



## **Inputs on Draft General Comment No. 38 concerning Article 22 of the International Covenant on Civil and Political Rights**

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1. The International Association for Human Rights Advocacy in Geneva (IAHRAG) presents its compliments to the Human Rights Committee (hereafter the Committee) and the Secretariat and respectfully submits this contribution in response to the Committee's call for inputs on Draft General Comment No. 38 concerning Article 22 of the International Covenant on Civil and Political Rights (ICCPR).

2. In line with the Committee's Concept Note, the submission addresses:

- Material Scope of the Right to Association
- Temporal Scope: State of emergency
- Obligation to Respect the Right to Association
- Obligation to Protect the Right to Association
- Obligation to Fulfil the Right to Association
- Trade Unions
- Relation with other rights: Article 15 (principle of legality).

## 1. Material Scope of the Right to Association

3. Paragraph 1 of Article 22, which protects "the right to freedom of association with others," should not be construed as limited to associations in the strict legal sense or only to entities formally recognized under domestic law. The notion of "association" should be understood in its broadest sense, extending beyond formal organizations to encompass all forms of collective action or shared activity. Accordingly, the term must be interpreted to include a wide range of forms of collective assemblies and cooperation, including informal groups, movements, and other collective formations.<sup>1</sup>

4. The right to freedom of association should also not be limited to traditional or formal "organizational" modes of activity. Forms of participation that reflect collective interests, values, or identities, even when they do not involve active membership in a structured entity, should fall within its protection. Therefore, even subscribing to a media outlet, while related to freedom of information, can also constitute an exercise of the right to freedom of association, particularly where such a subscription is understood and acted upon by States as reflecting identification with, or support for, a particular group, movement, or collective viewpoint.<sup>2</sup>

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<sup>1</sup> Similar risks may arise where loosely structured social, religious, or faith-based movements that do not constitute associations in the formal legal sense are nevertheless treated by States as criminal organizations following shifts in political context or prevailing security narratives, despite having long been embedded in the social, cultural, or historical fabric of a country and having operated for years through lawful activities aimed at strengthening social cohesion, community solidarity, and access to social, educational, or charitable services. For example, in Türkiye, the Hizmet/Gülen Movement, an informal social and faith-based network that does not constitute an organization or association in the legal sense, was designated as a terrorist organization without due process and in violation of established principles governing the definition of terrorism (AL TUR 5/2024). As a result, hundreds of thousands of individuals alleged to be associated with the Movement were prosecuted and convicted for "membership in a terrorist organization," notwithstanding the absence of individualized evidence of criminal conduct. In this regard, see in particular, *Alakuş v. Türkiye*, Human Rights Committee, UN Doc CCPR/C/135/D/3736/2020.

<sup>2</sup> Illustrative practice can be found in situations where States have treated expressive or supportive acts, such as subscribing to particular media outlets, or engaging in collective acts of economic solidarity, including depositing funds in a lawfully operating institution publicly targeted by the authorities, as constitutive elements of serious criminal offences, including membership in prohibited or terrorist organizations. In such cases, conduct that was entirely lawful at the time and that fell within the exercise of freedom of expression and association was relied upon as the sole or primary basis for detention and prosecution, in the absence of evidence of intent, violence, or participation in criminal activity. This practice demonstrates the

5. The right to freedom of association should not be limited to a particular purpose, and the “protection of his interests” shall be interpreted in the broadest term to extend to all legitimate purposes based on the Covenant, including not only social, cultural, educational or political interests, but also personal or private aims. The protection of Article 22 should therefore apply regardless of the nature of the objective pursued, so long as it is consistent with the Covenant.<sup>3</sup>

6. The right to freedom of association not only includes the right to join (or not to join) an association, but also encompasses all associated rights, so that members of associations should be free to determine their statutes, structure, and activities, and to make decisions without State interference.<sup>4</sup>

7. The right to freedom of association safeguards all activities carried out by an association, including those related to managing and accessing assets, as well as resources, as outlined in the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule (A/HRC/53/38/Add.4).

## 2. Temporal Scope: State of emergency

8. Although the right to freedom of association is not enumerated among the non-derogable rights in article 4, paragraph 2, it is difficult to conceive of any emergency, even situations of armed conflict, that could justify its total or absolute suspension. Any derogation from this right, in order to comply with the requirement that it be “limited to the extent strictly required by the exigencies of the situation,” must be narrowly circumscribed, clearly defined in scope and duration, and directed only at specific associations where strictly necessary. Such measures cannot extinguish or suspend the core and the essence of the right itself. Accordingly, while a State may, under exceptional circumstances, temporarily restrict the operation of a particular association or limit the formation or membership of specific associations, it may not derogate from the right to form or join associations in general. In other words, any derogation from this right must affect only the specific modalities of its exercise and must be strictly limited in scope and duration.<sup>5</sup> Therefore, even where the functioning of a particular

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risk of conflating expressive association with criminal liability and of retrospectively recharacterizing lawful conduct in violation of the principle of legality.

<sup>3</sup> See for example, UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 18; see also UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, para. 18.

<sup>4</sup> *Viktor Korineenko et al. v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/88/D/1274/2004, Views of 31 October 2006, para. 7.2.

<sup>5</sup> In practice, prolonged states of emergency in some jurisdictions have resulted in the permanent dissolution of large numbers of associations and the irreversible confiscation of their assets, with effects continuing long after the formal end of the emergency. Such measures illustrate the risk of derogations that extinguish, rather than temporarily limit, the essence of the right. See for example, Concluding observations on the second periodic report of Türkiye, Human Rights Committee, UN Doc CCPR/C/TUR/CO/2, where the Committee stated: “*The Committee is concerned about credible reports indicating that, during the state of emergency, more than 1,700 associations and foundations, including trade unions, human rights organizations, lawyers’ associations and educational institutions, were permanently closed. The Committee is concerned that the closures were carried out under vague criteria set out in state of emergency decree-laws, without effective judicial oversight or respect for due process guarantees. Despite the authority of the Inquiry Commission on the State of Emergency Measures to reopen organizations and restore their assets, a large majority of organizations remain closed. The Committee is concerned about the provisions of Law No. 7262 that grant the Ministry of Interior broad discretion to restrict the activities of independent organizations, audit them based on vague risk assessment criteria and weak evidentiary standards and suspend board members, thus creating a chilling effect that deters individuals from serving on executive boards or becoming members of these organizations*”; also, Venice Commission (2016), *Draft Opinion on Emergency Decree Laws in Turkey*, pp. 17-20.

association is suspended or restricted during a state of emergency, its members should not be prohibited from forming or joining other associations.<sup>6</sup>

9. In line with General Comment No. 29 on States of Emergency, and as measures derogating from the provisions of the Covenant must be exceptional and strictly temporary, no measures adopted during a state of emergency should result in the permanent closure or prohibition of an association. As any derogation from the right to freedom of association must be “limited to the extent strictly required by the exigencies of the situation,” any temporary suspension, prohibition, or restriction on certain forms of association must be clearly justified as strictly necessary and proportionate to the specific circumstances of the emergency, and must comply with due process guarantees, which remain non-derogable even during a state of emergency.<sup>7</sup>

10. Moreover, where a temporary ban affects an association with legal personality, the ability of its members to access, manage, or use the association’s assets must not be transferred, suspended, or otherwise interfered with unless such interference is clearly justified as strictly necessary and proportionate to the specific circumstances of the emergency.<sup>8</sup> In all cases, any measure relating to the property or assets of an association must comply with due process guarantees, which remain non-derogable even during a state of emergency.<sup>9</sup>

11. In no circumstances may derogations from the right to freedom of association result in discrimination, nor may such derogating measures be applied on discriminatory grounds such as race, colour, sex, language, religion, or social origin.<sup>10</sup>

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<sup>6</sup> Following the failed coup attempt in Türkiye, more than 130,000 public servants, including large numbers of teachers, health-care workers, judges, prosecutors, and other civil servants, were dismissed by name through legislative decrees adopted during the state of emergency. Many of those dismissed were members of trade unions or professional associations and, as a result of these measures, were subjected to *de facto* lifetime bans from public employment. OHCHR (2018), *Report on the Impact of the State of Emergency on Human Rights in Turkey*, pp. 3, 14-16

<sup>7</sup> UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, UN Doc. A/HRC/50/23, 10 May 2022, para. 14.

<sup>8</sup> For example, immediately after the declaration of the state of emergency in July 2016 in Türkiye, Decree-Law No. 667 (and subsequent decrees) ordered the closure and liquidation of a wide range of private legal entities, including associations, foundations, trade unions, and private medical and educational institutions. The legal basis for these liquidations was the allegation that these entities “belonged to, were connected to, or were in affiliation with terrorist organizations or structures, formations, or groups determined by the National Security Council to be acting against national security.” While the measures initially targeted the Hizmet Movement, the scope was rapidly expanded through subsequent decrees to include organizations associated with Kurdish rights, leftist movements, and various human rights advocacy groups. This broad and vague terminology, specifically the concepts of “connection” (*irtibat*) and “affiliation” (*iltisak*), allowed the executive branch to bypass judicial oversight and dissolve civil society organizations without a prior court ruling. Consequently, individuals dismissed from public service under the same vague criteria have faced significant barriers in exercising their right to lead or manage new or existing associations, effectively extending their exclusion from the public sphere into the civic sphere. The entities listed in annexes included 1,125 associations, 104 foundations, 19 trade unions, 15 universities, 934 private schools and 35 health institutions, with all their assets transferred without compensation to the Treasury or the Directorate General of Foundations. Expert Council on NGO Law (2017), *Opinion on the Impact of the State of Emergency on Freedom of Association in Turkey*, pp. 17-18.

<sup>9</sup> For example, during the state of emergency declared following the failed coup attempt in Türkiye, access to justice for affected individuals and organizations was severely curtailed. Emergency decree-laws expressly prohibited courts from issuing stays of execution in cases concerning measures adopted under those decrees. The Government further maintained that such decree-laws constituted “specific legislative transactions” and were therefore not subject to ordinary judicial review. The Constitutional Court, for its part, interpreted its jurisdiction in a manner that excluded abstract constitutional review of decree-laws enacted during the state of emergency. Expert Council on NGO Law (2017), *Opinion on the Impact of the State of Emergency on Freedom of Association in Turkey*, pp. 23-26.

<sup>10</sup> UN Human Rights Council, Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/26/29, 14 April 2014, para. 64.

12. Consistent with General Comment No. 29, States parties should remain bound by their obligation under article 2, paragraph 3, to ensure access to an effective remedy for any violation of Covenant rights, including the right to association. Even where emergency-related adjustments are introduced, the remedy must remain effective, accessible, and capable of providing appropriate redress.<sup>11</sup>

### 3. Obligation to Respect the Right to Association

13. States must ensure that any limitation on the right to association complies with the requirements of legality, legitimate aim, necessity, and proportionality in a democratic society, as set out in Article 22(2) of the ICCPR. Restrictions may not be imposed for discriminatory purposes nor applied in a discriminatory manner.<sup>12</sup>

14. A limitation does not satisfy the requirement of legality merely because it has been enacted as national law. The law must be sufficiently precise and free of ambiguous terms to enable individuals to foresee how to regulate their conduct,<sup>13</sup> and it must not grant unfettered or overly broad discretion to the authorities responsible for its enforcement.<sup>14</sup> In particular, the law must not grant authorities the discretion to impose penalties for non-compliance without the possibility of judicial review.

15. Limitations may be applied only for the purposes for which they were prescribed in paragraph 2 of Article 22, and no other objectives can be relied on by States to limit the right to association.<sup>15</sup>

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<sup>11</sup> For example, the State of Emergency Inquiry Commission established in Türkiye to review measures adopted during the state of emergency was widely assessed as failing to provide a timely or effective remedy for dismissals, the dissolution of associations, and other restrictions on the right to freedom of association. As the sole avenue to challenge such measures, the Commission was composed largely of members appointed by the executive, lacked the power to order suspensive measures, relied extensively on confidential or inaccessible information, and was confronted with an overwhelming caseload, resulting in extremely low rates of reinstatement or reopening. See Concluding observations on the second periodic report of Türkiye, Human Rights Committee, UN Doc CCPR/C/TUR/CO/2, para 45: “The Committee notes that a large majority of the claims filed with the Commission were rejected and reports indicating that many decisions lacked justification or were based on unlawful grounds. The Committee is therefore concerned that those dismissed have not had access to an independent, impartial and effective remedy”; see also, Expert Council on NGO Law (2017), *Opinion on the Impact of the State of Emergency on Freedom of Association in Turkey*, pp. 27-29; International Commission of Jurists (2018), *Justice Suspended: Access to Justice and the State of Emergency in Turkey*, p. 23-25.

<sup>12</sup> UN Human Rights Council, Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/26/29, 14 April 2014, para. 64.

<sup>13</sup> Experience from certain States shows that vague formulations such as “belonging to”, “having links with” or “being in affiliation with” an entity have been used as decisive legal grounds for the dissolution of associations and for criminal or administrative sanctions, without providing foreseeable guidance as to prohibited conduct (see footnote 8). The terms “connection” (*irtibat*) and “affiliation” (*iltisak*), introduced by Decree-Law No. 667 and subsequent legislation, lack definition within the Turkish Penal Code or established criminal jurisprudence. Historically utilized as intelligence-gathering concepts, their incorporation into the legal framework during the State of Emergency has been criticized by the Venice Commission (Opinion No. 872/2016) and the Council of Europe for violating the principles of legal certainty and foreseeability. These vague criteria grant the executive near-absolute discretion to bypass judicial standards of evidence, allowing for the penalization of civil society engagement without proving actual criminal intent or membership in a proscribed group. See also UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, UN Doc. A/HRC/50/23, 10 May 2022, para. 14.

<sup>14</sup> See for example, Concluding observations on the second periodic report of Türkiye, Human Rights Committee, UN Doc CCPR/C/TUR/CO/2, para 61: “The Committee is concerned about the provisions of Law No. 7262 that grant the Ministry of Interior broad discretion to restrict the activities of independent organizations, audit them based on vague risk assessment criteria and weak evidentiary standards and suspend board members, thus creating a chilling effect that deters individuals from serving on executive boards or becoming members of these organizations.”

<sup>15</sup> UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, UN Doc. A/HRC/50/23, 10 May 2022, para. 14.

16. In line with general comment No. 37 (2021) on the right to peaceful assembly, States in invoking “interests of national security” to limit the right to association should demonstrate that “restrictions are necessary to preserve the State’s capacity to protect the existence of the nation its territorial integrity or political independence against a credible threat or use of force.”
17. To meet the requirement of necessity, authorities must show that the restriction is objectively effective in pursuing the legitimate aim and that it constitutes the least restrictive measure necessary to achieve that objective. Dissolution of an association must always be considered a measure of last resort.<sup>16</sup>
18. To satisfy the requirement of proportionality, States must ensure that any measure adopted is proportionate to the legitimate objective pursued and must assess its impact on the essence of the right to freedom of association, ensuring that it is not excessively burdensome or does not impair the enjoyment of the right.<sup>17</sup> In doing so, States should consult members of civil society.<sup>18</sup>
19. States must ensure that any measures adopted, particularly those under anti-money-laundering and counter-terrorism financing frameworks, are clearly defined and free of vague formulations, so as to prevent arbitrary interpretation and application that could lead to violations of the right to freedom of association.<sup>19</sup>
20. Where the protection of national security or public order may be invoked as a legitimate aim, the requirement of necessity and proportionality is not met by permanent dissolution and confiscation of the property of associations, foundations and trade unions on the basis of administrative lists, without

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<sup>16</sup> This risk is illustrated by situations in which associations, foundations and trade unions have been permanently dissolved through executive or administrative listing mechanisms, without prior individualized judicial assessment and without consideration of less intrusive measures. For example, in its review of the emergency decree-laws adopted in Türkiye following the failed coup attempt, the Venice Commission observed that, even where the protection of national security or public order is invoked as a legitimate aim, the requirements of necessity and proportionality are not satisfied by the permanent dissolution of associations, foundations, and trade unions, or by the confiscation of their property, on the basis of administrative lists, without prior judicial findings and without consideration of less intrusive measures, such as temporary suspension or targeted sanctions. See Venice Commission (2016), *Draft Opinion on Emergency Decree Laws in Turkey*, p. 39.

<sup>17</sup> UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 75; see also UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, para. 38.

<sup>18</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, General principles and guidelines on ensuring the right of civil society organizations to have access to resources, 23 June 2023, A/HRC/53/38/Add.4, para 29.

<sup>19</sup> In certain post-emergency contexts, risk-based anti-money-laundering and counter-terrorism-financing frameworks have led to the systematic exclusion of associations from banking services and funding channels, effectively impairing their ability to operate. For example, in Türkiye, in particular, Law No. 7262 on the Prevention of the Financing of the Proliferation of Weapons of Mass Destruction has introduced additional and enduring constraints on civil society. Law No. 7262, read together with the pre-existing framework established by Law No. 6415 on the Prevention of Terrorism Financing, has significantly expanded the State’s asset-freezing powers. These laws enable the executive to designate individuals, associations, foundations, and foreign-based civil society organizations for asset-freezing on the basis of broad and opaque criteria, including “reasonable suspicion,” and without prior judicial authorization or effective and timely judicial review. Organizations listed under these mechanisms face serious practical obstacles, including the closure or refusal of bank accounts and an inability to conduct domestic and cross-border financial transactions. In practice, affected organizations and individuals are denied access to the underlying reports of the Financial Crimes Investigation Board (MASAK) and receive only formulaic judicial decisions that systematically uphold the executive measures, thereby depriving them of any effective judicial remedy.

prior judicial findings and without consideration of less intrusive measures such as temporary suspension or targeted sanctions.<sup>20</sup>

21. Permanent dissolution of associations, foundations, trade unions and other non-profit entities, and the confiscation of their assets, should be considered an extreme measure which in order to be compatible with Article 22 to be ordered by an independent and impartial court, following due process, on the basis of precise legal criteria and individualised evidence, and where less restrictive measures would be clearly insufficient.<sup>21</sup>

#### 4. Obligation to Protect the Right to Association

22. States must ensure that banks and financial institutions within their jurisdiction do not violate the right to freedom of association and conduct human rights due diligence to prevent associations from being unduly deprived of access to financial services or resources, particularly in the context of measures adopted under anti-money laundering and countering the financing of terrorism frameworks.<sup>22</sup>

23. States must ensure that the de-risking practices of banks and financial institutions do not lead to violations of the right to freedom of association, including the denial or deprivation of access to financial services or resources on unsubstantiated grounds.<sup>23</sup> They must also establish effective remedies to

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<sup>20</sup> Venice Commission (2016), *Draft Opinion on Emergency Decree Laws in Turkey*, p. 39.

<sup>21</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that “[s]uspension or involuntarily dissolution of associations should be sanctioned by an impartial and independent court in case of a clear and imminent danger resulting in a flagrant violation of domestic laws, in compliance with international human rights law.” UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 100. The International Labour Organization (ILO) Committee concluded in a case filed by Aksiyon-Is on the allegation that it and its affiliated unions were subjected to administrative dissolution by the authorities and its property confiscated on the basis of Decree-Law No. 667 that “the closure of a trade union by an executive authority pursuant to a decree conferring to it full powers, like the closure of a union by an administrative authority is a priori a violation of Article 4 of Convention No. 87, 4 a fundamental Convention”. The Committee highlighted “that under Article 4 that any dissolution of workers’ or employers’ organizations can only be carried out by the judicial authorities, which alone can guarantee the rights of defence. This principle in the Committee’s view is equally applicable when such measures of dissolution are taken even during an emergency situation.” International Labour Organization (ILO), Governing Body, 341st Session, Report of the Director-General – Fourth supplementary report: Reports of the two Committees set up to examine the representation alleging non-observance by Turkey of Convention No. 87 and Convention No. 158, ILO Doc. GB.341/INS/13/5 (24 Mar. 2021), Appendix I, paras. 22–23.

<sup>22</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, General principles and guidelines on ensuring the right of civil society organizations to have access to resources, 23 June 2023, A/HRC/53/38/Add.4, para 54; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/46/36, para. 16, <https://docs.un.org/en/A/HRC/46/36>; Technical Guide to the implementation of Security Council resolution 1373 (2001) and other relevant resolutions, p. 12, available at <https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted-technical-guide-2017.pdf>. The case of Türkiye illustrates the perilous consequences for the right to association when national asset-freezing mechanisms are integrated into global financial intelligence databases without adequate judicial safeguards. Within the context of Türkiye’s counter-terrorism financing framework, official asset-freeze lists issued by the authorities are imposed without prior notice, without disclosure of the evidentiary basis, and without an opportunity to be heard before an independent and impartial tribunal. These lists are then automatically replicated in private compliance and “financial intelligence” databases relied upon by banks and financial institutions worldwide. As a result, individuals and entities designated by Türkiye are flagged as high risk and are consequently de-banked or denied financial services even in their countries of residence, creating a form of transnational financial exclusion. Post-designation remedies remain largely illusory, as review mechanisms are non-adversarial, lack meaningful judicial scrutiny, and do not provide timely or effective relief. In this regard, humanitarian organizations lawfully registered in European Union Member States have reported that, following their designation by Türkiye under Laws No. 6415 and 7262, their bank accounts were closed and they were no longer able to transfer funds to support their projects, despite never having been subject to criminal proceedings or adverse judicial findings in their State of registration.

<sup>23</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, General principles and guidelines on ensuring the right of civil society organizations to have access to resources, 23 June 2023, A/HRC/53/38/Add.4, para 54.

ensure that each case of such denial or deprivation is reviewed independently. As noted by the UN Global Counter-Terrorism Coordination Compact, some States exercise broad discretion to freeze assets without due process, using these measures to target critical voices or political opposition. A critical barrier to justice is that even when judicial review is available, affected persons are often unable to challenge the underlying facts or access the evidence against them, as these decisions are frequently based on classified or confidential intelligence.<sup>24</sup> Such mechanisms should additionally provide remedy or redress where appropriate, including through renewed or enhanced banking access or compensation.<sup>25</sup>

## **5. Obligation to Fulfill the Right to Association**

24. States must take measures to facilitate the enjoyment of the right to freedom of association by adopting appropriate legislative, administrative, budgetary, and judicial measures to create and maintain an enabling environment in which individuals and associations can fully exercise this right. This includes ensuring transparent, non-discriminatory registration procedures; proportionate and non-arbitrary inspections; secure and independent access to domestic and foreign resources; protection from smear campaigns and harassment; and meaningful participation of civil society in law and policy-making processes.<sup>26</sup>

## **6. Trade Unions**

25. States should remove structural, legal, and practical barriers that hinder the exercise of the right to freedom of association and trade union rights, including obstacles to trade-union organizing and collective bargaining. Such barriers may include excessively high representativity thresholds, overly broad strike bans, burdensome registration requirements, and weak protections against anti-union

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<sup>24</sup> UN Global Counter-Terrorism Coordination Compact, Ensuring Respect for Human Rights While Taking Measures to Counter the Financing of Terrorism, November 2025, p. 30. The report highlights that listing procedures are often applied to those exercising rights to freedom of expression and association, and that the use of confidential intelligence prevents an effective opportunity to challenge such decisions.

<sup>25</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, General principles and guidelines on ensuring the right of civil society organizations to have access to resources, 23 June 2023, A/HRC/53/38/Add.4, para 64.

<sup>26</sup> For example, In Türkiye, human rights defenders working within associations and foundations have been subjected to criminal investigations, prosecutions and detention, including through high-profile terrorism-related trials such as those concerning the Gezi Park protests and the detention of defenders during a training meeting in Büyükkada, illustrating the use of counter-terrorism measures to restrict the exercise of the right to freedom of association beyond what is necessary and proportionate. (Human Rights Watch (2024), Submission to the Human Rights Committee: Review of Turkey, pp. 2–3.) Leaders and members of human rights organizations, including domestic branches of international NGOs, have faced repeated investigations and trials, resulting in office closures, reduced activities and self-censorship, and producing a significant chilling effect on associative life. (International Commission of Jurists (2018), Justice Suspended: Access to Justice and the State of Emergency in Turkey, pp. 37–38; U.S. Department of State (2018), Country Human Rights Report: Turkey, pp. 45–46.) Women's rights and LGBTI+ organizations have been subjected to political pressure, delegitimization and legal proceedings, including closure cases such as that opened against the We Will Stop Femicides Platform, contributing to discrimination and unequal treatment in the enjoyment of freedom of association. (World Organisation Against Torture (2022), The Legacy of Emergency Decrees in Turkey, pp. 42–43; Ülker Sözen (2022), Civil Society under Siege in Turkey: Authoritarianism, Polarisation and Counterstrategies, pp. 4–5; U.S. Department of State (2018), Country Human Rights Report: Turkey, p. 34.) Associations and media outlets operating in the predominantly Kurdish south-east have been particularly affected by closures and the broad application of anti-terrorism legislation, disproportionately restricting the ability of Kurdish and minority communities to exercise their right to freedom of association and to participate in public life. (European Commission (2018), Turkey 2018 Report, p. 18.)

discrimination and interference. States must ensure that regulatory frameworks do not unduly restrict workers' ability to form, join, and operate trade unions and to engage in lawful industrial action.<sup>27</sup>

26. States should ensure that all workers, including those in non-standard forms of employment and public employees not engaged in the administration of the State, can form and join trade unions of their own choosing and conduct collective bargaining without intimidation, retaliation, or undue influence from employers or public authorities. This includes ensuring robust legal safeguards against dismissal, harassment, surveillance, or any other form of reprisal linked to union activity, and ensuring that unions can operate independently, access resources, and represent their members effectively.<sup>28</sup> This approach is reinforced by ILO supervisory bodies, which have emphasized that dissolution or suspension of trade union organizations by executive or administrative authorities—even under emergency powers—constitutes an extreme interference incompatible with Article 4 of ILO Convention No. 87 and with the right of defence. They have stressed that only normal judicial procedure, with the attendant guarantees can satisfy due process requirements in cases of dissolution.<sup>29</sup>

## 7. Relation with other rights: Article 15 (principle of legality)

27. States may not criminalize lawful associational activities, including membership, donations, or participation in the governance of registered organizations, solely because those organizations are later declared unlawful, dissolved, or considered politically undesirable. Consistent with Article 22 of the ICCPR on the right to freedom of association and Article 15 on the principle of legality (*nullum crimen sine lege*), individuals cannot be subjected to criminal or administrative penalties for conduct that was lawful at the time it was carried out.<sup>30</sup> This prohibition equally extends to collateral measures, including dismissal from public service or private-sector employment, disqualification from professional or occupational activities, or the withdrawal of licences, accreditations, or authorizations, where such

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<sup>27</sup> In Türkiye, the trade union sector has been particularly affected by both emergency and ordinary measures. Nineteen trade unions, including two confederations, were closed by decree-laws on allegations of links to terrorist organizations or threats to national security, and their assets were transferred to public bodies, bypassing the ordinary judicial dissolution process under domestic labour law. (STGM (2022), *Outlook of Freedom of Association in Turkey II*, pp. 51–56.) Structural barriers to union organizing and collective bargaining remain entrenched: to obtain bargaining-agent status, a union must meet both a workplace majority requirement and a sector-wide membership threshold, which continues to exclude many unions in practice, particularly newly established and independent ones. (Friedrich Ebert Stiftung (2018), *Trade Unions in Turkey*, pp. 8–10.) Employers frequently challenge unions' representativity before the courts, suspending authorization for several years and preventing lawful bargaining or strikes, during which time union members may face dismissal or intimidation. (Trades Union Congress (2023), *Turkey's Trade Union Crisis: Repression, Dismissals and Denial of Rights*, pp. 4–5.)

<sup>28</sup> In Türkiye, protection against anti-union discrimination is insufficient, with weak legal sanctions that rarely include reinstatement; many workers, especially in small enterprises or precarious employment, remain effectively unprotected against dismissal or retaliation for union activities. (ILO CEACR (2023/2024), *Observation on Turkey concerning Freedom of Association and Protection of the Right to Organise Convention (No. 87)*, pp. 4–5.)

<sup>29</sup> ILO supervisory bodies have recalled that the closure of a trade union by an executive or administrative authority, including pursuant to emergency decree powers, is *a priori* incompatible with Article 4 of Convention No. 87 (“Workers’ and employers’ organisations shall not be liable to be dissolved or suspended by administrative authority”), as it fails to guarantee the rights of defence secured by normal judicial procedure. They further noted that remedial mechanisms such as emergency inquiry commissions cannot cure this defect where dissolution itself has not been subject to judicial review and suspensive effect, and where, in practice, the capacity of dissolved organizations to pursue review has been undermined—*inter alia*—by the imprisonment of leaders and members, the seizure of union funds, and the expiry of filing deadlines, resulting in a situation in which it has become impossible to bring the dissolution and its underlying allegations before a normal judicial procedure. ILO Doc. GB.341/INS/13/5 (24 Mar. 2021), Appendix I, paras. 23, 25–26.

<sup>30</sup> See for example, *Alakus v. Türkiye*, Human Rights Committee, UN Doc CCPR/C/135/D/3736/2020).

measures are imposed solely on the basis of an individual's past lawful exercise of the right to freedom of association.

28. If an association is subsequently deemed illegal, its members must not be punished merely for their earlier membership or involvement during the period in which the organization operated lawfully. Any sanctions imposed must relate solely to conduct that was unlawful at the time it occurred and must be based on individual responsibility, not on retroactive designation or collective attribution of wrongdoing. States must therefore ensure that measures concerning the dissolution, deregistration, or prohibition of associations do not have retroactive punitive effects on individuals who engaged in legitimate associative activity.<sup>31</sup>

Geneva, December 18, 2025

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<sup>31</sup> In certain situations, States may adopt measures through which lawful associational activities are later treated as indicators of criminal or administrative liability. In Türkiye, following the July 2016 state of emergency, authorities systematically treated previously lawful associational activities as indicators of criminal and administrative liability. Lawful membership in registered associations, foundations, and trade unions; donations to organizations later closed by decree; maintaining accounts at lawfully operating banks; sending children to legally authorized schools; and participation in professional and civil-society networks were all relied upon as elements of "evidence" of terrorist organization membership in criminal and administrative proceedings. These measures resulted not only in prosecutions and detentions, but also in widespread dismissals from public service and private-sector employment, the cancellation of professional licences and teaching certificates, and long-term exclusion from regulated professions, solely on the basis of individuals' past lawful exercise of freedom of association. As highlighted in the ECtHR's *Yalçınkaya v. Türkiye* (15669/20) judgment, Türkiye's criminalization of lawful association and trade-union membership has been found incompatible with Article 11 of the ECHR.