as a "foreign agent", while in others, there is a threshold that must be reached to meet the criteria. Additionally, some laws exclude certain sources from their scope.
40. The consequences of adopting "foreign agents" legislation or the like for the work of the non-governmental organizations (NGOs) and other associations have been dire in practice, often forcing them to choose between continuing their work while accepting foreign funding and the burdens and stigma associated with the "foreign agent" label or similar status or significantly reducing their activities due to insufficient domestic funding or a complete lack thereof. Additionally, the rhetoric surrounding discussions on these types of laws imply that associations receiving foreign funds and support were not to be trusted, so that the registration as "foreign agents" or the like also comes with a certain public stigma.<sup>81</sup> In the latest report to the UN Human Rights Council, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has warned that "*the so called "foreign agent" or "foreign influence" laws targeting foreign funded associations have become an additional tool to curtail independent civil society and silence critical voices*" and that "*that these laws severely impact the rights to freedom of peaceful assembly and of association and diminish civil space, and especially target civil society working to protect and promote human rights and to promote government transparency and accountability.*"<sup>82</sup>
41. Thus, it should be emphasized that any restrictions imposed should involve a proper and prior risk assessment of any legitimate dangers (such as money laundering, terrorist financing and interference with the political process) and not involve unnecessarily burdensome, intrusive or duplicative reporting and disclosure requirements that has been a feature of some "foreign agents" legislation or the like.<sup>83</sup> Moreover, it should be made clear that associations in receipt of foreign funding which cannot be shown to be impermissible should not be subject to any requirements, such as labelling their publications, that will lead to them and those involved in them being stigmatized.<sup>84</sup>

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81 CoE Commissioner for Human Rights, Opinion on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards, CommDH(2013)15, 15 July 2013, paras. 57 and 80.

83 See, e.g., ., ODIHR's Opinion on Bulgaria's draft Act on the Registration of Foreign Agents (as of 11 November 2024)

84 As found in European Court of Human Rights, *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022 and European Court of Human Rights, *Kobaliya and Others v. Russia*, no. 39446/16, 22 October 2024.

## 5. RESTRICTIONS AND LIMITATIONS

42. Article 22 (2) of the ICCPR sets out a three-part test that requires any restriction to be provided by law (requirement of legality), to be in pursuit of one or more of the legitimate aims listed exhaustively in the respective treaty/convention,<sup>85</sup> to be necessary in a democratic society and to respect the principle of proportionality (which *inter alia* presupposes that any imposed restriction should represent the least intrusive measure among all those possible means effective enough to achieve the designated objective).<sup>86</sup> In addition, the restriction must be non-discriminatory, either directly or indirectly<sup>87</sup> (Articles 2 and 26 of the ICCPR and Article 14 of the ECHR<sup>88</sup>). It is essential that this latter requirement forms an integral part of the assessment of the restrictions to determine whether they align with international human rights standards.
43. With respect to the list of discriminatory grounds that may be explicitly mentioned in the General Comment, and even if such list is non-exhaustive, it may be useful to not only refer to the protected grounds that are included in international and regional treaties,<sup>89</sup> but go beyond and refer to other characteristics such as national minority, migrant, asylum-seeker or refugee, disability, sexual orientation, gender identity. An explicit mention of the above features as protected grounds will help send out the message that discrimination on the basis of such characteristics is unacceptable and that these types of discrimination will be sanctioned,<sup>90</sup> It is also generally acknowledged that explicitly sanctioning such forms of discrimination has had positive effects in practice.<sup>91</sup>

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85 For Article 22 (2) of the ICCPR, these are 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. For Article 11 (2) of the ECHR, the aims are: the protection of public health or morals, and the protection of the rights and freedoms of others. For Article 19 (3) ICCPR: (a) *for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals*”; For Article 10(2) ECHR: “*in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*”

86 See ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), Principle 10 and para. 113.

87 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, Principle 5 and para. 123.

88 Bulgaria has not signed nor ratified the [Protocol No. 12 to the ECHR](#), which contains a general prohibition of discrimination in the enjoyment of any rights.

89 Especially Articles 2 and 6 of the ICCPR referring to “*race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”; Article 14 of the ECHR and Protocol 12 to the ECHR mentioning “*sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*”; Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD), ratified by Moldova on 21 September 2010; Article 4(3) of the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which refers to “*sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status*”. The UN Committee on Economic, Social and Cultural Rights has explicitly recognized gender identity as among the prohibited grounds of discrimination (Committee on Economic, Social and Cultural Rights, [General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights \(Art. 2, para. 2\)](#), UN Doc E/C.12/GC/20, 2009, para. 32). See also The ECtHR has clarified that the prohibition of discrimination extends to “*sexual orientation*” and “*gender identity*”; see ECtHR in [Khamtokhu and Aksenchik v. Russia](#) [GC], nos. 60367/08 and 961/11, 24 January 2017, para. 61, “*Article 14 prohibits differences based on an identifiable, objective or personal characteristic, or “status” by which individuals or groups are distinguishable from one another*” (discrimination grounds), underlying that the list of discrimination grounds is “an illustrative and not exhaustive” (thus open) list and noting that the words “other status” have generally been given a wide meaning and their “*interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent*”; ECtHR, [A.M. and Others v. Russia](#), no. 47220/19, 6 July 2021, para. 73, which states that “*the prohibition of discrimination under Article 14 of the Convention duly covers questions related to gender identity*”. The ECtHR also held that “[t]he reference to the traditional distribution of gender roles in society cannot justify the exclusion of men [...] from the entitlement to parental leave” and that “*gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation*” ([Konstantin Markin v. Russia](#) [GC], no. 30078/06, 22 March 2012, para. 143). See also Article 21 of the EU Charter of Fundamental Rights, which refers to “*sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation*”; Employment Equality Directive (2000/78/EC), limited to the field of employment and occupation, covering the grounds of religion or belief, disability, age and sexual orientation.

90 See also the [Yogyakarta Principles plus 10 \(YP plus 10\)](#), *Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* (10 November 2017).

91 See e.g., in the context of the European Union, the [Report on Harassment](#) related to Sex and Sexual Harassment Law in 33 European Countries, prepared by the Members of the European Network of Legal Experts in the Field of Gender Equality (2012).

## 5.1. Regime of Restrictions and Derogations

44. For the purpose of clarifying the applicable regime of restrictions and derogations applicable to the right to freedom of association, there are several considerations that might be useful in developing the General Comment. In the first place, it will be important to re-emphasize the exhaustive nature of the grounds for imposing restrictions listed in Article 22 (2) ICCPR and that they should be narrowly interpreted.<sup>92</sup>
45. In recent years, there has been a tendency by some States to justify the imposition of restrictions on associations by reference to the importance of securing so-called “transparency” without making any connection between this objective and any of the grounds listed in Article 22 (2) ICCPR, as if this were of itself a justifiable ground for imposing restrictions on associations (see Sub-Section 5.2. below).
46. Another noticeable trend is the impact the introduction of legislation regulating so-called “extremism” or “separatism” or the broad application of counter-terrorism legislation have on the enjoyment of the freedom of association. First, there is no consensus at the international level on a normative definition of “*extremism*” or “*violent extremism*”.<sup>93</sup> ODIHR and other international bodies have previously raised concerns pertaining to “*extremism*”/“*extremist*” as a legal concept and the vagueness of such a term.<sup>94</sup> On several occasions, ODIHR also questioned the practice of having specific legislation on countering so-called “*extremism*” at all, given the inherent difficulty of providing a legal definition of the term “*extremism*” and the serious human rights concerns arising from vague and overbroad definitions and provisions.<sup>95</sup> Although there is no internationally agreed definition of “*extremism*”, countering violent extremism and radicalization that lead to terrorism (VERLT), is a strategic focus area for the OSCE in the fight against terrorism.<sup>96</sup> The United Nations Secretary General’s *Plan of Action to Prevent Violent Extremism* similarly puts emphasis on “*violent extremism*” rather than “*extremism*” *per se*.<sup>97</sup> The UN High Commissioner for Human Rights (UNHCHR) has stated that if the measures to counter “*extremism*” “*are not limited to ‘violent’ extremism, such measures risk targeting the holding of an opinion or belief rather than actual conduct*”.<sup>98</sup> In that respect, the possibility to peacefully pursue a political, or any other, agenda – even where

92 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, Principle 9 and para. 34.

93 See e.g., UN Special Rapporteur on Counter-Terrorism and Human Rights, *2015 Thematic Report*, A/HRC/31/65, 22 February 2016, paras. 11 and 21 (UNSRCT *2015 Thematic Report*), noting that “[d]espite the numerous initiatives to prevent or counter violent extremism, there is no generally accepted definition of violent extremism, which remains an ‘elusive concept’”.

94 See e.g., UN Special Rapporteur on Counter-Terrorism and Human Rights, *2020 Report on the human rights impact of policies and practices aimed at preventing and countering violent extremism*, 21 February 2020, A/HRC/43/46, para. 12-14 (hereinafter “UNSRCT 2020 Report on Violent Extremism”); and *ibid.* paras. 11 and 21 (UNSRCT *2015 Thematic Report*), noting that “[d]espite the numerous initiatives to prevent or counter violent extremism, there is no generally accepted definition of violent extremism, which remains an ‘elusive concept’”. See also OSCE, *Preventing Terrorism and Countering Violent extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach* (2014), Sub-Section 2.3.1. See also ODIHR, *Opinion on the Law on Countering Extremist Activity of the Republic of Moldova* (30 December 2019), paras. 13-16; *Comments on the Law on Countering “Extremism” of the Republic of Uzbekistan* (22 November 2019), paras. 12-16; *Preliminary Opinion on the Draft Amendments to the Legal Framework “On Countering Extremism and Terrorism” in the Republic of Kazakhstan* (6 October 2016), paras. 21-24; *Comments on the Draft Laws of the Republic of Kazakhstan “On counteractive measures against extremist activities” and “On amendments to several legislative acts with regard to counteractive measures against extremist activities”* (11 February 2005), paras. 2-3 and 11-15; *Comments on the Draft Laws “On counteractive measures against extremist activities” and “On amendments to several legislative acts with regard to counteractive measures against extremist activities” in Kazakhstan* (20 October 2004), pages 5-7; and ODIHR, *Preliminary Comments on the Draft Laws “On counteractive measures against extremist activities” and “On amendments to several legislative acts with regard to counteractive measures against extremist activities” in Kazakhstan* (23 June 2004), paras. 4.1. to 4.3. See also ODIHR, *Guidelines on the Protection of Human Rights Defenders* (2014), paras. 100, 205 and 213; Venice Commission, *Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation*, CDL-AD(2012)016-e, 15-16 June 2012, para. 30; see UN HRC, *General comment No. 34 on Article 19 of the ICCPR*, CCPR/C/GC/34, para. 46; where the Committee has stressed the need to ensure that offences such as “*extremist activity*” are clearly defined to ensure that they do not lead to disproportionate interference with freedom of expression.

95 See e.g., ODIHR, *Opinion on the Law on Countering Extremist Activity of the Republic of Moldova* (30 December 2019), paras. 10 and 22; and *Comments on the Law on Countering “Extremism” of the Republic of Uzbekistan* (22 November 2019), paras. 9 and 21.

96 OSCE, Permanent Council Decision No. 1063, *Consolidated Framework for the Fight against Terrorism*.

97 United Nations Secretary General, *Plan of Action to Prevent Violent Extremism* A/70/674.

98 A/HRC/33/29 8

different from the objectives of the government and considered to be “extreme” – must be protected.<sup>99</sup> Indeed, freedom of expression protects all forms of ideas, information or opinions, including those that “*offend, shock or disturb*” the State or any part of the population,<sup>100</sup> even “*deeply offensive*” speech.<sup>101</sup> While the right to freedom of expression may in very limited cases be restricted, any such restrictions must strictly conform with the requirements of international human rights standards.<sup>102</sup> Simply holding or peacefully expressing views that are considered “*radical*” or “*extreme*” under any definition should never be prohibited or criminalized, unless such views are connected to violence or criminal activity,<sup>103</sup> such as incitement to hatred, inciting or condoning criminal activity and/or violence, as legally defined in compliance with international human rights law.<sup>104</sup> With respect to “separatism”, while recognizing that certain restrictions on the right to freedom of association may be permissible if these are prescribed by law and necessary in a democratic society, the ECtHR has stressed that “*inhabitants of a region in a country are entitled to form associations in order to promote the region’s special characteristics. That an association asserts a minority consciousness cannot in itself justify interference with its rights under Article 11 [ECHR]*”.<sup>105</sup> The Court also held that the ability to establish a legal entity to act collectively in a field of mutual interest was one of the most important aspects of freedom of association.<sup>106</sup> As underlined in the Joint Guidelines on Freedom of Association, associations should be entitled to pursue objectives or conduct activities that are not always congruent with the opinions and beliefs of the majority or run precisely counter to them, including calling for regional autonomy, or even requesting secession of part of the country’s territory.<sup>107</sup>

47. The requirement that any restrictions on the right to freedom of association be ‘prescribed by law’ not only requires that the restriction should have an explicit basis in domestic law, but also refers to the quality of the law in question.<sup>108</sup> Hence, laws must not only formally exist and be accessible but also be clear and foreseeable.<sup>109</sup> While acknowledging that absolute precision is not possible and that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation

99 UN Special Rapporteur on Counter-Terrorism and Human Rights, [2015 Thematic Report](#), A/HRC/31/65, 22 February 2016, para. 38.

100 See e.g., European Court of Human Rights, [Handyside v. United Kingdom](#), no. 5493/72, 7 December 1976; and [Bodrožić v. Serbia](#), no. 32550/05, 23 June 2009, paras. 46 and 56. See also *ibid.*, para. 38 (UNSRCT [2015 Thematic Report](#)).

101 See UN HRC, [General comment No. 34](#) on Article 19 of the ICCPR, CCPR/C/GC/34, para. 11 and 38.

102 See e.g., Article 19 (3) of the UN International Covenant on Civil and Political Rights (ICCPR), which states that the right to freedom of expression may “be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals”. See also Article 20 of the ICCPR as well as Article 4 of the UN International Convention on the Elimination of All Forms of Racial Discrimination, Article 3(c) of the Convention on the Prevention and Punishment of the Crime of Genocide, and UN [Security Council resolution 1624\(2005\)](#). Under Article 20 of the ICCPR, States are required to have legal prohibitions for certain forms of expression (“any propaganda for war” and “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”, see below). However, as the UN Human Rights Committee has noted, every case in which the State restricts freedom of expression, including those covered by Article 20, must be in strict conformity with the requirements of Article 19 ICCPR, see UN HRC, [General comment No. 34](#) on Article 19 of the ICCPR, CCPR/C/GC/34, para. 50-52.

103 UN Special Rapporteur on Counter-Terrorism and Human Rights, [2015 Thematic Report](#), A/HRC/31/65, 22 February 2016, para. 38. See also *op. cit.* footnote 94, para. 30 (2020 UNSRCT [Report](#) on Violent Extremism). ODIHR [Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#) (2014), page 42, which states that “[s]imply holding views or beliefs that are considered radical or extreme, as well as their peaceful expression, should not be considered crimes”.

104 *ibid.*, para. 38 (UNSRCT [2015 Thematic Report](#)). See also *op. cit.* footnote **Error! Bookmark not defined.**, pages 42-43 (2014 ODIHR Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism).

105 See ECtHR, [Stankov and the United Macedonian Organisation Ilinden v. Bulgaria](#), nos. 29221/95 and 29225/95, 2 October 2001, para. 89. See also [Sidiropoulos and Others v. Greece](#), no. 26695/95, 10 July 1998, para. 44.

106 See ECtHR [Özbek and Others v. Turkey](#), no. 35570/02, 6 October 2009.

107 See ODIHR and Venice Commission, [Guidelines on Freedom of Association](#) (2015), para. 182. See also ECtHR, [Stankov and the United Macedonian Organisation Ilinden v. Bulgaria](#), nos. 29221/95 and 29225/95, 2 October 2001, para. 97.

108 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, Principle 9 and para. 34, requiring the law to be “*precise, certain and foreseeable*”.

109 See e.g., European Court of Human Rights, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, para. 90; *Maestri v. Italy* [GC], no. 39748/98, 17 February 2004, para. 30; and *The Sunday Times v. the United Kingdom*, no. 6538/74, 26 April 1979, para. 49.

and application are questions of practice,<sup>110</sup> laws must be sufficiently clear and precise to enable an individual to assess whether or not his or her conduct would be in breach of the law and to foresee the likely consequences of any such breach.<sup>111</sup> This also means that the law must be formulated with sufficient precision to enable an individual to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.<sup>112</sup>

48. In the case of “foreign agents” legislation or similar legislative initiatives, the terms used to define the organizations falling within the scope of so-called “foreign agents” laws or similar legislative initiatives are in most of the cases vague, overbroad and/or ambiguous.<sup>113</sup> This ambiguity undermines the principles of legal certainty and foreseeability and allows for broad or/and arbitrary interpretation, giving public authorities excessive discretion in applying the law.<sup>114</sup> This results in the civil society being put at risk of politically motivated restrictions and repression.<sup>115</sup> All the more, in general, these overly broad terms could encompass almost all potential legitimate activities of a civil society organization, which are encouraged and protected under the international law, such as defending human rights, promoting knowledge of basic rights and public participation. As further underlined in Sub-Section 6, it is also important to underline the indirect discriminatory impact that such legislation may have in practice.
49. There is also a need to underline the importance of proportionality when making any assessment as to whether proposed restrictions can be regarded as necessary in a democratic society in order to be justified for the purpose of Article 22 (2) of the ICCPR. In practice, such proportionality is not always being respected either in terms of the nature of the obligations being imposed on associations and/or those belonging to or working with them or as regards the severity of the penalties that can be incurred for non-compliance with the requirements concerned.<sup>116</sup>
50. Further, attention ought to be drawn as to the impermissibility of ulterior motives lying behind restrictions being proposed. The risk of this occurring certainly seems to be possible in those cases where there is an absence of any substantiation being provided for the restrictions being proposed and their nature being such as to go clearly beyond what might be required for the aim allegedly being pursued.<sup>117</sup> Any restriction should rely on a risk-based approach in order to justify a potential difference in treatment between not-for-profit NGOs and other private, legal entities. Without providing any sufficient

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110 See, for example, ECtHR, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, 15 October 2015, para. 109. See also ECtHR, *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 131, where the Court underlined that: “A norm could not be regarded as a “law” unless it was formulated with sufficient precision to enable the person concerned to regulate his or her conduct: he or she needed to be able – if need be with appropriate advice – to foresee, to a degree that was reasonable in the circumstances, the consequences that a given action could entail. However, the Court went on to state that these consequences did not need to be foreseeable with absolute certainty, as experience showed that to be unattainable.”

111 See, for example, ECtHR, *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, 25 November 1999; *Gillan and Quinton v. the United Kingdom*, no. 4158/05, 12 January 2010; *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, 15 October 2015. See also UN HRC, *General comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 25. See also ECtHR, *The Sunday Times v. the United Kingdom (No. 1)*, no. 6538/74, paras. 48-49; and *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 131.

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113 For instance, the terms “political activities” and “foreign funding,” commonly found in many “foreign agents” or similar laws as key criteria for identifying and restricting a “foreign agent,” often lack clear definitions.

114 See, e.g., European Court of Human Rights, *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, paras. 107-122; and the Expert Council on NGO Law’s Opinion on the Bill on the Transparency of Public Life submitted to the National Assembly of Hungary on 13 May 2025

115 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Letter OL RUS 16/2022 dated 30 November 2022 addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012 and subsequent amendments, p. 3.

116 See, e.g., ODIHR’s Opinion on Bulgaria’s draft Act on the Registration of Foreign Agents (as of 11 November 2024).

117 See, e.g., the concern expressed in this regard by the Expert Council on NGO Law in its Opinion on the Bill on the Transparency of Public Life submitted to the National Assembly of Hungary on 13 May 2025. See also the judgment of the European Court of Human Rights in *Kavala v. Turkey* [GC], no. 28749/18, 10 December 2019, in which it found that the applicant’s detention had an ulterior purpose, namely, to reduce him to silence as a human-rights defender.

evidence and justification for this differential approach in regulating different entities of private law, they could be regarded as being discriminatory.

51. Even if there are no ulterior motives, there is a growing tendency to impose regulatory requirements on associations indiscriminately, without consideration of any real risk or need for this to be done is an increasing feature of the approach to the adoption of regulatory measures. This has begun to be acknowledged to an extent, e.g., by the Financial Action Task Force (FATF) in connection with the measures introduced to comply with its recommendations concerning anti-money laundering and terrorist financing with respect to non-profit organizations.<sup>118</sup>
52. In terms of the use of derogations pursuant to Article 4 of the ICCPR in times of public emergencies “threatening the life of a nation”, in principle, States Parties should not rely on derogation from the right to freedom of association if they can attain their objectives by imposing restrictions in terms of Article 22 of the ICCPR. If States nevertheless decide to derogate, they must be able to justify not only that a genuine emergency must be shown to exist<sup>119</sup> and constitutes a threat to the life of the nation, but also that all measures derogating from their obligations under the ICCPR are strictly required by the exigencies of the situation and comply with the conditions in Article 4 of the ICCPR. Further, it must be reiterated that the right to freedom of association continues to be exercisable in a territory under foreign occupation<sup>120</sup> and that any restrictions imposed on it must still meet the test of foreseeability in their formulation<sup>121</sup> (see also Sub-Section 9 *infra*).

## 5.2. Legitimate Grounds for Restrictions

53. The General Comment should ideally address and clearly delineate what are the legitimate grounds based on which restrictions may be introduced. In particular, ODIHR has observed that when introducing “foreign agents” and similar laws, the most common justification used by participating States is the need for so-called “transparency” in the civil society sector. Another frequent argument is the alleged risk posed by “foreign influence” and the need to protect national interests and state sovereignty. A third rationale is that these laws are essential for combating the financing of terrorism and money laundering. These justifications often overlap, as they are interconnected. Restrictions to foreign funding based on the *rationale* mentioned above are not among the legitimate grounds for restrictions under Article 22 of ICCPR.
54. The European Court of Human Rights has specifically held that “[a]ny interference must correspond to a ‘pressing social need’” and the reasons adduced by the national authorities to justify it should be “relevant and sufficient”, with “evidence of a sufficiently imminent risk to democracy”.<sup>122</sup> The CJEU also underlined the need to establish “a genuine, present and sufficiently serious threat to a fundamental interest of society”.<sup>123</sup> As ODIHR and the Venice Commission have observed, “[a]bstract ‘public concern’ and ‘suspicions’ about the legality and honesty of financing of NGO sector, without pointing to a substantiated concrete risk analysis concerning any specific involvement of the NGO

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118 See, the FATF, High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards.

119 As was found not to be the case in European Court of Human Rights, *Dareskizb Ltd. v. Armenia*, no. 61737/08, 21 September 2021.

120 See European Court of Human Rights, *Ukraine v. Russia (Re Crimea)* [GC], no. 20958/14, 25 June 2024.

121 As was found not to be the case in European Court of Human Rights, *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, 26 September 2023, where the scope of the offence of membership of an illegal organisation was overly extended by the courts.

122 See e.g., European Court of Human Rights, *Partidul Comunistilor (Nepecearisti) and Ungureanu v. Romania*, no. 46626/99, 3 February 2005, para. 48; and European Court of Human Rights, *Gorzelik and Others v. Poland*, no. 44158/98, 17 February 2004, paras. 95-96.

123 See e.g., Court of Justice of the European Union (CJEU), *Commission v. Hungary* Case C-78/18, 18 June 2020, para. 91.

*sector in the commission of crimes, such as corruption or money-laundering cannot constitute a legitimate aim justifying restrictions to this right”.*<sup>124</sup>

### 5.2.1. “Transparency” or “Publicity” or “Openness”

55. As noted above, many of the “foreign agents” and similar laws specify or at least imply that they aim to enhance so-called “transparency”, “openness” or “publicity” of funding in the civil society sector.<sup>125</sup> It is important to emphasize that generally NGOs are already subject to numerous obligations under existing laws, similar to other private entities. In some countries, “non-commercial organizations” or “non-for-profit organizations” is used in the civil law and different reporting obligations apply depending on the form of such a non-commercial organization. These obligations usually include requirements to submit or publish annual financial statements, comply with tax laws, and adhere to accounting regulations. In addition, NGOs may face further obligations imposed by their donors, both public and private, which would typically require more detailed documentation of expenses, reporting on activities and regular auditing of accounts. As a result, a significant level of reporting and/or public disclosure already exists for NGOs, at times, more stringent and burdensome than for private entities.
56. Enhancing transparency or openness of the funding of the civil society sector is not listed among the legitimate aims that may justify a restriction to the right to freedom of association under Article 22 (2) of the ICCPR. While the ECtHR has acknowledged in principle, that the objective of increasing transparency with regard to the funding of CSOs may correspond to the legitimate aim of the protection of prevention of disorder,<sup>126</sup> it also specifically referred to the receipt of “substantial foreign funding” in connection with identified risks of foreign involvement in some “*sensitive areas – such as elections or funding of political movements*” and to the objective of preventing money laundering and terrorism financing, however reasserting that “*the ability of an association to solicit, receive and use funding in order to be able to promote and defend its cause constitutes an integral part of the right to freedom of association*”.<sup>127</sup>
57. In this respect, as underlined in ODIHR previous opinions and reports,<sup>128</sup> enhancing transparency does not *by itself* constitute a legitimate aim as described in the above international instruments,<sup>129</sup> although there may be circumstances where this may be a means in the pursuit of one or more of the legitimate aims recognized as allowing restrictions on this right according to international or regional standards, including public order or the prevention of crimes such as corruption, embezzlement, money-laundering or terrorism financing.<sup>130</sup> Moreover, the Joint Guidelines on Freedom of Association provide that, while openness and transparency are fundamental for enhancing

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124 See OSCE/ODIHR, *Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards* (2023), para. 30; and Venice Commission, CDL-AD(2019)002, Report on Funding of Associations, para. 81.

125 See ODIHR, *Urgent Opinion on the Law “On Transparency of Foreign Influence” of Georgia*, 30 May 2024.

126 European Court of Human Rights, *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, para. 122.

127 European Court of Human Rights, *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, paras. 139 and 165

128 See e.g., ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations*, 12 June 2023, para. 25; *Joint Opinion on Draft Law no. 6674 on Introducing Changes to some Legislative Acts to ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance and on Draft Law no. 6675 on Introducing Changes to the Tax Code of Ukraine to ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance*, CDL-AD(2018)006-e, para. 35. See also ODIHR, *Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organisations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic* (12 December 2022), para. 107; and Venice Commission, CDL-AD(2019)002, Report on Funding of Associations, paras. 61 and 80.

129 See e.g., ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations*, 12 June 2023, para. 25; ODIHR, *Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organisations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic* (12 December 2022), para. 107; and Venice Commission, *Report on Funding of Associations*, CDL-AD(2019)002, paras. 61 and 80.

130 *Ibid.*

accountability and public trust, “*the state shall not require but shall encourage and facilitate associations to be accountable and transparent*”.<sup>131</sup>

58. Generally speaking, enhancing transparency and accountability is an essential component of good *public* governance applicable to the public sector but not to private associations, unless they are funded from public sources<sup>132</sup> or performing essential democratic functions, such as political parties, which may justify the imposition of specific reporting or disclosure requirements as underlined in the Joint Guidelines on Freedom of Association and in the Council of Europe’s Committee of Ministers’ *Recommendation CM/Rec(2007)14*.<sup>133</sup>
59. Furthermore, it is important for the General Comment to distinguish interest representation activities like lobbying from civil dialogue and public participation. With respect to lobbying specifically, the ODIHR Guidelines on Democratic Lawmaking for Better Laws note that “[l]obbying is understood as the promotion of specific interests by communicating with a public official as part of a structured and organized action aimed at influencing public decision-making” and “...is a legitimate act of political participation.”<sup>134</sup><sup>135</sup> Lobbying activities may be regulated in the interests of transparency and accountability, as an essential component of good public governance applicable to the public sector and to ensure that financially or politically powerful groups do not unduly influence or capture state policies. ODIHR has also underlined that “any legislation regulating lobbying should strictly define the meaning of lobbying, ensuring that it primarily targets those who receive compensation for carrying out lobbying activities and that it does not cover all advocacy activities by civil society organizations or participation in public consultations”.<sup>136</sup> At the same time, regulation of lobbying activities should not be unduly burdensome and should seek to balance the need for transparency with safeguards for the rights of individuals and associations, including the rights to freedom of expression and opinion, freedom of association and the right to participate in public affairs by campaigning for political, legislative or constitutional change.<sup>137</sup> Thus, when drafting or reviewing regulations on lobbying, it is important to

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131 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 224.

132 The ODIHR and Venice Commission *Joint Guidelines on Freedom of Association* (2015) acknowledge that the receipt of public support may justify the imposition of reporting requirements, though they should not be too burdensome and, at the very least, should be proportionate to the level of public support received (see para. 214).

133 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), paras. 225-226. See also Council of Europe Committee of Ministers, Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, adopted on 10 October 2007, paras. 62-65, which envisages the possibility of certain reporting and public disclosure requirements, namely, as regards submitting accounts and an overview of their activities every year, making known the proportion of their funds used for fundraising and administration and having their accounts audited by an institution or person independent of their management.

134 ODIHR, Guidelines on Democratic Lawmaking for Better Laws, 2024, paras. 75 and 91.

136 ODIHR, Guidelines on Democratic Lawmaking for Better Laws, 2024, paras. 75 and 91: “*regulation of lobbying activities should not be unduly burdensome and should seek to balance the need for transparency with safeguards for the rights of individuals and associations, including the rights to freedom of expression and opinion, freedom of association and the right to participate in public affairs. Individuals and associations have the right to express their opinions and petition public officials, bodies and institutions, whether individually or collectively, and to participate in public affairs by campaigning for political, legislative or constitutional change. While some civil society organizations may be involved in lobbying, not all contacts between civil society and politicians or political institutions, nor forms of advocacy by civil society organizations should be characterized as lobbying*”. See also ODIHR, Urgent Opinion on Draft Rules Governing the Activity of Representation of Interests, 2021, para. 21, which underlines that lobbying legislation should be carefully drafted to ensure that not all advocacy and awareness-raising done by civil society organizations in the public domain is qualified as “indirect lobbying”, while also ensuring that it does not stifle the very engagement with societal and social issues that are at the core of most civil society organizations’ work.

137 ODIHR, Guidelines on Democratic Lawmaking for Better Laws, 2024, paras. 75 and 91: “*regulation of lobbying activities should not be unduly burdensome and should seek to balance the need for transparency with safeguards for the rights of individuals and associations, including the rights to freedom of expression and opinion, freedom of association and the right to participate in public affairs. Individuals and associations have the right to express their opinions and petition public officials, bodies and institutions, whether individually or collectively, and to participate in public affairs by campaigning for political, legislative or constitutional change. While some civil society organizations may be involved in lobbying, not all contacts between civil society and politicians or political institutions, nor forms of advocacy by civil society organizations should be characterized as lobbying*”. See also ODIHR, Urgent Opinion on Draft Rules Governing the Activity of Representation of Interests, 2021, para. 21, which underlines that lobbying

define lobbying and who is to be considered a lobbyist clearly and unambiguously, while involving all key actors, including public officials, and also representatives of the lobbying consultancy industry, civil society and independent ‘watchdogs’ in establishing rules and standards, and putting them into effect.<sup>138</sup>

60. In the context of political party regulation specifically, the ECtHR has also acknowledged the imposition of certain requirements entailing transparency limited to political parties, providing that they did not entail significant disclosure or reporting obligations, not to be disproportionate.<sup>139</sup> Thus, the Court has found that a prohibition on the funding of political parties by foreign States – which effectively gave rise to an obligation for political parties to publish donations through depositing them in a specified bank account – was necessary for the prevention of disorder.<sup>140</sup> It has also recognized that the possibility for some associations to participate in elections and accede to power might make it necessary to require some of them to register as political parties, so as to make them subject to, for instance, stricter rules concerning party financing, public control and oversight.<sup>141</sup>
61. In addition, the ECtHR has acknowledged that, in view of the fundamental role played by political parties in the proper functioning of democracies, the general public may be deemed to have an interest in political parties being monitored and in sanctions being imposed for any irregular expenditure, particularly as regards those parties that receive public funding so that the inspection of their finances did not in itself raise an issue under Article 11 of the ECHR.<sup>142</sup> In any case, the reporting and transparency requirements that may be imposed on political parties may be justified in light of their specific role and status and should not be extended to apply to all associations. The Joint Guidelines on Political Party Regulation also acknowledge the legitimacy of certain regulations with respect to the third-party financing in relation to election campaigns, such as “[c]ampaign expenditures made independently of a candidate or party with the aim of promoting or opposing a candidate or party, either directly or indirectly”, which “may be subject to reasonable and proportionate limitations”.<sup>143</sup>

### 5.2.2. Alleged Risks Caused by So-called “Foreign Influence”

62. Some “foreign agents” laws and similar legislation that target associations, which receive funding from abroad refer to the risks posed by “foreign influence” or to a general or abstract assumption that all funding of associations from abroad is suspicious. As stated in the *Ecodefence* case, an approach considering as “suspect and a potential threat to national interests” any external state scrutiny of the work of CSOs in any matters,

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legislation should be carefully drafted to ensure that not all advocacy and awareness-raising done by civil society organizations in the public domain is qualified as “indirect lobbying”, while also ensuring that it does not stifle the very engagement with societal and social issues that are at the core of most civil society organizations’ work. Furthermore, insofar as steps are taken to equate advocacy by associations with lobbying on behalf of commercial interests, it would be appropriate to highlight the positive approach seen in [Recommendation CM/Rec\(2017\)2 of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making](#), which provides that “[l]egal regulation of lobbying activities should not, in any form or manner whatsoever, infringe the democratic right of individuals to: a. express their opinions and petition public officials, bodies and institutions, whether individually or collectively; b. campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively” (paragraph 4) and allows for alternative mechanisms to public registers as a means of guaranteeing public access to information on lobbying activities and ensuring equivalent levels of accessibility and transparency (paragraph 13).

139 As in European Court of Human Rights, *Parti nationaliste basque – Organisation régionale d’Iparralde v. France*, no. 71251/01, 7 June 2007 (as regards political parties).

140 European Court of Human Rights, *Parti nationaliste basque – Organisation régionale d’Iparralde v. France*, no. 71251/01, 7 June 2007.

141 European Court of Human Rights, *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007.

142 European Court of Human Rights, *Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, 26 April 2016.

143 See ODIHR and Venice Commissions, *Guidelines on Political Party Regulation* (2nd ed., 2020), para. 218. See also European Court of Human Rights, *Bowman v. United Kingdom*, no. 24839/94, 19 February 1998

including human rights or rule of law, “is not compatible with the drafting history and underlying values of the Convention as an instrument of European public order and collective security: that the rights of all persons within the legal space of the Convention are a matter of concern to all member States of the Council of Europe.”<sup>144</sup>

63. Introducing new reporting, disclosure, or other obligations for CSOs cannot be justified solely on general “suspicions” about the integrity of their funding and alleged “foreign influence” without conducting a concrete risk analysis and without evidence linking CSOs to crimes like corruption or money laundering. Imposing such obligations without a thorough risk assessment undermines the principles of fairness and legal certainty, as regulations should be based on actual risks rather than speculative concerns.<sup>145</sup>

### 5.2.3. Risk of Money-Laundering or Financing of Terrorism or Other Threats to National Security or Public Order

64. Some governments argue that the introduction of “foreign agents” and similar laws is necessary to combat terrorism financing and money laundering. Although the prevention of disorder or crime in Article 11 (2) of the ECHR is one of the legitimate aims to restrict the freedom of association, it may be invoked only to avert a *real*, and not only hypothetical danger.<sup>146</sup> It must rely on a substantiated concrete risk analysis confirming specific involvement of the civil society sector in the commission of crimes<sup>147</sup>.
65. Firstly, it is important to note that associations are already subject to both national and international regulations in the fields of anti-money laundering (AML) and countering the financing of terrorism (CFT), just like other private entities. This is particularly relevant for member states of the European Union, which have adopted comprehensive AML/CFT frameworks to prevent and combat money laundering and terrorism financing,<sup>148</sup> which already impose strict requirements on everyone falling within its scope, including NGOs, including in terms of transparency in financial transactions, due diligence, and reporting suspicious activities. These obligations ensure that NGOs adhere to the same standards of financial scrutiny and accountability as other entities operating within the private sector, reducing the risk of illicit financial activities.
66. At the global level, international recommendations in this field are primarily developed by the FATF (see paragraph 53), which is an intergovernmental body that develops policies to combat money laundering, terrorism financing, and the financing of weapons of mass destruction.<sup>149</sup> In 2021, FATF released a *Report on the Unintended Consequences of the FATF Recommendations*, including on the civil society sector, noting the misuse of FATF Recommendation 8 as a justification for introducing undue restrictions on freedom of association, essentially due to a poor or negligent implementation of the

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144 European Court of Human Rights, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, para. 139.

145 ODIHR and Venice Commission, Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations, 12 June 2023, para. 55; and Romania - Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations, CDL-AD(2018)004, paras. 12 and 66.

146 UN Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, Communication No. 1119/2002, U.N. Doc. CCPR/C/84/D/1119/2002(2005), para. 7.2.

147 Venice Commission, Report on Funding of Associations, CDL-AD(2019)002, para. 81.

148 European Commission. Anti-money laundering and countering the financing of terrorism at EU level. See in particular [the EU Directive 2015/849 of the European Parliament and the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing](#), amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC and the EU Directive 2015/849. See also [Regulation - EU - 2024/1624 - EN - EUR-Lex \(europa.eu\)](#), published on 19 June 2024, entry into force on 9 July 2024, applicable from 10 July 2027; and [Directive - EU - 2024/1640 - EN - EUR-Lex \(europa.eu\)](#), to be repealed with effect from 10 July 2027.

149 FATF. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - The FATF Recommendations, as updated in 2023.

FATF's risks-based approach.<sup>150</sup> In 2023, the FATF released an updated Best Practices Paper on Combating the Abuse of Non-Profit Organisations for Terrorist Financing, offering guidance to states on how to implement FATF Recommendation 8 in practice.<sup>151</sup> As mentioned above, even if there were indications of criminal activities on the side of certain individual associations, the correct approach to this would be risk-based and proportionate targeted responses, as recommended by FATF, and not new blanket registration and reporting requirements affecting numerous other organizations engaging in entirely legitimate activities, targeted due to the foreign origin of their sources of funding.<sup>152</sup>

67. The General Principles and Guidelines on ensuring the right of civil society organizations to have access to resources, issued by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, recommend that States must ensure that measures related to terrorist financing, “do not unduly or inadvertently restrict associations’ right to access resources, including financial resources, to carry out their legitimate activities.” The Guidelines reasserted that “any AML/CFT regulation must be based on **comprehensive, transparent, empirically-based, inclusively-performed, and human rights-centered risk assessments**, and that civil society and the general public should be able to provide through formal avenues inputs to risk assessments and to review and challenge the findings of State assessment reports. Any such measures should provide clear exemptions, including from sanctions, for humanitarian and human rights organizations and protected activities such as reporting and documenting on terrorism and carrying out charitable work in conflict zones.”<sup>153</sup>
68. The connection to AML and CFT is often emphasized in official justifications to align so-called “foreign agents” laws with global standards. However, even basic requirements – such as the targeted application towards associations identified through a specific risk-based procedure or the consideration of the impact of regulatory measures on legitimate activities – are not reflected in the laws or their explanatory statements as showcased below, which would be important to stress in the General Comment.

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150 FATF, “High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards” (2021). The Recommendation 8 of the FATF, often cited as one of the reasons leading to the adoption of the “foreign agent” and similar laws, calls for countries to protect associations from the risk of terrorist financing abuse. However, Recommendation 8 does not mandate the implementation of “foreign agent” or similar laws. The FATF Recommendation 8 requires countries to regularly identify organizations that meet the FATF definition of non-profit organizations and conduct risk assessments to determine the terrorist financing risks they may face. Each country is responsible for deciding how to evaluate the terrorism financing risks affecting their associations, using all relevant and reliable sources of information to properly identify these organizations. associations face varying levels of terrorism financing risk depending on their type, activities, or characteristics, with most posing a low risk. Countries must consider the potential impact of any regulatory measures on legitimate associational activities, ensuring that restrictions are applied only where necessary to address the assessed risks. Importantly, Recommendation 8 does not require countries to treat associations as reporting entities, nor does it advocate for blanket registration or reporting requirements. Imposing such requirements would place unnecessary burdens on associations engaged in legitimate activities, particularly those targeted due to foreign funding sources, without contributing to mitigating terrorism financing risks effectively. The focus should remain on a proportionate, risk-based approach that balances security concerns with freedom of associations. See also ODIHR and Venice Commission, *Joint Opinion on the draft law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations* (13 June 2023), para. 29.

151 FATF, BPP-Combating the Terrorist Financing Abuse of Non-Profit Organisation, November 2023.

152 Regarding similar legislation requiring organizations “receiving support from abroad” to register, with possible dissolution as a penalty for non-compliance, the Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) expressed concern that the said legislation was not the result of the application of a risk-based approach; see Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), Hungary - 1st Follow-up report (Enhanced) (7 December 2017), para. 109.

153 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2022 Report on Access to resources, A/HRC/50/23, 10 May 2022, para. 64(f) and supplementary guidelines: General principles and guidelines on ensuring the right to civil society organisations to have access to resources, HRC/53/38/Add.4, 23 June 2023, para. 52.

## 6. EQUAL ENJOYMENT OF THE RIGHT TO FREEDOM OF ASSOCIATION

69. The right to freedom of association should be enjoyed by everyone equally. In particular, all persons and groups wishing to form an association should be able to do so on the basis of equal treatment before the law and enjoy equal protection of the law without discrimination. Consequently, when introducing regulations that concern this right, the authorities must not treat any individual, group or type of association differently, without providing a well-founded justification. Any restrictions on the formation of associations imposed on certain persons or groups should, thus, be narrowly tailored.<sup>154</sup>
70. The UN Human Rights Council’s Resolution 22/6 on protecting human rights defenders urged States to ensure that “*restrictions are not discriminatorily imposed on potential sources of funding*”, and that “*no law should criminalize or delegitimize activities in defence of human rights on account of the geographic origin of funding thereto*”.<sup>155</sup> In addition, the states should also take all necessary measures to ensure that human rights defenders are protected from any form of violence, threats or discrimination as a result of their exercise of the rights granted by the Declaration.<sup>156</sup>
71. The General Comment would benefit from taking an intersectional approach and addressing the differentiated impact the regulation and restrictions on the right to freedom of association can have on different groups, including women, children and youth, marginalised or under-represented groups or groups that are the object of some form of hostility and how this can impact associations expressing a diverse range of views and interests.<sup>157</sup>
72. At the same time, while there may be a need to ensure “*equal and effective access to associations*”, the General Comment should also take into account the right of those forming or belonging to an association to choose with whom they associate or whom they admit as members so long as this right is not exercised in a manner inconsistent with the prohibition on discrimination.<sup>158</sup> Hence, an association’s right to choose its members should be adequately balanced with a person’s right to join or remain a member of the association in question.<sup>159</sup> As noted in the Joint Guidelines on Freedom of Association, “*requiring members of a religious association to belong to the religion concerned would certainly be admissible. At the same time, an association limiting membership of employees in a particular enterprise or industry to only men or only women would be hard to justify. When the distinction in question operates on grounds such as colour or ethnic origin, or in the intimate sphere of an individual’s private life – for example, where a difference of treatment is based on sex or sexual orientation – particularly “weighty reasons” need to be advanced to justify the measure. Associations may justify the use of restrictive membership criteria in certain cases where the objective of the association is to tackle discrimination faced by its members or to seek to redress specific instances of historical exclusion and oppression by the majority, for example, for endangered*

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154 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), paras. 124 and 125.

155 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter “UN Declaration on Human Rights Defenders”) of 9 December 1998, adopted unanimously by the United Nations General Assembly (A/RES/53/144), paras 5 and 9.

156 UN Declaration on Human Rights Defenders., para 2.

157 See: Council of Europe, Committee of Ministers, Recommendation CM/Rec(2022)6 of the Committee of Ministers to member States on protecting youth civil society and young people, and supporting their participation in democratic processes, 17 March 2022.

158 See, in this regard, European Court of Human Rights, *Staatkundig Gereformeerde Partij v. Netherlands* (dec.), no. 58369/10, 10 July 2012, in which the position of the applicant party that women should not be allowed to stand for elected office on its own lists of candidates was held to be incompatible with the goal of the advancement of the equality of the sexes which necessarily prevented the State from lending its support to views of the man’s role as primordial and the woman’s as secondary.

159 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 130.

*indigenous groups or marginalized groups. However, any discrimination for reasons unrelated to the purposes of the association should be prohibited in all cases*".<sup>160</sup>

73. It would also be important for the General Comment to highlight the impact of the stigmatization of associations, as the negative stereotyping of associations pursuing legitimate goals can lead to undue discrimination or other forms of unfavourable treatment (such as organizations working on women's rights, providing aid to migrants, asylum-seekers or refugees or environmental groups).
74. With respect to the so-called "foreign agents" laws and other similar legal initiatives, these laws have also been criticized for lacking weighty reasons for treating foreign-funded entities differently from those with domestic funding, especially when it comes to their role in public discourse, civic engagement, or human rights advocacy.<sup>161</sup>
75. This distinction lacks objective and rational justification in many cases, as the differential treatment is applied broadly, irrespective of the purpose of the funding or (in certain cases) the activities conducted by the organization. Explanatory statements that accompany such legislative initiatives generally fail to provide rational justifications for this distinction, leading to concerns that the laws are used to stigmatize foreign-funded organizations or suppress dissent.<sup>162</sup>
76. In the *Ecodefence* case, the ECtHR decided not to examine whether the Russian legislation violated Article 14 of the ECHR since "*it ha[d] already considered the claim that the applicant organisations were put into a separate category and singled out for a differential treatment on the basis of the source of their funding*".<sup>163</sup> In the case *Commission v. Hungary*, the CJEU considered that the "*differences in treatment depending on the national or 'foreign' origin of the financial support in question, and therefore on the place where the residence or registered office of the natural or legal persons granting the support is established, constitute indirect discrimination on the basis of nationality [...] inasmuch as they establish differences in treatment which do not correspond to objective differences in situations*".<sup>164</sup> The CJEU, concluded that "*Hungary has introduced discriminatory, unjustified and unnecessary restrictions on foreign donations to civil society organisations*".<sup>165</sup>
77. Further, as underlined in previous ODIHR-Venice Commission Joint Opinions, the mere foreign origin of the funding of an association does not by itself constitute a legitimate reason for a differentiated treatment.<sup>166</sup> Without further justification for introducing such

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160 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 131.

161 See e.g., ODIHR and Venice Commission, CDL-AD(2018)006-e, Ukraine - Joint Opinion on Draft Law no. 6674 on Introducing Changes to some Legislative Acts to ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance and on Draft Law no. 6675 on Introducing Changes to the Tax Code of Ukraine to ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance, para. 44; and the Expert Council on NGO Law's Opinion on the Hungarian Draft Act on the Transparency of Organisations Supported from Abroad, para. 46. See also Venice Commission, CDL-AD(2019)002, Report on Funding of Associations, paras. 122-127.

162 ODIHR, *Urgent Opinion on the Law of Georgia "On Transparency of Foreign Influence*, 30 May 2024, para. 41.

163 European Court of Human Rights, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, para. 189.

164 CJEU, *Commission v. Hungary* Case C-78/18, 18 June 2020, paras. 62-64.

165 *Ibid.* para. 143 (CJEU, *Commission v. Hungary* Case C-78/18).

166 ODIHR and Venice Commission, Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations, 12 June 2023, para. 33; Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic, CDL-AD(2013)030, para. 54, referring as a comparison to European Court of Human Rights, *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, 5 October 2006, paras. 81-86, where the Court was reluctant to accept the foreign origin of a non-commercial organisation as a legitimate reason for a differentiated treatment. See also Venice Commission, Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting "foreign agents", CDL-AD(2021)027, para. 34.

- a difference in treatment, this would appear contrary to the prohibition on discrimination.<sup>167</sup>
78. The issue of discriminatory treatment of certain categories of associations on the basis of the foreign origin of their funding also needs to be analysed from the perspective of sectoral equity, meaning that measures that apply to associations should not be more exacting than those generally applicable to business or commercial entities.<sup>168</sup> As underlined in the ODIHR-Venice Commission Joint Guidelines on Freedom of Association, the process of registering an association should not be more cumbersome than the process created for other entities, such as businesses, and associations should not be required to submit more reports and information than other legal entities; equality between different sectors should be exercised.<sup>169</sup> Some "foreign agents" laws and similar legislation have introduced legal distinctions between different types of associations.
79. It is also important to underline the indirect discriminatory impact that such legislation may have in practice. Indeed, they will primarily have negative consequences on associations that do not receive public funding nor donations/contributions from domestic sources and heavily rely on contributions from abroad. Associations that often rely on contributions from abroad are frequently those whose objectives or activities may not be a priority for public funding or may not align with the views of the majority of society. In some cases, their work may even challenge prevailing discriminatory societal norms or be critical of the government. However, these associations are still protected by the rights to freedom of association and freedom of expression.<sup>170</sup> This generally includes associations imparting information or ideas contesting the established order or advocating for a peaceful change of the Constitution or legislation by, for example, advocating for the decriminalization of abortion, asserting a minority consciousness, promoting gender equality, protecting the human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people, working with migrants, asylum-seekers and refugees, calling for regional autonomy, or even requesting secession of part of the country's territory.<sup>171</sup>
80. In this respect, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association noted specifically the "*disproportionate impact [of foreign agents legislation] on civil society organisations, especially those advancing human rights, democracy, accountability and the rights of marginalized groups, which are often highly dependent on foreign funds to support their activities*"<sup>172</sup> as well as the "*particularly acute chilling effect of the designation of 'foreign agent' of human rights defenders, activists and civil society organisations, including those protecting and promoting the rights of LGBTI+ persons.*"<sup>173</sup>
81. So-called "foreign agents" laws generally result in severely restricting or completely preventing associations from participating in policy-making processes, public consultations, or even public discourse.<sup>174</sup> Such a measure could significantly hinder the

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167 ODIHR and Venice Commission, Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic, CDL-AD(2013)030, Section 3. In this respect, as the Joint Guidelines note, "while the foreign funding of non-governmental organisations may give rise to some legitimate concerns, regulations should seek to address these concerns through means other than a blanket ban or other overly restrictive measures"; see ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 219.

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

169 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), paras. 156 and 225.

170 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 98.

171 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 182, and Access to Resources, para. 47.

172 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Letter OL RUS 16/2022 dated 30 November 2022 addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012 and subsequent amendments, p. 7.

173 Ibid. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Letter OL RUS 16/2022, p. 3.

174 ODIHR and Venice Commission, Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations, 12 June 2023, para. 39.

advocacy efforts of organizations advancing and protecting women’s rights, persons with disabilities, or marginalized groups, and those belonging to minorities, among others. It is further concerning that these types of laws - either explicitly or as an effect – impose further discriminatory restrictions on those designated as “foreign agents” to engage in political activities.

82. This would have effectively prevented associations from participating in policy-making processes, public consultations, and even broader public discourse. Such a measure could significantly hinder the advocacy efforts of organizations that advance and protect the rights of women, persons with disabilities, minorities, and other vulnerable or marginalized groups. It is also concerning that these types of laws—whether expressly or in effect—impose additional discriminatory restrictions on organizations designated as “foreign agents” when they engage in political activities.
83. Religious or belief organizations are also among the types of associations that may be disproportionately affected by the discriminatory impact of "foreign agents" and similar laws. In most cases, they fall within the scope of such legislation, which can severely limit their access to foreign funding, hindering their ability to carry out charitable work, provide social services, or engage in religious outreach. Many religious or belief organizations, particularly those involved in humanitarian work or faith-based education, are especially vulnerable as they often rely on donations and support from international religious networks. The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which (among others) indicates that the right to freedom of thought, conscience, religion or belief is to include, in particular, the freedom “*to solicit and receive voluntary financial and other contributions from individuals and institutions*”.<sup>175</sup>
84. In addition, "foreign agent" and similar laws may stigmatize religious or belief organizations if they are required to register as "foreign agents" or under another designation specified by national legislation. These labels carry negative connotations, suggesting disloyalty or foreign influence. For religious or belief organizations, such branding can damage their reputation within the community and weaken trust among followers. They may also face increased government control and costly compliance. Finally, these laws can be weaponized against minority religious or belief groups that might be perceived as opposing dominant religious or belief narratives.

## 7. INTERDEPENDENCE OF FREEDOM OF ASSOCIATION WITH OTHER RIGHTS

85. The Concept Note acknowledges the importance of highlighting the links between the right to freedom of association and other rights guaranteed by the ICCPR. Such links are well-recognized, notably in paragraphs 8 and 16-19 of the Joint Guidelines on Freedom of Association and paragraph 5 of Recommendation CM/Rec(2007)14.<sup>176</sup> This recognition would reflect the reality that many restrictions on the exercise of the right to freedom of association have been found also to give rise to violations of these other rights.
86. In this respect, it should be underlined that the rights to freedom of association and freedom of expression and to receive and impart information are fundamental rights, that enable other human rights and fundamental freedoms and serve as a guardian of

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<sup>175</sup> General Assembly of the United Nations. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Resolution 36/55 of 25 November 1981. (Article 6 (f))

<sup>176</sup> Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe.

democratic values.<sup>177</sup> The state's positive obligation to create a safe and enabling environment for the exercise of these rights, including by fostering media independence and diversity as a key means of promoting robust, open debate about matters of public interest, should be reflected in the legislative framework.<sup>178</sup>

87. In this regard, ODIHR has observed that in recent years, a number of states have expanded so-called “foreign agents” or similar laws beyond associations to include journalists, news outlets, and media-support organizations. These laws have become tools not only for constraining associations but also for controlling the information environment in which associations operate. States have employed “foreign agents” regimes and the like to compel journalists and news outlets to register as foreign agents or foreign-influenced entities; to impose onerous reporting, labelling, or disclosure requirements that stigmatize the press; to restrict access to funding, partnerships, or training from international media-development organizations; and to criminalize routine journalistic collaboration with international partners.
88. The General Comment should affirm that “foreign agents” regimes and foreign-influence regimes must never be used to target journalists or media outlets, whether directly or indirectly, and that doing so constitutes an unjustified interference with both Article 19 and Article 22. In short, efforts to apply “foreign agents” frameworks to journalists and news organizations represent a growing form of *de facto* interference with associational life. The General Comment would benefit from an explicit acknowledgment that protecting freedom of association requires safeguarding the independence, pluralism, and legal security of the news media against such abuses.
89. More broadly, the vitality of freedom of association depends in profound ways on a free, independent, and pluralistic press. Media freedom is not simply adjacent to the freedom of association; it is constitutive of the environment in which associations form, operate, and contribute to democratic life. Associations, especially NGOs, trade unions, community groups, political movements, human rights defenders, and watchdog organizations, require the ability to communicate their aims, expose wrongdoing, and mobilize support. The Concept Note highlights, for example, that associations “*publish analyses and reports ... that serve to inform the public*” (paragraph 2). With that in mind, the General Comment should clarify that State Parties must refrain from media restrictions that, while ostensibly aimed at the media, effectively silence associations.
90. The General Comment should also recognize that journalists serve as external monitors of compliance by States Parties with Article 22 ICCPR by documenting improper restrictions, unlawful surveillance, intimidation, or dissolution of associations. Interference with such reporting impairs the transparency necessary for associations to defend their rights, and protection of journalists covering civil society, particularly those who report on violations of freedom of association, is a necessary condition for the protection of Article 22 itself. The General Comment should urge State Parties to ensure special safeguards for journalists reporting on associational rights, including protection from retaliation, violence, or misuse of criminal law.

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177 See UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur and the African Commission Special Rapporteur on Freedom of Expression and Access to Information (hereinafter “International Mandate-Holders on Freedom of Expression”), Joint Declaration on Media Freedom and Democracy, 2 May 2023.

178 European Court of Human Rights, *Straume v. Latvia*, no. 59402/14, 2 June 2022 relating to sanctions imposed for statements by a trade union official

91. As to the interlinkage of the right to freedom of association and the right to freedom of peaceful assembly, the *Joint Guidelines on Freedom of Peaceful Assembly*<sup>179</sup> provide that the “ [f]reedom of assembly is essential for the normal activities of many associations (such as trade unions), and an enabling environment for associations facilitates the exercise of freedom of peaceful assembly. Furthermore, what may begin as a mobilization or gathering of like-minded individuals might evolve into an association over time. As such, the associational value of an assembly can be just as important as its communicative or expressive purpose. Restrictions on freedom of association can adversely impact the freedom to peacefully assemble. Problematic examples include requiring formal registration or payment of high registration fees before an association may lawfully assemble, prohibiting public expression and other peaceful activities of unregistered groups, prescribing the scope of an association’s mandate, or disbanding or prohibiting an association without convincing evidence that it has unlawful goals. The right to freedom of peaceful assembly should never be made conditional upon prior registration as an association or as any other type of legal entity. Furthermore, the fact that an association has been refused registration should not, of itself, justify restrictions on the holding of peaceful assemblies by members of that association.”<sup>180</sup> Moreover, interference with the right to freedom of assembly invariably affects not only the exercise of the right to freedom of expression by associations but inhibits or prevents a legitimate means of participation in public affairs by them, thereby frustrating their ability to pursue objectives for which they were established.
92. Notably, as already mentioned above, the right to freedom of association also involves the right to associational privacy. At the same time legislation should contain safeguards to ensure the respect of the right to privacy of beneficiaries, members, founders, employees of associations, as well as provide redress for any violation in this respect.<sup>181</sup> The publication of personal data and information as a result of so-called “foreign agents” legislation and similar laws, about “foreign agents”, their representatives, or even individuals in registers impacts their right to privacy.<sup>182</sup>
93. Other important interlinkages include the right to freedom of religion or belief freedom of religion<sup>183</sup>, electoral rights and participation in the conduct of public affairs,<sup>184</sup> freedom of movement,<sup>185</sup> and the right to a fair trial.<sup>186</sup>

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179 See Guidelines on Freedom of Peaceful Assembly, ODIHR and Venice Commission, 3rd ed., adopted at the Venice Commission Session on 21-22 June 2019, and further edited as of 15 July 2020.

180 See Guidelines on Freedom of Peaceful Assembly, ODIHR and Venice Commission, 3rd ed., adopted at the Venice Commission Session on 21-22 June 2019, and further edited as of 15 July 2020, paras 5-6. See also Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, Opinion on the compatibility with international and regional standards of recent amendments to the Belarusian legislation affecting NGOs as regards the organisation and conduct of assemblies, October 2022.

181 See OSCE/ODIHR-Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 231.

182 See, ODIHR, Urgent Opinion on the draft Law of Georgia “on Transparency of Foreign Influence” and ODIHR, Opinion on Bulgaria’s draft Act on the Registration of Foreign Agents (as of 11 November 2024) as regards the imposition of disclosure requirements. See also, European Court of Human Rights, *Kobaliya and Others v. Russia*, no. 39446/16, 22 October 2024 as regards the adverse impact on the social and professional lives and reputations of the requirement for NGOs, media organisations and individuals to register as “foreign agents”.

183 See European Court of Human Rights, *Bulgarian Orthodox Old Calendar Church and Others v. Bulgaria*, no. 56751/13, 20 April 2021 and European Court of Human Rights, *Föderation der Aleviten Gemeinden in Österreich v. Austria*, no. 64220/19, 5 March 2024, both relating to refusal of registration.

184 See European Court of Human Rights, *Andrey Rylkov Foundation and Others v. Russia*, no. 37949/18, 18 June 2024 and European Court of Human Rights, *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007, concerning respectively the designation of associations as “undesirable” and the refusing of registration to an association because campaigning for constitutional change could only be by a political party.

185 See European Court of Human Rights, *Ukraine v. Russia* [GC], no 20958/14, 25 June 2024 concerning the expulsion of a human rights activist from the territory where he lived.

186 European Court of Human Rights, *Croatian Golf Federation v. Croatia*, no. 66994/14, 17 December 2020 and European Court of Human Rights, *Lovrić v. Croatia*, no. 38458/15, 4 April 2017, concerning respectively the lack of impartiality of the court determining the dissolution of an association and the absence of a remedy to contest expulsion from an association

## 8. SANCTIONS AND DISSOLUTION

94. The existence of an association may be terminated by decision of its members or by way of a court decision. Thus, termination may be voluntary or involuntary. Involuntary termination of an association, which may take the form of dissolution or prohibition, may only occur following a decision by an independent and impartial court.
95. As the Joint Guidelines on the Freedom of Association notes: “[a]ssociations should not be prohibited or dissolved owing to minor infringements, including cases where the association’s chosen name is not in line with legislation, or of other infringements that may be easily rectified. In addition, associations should be provided with adequate warning about the alleged violation and be given ample opportunity to correct infringements and minor infractions, particularly if they are of an administrative nature. Furthermore, the individual wrongdoing of founders or members of an association, when not acting on behalf of the association, should lead only to their personal liability for such acts, and not to the prohibition or dissolution of the whole association.”<sup>187</sup>
96. It is essential to underline that any sanctions imposed on associations or their members must, where lawful and consistent with both the right to freedom of association and other human rights, always be proportionate to the harm they may cause, which as noted above does not always occur. The General Comment would benefit from outlining the conditions under which the dissolution of an association may take place, whilst emphasizing that this should be a last resort measure and only for serious misconduct, such as when an association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law, and shall never be used to address minor infractions.<sup>188</sup>
97. In particular, the suspension of the right of associations to pursue their activities or their enforced dissolution should not be regarded as justified where there was no concrete evidence of a threat to national security or of the commission of criminal offences or dangerous conduct,<sup>189</sup> nor where efforts had been made by the association to mitigate failures to comply with certain legal requirements<sup>190</sup> or the violations committed by it which were purely formal and did not relate to the essence of its activity.<sup>191</sup> Insofar, as the enforced dissolution of an association does appear to be justified, it should be emphasized that such a measure should be adopted by a court and be subject to prompt appeal, with a ruling pronouncing the dissolution generally being suspended until the outcome of an appeal.<sup>192</sup>

## 9. JUDICIAL REVIEW AND REDRESS MECHANISMS

98. It is essential that the General Comment encourages States Parties to establish accessible complaint and redress mechanisms for associations, including trade unions and political parties and their members, facing undue restrictions, or arbitrary interference. Such mechanisms are also required by provisions in regional instruments, such as Article 13 of the European Convention on Human Rights and the need for them is also underlined

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187 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), paras. 253-254.

188 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), paras. 35 and 114.

189 See, e.g., European Court of Human Rights, *Association of People of Silesian Nationality (in liquidation) v. Poland*, no. 26821/17, 14 March 2024 and European Court of Human Rights, *Church of Scientology Moscow and Others v. Russia*, no. 37508/12, 14 December 2021.

190 European Court of Human Rights, *Savenko and Others v. Russia*, no. 13918/06, 14 September 2021.

191 European Court of Human Rights, *Vladimir Regional Public Association of Refugees and Displaced Persons ‘Sodeystviye’ v. Russia*, no. 53097/08, 9 November 2021.

192 See the contribution of the absence of such a possibility to the measure being found to be disproportionate in, e.g., European Court of Human Rights, *United Communist Party of Turkey v. Turkey* [GC], no 19392/92, 30 January 1998.

in Principle 11 of the Joint Guidelines. Associations, their founders and members should have the right to an effective remedy concerning all decisions affecting their fundamental rights, in particular those concerning their rights to freedom of association, expression of opinion and assembly.<sup>193</sup> This means providing them with the right to appeal or to have reviewed by an independent and impartial court the decisions or inaction by the authorities, as well as any other requirements laid down in legislation, with respect to their registration, charter requirements, activities, prohibition and dissolution or penalties; if a violation is found to have occurred, proper and effective redress should be made available in a timely manner.<sup>194</sup> The procedure for appeal and review should be clear and affordable, and remedies should include compensation for moral or pecuniary loss.<sup>195</sup> However, in elaborating what is entailed by such mechanisms, it will be important to clarify their precise scope and implications.. In particular, it should be made clear that the body concerned should generally be an independent and impartial court.

99. Nonetheless, it should also be underlined that independence and impartiality will not be sufficient if the court or other body is precluded from examining certain interferences;<sup>196</sup> or lacks the authority to rule on the substantive issues in dispute;<sup>197</sup> and is rendered ineffective through administrative practice,<sup>198</sup> or has not proven effective in practice.<sup>199</sup>
100. Moreover, as indicated in Principle 11 of the Joint Guidelines, associations should generally be able to request suspension of any administrative measure taken in respect of them and any refusal of a request for suspension should itself be subject to prompt judicial challenge.
101. Furthermore, although Article 2 (3) of the ICCPR is concerned with the provision of national mechanisms, it should be borne in mind that applications and communications to regional and international human rights bodies can also be a means of securing redress where national ones have been ineffective.
102. In this regard, it would be important to underline the importance of ensuring that the rulings of such bodies are appropriately implemented without undue delay. Unfortunately, this has not proved always to be the case where violations of the right to freedom of association have been found by the ECtHR.<sup>200</sup> The adverse effect of this shortcoming on the exercise of the right to freedom of associations could also usefully be highlighted in the General Comment.

## 10. FREEDOM OF ASSOCIATION IN TIMES OF CONFLICT OR CRISIS

103. Associations, CSOs and human rights defenders (HRDs) play a vital role in promoting and protecting international human rights law (IHRL) and international humanitarian law (IHL), democratic resilience and accountability, especially during public health emergencies, humanitarian crises and armed conflict.<sup>201</sup> In particular, they monitor and

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193 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), Principle 11.

194 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), Principle 11.

195 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), Principle 11.

196 Such as the disciplinary sanctions against trade union members considered in European Court of Human Rights, *Sadrettin Güler v. Turkey*, no. 56237/08, 24 April 2018.

197 As was found, e.g., not to be possible in European Court of Human Rights, *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, 26 October 2000.

198 As was found to be the situation in European Court of Human Rights, *Ukraine and Netherlands v. Russia* [GC], no. 8019/16, 9 July 2025.

199 As in European Court of Human Rights, *Djavit An v. Turkey*, no. 20652/92, 20 February 2003.

200 See the study of the Expert Council on NGO Law, *The Execution of Judgments involving Freedom of Association: the Impact on Human Rights Organisations and Defenders*

201 See e.g., See OSCE/ODIHR Report on OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic (2020); and SHDM on The Functioning of Democratic Institutions in Times of Crisis, 16-17 May 2022, Annotated Agenda and Final Report (see [here](#)).

document human rights and humanitarian law violations, provide humanitarian assistance, legal aid, psychosocial support and essential services that often fill critical gaps left by state authorities and ensure transparency and accountability through their monitoring and reporting functions.

104. Given their essential contributions, States Parties to the ICCPR should ensure that associations and HRDs operate in a safe and enabling environment that protects their independence, safety and access to affected populations. States should ensure that associations can operate both domestically and across borders during times of crisis, including by facilitating their registration and functioning even under emergency conditions while enabling organizations that have fled their home countries to be recognized and/or continue functioning as civil society actors in host states.<sup>202</sup>
105. HRDs in exile may face additional challenges in trying to associate or re-associate in their new host countries, due to them: a) working on human rights, b) coming from countries under sanctions, and/or c) being nationals of a country under sanctions. More than merely associating, they may face additional problems in accessing funds, as the aforementioned circumstances may put them under extra scrutiny, making their opening of organizational bank accounts very difficult, burdensome, and sometimes impossible. The right to privacy of associations in exile may have an extra layer of risks, as disclosure of funding sources or activity beneficiaries, that may be seen as unproblematic in some contexts, may put associations in exile, their donors and beneficiaries at a very clear danger of persecution at home and transnational repression abroad.
106. Administrative obstacles that impede their effective operation – such as difficulties in opening bank accounts or accessing financial systems – should be removed, particularly for organizations representing displaced persons, asylum-seekers, refugees, minorities and marginalized communities. Support for cross-border activity also requires that states facilitate the transfer and receipt of funding by associations, and refrain from imposing limitations on international financial flows that would constrain their operations.<sup>203</sup> Emergency financial measures made available to legal persons, such as relief packages or recovery funds, should be accessible to associations as well. In parallel, states should facilitate the conduct of their activities online, including registration processes, reporting obligations and internal governance meetings, thereby ensuring continuity of operations when in-person activity is restricted. In addition, states should offer relocation support, including simplified visa procedures, assistance for family members and integration support for HRDs who are compelled to leave their home countries.<sup>204</sup>
107. It is equally important that associations are able to participate meaningfully in shaping crisis responses. States should therefore create opportunities for them – especially women’s organizations and those representing under-represented or marginalized groups – to contribute to the design, adoption, implementation, monitoring and evaluation of emergency policies and laws.<sup>205</sup> Sustained dialogue with civil society should be institutionalized through regular consultation platforms, and co-ordination mechanisms should be strengthened to ensure that CSOs are fully included in humanitarian and human rights-related decision-making.

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202 See e.g., SHDM on The Functioning of Democratic Institutions in Times of Crisis, 16-17 May 2022, Annotated Agenda and Final Report (see [here](#)).

203 See e.g., SHDM on The Functioning of Democratic Institutions in Times of Crisis, 16-17 May 2022, Annotated Agenda and Final Report (see [here](#)).

204 See e.g., OSCE, Supplementary Human Dimension Meeting (SHDM) On the Role of Civil Society in the Promotion and Protection of International Human Rights Law and International Humanitarian Law, 22-23 April 2024 (see [here](#)).

205 See e.g., OSCE/ODIHR Report on OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic (2020), p. 116.

108. Furthermore, states must guarantee that civil society organisations and human rights defenders have access to affected populations, including in border areas, conflict zones and other locations where humanitarian and monitoring efforts are essential. Restrictions that prevent CSOs from reaching communities in need undermine both the effectiveness of emergency responses and the protection of human rights.
109. Beyond enabling access and participation, states should foster a broader environment in which associations can function freely. This includes ensuring transparency and public access to accurate, timely and accessible information about crises, and refraining from adopting or retaining criminal provisions that penalise so-called “false information,” which risk suppressing legitimate civil society oversight and public debate. Regulatory frameworks should be sufficiently flexible to allow remote submissions, electronic procedures and other simplified administrative processes, and deadlines for reporting and similar obligations should be extended when necessary.

## 11. PARTICIPATION OF ASSOCIATIONS IN PUBLIC DECISION-MAKING AND LAWMAKING PROCESSES

110. OSCE participating States have committed to ensure that legislation will be “*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*”.<sup>206</sup> Moreover, key commitments specify, “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives”.<sup>207</sup>
111. As emphasized in the Joint Guidelines on Freedom of association: “*Associations and their members should be consulted in the process of introducing and implementing any regulations or practices that concern their operations. They should have access to information and should receive adequate and timely notice about consultation processes. Furthermore, such consultations should be meaningful and inclusive, and should involve stakeholders representing a variety of different and opposing views, including those that are critical of the proposals made. The authorities responsible for organizing consultations should also be required to respond to proposals made by stakeholders, in particular where the views of the latter are rejected*”.<sup>208</sup>
112. The *ODIHR Guidelines on Democratic Lawmaking for Better Laws* underline the importance of a participatory and inclusive lawmaking process<sup>209</sup> and also include a dedicated Section on the Role of Civil Society, including associations, in the lawmaking process. In particular, the Guidelines underline that “*[t]he participation of civil society organizations in lawmaking should be facilitated by public authorities, for instance, by the establishment of mechanisms that enable associations to engage regularly in dialogue with, and be consulted by public authorities at various levels of government. When participation happens through regular discussions or institutionalized frameworks, such as consultative bodies (e.g., public councils), working groups or appointed government bodies, this participation should be organized through a public, transparent, open and competitive selection process, based on clear and predefined criteria. It should allow associations to choose their representatives and should be transparent. In parallel, public consultation mechanisms should be open, making it possible for all interested*

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206 CSCE/OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, Para. 5.8.

207 CSCE/OSCE, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 3 October 1991, Para 18.1.

208 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 106.

209 See ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), in particular Principle 7. See also Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, Part II.A.5.

*associations, including smaller civil society groups that are not involved via regular discussions or institutionalized frameworks, to take part*".<sup>210</sup> The ODIHR Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (2015) provide a comprehensive set of guiding principles and practical recommendations.<sup>211</sup>

113. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association specifically recommends to states to “*meaningfully engage with civil society organisations when adopting any measures affecting their right to seek, receive and use funding*”.<sup>212</sup>
114. The need for public consultation on proposals for the imposition of restrictions on the exercise of the right to freedom of association should be underlined as this is not simply a means of open and democratic governance ensuring the transparency and accountability of public institutions but it is a key element in ensuring the rule of law and identifying the genuine nature of the problems claimed to exist and, insofar as such problems do exist, the appropriateness of the solutions being proposed. Unfortunately, where proposals for restrictions on the right to freedom of association have been considered by the legislatures of some States, the undertaking of such consultation has either frequently not occurred at all or has been so limited as not to be meaningful.<sup>213</sup> This failure only serves to underline the absence of any real substantiation for what is being proposed and often the lack of any prior assessment of the impact that particular requirements would have on associations.
115. For consultations on draft legislation to be effective, they need to be inclusive and involve consultations and comments by the public, including civil society organizations. They should also provide sufficient time to stakeholders to prepare and submit recommendations on draft legislation, while the State should set up an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions, providing for clear justifications for including or not including certain comments/proposals. To guarantee effective participation, consultation mechanisms must allow for input at an early stage and throughout the process, meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organisation of public hearings).

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210 See ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), in particular Principle 7. See also Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, para. 72.

211 See <[183991.pdf](#)>.

212 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2022 Report on Access to resources, A/HRC/50/23, 10 May 2022, para. 64(f) and supplementary guidelines: General principles and guidelines on ensuring the right to civil society organisations to have access to resources, HRC/53/38/Add.4, 23 June 2023, para. 29.

213 See, e.g., ODIHR Opinion on Bulgaria’s draft Act on the Registration of Foreign Agents (as of 11 November 2024).