IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS REQUEST FOR ADVISORY OPINION NO. OF 2026

IN THE MATTER OF A REQUEST BY THE PAN AFRICAN LAWYERS UNION (PALU) FOR AN ADVISORY OPINION ON THE COMPATIBILITY OF NON-GOVERNMENTAL ORGANIZATION (NGO) LAWS AND REGULATIONS WITH THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS AND OTHER HUMAN RIGHTS INSTRUMENTS APPLICABLE IN AFRICA

(Made under Article 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights and Rule 82(1) of the Rules of the African Court on Human and Peoples' Rights)

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3 EXECUTIVE SUMMARY

3.1 Jurisdiction and admissibility

1. This is a Request for an Advisory Opinion by the Pan African Lawyers Union (hereafter, "PALU") which is an African organisation that is recognised by the African Union (hereafter, "AU") through a Memorandum of Understanding (hereafter, "MOU"). (***Annexure 1***).

2. Pursuant to Article 4 (1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (hereafter, "Protocol") and Rule 82(1) of the Rules of the African Court on Human and Peoples' Rights (hereafter "Rules"), PALU specifically seeks an Advisory Opinion before this Honourable Court (hereafter, "AfCHPR") on the extent to which Non-Governmental Organisation (hereafter, "NGO") laws and regulations comply with the African Charter on Human and Peoples' Rights

(hereafter, “African Charter”), and the Guidelines on Freedom of Association and Assembly (hereafter, “AComHPR Guidelines”) of the African Commission on Human and Peoples’ Rights (hereafter, “AComHPR”) in Africa of 2017.

3. The subject matter of this Request for an Advisory Opinion is not related to a matter being examined by the AComHPR.

3.2 Circumstances giving rise to the Application

4. A number of AU Member States have laws and regulations in relation to NGOs that unduly restrict their right to freely associate by extensively regulating the extent to which NGOs can form, operate lawfully within a given territory, and accomplish their objectives and purposes.

5. For the purpose of this Request, these laws and regulations will loosely be referred to as “NGO laws” and can be categorised as follows:

6. In at least 17 African countries[1], NGOs are required to produce extensive documents which are difficult to produce or obtain, which deters, limits or otherwise prevents their free association by presenting an obstacle to their registration. These documents range from permits and letters of approval from various high-ranking officials in government, to documents produced by state entities such as criminal records and letters of good conduct and morals which are not efficiently produced by governments. The documents also include minutes of internal meetings, proofs of funding which disclose donor sources or prove financial capability to a specified otherwise exorbitant sum, and operational plans.

[1] Angola (NGO Decree, Art 7(1)(b)-(d)); Burundi (https://www.icnl.org/wp-content/uploads/global-ngo-law_trends3-3.pdf); Cameroon (NGO Law, Art 4); Democratic Republic of the Congo (NGO Law, Arts 4, 5); Egypt (NGO Law, Art 8); Eritrea (NGO Proclamation, Arts 6(1)-(2), 8(1)(c), 9(5), 10(1)); Ethiopia (NGO Law, Arts 58(1)(a)-(b), 58(2)(c)); Ghana (https://npos.mogcsp.gov.gh/registration-and-licensing/); Liberia (https://reliefweb.int/report/liberia/faq-document-ngo-humanitarian-community-liberia); Libya (NGO Decree, Art 3(1)); Malawi (NGO Law, s.20(3)(a)(iv)); Mozambique (https://www.icnl.org/wp-content/uploads/global-ngo-law_trends3-3.pdf); Rwanda (NGO Law, Art 20(1)(d) and (h)); Sierra Leone (NGO Policy, Arts 2.2.3, 2.2.4 and Forms A and R); South Sudan (NGO Law, s.9(1)(b)(xi); NGO Regulations, Regs 4, 5(1)); Tanzania (NGO Law, s.12(2)(b), (4)(c)); The Gambia (NGO Decree, ss 10, 12(1)-(2); First Schedule; Second Schedule, items A-C).

7. In at least 9 African countries[2], NGOs' registration occurs through an authorisation regime where the government can deny registration or compel dissolution of NGOs on nebulously defined grounds such as morality, public interest, basic national values, public order, public morals, national interest, health security and human rights.

8. In at least 10 African countries[3], NGOs are regulated by bodies composed by government that have broad discretionary powers to refuse to register NGOs, to suspend their activities, to order their dissolution or to investigate their activities or monitor their operations.

9. In at least 8 African countries[4], NGOs are prohibited from engaging in political activity, either outright or from engaging in electioneering or politicking. Other prohibitions include any work outside of rehabilitation or relief work, becoming affiliated or connected with any organisation of a political nature outside the country, supporting political organisations or candidates for office through fundraising or any other activity, lobbying, engaging in voters' education or election observation. These prohibitions unduly limit the free association of NGOs to determine their objectives or pursue their purposes.

10. In at least 5 African countries[5], there exist high fees and administrative costs for applying to register an NGO, applying to renew registration or as an annual operating cost.

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[2] Angola (NGO Decree, Arts 7(3), 22(a), 38(2)(a)); Egypt (NGO Law, Arts 3, 9, 15(d), 45); The Gambia (NGO Decree, s.10(1); First Schedule, Art 18); Liberia (NGO Policy, p.8); Libya (NGO Decree, Art 3); Rwanda (NGO Law, Arts 6(1), 7(b), 19, 27); Sierra Leone (NGO Policy, Arts 2.2.5, 2.3.2.1, 2.13.4–2.13.5); South Sudan (NGO Regulations, Reg 6); Zimbabwe (NGO Law, ss 6(2)-(3), 9(5), 13A(3)(a), 21(1)(d)).

[3] Algeria (NGO Law, Art 39); Angola (NGO Decree, Arts 38(1)-(2), 32); Egypt (NGO Law, Arts 15(b), (d), (j), (k), 30, 45, 48); Eritrea (NGO Proclamation, Art 7(3)); Ethiopia (NGO Law, Art 59(1)); Libya (NGO Decree, Arts 3(2), 31, 32); Rwanda (NGO Law, Arts 7(b), 42-44); Sierra Leone (NGO Policy, Arts 2.3.2.1, 2.6.1, 2.13.4–2.13.5); Tanzania (NGO Law, ss 14(1)(a)-(b), 20(1)); Zimbabwe (NGO Law, s.9(5)(b)(i)).

[4] Algeria (NGO Law, Art 13); Egypt (NGO Law, Arts 15(b), (f), 68); Eritrea (NGO Proclamation, Arts 2(4)-(5), 7(1)); Ethiopia (NGO Law, Art 62(5)); Libya (NGO Decree, Art 27(3)); Malawi (NGO Law, s.20(3)(a)(vi)); South Sudan (NGO Regulations, Reg 21(2)(a)-(f)); Uganda (NGO Law, s.44(g)).

[5] Egypt (NGO Law, Art 8); Liberia (https://reliefweb.int/report/liberia/faq-document-ngo-humanitarian-community-liberia); Rwanda (https://www.rgb.rw/1/civil-society-faith-based-and-political-organisations/non-governmental-organisations); Sierra Leone (NGO Policy, Section 5); South Sudan (NGO Regulations, Reg 13).

11. In at least 11 African countries[6], foreign NGOs are subjected to additional requirements to register or operate in the territory, face heightened limitations on their ability to receive or disburse funds, are compelled to sign agreements with government ministries, are forced to pay higher administrative fees or are required to have subsisted for a lengthy period prior to seeking accreditation.

12. In at least 5 African countries[7], there exist steep fines, criminal penalties and custodial sentences for transgressing NGO laws.

13. In at least 2 African countries[8], there are laws imposing mandatory purposes and objectives on NGOs, such as requiring NGOs to commit to local empowerment, improvement of community self-reliance, alignment with national development goals, elimination of poverty and integrated development.

14. PALU submits that the above list is elaborated on further in this document, but the upshot of this trend on the continent is to stifle freedom of association, cripple NGOs from freely defining their purposes and plans, hobble the potential of NGOs to pursue their purposes, and to unjustifiably limit the scope of association for foreign NGOs. This trend can be defined as a "constitutional emergency" because it undermines democratic participation, accountability and public trust in governance institutions.

15. For ease of reference, PALU has referred to the operative laws in each African country governing the NGO sector as that countries' "NGO law", with the use of "Decree", "Policy" or "Regulations" having a corresponding meaning. A Table of authorities and sources (**Annexure 2**) lists, in order of authority, the treaties and national laws (hard law); the guidelines, decisions, resolutions, reports and general comments of African and international bodies (soft law); the

[6] Democratic Republic of the Congo (NGO Law, Arts 30, 37); Egypt (NGO Law, Arts 65, 67, 68, 70, 74); Ethiopia (NGO Law, Art 58(2)(c)); Liberia (https://moci.gov.lr/sites/default/files/documents/LBR_Fee_Schedule.pdf); Libya (NGO Decree, Arts 45-47, 57(1), 58, 66, 67); Morocco (2002 NGO Decree, Arts 23-24); Rwanda (NGO Law, Art 29(h), (k)); Sierra Leone (NGO Policy, Art 2.2.3; Section 5); South Sudan (NGO Regulations, Regs 5, 13, 21(3)(a)-(e), 22); Sudan (NGO Law, s.9(3)(g)); Uganda (https://ngobureau.go.ug/en/fees-regulations).

[7] Eritrea (NGO Proclamation, Art 7(3); Penal Code, Art 116); Morocco (2002 NGO Decree, Art 27); Tanzania (NGO Law, s.35(1)(e), (2)); Zambia (NGO Law, s.10(3)); Zimbabwe (NGO Law, s.6(5)(a)-(c)).

[8] The Gambia (NGO Decree, First Schedule, Art 12; Second Schedule, items A-B); Ghana (https://npos.mogcsp.gov.gh/registration-and-licensing/).

jurisprudence of African, regional and national courts and treaty bodies; and the academic, online and press sources cited in this Request.

16. PALU acknowledges that the exercise of regulatory powers is a legitimate aspect of state governance. However, it notes with concern that NGO laws are often enforced in a manner that unlawfully restricts the right to freedom of association. This practice undermines the vital work of civil society organisations, with deeply negative consequences for the communities they serve, particularly those who are indigent, marginalised, or otherwise in need of assistance. PALU emphasises that while states may regulate NGOs, such laws and their implementation must remain fully consistent with international and regional human rights standards.

3.3 Applicable Law

17. PALU seeks an Advisory Opinion from this Honourable Court on whether the above NGO laws and regulatory practices comply with Articles 1, 2, 7, 9, 10(1), 11, 13, 27(1) and (2), and 29(2), (4), (5), (7), and (8) of the African Charter on Human and Peoples' Rights, and with the Guidelines on Freedom of Association and Assembly in Africa of the African Commission on Human and Peoples' Rights (2017), as well as relevant international human rights instruments applicable to the African States concerned pursuant to Article 4(1) of the Protocol, including Articles 14, 19, 21, 22, 25, and 26 of the International Covenant on Civil and Political Rights (ICCPR).

18. Each of these provisions is engaged by one or more of the issues for determination below and is developed in Sections 7, 9 and 10.

3.4 Issues for determination

19. PALU respectfully requests advice from this Honourable Court on the following issues for determination:

    a) Whether laws governing the registration, operations, financing, reporting, and dissolution of NGOs, through the imposition of, among others, the following obligations violate the rights to freedom of association and freedom

of assembly protected under Article 10(1) and 11 of the African Charter, read with Articles 21 and 22 of the ICCPR:

i) Establishment and Maintenance Constraints:

- mandatory and rigorous registration requirements such as the submission of an extensive number and/or difficult to acquire documentation, the costs related to those documents;
- mandatory periodic renewal of registration;
- disproportionate costs associated with registration, renewal, and the production of required documentation;
- mandatory number of founding members.

ii) Operational and Financial Constraints:

- mandatory and rigorous financial restrictions regarding the source, process, amount and disbursement of funding;
- mandatory and rigorous requirements regarding the nature and scope of the activities and its implementation;
- mandatory and extensive reporting obligations.

iii) Penal Measures:

- criminalization of unregistered operations or administrative non-compliance

b) Whether the discretionary powers, afforded to the regulators to register, monitor and approve funding, investigate, deregister, suspend, dissolve and penalise NGOs and their members, without prior judicial authorization or due process safeguards, violate the right to free association protected under Article 10(1) of the African Charter, read alongside Article 7 (Right to Fair Trial), and Article 14 of the ICCPR, insofar as such powers are unduly broad and vague.

c) Whether statutory and regulatory frameworks that subject foreign NGOs, foreign-run NGOs, and local NGOs receiving foreign funding to more onerous treatment than their domestic counterparts violate the right to non-

discrimination and the right to free association protected by Articles 2 and 10(1) of the African Charter, read with Articles 22 and 26 of the ICCPR.

d) Whether laws that prohibit or restrict NGOs from engaging in advocacy, public communication, lobbying, voter education, election observation or other political activity violate the right to freedom of expression and to receive and impart information (Article 9) and the right to participate freely in the government and public affairs of one's country (Article 13) of the African Charter, read with Articles 19 and 25 of the ICCPR.

e) What are the applicable legal standards under Article 27(2) of the African Charter for evaluating whether state-imposed restrictions on NGOs, justified on grounds such as national security, public order, public morality, national sovereignty, or national development goals, constitute permissible limitations, and specifically, whether such restrictions must satisfy the three-part test of legality, legitimate aim, and strict necessity and proportionality in an open and democratic society, as elaborated in Section 9?

f) Whether state laws and regulatory measures that arbitrarily restrict non-discrimination, freedom of association, and assembly (Articles 2, 10(1), and 11) also constitute a breach of the State's positive obligation under Article 1 of the African Charter, by creating legal and operational barriers that frustrate and render impossible the ability of individuals and civil society groups to discharge their fundamental duties to their communities, nation, and continent under Articles 27(1) and 29(2), (4), (5), (7), and (8) of the African Charter?

4 STATEMENT OF INTEREST

20. PALU was founded in 2002, only 2 months after the birth of the AU, by African Bar leaders and eminent lawyers, to reflect the aspirations and concerns of the African people and to promote and defend their shared interests. It brings together the continent's 5 regional lawyers' associations, over 55 national lawyers' associations and over 1,000 lawyers from Africa and the Diaspora.

21. PALU's vision is to see a united, just and prosperous Africa, built on the rule of law and good governance. Its mission is to advance the law and the legal profession, rule of law, good governance, human and peoples' rights and socio-economic development of the African continent.

22. PALU has a MOU on Co-operation and Collaboration with the AU since 2006 and is routinely involved in the activities of the Office of the Legal Counsel of the AU; the Department of Political Affairs of the African Union Commission; the AfCHPR; the AComHPR, African Union Commission on International Law (AUCIL); African Union Advisory Board on Corruption (AUABC) and the Pan African Parliament (PAP), amongst others. PALU also regularly engages the East African Community (EAC), the Southern African Development Community (SADC) and the International Conference of the Great Lakes Region (ICGLR).

23. PALU further has observer status before the AComHPR.

24. PALU is also the first organisation to be granted *Amicus Curiae* status at the AfCHPR and the first organisation to be appointed as a Legal Aid Provider at the AfCHPR in turn becoming the foremost litigant before the AfCHPR.

25. PALU submits the present Request for an Advisory Opinion as part of its mandate to promote human and peoples' rights and following on the substantial concerns from civil society that NGO laws on the continent hamper, threaten or have caused the termination of their work in Africa.

5 STATEMENT REGARDING JURISDICTION AND STANDING

26. PALU submits this Request for an Advisory Opinion under Article 4 of the Protocol and Rule 82(1) of the Rules.

27. Article 4 of the Protocol empowers the AfCHPR to issue advisory opinions "*on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission*". PALU therefore respectfully submits that this Request for an Advisory Opinion is a legal matter relating to whether

NGO laws violate the African Charter and other African human rights' instruments.

28. PALU further submits that the present Request for an Advisory Opinion does not relate to any application pending before the AComHPR as per Rule 82(3) of the Rules.

29. Rule 82(1) of the Rules provides that a request for an advisory opinion may be filed by an African Organisation, recognised by the AU. As such, this Honourable Court has defined "organisation" to include an NGO and has defined "African organisation" to refer to an organisation that is registered in an African State, has structures at the sub-regional, regional or continental levels, or undertakes its activities beyond the territory where it is registered.[9] PALU therefore respectfully submits that it meets all the above criteria to be classified as an African organisation.

30. The AfCHPR has further established that recognition of NGOs by the AU is through the granting of observer status or the signing of a MoU between the AU and those organisations.[10] PALU respectfully submits that by virtue of having signed an MoU with the AU and having illustrated above of its engagement with the AUC and various AU organs and institutions, it is accordingly formally recognised by the AU, thus meeting the criteria set forth by the AfCHPR.

31. PALU further submits that its *locus standi* to request Advisory Opinions before this Honourable Court has been authoritatively established inter alia in: -

    a) Advisory Opinion No 001/2018 - Request by the Pan African Lawyers Union (PALU): On the compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and other human rights instruments applicable in Africa.

    b) Advisory Opinion No 001/2020 - Request by the Pan African Lawyers Union (PALU): On the right to participate in the government of one's country in the

[9] Socio-Economic Rights and Accountability Project (SERAP) (Advisory Opinion) (2017) 2 AfCLR 572, paragraphs 46 and 48.
[10] Centre for Human Rights, University of Pretoria and Others (Advisory Opinion) (2017) 2 AfCLR 622, paragraph 47.

context of an election held during a public health emergency or a pandemic, such as the Covid-19 crisis.

32. Therefore, PALU respectfully submits that it is an African organisation recognised by the AU, pursuant to the Rules, and as defined by this Honourable Court in its jurisprudence, as having demonstrated the requisite *locus standi* to file the present Request for an Advisory Opinion.

6 CIRCUMSTANCES GIVING RISE TO THE APPLICATION

6.1 Background

6.1.1 NGOs as a product of diverse social problems presenting in Africa

33. Modern African societies are extraordinarily diverse, not by coincidence, but by design. The Berlin Conference of 1884 produced an imposed set of colonial boundaries that trampled upon pre-existing lines of communication, community, and shared socio-political institutions built from shared history and kinship that predated colonisation.[11] Inevitably, these arbitrarily drawn borders presented a complex social conundrum to those ruling over African territory: how does one compose a nation from groupings of persons gathered arbitrarily into a territorial unit and without corresponding historical and socio-political units to affirm such boundaries?[12]

34. The movement for independence from colonial regimes, which gathered feverish pace in the 1950s and 1980s[13], produced a compelling answer to the question: conglomerations of oppressed persons would unite against colonial rule to ensure that the ensuing state formations would represent a plurality of interests across the lines of race, tribe, clan or ethnicity, but would yield a state with sovereignty that would work for the benefit of the majority through self-rule.[14] This

[11] E Gbenenye "African colonial boundaries and nation-building" *Inkanyiso Journal* Vol 8 No 2 (2016), pages 119-121.
[12] Ibid, page 122.
[13] Z Mbandlwa "The Rise and Fall of the Liberation Movements in Africa" *Migration Letters* Vol 20 No 3 (2023), page 493.
[14] K Asante "National Movements in Colonial Africa" in Frankema, Ewout, Hillbom, Ellen, Kufakurinani, Ushehwedu and Meier zu Selhausen, Felix (Eds.) *The History of African Development (2023), pages 5-6*.

nationalist movement not only produced unity within African countries, but resulted in nascent continental unity as Pan-Africanism.[15]

35. Unfortunately, the sense of unity produced through opposing a common foe in the form of colonialism did not translate into a new socio-political reality for the liberated African populations, who faced a diversity of inherited and newly created inequities manifesting in geographical, racial and economic divides which threatened the ability for the newly self-governing states to distribute the benefits of freedom and human rights on an equal and equitable basis.[16]

36. Compounding the problem, both the national and continental sense of political unity, whilst summarily expressed in the African Charter in the form of the right to development, equality and non-discrimination,[17] has not been sufficiently implemented by governments which are usually the end result of fractious electoral and political processes[18] that produce an unequal emphasis on representation of larger and more powerful polities and the protection of their interests to the necessary exclusion of demands emanating from the ordinary people who lack a mechanism to translate their demands into the circles of political elites.[19]

37. Resultantly, despite Africa surviving through its independence era and despite integrating into multilateral institutions of political[20] and financial import,[21] along with the rising adoption of multi-partyism in various African nations,[22] political independence and the governing arrangements that followed have not always

[15] African Union "The Pan-Africanist Movement and the road to liberation" https://oau60.au.int/en/pan-africanist-movement-and-road-liberation.
[16] African Economic History Network "Inequality Regimes in Africa from Pre-Colonial Times to the Present"; https://aehnetwork.org/blog/inequality-regimes-in-africa-from-pre-colonial-times-to-the-present/.
[17] Articles 22, 3 and 2 of the African Charter.
[18] F Makoa 'Democratization, elections and the problem of non-acceptance of election results in Africa' (undated) https://www.elections.org.za/content/WorkArea/DownloadAsset.aspx?id=1942.
[19] O Edigheji "Political Representation in Africa: Towards a Conceptual Framework" *Africa Development* Vol. 31 No 3 (2006), pages 93-95.
[20] African Union "The African Group" https://www.africanunion-un.org/africangroup.
[21] IMFConnect "About the African Caucus" https://www.imfconnect.org/content/imf/en/groups/TheAfricanCaucus.html#tab_1.
[22] T Lumumba-Kasongo The Rise of Multipartyism and Democracy in the Context of Global Change: The Case of Africa (Praeger 1998).

ensured that governments fulfil their developmental and human rights obligations towards all citizens fairly.

38. Social necessity has therefore produced social movements, popular associations and community organisations that would pursue integration, public participation and the pursuit of common objectives in a collective manner. These organisations, whilst not forming part of government and not necessarily being partisan themselves, would form part of the social fabric of society that would intend to pursue popularisation of causes to combat injustice, apply pressure over governing institutions to realise reforms and otherwise militate for the concerns of the public to be realised in law, policy and governmental action. These organisations are broadly referred to as NGOs within this document.

6.1.2 NGO activity in Africa post-independence

39. African NGOs have become famous for their ability to champion the causes of community groups,[23] have been afforded global prizes for their ability to campaign for social justice and unfulfilled socio-economic rights[24] and have taken pole position in ensuring that periods of tumult and civil war are concluded with justice for survivors.[25] African NGOs have further committed themselves to pursuit of policy reform,[26] spotlighted environmental issues that threaten the life and heritage of citizens[27] and have even approached the international courts to ensure that social causes, respect for human rights and accountability may be implemented even against corporate multinational entities.[28]

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[23] ESCR-Net 'Movement for the Survival of the Ogoni People (MOSOP)' https://www.escr-net.org/members/movement-survival-ogoni-people-mosop/.
[24] Z Pikoli 'Abahlali baseMjondolo: SA champion for shack dwellers' rights gets international recognition' *Daily Maverick* (Johannesburg) 29 March 2021 https://www.dailymaverick.co.za/article/2021-03-29-abahlali-basemjondolo-sa-champion-for-shack-dwellers-rights-gets-international-recognition/.
[25] Peace Insight "Action Pour la Protection des Droits de l'Homme" https://www.peaceinsight.org/en/organisations/action-pour-la-protection-des-droits-de-lhomme.
[26] The Chanzo Reporter "LHRC Calls for Reforms in Tanzania's Criminal Justice System" *The Chanzo* (Dar es Salaam) 11 April 2022 https://thechanzo.com/2022/04/11/lhrc-calls-for-reforms-in-tanzanias-criminal-justice-system/.
[27] Siyabona Africa "NGOs Against Mining at Mapungubwe World Heritage Site" https://www.krugerpark.co.za/krugerpark-times-e-5-ngos-appeal-mapungubwe-mining-25227.html.
[28] Ligue Ivoirienne Des Droits De L'Homme (LIDHO) and Others v. Republic of Cote D'Ivoire, Application No. 041/2016, Judgment of 5 September 2023.

40. In sum, African NGOs have formed part of the social tapestry of African society to deepen political participation, strengthen governmental responses to crisis and to ensure that the laborious task for governing fairly for all people can be better achieved on the continent.

41. Accordingly, the infrastructure of modern African states must draw from beyond their internal political processes and institutions of government to include NGOs as the demands of the modern polity include that social pressure have a conduit through which it can affect the choices of government and influence the executive and legislative branch outside the ordinary process of elections. Importantly, this realisation stems from the basic premise that African populations must play a strong role in the development of their nations and must therefore be highly informed, well organised and capable of effecting change even when located outside the institutions of political prominence and state power.

42. Indeed, post-independence Africa has seen a remarkable proliferation of NGOs blossom irrespective of the internal political systems implemented by those who govern.[29] This trend mirrors the global phenomenon of the rise of NGOs which have become trusted sources of information[30], important watchdogs for the exercise of executive power[31], motivators for respect for human rights through advocating for reforms and a presence in almost every country in the world.[32] African people are therefore dynamically engaged in processes of positive change, drivers of their own development and feature prominently as changemakers regardless of the support they enjoy by their domestic governments.

43. As noted by a World Bank report in 1995, NGOs were involved in 41 percent of all projects approved for funding,[33] and collaboration with NGOs was most

[29] F Manji and C O'Coill 'The Missionary Position: NGOs And Development In Africa' *International Affairs* Vol 78 No. 3 (2002), page 580.
[30] Council of Europe 'Human Rights Activism and the Role of NGOs' https://www.coe.int/en/web/compass/human-rights-activism-and-the-role-of-ngos.
[31] University of Bath 'how can NGOs become more credible watchdogs?' https://blogs.bath.ac.uk/business-and-society/2017/07/12/ngo-credible-watchdogs/.
[32] WANGO "Worldwide NGO Directory" https://www.wango.org/resources.aspx?section=ngodir.
[33] World Bank "NGOs and the Bank: Incorporating FY95 Progress Report on Cooperation Between The World Bank and NGOs" (June 1996), page 13, https://documents1.worldbank.org/curated/pt/855961468779993814/pdf/270700NGOs0and0the0Bank0FY95.pdf.

extensive on the African continent.[34] Similarly, NGOs continued to receive and maintain pathways for global funding for their causes of advancing human rights and development on the African continent, with upwards of 8 billion US Dollars in aid already being channelled through NGOs worldwide by the mid-1990s.[35] In particular, a large shift in global funding trends occurred in the last decade, with African NGOs receiving over 55% of large-scale funding disbursed by non-African donors in 2022 and 2023 as opposed to a mere 14% between 2010 and 2019.[36]

44. The data is therefore clear; NGOs continue to play a fundamental role in advancing their causes and are increasing their presence whilst enjoying ever-increasing legitimacy and funding for their activities on the African continent.

45. The importance of NGOs has further been globally recognised, with the United Nations General Assembly approving accreditation and participation of NGOs in several committees in relation to human rights matters.[37] The AComHPR's website states that NGOs play a prominent role in its activities, spotlighting human rights violations, monitoring human rights compliance and awareness-raising, and is therefore granting NGOs observer status to participate at the AComHPR's proceedings.[38] The AfCHPR has likewise permitted particular NGOs to submit cases where it has observer status before the AComHPR and where the state in question has filed an optional Declaration permitting such.[39]

46. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association (hereafter, "Special Rapporteur") has produced reports on the exercise of free association, in particular the formation of NGOs,

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[34] Ibid, pages 1 and 13.
[35] J Adisa "The Role of Non-Governmental Organizations in Development Support: The African Perspective" (Arab-Africa Economic Forum, Kuwait, 11-12 November 2013), page 2, https://au.int/sites/default/files/speeches/27321-sp-the_role_of_ngos_presentation_-_kuwait.pdf.
[36] The Bridgespan Group "The Changing Landscape of Large-Scale Giving in Africa by Non-African Philanthropists" https://www.bridgespan.org/insights/the-changing-landscape-of-large-scale-giving-in-africa-by-non-african-philanthropists.
[37] E.g. UNGA Resolution 56/510 (https://www.un.org/esa/socdev/enable/documents/garesa56510e.pdf).
[38] African Commission on Human and Peoples' Rights 'Non-governmental organizations' https://achpr.au.int/en/network/ngos.
[39] Article 5(3), read with Article 34(6), Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

as essential to the advancement of the cause of climate justice,[40] as a necessary requirement for solidarity and partnerships that form the basis of real change in society[41] and as an important tool for the attainment of resources necessary to achieve the sustainable development goals.[42]

47. Likewise, the United Nations Human Rights Office has produced key guidelines for poverty reduction strategies which specifically highlight the role that free association and its exercise impacts on the ability for the global poor to make their voices heard and to have impact in the development, implementation and monitoring of poverty reduction strategies in their countries.[43]

6.1.3 NGO laws as a (looming) regulatory threat to the establishment and existence of NGOs

48. Despite the importance of NGOs, over the last 2 decades there has been a growing trend by African States to restrict the ability of NGOs to carry out their work and achieve their stated objectives. These constraints have been implemented as laws and regulations which result in the banning of 'political' activities, burdensome registration processes, requirements to sign agreements with governments or otherwise seek approval from government ministers, interference with the aims and purposes of NGOs, arbitrary time-bars prior to accreditation being possible and the introduction of powerful oversight bodies with wide discretion to inhibit NGO activity which have all resulted in undermining fundamental human rights principles such as freedom of association which are guaranteed by both international and regional instruments.[44]

49. The trend to restrict civic space and therefore NGO activity in Africa mirrors the shift on the continent from more outwardly dictatorial regimes towards a more subtle approach to stifle, hobble and otherwise hinder the capacity of NGOs to

[40] A/76/222, paragraphs 12 and 54-55.
[41] A/73/279, paragraph 8.
[42] Ibid, paragraphs 9-15 and 20.
[43] Office of the United Nations High Commissioner for Human Rights, Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies (HR/PUB/06/12), Guideline 5, paragraphs 63-74, and Guideline 8.
[44] International Center for Not-for-Profit Law 'NGO Laws in Sub-Saharan Africa' *Global Trends in NGO Law* Vol 3 No. 3 (June 2011), pages 2-10.

perform their role in holding governments accountable.[45] Accordingly, NGOs are now subjected to increased levels of monitoring by governments, more bureaucratic requirements to fulfil prior to being accredited, a deluge of reporting and compliance requirements in relation to their funding and activities and potential criminal penalties for transgressing laws applicable to the NGO sector. Importantly, restrictions on free association that explicitly target civil society creates a knock-on effect for rights adjacent to the exercise of free association, such as rights to public political participation, free speech and the ability to blow the whistle on crimes committed by the state. Restrictions on free association are therefore pernicious gateways to crushing dissent, flattening critique and ensuring that democracy is gradually eroded to favour the ruling elite.

50. The restrictive regulatory trend has not gone unnoticed, with a prominent report produced by Amnesty International in 2019 relating to the global crackdown on civil society organisations[46] analysing the various laws regulating the civic space in 14 different African countries[47] and concluding that there were significant trends regarding presenting obstacles to NGO registration, restricting sources of foreign funding, granting sweeping powers to state authorities over NGOs, placing undue restrictions on free association and imposing burdensome reporting and administrative requirements.[48] The report further shows that establishing 'authorization regimes' for NGOs where governments have plenary approval power during registration leads to lengthy delays in receiving accreditation, of over 10 years in Equatorial Guinea[49] and that the excessive monitoring and reporting requirements imposed on NGOs are often leveraged to

[45] The International Center for Not-for-Profit Law and World Movement for Democracy Secretariat at the National Endowment for Democracy, Defending Civil Society "A Report of the World Movement for Democracy" February 2008, available at: https://queme.org/en/defending-civil-society/.
[46] Amnesty International "Laws Designed To Silence: The Global Crackdown on Civil Society Organizations" February 2019 available at https://www.amnesty.org/en/documents/act30/9647/2019/en/.
[47] Ibid, pages 39-44: Algeria, Burundi, Chad, Democratic Republic of Congo, Egypt, Equatorial Guinea, Ethiopia, Malawi, Mauritania, Mozambique, Nigeria, Sierra Leone, Uganda and Zambia.
[48] Ibid, pages 7-24; see pages 39-44 for tabulated concerns about legislation operative in African and other states.
[49] Ibid, pages 8 and 16.

discourage, disband and otherwise muzzle civil society from challenging the government.[50]

51. A report produced by the Carnegie Endowment for International Peace in 2014[51] details a wave of repressive global pushback against civil society in the form of limiting their foreign support and funding[52] and imposing burdensome registration procedures as a means of reducing the operational capability and legitimacy of NGOs.[53] The report further makes clear that there are broad challenges to restrictions being placed on free association of civil society in Algeria, Eritrea, Ethiopia, Sudan, Zimbabwe and Zambia, with Kenya and Tunisia also seeing proposals to limit external aid to NGOs.[54] This report is cited to demonstrate the longstanding and continuing imposition of unlawful restrictions on the rights to freedom of association, in contravention of international legal standards.

52. A much more recent 2025 report by CIVICUS on the state of civil society discloses that the growth of populism, nationalism and autocratic rule has produced a crisis of democracy that translates into a civic space crisis, where fundamental civil rights are being attacked after democratic freedoms are eroded.[55]

53. In similar vein, the UN Special Rapporteur on the rights to freedom of assembly and association presented a report[56] on growing authoritarianism and attacks on the civic space, highlighting that the growth of populism in Africa continues to dominate the electoral landscape and has contributed to the attacks and restrictions on civil society organisations and a growth of the "anti-rights" agenda on the continent.[57] The report further makes clear that civil society is under

[50] Ibid, pages 7-8; at page 23, Algeria is cited as having passed a law restricting access to foreign funding for NGOs.
[51] Carnegie Endowment for International Peace "Closing Space: Democracy And Human Rights Support Under Fire" 20 February 2014 available at https://carnegie-production-assets.s3.amazonaws.com/static/files/closing_space.pdf.
[52] Ibid, page 7.
[53] Ibid, pages 13 and 14, Egypt and Ethiopia in particular are cited as posing problems to their domestic NGOs.
[54] Ibid, pages 6, 9, 15 and 16; Article 19 "Tunisia: New law proposal threatens civic space"; 31 October 2023 available at https://www.article19.org/resources/tunisia-protect-civic-space/.
[55] CIVICUS "2025 State of Civil Society Report" available at https://www.civicus.org/documents/reports-and-publications/SOCS/2025/state-of-civil-society-report-2025_en.pdf, pages 4 and 5.
[56] A/HRC/56/50.
[57] Ibid, paragraph 47.

sustained attack characterised by identification of NGOs as enemies, threats to security, unpatriotic, corrupt or as foreign agents[58] and that the trend of repressing civil society manifests through restrictive regulation on NGOs that complicate their registration process, permit their dissolution on broad grounds, impose stringent and burdensome reporting obligations on them and limit the extent to which they can access funding in particular from foreign sources.[59] The report further found that the crackdown on civic space threatens the attainment of development, negatively impacts social inclusion and further exacerbates inequality.[60]

54. Given the effluxion of time between promulgation of initial NGO laws on the continent and the present date, the Special Rapporteur, in collaboration with civil society from around the world, has produced a 2025 report[61] which details the effects of NGO laws and the resultant shrinking civic space. The report finds that the right to association permits the solving of collective problems, stimulates the ability to hold governments to account and is crucial for the realisation of human dignity.[62] The report continues that states are expanding the adoption of repressive laws to prevent collective activism and solidarity by abusing the justification of counter-terrorism, anti-money laundering and anti-foreign agents to pass sweeping laws that reduce the ability for civil society to engage in public participation.[63] The report draws a startling conclusion that civil society is facing an existential threat, with many organisations fighting for survival and being hamstrung from actually advocating for democracy, rule of law and human rights.[64]

55. The above conclusions are problematic for an additional reason: African populations are expected to serve their national community through their physical and intellectual abilities,[65] to preserve and strengthen social and national

[58] Ibid, paragraph 25.
[59] Ibid, paragraphs 34 and 38.
[60] Ibid, paragraph 68.
[61] A/80/219.
[62] Ibid, at paragraph 6.
[63] Ibid, at paragraphs 35-36.
[64] Ibid, at paragraph 57.
[65] African Charter, Article 29(2).

solidarity[66], to work to the best of their ability and competence,[67] to strengthen positive African cultural values and contribute to the moral well-being of society[68] as well as contribute to the best of their abilities at all times and all levels to the promotion and achievement of African unity.[69] These duties are embodied in the African Charter and represent a unique phenomenon as no other regional treaty contains such a comprehensive net of civic duties imputed to their populations. For Africans to fulfil the duties articulated under Article 29 of the African Charter, it is vital for the civic space and NGO work to remain open and possible, otherwise contributing to national wellbeing through defending and protecting human rights, including vindicating breaches of human rights suffered by the population, will be impossible.

6.2 Practical examples of the spread of restrictive NGO laws on the continent

56. To further illustrate this widespread trend on the continent, this section will examine instances of intensified NGO restriction laws over the past several decades. Though laws of association in francophone[70] and anglophone Africa have governed the relationship between organised civil society and the state since the days of colonisation, the content of these laws have long correlated with the culture of governance in each state. As sovereign African states began to replace colonial-era association codes with domestic legislation from the 1990s,[71] the absence of continent-wide customary law and the conflicting interests of national stakeholders blurred the line between regulations meant to combat corruption and prevent undue foreign influence and those meant to enact overt political goals and attack the freedom of association.

[66] African Charter, Article 29(4).
[67] African Charter, Article 29(6).
[68] African Charter, Article 29(7).
[69] African Charter, Article 29(8).
[70] Loi du 1er juillet 1901 relative au contrat d'association (France).
[71] Democratic Republic of the Congo (DRC), Law N° 004/2001 of 20 July 2001; Angola, Law on Associations (Law No. 14/91 of 11 May 1991); Tanzanian 2002 NGO Act, section 31(c)(iii).

57. Sudan enacted the Voluntary and Humanitarian Work Act in 2006[72] which placed NGOs under restrictive registration and operating controls.[73] After the 2019 ouster of President Omar el-Bashir, Sudan entered a transitional period during which there were attempts to loosen the restrictions that had been placed on civil society organisations. However, the military takeover of power in October 2021 and the April 2023 civil war disrupted these efforts, leaving the 2006 Act in place.[74]

58. Rwanda, in 2008, adopted the Organic Law governing Non-Governmental Organizations[75] which resulted in a difficult registration process, a provisional probation period for NGO accreditation, detailed reporting requirements which included quarterly financial statements along with an annual approval from the Ministry of Justice. Foreign NGOs were subsequently required to obtain permission from local government authorities in every single district that they intended to work in. All NGOs were required to lodge notification for public meetings and could be required to give advance notice of demonstrations to local governance authorities. These restrictions were deemed burdensome and restricted the ability for NGOs to attain accreditation and pursue their programmes.[76] In 2024, a new Law No. 058/2024[77] was introduced with government claims of streamlining registration and strengthening accountability. However, the restrictive nature remains; the Rwanda Governance Board maintains broad discretionary powers and the vague provisions of the law allow for extensive authority over organisations such as denial of registration based on unclear grounds, including threats *to "security, peace, public health, unity of Rwandans*".[78]

[72] The Voluntary and Humanitarian Work (Organization) Act, 2006.
[73] Freedom House "The Spread of Anti-NGO Measures in Africa: Freedoms Under Threat" (May 2019), pages 8 and 14, https://freedomhouse.org/sites/default/files/2020-02/05132019_UPDATED_FINAL_Africa_Special_Brief_Freedoms_Under_Threat.pdf.
[74] Freedom House, 'Sudan: Freedom in the World 2023 Country Report' https://freedomhouse.org/country/sudan/freedom-world/2023; Freedom House, 'Sudan: Freedom in the World 2024 Country Report' https://freedomhouse.org/country/sudan/freedom-world/2024.
[75] Organic Law No. 55/2008 of 10/09/2008 Governing Non-Governmental Organizations.
[76] United States Department of State "2008 Human Rights Report: Rwanda" (25 February 2009), Section 4, https://2009-2017.state.gov/j/drl/rls/hrrpt/2008/af/119019.htm.
[77] Law No 058/2024 of 20/06/2024 governing Non-governmental Organisations.
[78] Rwanda NGO Law, Articles 7(b), 44(d).

59. Ethiopia followed in 2009, passing the Charities and Societies Proclamation[79] which prohibited organisations taking 10% or more of their funding from foreign sources from undertaking human rights activities and outright prohibited foreign NGOs from engaging in human rights activities which had the effect of preventing campaigns for women's and children's rights, campaigns to support persons with disabilities along with campaigns on conflict resolution.[80] The law further had the effect of restricting the ability for NGOs to freely spend their funds and subjected NGOs to a powerful monitoring body that had wide investigative powers and could compel the production of any document, including those that were potentially confidential.[81] The law caused prominent Ethiopian NGOs to either drop human rights work from their mandate, to retrench the majority of their staff and to suffer significant drop in donations owing to removal of donor anonymity.[82] This restrictive framework was replaced by the Organizations of Civil Societies Proclamation No. 1113/2019 (enacted 12 March 2019), which removed the 10% foreign-funding cap and the categorical ban on rights-based activity by foreign-funded organisations. Despite this legislative reform, the 2009 Proclamation nevertheless remains illustrative of the restrictive trend that imposes barriers to civil society operations (CSOs). For example, under the 2019 Proclamation, organisations are required to get written approval from the CSO Agency to open a bank account.[83]

60. In 2009, Zambia passed the Non-Governmental Organisations Act[84] which established the Non-Governmental Organisations' Registration Board, giving it wide powers to register NGOs, to monitor them, to compel production of annual reports and to subject NGOs to a regular review; the Act also provides for an NGO code of conduct, adopted by the NGO Congress.[85] The law further

[79] Charities and Societies Proclamation No. 621/2009.
[80] D M Balcha 'THE IMPACT OF CHARITIES AND SOCIETIES PROCLAMATION NO. 621/2009 ON ADDRESSING HIV/AIDS ISSUES IN ETHIOPIA' *International Journal of Not-for-profit Law* Vol 16 No 2 (2014), page 53.
[81] Amnesty International 'Ethiopia: The 2009 Charities and Societies Proclamation as a serious obstacle to the promotion and protection of human rights in Ethiopia: Amnesty International's written statement to the 20th Session of the UN Human Rights Council' https://www.amnesty.org/en/documents/afr25/007/2012/en/.
[82] Ibid.
[83] Ethiopia NGO Law, Article 75(1).
[84] Non-Governmental Organisations Act No. 16 of 2009.
[85] Ibid, section 7; see also sections 17(1) and 26.

compelled disclosure of financial information, the financial status of all board members of the NGOs and information about donors.[86] An amendment in 2020 did not reform any of the 2009 Act's core restrictive features, instead, it extended state oversight over NGO finances, using a security and counter terrorism financing clause.[87] The effect of the law was to severely impede the free association of NGOs and their operation in Zambia by subjecting them to excessive governmental controls where NGOs could be arbitrarily deregistered, refused registration, be required to re-register periodically and be ordered to deregister. The law ultimately disempowered Zambian NGOs by extensively regulating their conduct through a code of conduct.[88]

61. In 2009, Sierra Leone adopted the Revised Non-Government Organizations Policy Regulations[89] which regulates the structure of NGOs allowed to register and operate in the country. The Regulations further imposed requirements for foreign NGOs to obtain an attestation from Sierra Leone's representatives abroad, where present, prior to registering and operating in the country and required them to prove their NGO activities in other countries prior to registration.[90] The overall effect of the regulations was to permit government to monitor, interfere with NGOs and to require NGOs to jump through many bureaucratic hoops to register and stay registered, including requiring permissions from ministers in government, to attend interviews with government and to sign agreements with government prior to operating in the country.[91] The law further provided that all NGO projects required prior approval from government, that donor information be disclosed[92] and that NGOs could have

[86] Human Rights Watch "Zambia: Repeal law that restricts civil society" https://www.hrw.org/news/2023/03/29/zambia-repeal-law-restricts-civil-society.
[87] Non-Governmental Organisations (Amendment) Act No. 13 of 2020, section 3(a) (inserting section 7(c)).
[88] CIVICUS "Analysis of the Zambia NGO Bill 2009" https://www.civicus.org/media/446-CIVICUS-Analysis-Zambia-NGO-Bill-2009.pdf; see also Non-Governmental Organisations Act No. 16 of 2009, sections 17 and 32–33.
[89] Revised Non-Government Organizations Policy Regulations, 2009 (since superseded by the National NGO Policy Framework 2023–2028).
[90] Sierra Leone NGO Policy, Article 2.2.3.
[91] Sierra Leone NGO Policy, Article 2.3.2.1.
[92] Sierra Leone NGO Policy, Articles 2.4.3, 3.5.1 and 2.7.1.

their registration cancelled for 'not developing/promoting the capacity of Sierra Leoneans' in the management of their operations.[93]

62. Algeria, in 2012, passed the Law on Associations of 2012.[94] The Law provided for a radical restructuring of the Algerian civic space, mandating registration of NGOs, permitting government to refuse registration where the NGO goals were deemed contrary to 'national constants and values' and 'public order',[95] requiring that a national NGO has founding members drawn from at least 12 Wilayas (provinces)[96] and requiring local NGOs to give the Minister of the Interior prior notice, with 60 days to respond, before joining foreign associations pursuing the same or similar objectives.[97] NGOs were further prohibited from having objects or purposes that conflicted with 'national constants and values, public order, good morals or the provisions of the laws and regulations in force'.[98] The law permits government to suspend the activities of, or dissolve entirely NGOs that contravene the law or interfere with the countries internal affairs or undermine national sovereignty.[99] Lastly, the Algerian Law permitted a radical blocking of all foreign funding, including from foreign NGOs other than the funding that was already subject to a cooperation agreement between the government and the parties to the funding.[100] Accordingly, the law permitted incredible power for the Algerian government to deprive NGOs of critical funding and to subject foreign NGOs to a different regime of even stricter regulation than local NGOs.[101]

63. Egypt, in 2017, passed the Law of Associations (Law No. 70 of 2017), which imposed severe restrictions on formation as well as harsh criminal penalties for non-compliance. In 2019, it was repealed and replaced by Law No. 149 of 2019[102] with Executive Regulations issued in January 2021 by Prime Minister's

[93] Sierra Leone NGO Policy, Articles 2.13.4(iv) and 2.13.5(a).
[94] Algeria, Law No. 12-06 of 12 January 2012 on Associations (Algeria NGO Law).
[95] Algeria NGO Law, Articles 2 and 8.
[96] Algeria NGO Law, Article 6.
[97] Algeria NGO Law, Articles 22 and 23.
[98] Algeria NGO Law, Article 2.
[99] Algeria NGO Law, Articles 39, 40 and 43.
[100] Algeria NGO Law, Article 30.
[101] Euro-Mediterranean Human Rights Network "Memorandum: Assessment of Law 12-06 of 12 January 2012 on Associations" (14 February 2012), Refworld https://www.refworld.org/policy/opguidance/emhrn/2012/en/70474.
[102] Law No. 149 of 2019 on Regulating the Exercise of Civil Work.

Decree No. 104 of 2021.[103] While the current law alleviates some restrictions, such as the elimination of individual prison sentences, it retains the restrictive nature of its predecessor. It requires NGOs to regularise their status with the government within 1 year, failing which they are dissolved and their funds transferred to a government-composed fund, and to disclose all activities, sources of funding and memoranda of understanding.[104] The law further requires that NGOs are registered and commit to respecting 'public morals'.[105] The law restricts NGO membership by requiring that no more than 25% of members be foreign nationals. It also mandates that foreign NGOs obtain additional authorisation from the NGO regulator before operating within the country.[106] NGOs are required to submit a substantial number of documents to the competent regulatory authority as part of the registration process, including criminal record certificates for all founding members. NGOs are further prohibited from conducting opinion polls or publishing their results, participating in or supporting electoral campaigns, or making donations to political parties. In addition, NGOs may not enter into agreements or arrangements with foreign entities without obtaining prior approval from the competent NGO regulatory authority. [107] The law further confers extensive discretionary powers on the NGO regulatory authority, including the power to investigate and conduct unannounced[108] searches of NGO premises. It also authorises the suspension of NGO activities for up to 1 year on broadly framed grounds, including the submission of inaccurate registration information, engagement in unlicensed activities, the use of assets for purposes beyond the organisation's stated objectives, failure to notify authorities of a change of premises, the conduct of unauthorised campaigns, or violations of specified provisions of the NGO law.[109]

64. As further demonstration of the restrictions imposed on NGOs, PALU refers to Annexure 2 attached to this Request, demonstrating the broad sweep of adopted

[103] Prime Minister's Decree No. 104 of 2021 (Executive Regulations to Law No. 149 of 2019).
[104] Egypt NGO Law, Article Two of the Promulgation Articles.
[105] Egypt NGO Law, Article 3.
[106] Egypt NGO Law, Articles 5, 65, 66 and 67.
[107] Egypt NGO Law, Articles 8, 15(f), (j) and (k).
[108] Egypt NGO Law, Article 30.
[109] Egypt NGO Law, Article 45.

restrictive NGO laws on the continent and therefore a trend that unduly limits NGOs freedom of association.

65. The restrictions on NGOs vary as discussed in greater detail in the remainder of this Request. This Request invokes the advisory jurisdiction of this Honourable Court to interpret the provisions of the African Charter and any other human rights instrument that African states are parties to.

7 LEGAL MATTERS

66. The key applicable laws are:

a) The African Charter on Human and Peoples' Rights (African Charter):

- Article 1: Obligation of State Parties to recognize rights, duties, and adopt legislative or other measures.
- Article 2: Enjoyment of rights and freedoms without distinction/discrimination.
- Article 7: Right to due process, fair hearing, and protection against arbitrary administrative sanctions.
- Article 9: Right to receive information and express and disseminate opinions freely.
- Article 10(1): Right to free association.
- Article 11: Right to assemble freely.
- Article 13: Right to participate freely in the government and public affairs of one's country.
- Article 27: Individual duties and the general limitation clause.
- Article 29(2), (4), (5), (7), and (8): Specific civic and community duties owed by individuals and groups.

b) The AComHPR Guidelines (2017) on Freedom of Association and Assembly in Africa:

- Fundamental Principles II & III: Enabling environment for civic participation.
- Paragraphs 2, 11, 13, 14, 17, 18, & 20: Establishment, non-mandatory registration, modest fees, and non-discrimination of foreign CSOs.
- Paragraphs 23, 24, 25, 29, 31, 33, 34, 37, 38, & 48: Operational autonomy, self-determination of purpose, financial autonomy, protection from intrusive state oversight/inspections, and proportionate reporting.
- Paragraphs 55, 56, & 58: Prohibition of criminal sanctions for administrative non-compliance, due process, and strict limitations on involuntary dissolution.

c) Relevant International Human Rights Instruments (ICCPR), pursuant to Article 4(1) of the Court Protocol:

- Article 14 (Fair Hearing)
- Article 19 (Freedom of Expression & Information)
- Article 21 (Freedom of Assembly)
- Article 22 (Freedom of Association)
- Article 25 (Public Participation)
- Article 26 (Non-Discrimination & Equal Protection)

67. Restrictions on the foregoing rights are permissible only where they satisfy the requirements of Article 27(2) of the African Charter. The restriction must be (i) provided by a law of adequate precision, (ii) directed at a legitimate aim recognised by the Charter, and (iii) necessary and proportionate in an open and democratic society. A measure that fails any limb is impermissible. This standard governs the assessment of every NGO law examined below and is developed further in Section 9.

68. The existence of an independent judiciary is a fundamental precondition to any substantive review of statutory restrictions on NGOs. The safeguards enumerated above are not self-executing: without impartial courts capable of enforcing rights, recourse to Article 27(2) affords no practical remedy against unlawful state interference, and the standard risks becoming a formal guarantee without operative effect. This position is reinforced by the Joint Declaration on Protecting the Rights to Freedom of Peaceful Assembly and of Association from Criminalization amid intensified existential threats[110], which affirms that restrictions on these rights must be narrowly tailored, proportionate, and subject to independent judicial review.

69. Article 1 of the African Charter provides that AU member states have an obligation to ensure that freedom of association and rights related thereto should be respected and protected through their national legislative frameworks. States have a negative obligation to refrain from interfering with the exercise of this right. They are not required to grant permission for the enjoyment of the freedom of association, but rather to protect and facilitate its full and free exercise.

70. Article 2 of the African Charter provides for the enjoyment of all rights and freedoms recognised and guaranteed in the African Charter without distinction of any kind, such as political or other opinion, national origin or any other status.[111]

71. Article 10(1) of the African Charter establishes the right to association: every individual shall have the right to free association 'provided that he abides by the law.' This internal limitation ('claw-back') does not permit States to negate the right through domestic legislation; the very laws relied upon to restrict association must themselves conform to the African Charter and satisfy Article 27(2), failing which the right would be rendered illusory. In ***Elgak v Sudan***[112], the AComHPR determined that freedom of association applies to NGOs.

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[110] Joint Declaration on Protecting the Rights to Freedom of Peaceful Assembly and of Association from Criminalization amid intensified existential threats, 17/09/2025, https://www.ohchr.org/sites/default/files/documents/issues/association/statements/en-joint-declaration-foaa2025.pdf.

[111] Article 2, the African Charter.

[112] Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan, Comm. No. 379/09 (2014), paragraph 118.

72. The right to freedom of association is a fundamental right that should underpin all democratic societies in which individuals can freely express their views on all issues concerning their society.[113]

73. The AComHPR has also adopted an interpretive aid to the right to freedom of association in Africa in the form of Guidelines.[114] The AComHPR Guidelines were developed in accordance with the relevant provisions of the African Charter which stipulates under Article 45(1)(b)[115] that the AComHPR is mandated "*to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislations*".

74. Additionally, the African Charter provides provisions, serving as a mechanism to interpret the rights and freedoms protected from the lens of the respective duties of individuals and groups.

75. Indeed, Article 29 of the African Charter finds no discussion in the jurisprudence of African human rights bodies and little discussion in academia. Amnesty International has argued that the African Charter, in Article 29, is 'unique in emphasising the duties of the individual towards the community and the state*'*.[116] Academics have further argued that Article 29 is a 'distinctive feature' of the African Charter as the duties are autonomous and defined to give legal content to some recognised African culture and values that would seek to combat an irresponsible focus on the individual in society.[117]

76. Pamphlet No. 6 on the United Nations Guide for Minorities has detailed that there has been a large focus on the rights contained in the African Charter without proper exegesis of the duties it places on individuals and argues that the meaning

[113] African Commission on Human and Peoples' Rights Guidelines on Freedom of Association and Assembly in Africa, Foreword, page 4.
[114] AComHPR Guidelines.
[115] Article 45 (1) (b) of the African Charter.
[116] Amnesty International 'A Guide to the African Charter on Human and Peoples' Rights' https://www.amnesty.org/es/wp-content/uploads/2021/08/ior630052006en.pdf.
[117] Nneka Chukwumah,"The Banjul Charter and Universal Human Rights: A Comparative Analysis"; https://www.legal-tools.org/doc/04810f/pdf.

of Article 29 is not always clear.[118] However, as one commentator mentions: *"The African Charter takes the view that individual rights cannot make sense in a social and political vacuum, unless they are coupled with duties on individuals. In other words, the Charter argues that the individual egoist is not the center of the moral universe. Thus it seeks to balance the rights of the individual with those of the community and political society through the imposition of duties on the individual."*[119]

77. PALU argues that Article 29 is fundamental to African societies and the recognition of the duty attendant on African citizens to improve their national development, ameliorate their social conditions and to work for the advancement of realisation of human rights and adherence to standards of good governance on the continent.

78. Article 29(2) provides that Africans must serve their national community through physical and intellectual abilities brought to bear towards this end. Article 29(4) obliges Africans to preserve and strengthen national and social solidarity. Article 29(5) obliges Africans to preserve and strengthen the national independence and territorial integrity of their country and to contribute to its defence in accordance with the law; NGOs discharge this duty by strengthening the resilience, self-reliance and institutional capacity of African communities and by guarding against undue external interference in domestic affairs, rather than threatening it, as is often asserted by states seeking to justify restrictive NGO laws. Article 29(7) binds Africans to preserve positive African cultural values and to contribute to the moral well-being of society. Lastly, Article 29(8) compels African individuals to contribute to the best of their abilities and at all times, to the promotion and achievement of African unity.

[118] United Nations Human Rights Office 'Minority Rights Under the African Charter on Human and Peoples' Rights' (Pamphlet No. 6, UN Guide for Minorities), page 4, https://www.ohchr.org/sites/default/files/Documents/Publications/GuideMinorities6en.pdf.
[119] M Mutua 'The African Human Rights System: A Critical Evaluation', page 8; https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=1015&context=other_scholarship.

8 LEGAL AND ADMINISTRATIVE RESTRICTIONS ON THE ESTABLISHMENT, OPERATION AND OVERSIGHT OF NGOS.

79. PALU elaborates below on the different categories and levels of NGO restrictions such as the mandatory registration (8.1), required documentation for registration (8.2), the mandatory periodic renewal (8.3), the registration or affiliated costs (8.4.), required number of founding members (8.5), restrictions on funding, fundraising and financial autonomy (8.6), state oversight in internal governance (8.7), restrictions regarding the nature and scope of the activities (8.8), reporting obligations to government (8.9), criminal penalties for transgressing NGO laws (8.10), authority and discretion of NGO regulators (8.11), governmental authority to investigate (8.12), discriminatory practices towards foreign NGOs (8.13).

8.1 Mandatory registration regimes

80. Despite the AComHPR Guidelines forbidding mandatory registration regimes, there has been a mushrooming of mandatory registration schemes across the continent.

81. The Gambia requires that every organisation seeking to operate as an NGO register under a compulsory scheme which brings all NGOs under the purview of a strict regime of regulation.[120] So too, does Zimbabwe which prohibits Private Voluntary Organizations (PVOs) from conducting operations or seeking funding until registration is approved and criminalises breach of that prohibition.[121] The 2025 amendment of the law widened the class of associations by expanding the definition of PVOs to include trusts, legal persons and "legal arrangements."

82. Liberia also has compulsory NGO registration[122] along with Angola[123] and Sierra Leone.[124] This trend is followed by Rwanda[125] and South Sudan.[126]

[120] The Gambia NGO Decree, section 10(1).
[121] Zimbabwe NGO Law, section 6(2), (3) and (5)(a)-(b).
[122] International Center for Not-for-Profit Law "Sub-Saharan Africa Country Reports, Liberia" https://www.icnl.org/resources/research/ijnl/liberia.
[123] Angola NGO Decree, Article 7(1); see now Law 2/26 of 2 March 2026, Articles 6(1) and 8(1).
[124] Sierra Leone NGO Policy, Article 2.2.5.
[125] Rwanda NGO Law, Article 6(1) read with Articles 19 and 27.
[126] South Sudan NGO Regulations, Regulation 6.

83. In Egypt, all NGOs are required to register, otherwise the courts of law are ordered by legislation to dissolve said NGO and to distribute the monies to a government endorsed civil fund.[127]

84. In Libya, registration is also mandatory.[128] Similarly, Kenya's Public Benefit Organisations Act, first passed in 2013, was operationalised in 2024 and prohibits any organisation from operating as an NGO, unless it is registered.[129] Existing NGOs registered under the repealed Non-Governmental Organizations Co-ordination Act, 1990 must reregister under the new law.[130]

85. Morocco also maintains a declarative regime that functions in practice as a *de facto* registration requirement, by prohibiting NGOs from managing monies and owning property without proper recognition under its NGO laws and provides for a fine up to 556 US Dollars for those operating without being registered. This fine is set to be doubled for every repeat offence.[131]

86. Mandatory regimes of registration have the effect of preventing informal associations from freely forming for public benefit as the regimes which compel registration often requires the payment of fees, both for registration, renewal and other administrative charges to procure documents which hampers the free and fair exercise of the right to association. The reporting requirements that crystallise upon registration of an association further alienates the ability for the indigent to form associations and operates to restrict artificially free association. There is therefore a disparate effect on minority, marginalised and other disadvantage groups, as observed by the Special Rapporteur who found that forced registration impacted disproportionately on minority groups, persons with disabilities and marginalised groups.[132]

87. The mandatory restriction regime contradicts paragraph 11 of the AComHPR Guidelines which prohibits mandatory registration practices and Fundamental

[127] Egypt NGO Law, Article 2; Article Two of the Promulgation Articles.
[128] Libya NGO Decree, Article 3. The Decree's status is contested: the South Benghazi Court suspended its implementation in July 2022, and the Civil Society Commission has since issued Decision No. 5 of 2023.
[129] Kenya NGO Law, section 7(a) and (b).
[130] Kenya NGO Law, Fifth Schedule, paragraph 5(1).
[131] Morocco 2002 NGO Decree, Article 8, read with Articles 5 and 6.
[132] A/HRC/26/29, paragraphs 53-54.

Principle II of the AComHPR Guidelines which dictates that "*Any legal framework put in place or other steps taken relative to the rights to freedom of association and assembly shall have the primary purpose of enabling the exercise of the rights*".[133] It further contravenes paragraph 2 of the AComHPR Guidelines which provides that civil society also includes informal associations which pursue common purposes in all matters relating to public policy and public affairs and that the association may have no legal personality but still have institutional form and structure.[134]

88. Mandatory registration does not concord with the requirement of a legal framework that enables the right to free association as per the Fundamental Principle II of the AComHPR Guidelines, a thought articulated by the United Nations High Commissioner in practical recommendations for states to create an enabling environment for civil society, wherein it was recommended that unregistered organisations must be allowed to operate.[135]

89. Mandatory registration therefore violates Article 10 (1) of the African Charter as it prevents informal associations from operating.

8.2 Required documentation for registration

90. The process of forming NGOs can be subject to restrictions for legitimate purposes in a proportionate and necessary manner. Actions taken by African states to complicate, dissuade or otherwise discourage NGOs from forming through the creation of bureaucratic barriers to registration therefore serves as an unlawful limitation of the right to freedom of association.

[133] AComHPR Guidelines, Fundamental Principle II.
[134] AComHPR Guidelines, paragraphs 1(b) and 2.
[135] UN High Commissioner for Human Rights, Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned, A/HRC/32/20, 11 April 2016, paragraph 84(c).

8.2.1 Requirement to produce documents that are difficult to procure from the state

91. Several African states needlessly complicate the process of registration by requiring submission of numerous documents that are sometimes difficult to produce or obtain from the state.

92. Illustratively, Mozambique[136] requires the production of criminal records for the founding members of the NGOs, documents which have been described as the most difficult to obtain from the state and connote long waiting times prior to being provided. Burundi[137] further requires the production of certificates of "good conduct, character and moral standards" for NGO founding members whilst the Democratic Republic of the Congo[138] requires certificates of "good conduct, lifestyles and morals" for all NGO management staff. These documents are difficult to obtain, are not clearly described and therefore attest to subjective barriers to entry as the state can determine what constitutes good morals or lifestyle without objective limitation.

93. Furthermore, Cameroon[139] requires that an NGO proves 3 years of effective contribution to society in their application to register, a needlessly long period for an NGO to be recognised and further likewise a subjective barrier as there is no standard form or any guidelines on how to prove said contribution.

94. Requirements for furnishing documents produced by state institutions in an untimely, inefficient and otherwise difficult to access manner conflict with the AComHPR Guidelines, Fundamental Principle II[140] to use a legislative framework to create an enabling environment and Fundamental Principle III[141] to enable the participation of individuals in the political, social and cultural life of their communities.

95. The requirements to furnish documentation such as criminal records that are difficult to produce owing to the government itself not efficiently producing them

[136] International Center for Not-for-Profit Law "NGO Laws in Sub-Saharan Africa" *Global Trends in NGO Law* Vol 3 No. 3 (June 2011), page 6.
[137] Ibid, page 5.
[138] DRC NGO Law, Article 4(d).
[139] Cameroon NGO Law, Article 4(1).
[140] AComHPR Guidelines, Fundamental Principle II.
[141] AComHPR Guidelines, Fundamental Principle III.

is contrary to footnote 13 of the AComHPR Guidelines, which prevents non-registration of associations owing to failure to obtain documents that only the state can produce when that state is not effectively and promptly supplying such documents.

8.2.2 Requirement to produce documents that prove extraordinary financial prowess

96. Eritrea[142] has a requirement that NGOs, before they are qualified to register, provide proof of funds of 1,000,000 United States Dollars (local NGOs may instead show equivalent technical capacity, while international NGOs must show 2,000,000 United States Dollars), a requirement that explicitly extinguishes free association for most NGOs that would seek to operate in the territory and are barred.

97. This prohibitive requirement clearly violates Fundamental Principle II[143] to use a legislative framework to create an enabling environment and Fundamental Principle III[144] to enable the participation of individuals in the political, social and cultural life of their communities.

8.2.3 Requirement to produce extensive documents

98. Other countries require production of extensive documentation that serves no legitimate purpose, such as both Rwanda[145] and Uganda[146] which require disclosure of the NGOs proposed work plan and action plan within the country, with The Gambia requiring NGOs to furnish documents stating the problems and concerns which led to their founding along with their medium and immediate term objectives, their operational plans, their sources of funding and strategies for financial self-reliance and sustainability.[147]

[142] Eritrea NGO Proclamation, Articles 8(1)(c) and 10(1)(c); see also Article 9(5).
[143] AComHPR Guidelines, Fundamental Principle II.
[144] AComHPR Guidelines, Fundamental Principle III.
[145] Rwanda NGO Law, Article 20(1)(h).
[146] Uganda NGO Law, Section 39(3)(b).
[147] The Gambia NGO Decree, Second Schedule, Non-Governmental Organisation Code of Conduct, paragraphs A, B and C.

99. Libya requires NGOs to provide a statement of objectives and means of achieving them along with an organisational statute.[148]

100. Likewise, Ghana requires that NGOs seeking registration must submit a mission statement, highlight their key objectives along with their target beneficiaries and disclose their oversight bodies. [149]

101. Ethiopia[150] requires disclosure of the minutes of the meeting which established the NGO along with the identity documents and passports of the founding members. Tanzania[151] likewise require disclosure of the meeting minutes which founded the NGO.

102. Egypt further requires 4 copies of the NGO articles of association, 2 copies of the internal NGO bylaws, the criminal status sheets and declarations of their non-listing on terrorist lists of all founding members, a list of leadership and an official document certifying the occupancy of the NGO premises.[152]

103. South Sudan requires that NGOs submit a concept paper of their organisation, an organisational organogram, a constitution, a 1 year plan and budgets, sectors and areas of operation geographically, all known or probable sources of funding for the organisation, 2 coloured passport photographs and the written names of the top 3 NGO officials along with copies of the identity documents and passports, a list of national and international staff along with national and international partners and a list of project and organisational assets.[153]

104. The Democratic Republic of the Congo requires that an NGO seeking recognition deliver in duplicate a request for legal personality duly signed by the members of staff charged with the administration and management of the organisation, a list showing the names, post name, first names, domicile or residence of all the organisation's members of staff. This list is signed by all the members of staff who shall be charged with the administration or management of the organisation.

[148] Libya NGO Decree, Article 3(1), (3).
[149] Non-Profit Organization Secretariat 'Registration and Licensing Requirements' https://npos.mogcsp.gov.gh/registration-and-licensing/.
[150] Ethiopia NGO Law, Article 58(1)(a) and (b).
[151] Tanzania NGO Law, Section 12(2)(b) and (4)(c).
[152] Egypt NGO Law, Article 8.
[153] South Sudan NGO Regulations, Regulation 4.

The NGO must further supply a declaration signed by the majority of staff members showing the names, professions and domicile or residency of these people, who whatever their title, shall be charged with the administration or management of the organisation and officially recorded articles of association and duly signed by all members of staff charged with the administration or management of the organisation. In addition, the NGO must supply a statement concerning the resources it anticipates it will need to carry out its objectives and certificates of good conduct, morals and lifestyle from all members of staff charged with administration or management of the organisation.[154]

105. Moroccans NGOs, seeking public-benefit status[155], must submit two copies of its internal statutes and bylaws, two copies of a list of the members responsible for administering the association (indicating their nationality, profession, and residence), a report on the association's activities and achievements, an estimated action programme for the following three years, structural statements of its accounts and financial statements, and a copy of the minutes of the deliberations by which the organisation resolved to apply for public-benefit recognition. In practice, however, few associations hold public-benefit status, and most therefore operate under the ordinary declaration regime alone[156].

106. These required documentation for registration, albeit work plans, activity plans, mission statements or internal meeting minutes exceeds the scope of required reasonable disclosure and is further complicated by the requirements levied by some states for personal information such as identity documents and even passports to be furnished.

107. The requirements for NGOs to furnish excessive and unnecessary documents do not comport with paragraph 13 of the AComHPR Guidelines for registration procedures for associations to be simple and non-burdensome.

108. The slew of requirements to disclose detailed operational plans, concept notes and other technical documents which are time-intensive to produce also run afoul

[154] DRC NGO Law, Article 4.
[155] Morocco 2005 NGO Decree, Article 3.
[156] International Center for Not-for-Profit Law, 'Civic Freedom Monitor: Morocco' https://www.icnl.org/resources/civic-freedom-monitor/morocco.

of paragraph 14 of the AComHPR Guidelines which permits states to request basic information in registration procedures.[157]

109. Further, the requirements to submit other detailed information such as minutes of meetings contravenes the wording of paragraph 33(a) of the AComHPR Guidelines, which prohibits requesting detailed information such as meeting minutes.[158]

110. In ***African Commission on Human and Peoples' Rights v Kenya***, the AfCHPR found that an interference with a particular right, which the State had not shown to be necessary and proportionate, constituted a violation of that right.[159]

111. The variety of legislative provisions, imposing onerous documentary requirements on persons before they can register an NGO, constitute a factual averment that the conditions for enjoyment of the right to free association in the form of a participation in a registered NGO are difficult to achieve, either because they impart a disproportional documentary burden that is difficult to discharge by ordinary members of society, or because the registration requirements themselves require documents which only the state can provide and does not provide in timely and efficient manner.

112. The above requirements of registration therefore constitute a violation of the right to free association enshrined in Article 10 (1) of the African Charter as they impair the fundamental ability for persons in society to freely associate by establishing NGOs.

8.2.4 Requirements for government permissions to register or operate or to sign agreements with government

113. In Angola, NGOs need a registration certificate from the Ministry of Justice in order to enrol and operate in the country.[160]

[157] AComHPR Guidelines, paragraph 14.
[158] AComHPR Guidelines, paragraph 33(a).
[159] African Commission on Human and Peoples' Rights v Kenya (merits) (2017) 2 AfCLR 9, paragraphs 167-169.
[160] Angola NGO Decree, Article 7(1)(b).

114. Morocco offers NGOs the option to apply for "public benefit" status, which grants a number of privileges, including the ability to publicly fundraise once a year without prior authorization. However, in order to obtain this status, applications are subjected to a unique investigation process by the government. The local administrative authority investigates the objectives of the NGO, and the Secretary General of Government then forwards the results of the investigation to the Minister of Finance and other relevant government ministries for their opinions prior to forwarding the investigation results to the Prime Minister to 'take a decision'. This process of investigation constitutes a vetting process that requires NGOs be greenlit by the Prime Minister themselves before they can obtain that status.[161] Given the large discretion placed at the disposal of the Secretary General of Government, the Minister of Finance and then ultimately the Prime Minister, this constitutes a large degree of autonomy to deny NGOs access to these benefits without legal limitation.

115. The Gambia requires all NGOs to sign a 'protocol of accord' with government[162] in order to function within the territory along with a code of conduct, the breach of which permits government to take 'conciliatory' measures to remedy the breach[163] and the protocol in standard form provides that the NGO must align its programmes with the policies and priorities of government, in accordance with a memorandum of understanding signed with the minister responsible for the sector the NGO wishes to operate in.[164]

116. South Sudan requires all international NGOs seeking registration to enter into a country agreement with the government.[165]

117. Rwanda, on the other hand, requires a letter where the district authorities agree to collaboration.[166] Other countries like Equatorial Guinea, the Democratic

[161] Morocco 2005 NGO Decree, Articles 4, 5, 6 and 7.
[162] The Gambia NGO Decree, section 12(1) and (2).
[163] The Gambia NGO Decree, section 14(2).
[164] The Gambia NGO Decree, First Schedule, Protocol of Accord, Article 12.
[165] South Sudan NGO Regulations, Regulations 5(1)(h) and 22.
[166] Rwanda NGO Law, Article 20(1)(d).

Republic of Congo[167], Malawi[168] and Liberia.[169] further require that the Minister of the sector where the NGO intends to operate must grant permission.

118. Ethiopia requires the granting of a governmental permission to any NGO that wishes to open a bank account. [170]

119. In Liberia, local NGOs obtain legal status through the National Legislature, and NGOs need accreditation from the Ministry of Planning and Economic Affairs to register. [171]

120. The variety of requirements discussed above pose undue obligations on NGOs to seek consent from government to register or operate, which poses fundamental questions about the ability of NGOs to be independent and impartial and to serve as government watchdogs when their ability to operate in the territory requires consent from the government, particularly high-ranking functionaries or the national legislature which will be burdensome to obtain given their respective workloads and may become partisan owing to their respective connection to party politics.

121. In addition, both Eritrea[172] and Sierra Leone compel NGOs to conclude an agreement with government[173] to commence operations. Sierra Leone further requires that all projects be first submitted to and approved by the NGO regulator that is empowered to 'ensure that projects submitted meet the obligations of' government policy.[174] Eritrea further requires that every project or proposed 'work' of the NGO be approved by the competent Ministry, with work permits issued first and project agreements concluded thereafter. [175]

122. The Angolan NGO regulator can further 'control and supervise' the activities of NGOs, by imposing programmes and projects to be developed by NGOs that are

[167] DRC NGO Law, Article 5.
[168] Malawi NGO Law, Section 20(3)(a)(iv).
[169] Reliefweb "FAQ document for the NGO humanitarian community in Liberia" accessed at https://reliefweb.int/report/liberia/faq-document-ngo-humanitarian-community-liberia.
[170] Ethiopia NGO Law, Article 75.
[171] Reliefweb "FAQ document for the NGO humanitarian community in Liberia" accessed at https://reliefweb.int/report/liberia/faq-document-ngo-humanitarian-community-liberia.
[172] Eritrea NGO Proclamation, Article 6(2); see also Article 7(4).
[173] Sierra Leone NGO Policy, Article 2.2.5.
[174] Sierra Leone NGO Policy, Article 3.5.1.
[175] Eritrea NGO Proclamation, Articles 3(3) and 6(2).

complementary to the Angolan government's actions.[176] NGOs must further implement approved projects in the province or region determined by the NGO regulator[177], under the coordination and supervision of the provincial government.[178]

123. The aforementioned requirements of obtaining governmental permission to register or perform operations, along with the requirement to enter into agreement with government do not accord with paragraph 13 of the AComHPR Guidelines which expressly states that registration of NGOs should be governed by a notification and not an authorisation regime where permissions are required.[179] These requirements also breach paragraph 13 as government has the discretion to withhold its assent to agreement and asymmetrically impose its demands on NGOs that wish to operate within the territory.

124. Furthermore, insistence that activities of NGOs be authorised prior does not concord with paragraph 23 of the AComHPR Guidelines which permit associations to determine their purposes freely[180] and paragraph 29 of the AComHPR Guidelines which provides that associations have a right to carry out their activities without interference of any kind.[181]

125. Requiring NGOs to obtain government permissions from high-ranking members of the executive renders their right to free association in the form of establishing an NGO contingent on the desires of government officials and constitutes a violation of their right to free association under Article 10 (1) of the African Charter.

8.3 Mandatory periodic renewal

126. The trend of mandatory periodic renewal for NGOs registration is widespread across Africa, reflecting a common regulatory practice aimed at ensuring that there is no benefit of registration-tenure afforded to NGOs and that governments

[176] Angola NGO Decree, Article 20(a) and (b).
[177] Angola NGO Decree, Article 23(1)(e); see also Article 20(c).
[178] Angola NGO Decree, Article 23(1)(f).
[179] AComHPR Guidelines, paragraph 13.
[180] AComHPR Guidelines, paragraph 23.
[181] AComHPR Guidelines, paragraph 29.

can continuously (re)assess their willingness to grant permission to NGOs to continue to operate.

127. Eritrea,[182] Sudan[183] and South Sudan[184] require annual renewal, reflecting stringent regulatory oversight. In contrast, Uganda[185] mandates renewal every 1 to 5 years depending on the permit issued to the NGO and Zambia[186] mandates renewal every 5 years. Tanzania[187] has a renewal process every 10 years. The Democratic Republic of the Congo[188] has an oblique method of requiring renewal, by mandating that NGOs produce a declaration every half-year on the resources at their disposal to achieve their objectives failing which they may be dissolved by the courts.

128. Overall, the trend of mandatory periodic renewal, even where there is no compelling legal reason or changes made to the NGOs, demonstrates a disproportionate amount of governmental authority over NGO's existence and allows a worrying amount of control to re-assess the accreditation, particularly of NGOs that spotlight government failures and injustice or those who oppose or militate against government policy.

129. The requirements for periodic renewal of registration therefore undermines the otherwise permanent nature of the right to have ones registered NGO enjoy formal recognition. It further subjects NGOs to repetitive and burdensome administrative and bureaucratic procedures as part of the renewal process, in direct contravention of the abovementioned provisions of the AComHPR Guidelines and exposes NGOs to a looming spectre of potentially being denied renewal on broad and discretionary grounds exercised by the NGO regulator (explored in more detail below).

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[182] Eritrea NGO Proclamation, Article 10(2).
[183] Sudan NGO Law, Section 11.
[184] South Sudan NGO Regulations, Regulation 7; Eye Radio 'NCAC seeks to omit annual registration of NGOs' (23 February 2023) https://www.eyeradio.org/?p=97852.
[185] The National Bureau for Non-Governmental Organizations 'Registration of a new NGO' https://ngobureau.go.ug/en/services/registration-of-a-new-ngo.
[186] Zambia NGO Law, sections 14 and 16.
[187] Tanzania NGO Law, read with Written Laws (Miscellaneous Amendments) (No. 3) Act, 2019 (Act No. 9 of 2019), which amended the NGO Law to provide for a ten-year duration of registration in section 17(3).
[188] DRC NGO Law, Articles 4(e) and 20.

130. Requirements to renew registration violates paragraph 17 of the AComHPR Guidelines that prohibit states from compelling associations to renew their registration and likewise Article 10 (1) of the African Charter.

8.4 Registration costs

131. While there is a dearth of available information on the subject, there are some jurisdictions which levy high costs on the ability of NGOs to register their organisations which deters smaller-scale NGOs from registering and prevent indigent communities from enjoying their rights to free association. The fees stipulated in this section are accurate as of the exchange rate against the US Dollar at the time of filing.

132. Egypt charges up to EGP 5,000 (about 98 US Dollars)[189], Liberia 150 US Dollars for local NGOs (2004 figures)[190], Rwanda 208 US Dollars[191], while membership of Sierra Leone's NGO association (SLANGO) costs 286 US Dollars[192]. The pattern of high costs continues with South Sudan charging 600 US Dollars in total registration charges.[193]

133. Registration costs for NGOs vary widely across the continent. While some States charge substantial fees, others register organisations at little or no cost, and some carry out the whole administrative process free of charge (e.g. Seychelles[194]).

134. Importantly, the acceptable standard for levying fees and associated charges on NGOs is elucidated in paragraph 18 of the AComHPR Guidelines. It requires that the imposed fees cover the administration costs and that they are 'modest'

[189] Egypt NGO Law, Article 8(6).
[190] Reliefweb "FAQ document for the NGO humanitarian community in Liberia" accessed at https://reliefweb.int/report/liberia/faq-document-ngo-humanitarian-community-liberia.
[191] Rwanda Governance Board 'non-governmental Organizations' https://www.rgb.rw/1/civil-society-faith-based-and-political-organisations/non-governmental-organisations.
[192] Sierra Leone Association of Non-Governmental Organizations 'New Member Registration and Renewal Form' https://slango.sl/join-us/.
[193] South Sudan NGO Regulations, Regulation 13(b).
[194] International Center for Not-for-Profit Law 'Historical Milestones' https://www.icnl.org/wp-content/uploads/Seychelles_Seychellesreg.pdf.

and not have the effect of deterring associations from registering, with organisations being unable to afford the fees being afforded easements.

135. In a context where widespread poverty and inequality limit access to disposable income for much of the population, the registration fees set out above must be weighed against the prevailing economic reality on the continent. According to the World Bank, the Gross Domestic Product (GDP) per capita across Sub-Saharan Africa stood at approximately 1,673 USD in 2025[195], the equivalent of roughly 139 USD per month per person.

136. Measured against this benchmark, even a registration fee of 50 US Dollars alone already consumes close to 36 percent of the average person's monthly income in the region, while the higher fees identified above, 150, 208, 286 and 600 USD in Liberia, Rwanda, Sierra Leone and South Sudan respectively, represent between one and several months' worth of income for the nearly half of the region's population living below the 3 US Dollar a day threshold.[196]

137. Fees of this magnitude cannot reasonably be characterised as 'modest' within the meaning of paragraph 18 of the AComHPR Guidelines. Registration fees exceeding 50 US Dollars in some states therefore pose a significant barrier to public participation and hinder the effective exercise of the right to freedom of association. High costs of this kind constitute flagrant violations of the right to free association, as they annul the practical exercise of the right and no longer serve the purpose laid down in the AComHPR Guidelines of merely covering administrative costs, functioning instead as a de facto extraction of rents that the majority of the population cannot afford.

138. In a context where widespread poverty and inequality limit access to disposable income for much of the population, registration fees exceeding 50 US dollars in some states poses a significant barrier to public participation and hinders the effective exercise of the right to freedom of association. High costs therefore constitute flagrant violations of the right to free association as it annuls the

[195] World Bank "GDP per capita (current US$) – Sub-Saharan Africa" https://data.worldbank.org/country/sub-saharan-africa.
[196] World Bank "Poverty headcount ratio at $3.00 a day (2021 PPP) (% of population) – Sub-Saharan Africa" https://data.worldbank.org/indicator/SI.POV.DDAY?locations=ZG.

practical exercise of the right and no longer serves the purpose laid down in the AComHPR Guidelines of merely covering administrative costs as opposed to constituting the extraction of rents from wealthier members of the public.

139. The introduction of costs which prevents the exercise of the right to free association clearly contemplates a violation of the right to free association under Article 10(1) of the African Charter.

8.5 Requirement to have a determined number of founding members

140. PALU submits that some jurisdictions in Africa require that NGOs have a predetermined number of founding members, above the legally acceptable standard of 2 founding members as provided for in the AComHPR Guidelines.

141. To this end, it must be mentioned that Ethiopia requires 5 or more founders for an association[197], with Algeria[198] and Libya[199] requiring 10 founding members. Algeria does, however, require that an NGO operating in the entire territory has 25 founding members drawn from at least 12 Wilayas (Provinces).[200] Furthermore, Sudan[201] requires an NGO to be founded with 30 members whilst the Democratic Republic of the Congo[202] requires that an NGO have at least 7 members.

142. Any requirement to have more than 2 founding members is an unjustifiable limitation of free association as there is no compelling reasons to prevent smaller groups from forming and operating in free association, especially given the fact that NGO work can be done in financially strained circumstances, requiring smaller but impactful teams. Furthermore, the freedom to determine one's own number of associated members is a core part of free association and mandatory size-restrictions is an unreasonable limitation.

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[197] Ethiopia NGO Law, Article 19(1).
[198] Euro-Mediterranean Human Rights Network 'Memorandum: Assessment of Law 12-06 of 12 January 2012 on Associations' (14 February 2012), Refworld https://www.refworld.org/policy/opguidance/emhrn/2012/en/70474.
[199] Libya NGO Decree, Article 1.
[200] Algeria NGO Law, Article 6.
[201] Sudan NGO Law, Section 9(1)(a).
[202] DRC NGO Law, Article 6.

143. Imposing a requirement that more than 2 persons are necessary to registrate an NGO therefore violates the right to freely associate in terms of Article 10 of the African Charter.

8.6 Restrictions on funding, fundraising and financial autonomy

144. A critical component of any social movement or NGOs operations is the ability to mobilise resources. Without funding, the total scheme of building civic awareness, uniting population groups and attempting to effect change within a country falls apart as the causes championed by NGOs often imply projects to build infrastructure, to organise assemblies of persons, to produce informational and promotional materials to raise awareness, and to engage legal services and seize the courts of law, all of which are costly.

145. Another important reality to account for is that the strength of global financial architecture to sustain civil society and NGOs exists outside of Africa. An unfortunate reality of colonialism and neocolonial globalisation is that Africa has little private or public wealth to fund the totality of causes within its geography and often relies on donations, contributions, grants and other financial arrangements from external, foreign parties to foot the bill for necessary social campaigns and projects. As demonstration of this reality, a causal glance at the funding received by African governments discloses that a large contribution to the humanitarian and socio-economic sectors of expenditure comes from other governments and international organisations in the form of aid.

146. The trend of external funding which applies to governments also applies to NGOs. Measures taken to suppress sourcing of funding, including from foreign sources therefore cripple the ability for NGOs to cause positive change in society and impliedly violates their rights to pursue their objectives and projects.

147. In Angola, the financing of any NGO by a foreign government must occur based on an intergovernmental agreement signed between the Angolan government and the government dispensing funds,[203] and funding dispensed by non-

[203] Angola NGO Decree, Article 15(3).

governmental foreign 'bodies' to NGOs inside Angola must be done in terms of a written agreement approved by the NGO regulator.[204]

148. In Libya, each donation or gift must be approved by the NGO regulator[205] and public fundraising must be approved a week prior to the campaign, with information about the purpose of fundraising, the targeted locations and the duration of the campaigns along with a justification.[206] NGOs are further required to notify the NGO regulator ten days prior to receiving a donation from any entity and approval has to be granted or declined within a week based on whether the donation complies with the objectives of the organisation, if it does not, the donation can be vetoed.[207] NGOs are further required to request permission from the NGO regulator to open a bank account.[208]

149. Morocco also maintains a large degree of control over NGO financing, requiring by law that all NGOs with public benefit status obey a maximum value of property through decree.[209] Furthermore, Morocco requires the Prime Minister's authorisation for gifts of property to public-benefit associations.[210] For associations that do not hold "public benefit" status, Morocco imposes more limited, though still significant, financial reporting obligations.[211]

150. Meanwhile, in Rwanda, foreign NGOs are restricted from sale of assets other than in terms of as agreement with the relevant government Minister or organ of state[212] and the sale of assets must further be monitored by the government.[213] All NGOs in Rwanda are duty bound to not exceed more than 20% of their budget on overhead costs in projects which are not in the interest of its beneficiaries without providing justifications to the NGO regulator.[214]

[204] Angola NGO Decree, Article 15(4).
[205] Libya NGO Decree, Article 27(4).
[206] Libya NGO Decree, Article 28.
[207] Libya NGO Decree, Article 37.
[208] Libya NGO Decree, Article 38.
[209] Morocco 2005 NGO Decree, Article 7.
[210] Morocco 2002 NGO Decree, Article 11.
[211] Morocco 2002 NGO Decree, Article 32.
[212] Rwanda NGO Law, Article 16 (1) and (2).
[213] Rwanda NGO Law, Article 16(3).
[214] Rwanda NGO Law, Article 9(1)(f).

151. Egypt adopts severe financial restriction on NGOs, mandating that all funds received by NGOs are public funds and that an NGO may only open a bank account in a bank other than the original bank it opened an account in upon registration when it has an annual revenue or expenditure of more than 5.000.000 Egyptian pounds.[215] Egyptian NGOs are further subjected to maximum limits for cash donations.[216] Fundraising activities of Egyptian NGOs require separate permits issued by governments per fundraising initiative.[217] Funds from foreign sources are not to be spent within 60 working days of being received.[218] Egypt further prohibits an NGO from receiving foreign donations and from fundraising in general if it has been claimed that they have committed an offence that warrants dissolution of the NGO or removal of its directors in terms of the NGO law and this situation of financial incapacity subsists until a court ruling on the matter.[219]

152. The AComHPR Guidelines provide in paragraph 37(a) and (b) that associations shall be free to acquire resources in the form of cash, property, investments, goods and services and shall be free to conduct fundraising[220] along with being permitted to seek and receive funds from local and foreign sources without prior authorisation required.[221]

153. The AComHPR has expressly found that the receipt of foreign funding should in no way affect an association's ability to engage in the full range of legitimate activities,[222] and this includes the right to participate in fundraising outside the domestic realm.

154. The AComHPR further found that any restrictions on funding must be in accordance with international legal standards, must be for a legitimate reason and must be clearly codified in law whilst states must enshrine in their laws the

[215] Egypt NGO Law, Article 23.
[216] Egypt NGO Law, Article 24.
[217] Egypt NGO Law, Article 25.
[218] Egypt NGO Law, Article 27.
[219] Egypt NGO Law, Article 49.
[220] AComHPR Guidelines, paragraph 37(a) and (b).
[221] AComHPR Guidelines, paragraph 38.
[222] Report of the African Commission on Human and Peoples' Rights Study Group on Freedom of Association, paragraph 49; https://achpr.au.int/en/special-mechanisms-reports/report-study-group-freedom-association-assembly-africa.

right of associations to seek and receive funds from domestic and foreign sources.[223]

155. Several United Nations bodies have recognised the right to fundraise and receive external, even foreign funds.

- The Human Rights Council, in its 22nd session, adopted Resolution 22/6 which enshrines the duty on states to ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders.[224]
- In communication No. 1274/2004, the Human Rights Committee observed that: "*the right to freedom of association relates not only to the right to form an association but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association*". This applies to the activities connected to fundraising and seeking sources of funding.
- The United Nations Committee Against Torture, in its concluding observations to Belarus in 2011 recommended that it should enable NGOs to *"Seek and receive adequate funding to carry out their peaceful human rights activities".*[225]
- The United Nations Committee on the Elimination of Discrimination against Women acknowledged the importance of NGO funding, stating that insufficient funding makes it difficult for NGOs to build their capacities to fulfil the various roles and functions.[226]
- The United Nations General Assembly, in Resolution 53/144[227], recognised the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which provides in Article 13 that every

[223] Ibid, paragraphs 76 and 77.
[224] A/HRC/RES/22/6, paragraph 9(b).
[225] United Nations Committee Against Torture, Concluding Observations for Belarus (2011), Reference: CAT/C/BLR/CO/4, paragraph 25(a).
[226] A/55/38, Part Two, paragraph 154 (concluding comments on Lithuania).
[227] A/RES/53/144.

association has the right to solicit, receive and utilise resources for the express purpose of protecting human rights.

- The Special Rapporteur has emphasised that the right to access funding, including foreign funding, is an integral part of freedom of association and restrictions in the form of prohibition of funding, requiring government approval for funding, banning or restricting activity of foreign funded NGOs, labelling the aforementioned NGOs as foreign agents to stigmatise them and imposing criminal penalties on transgressing bans on foreign funding are all instances of behaviour, illegal under international law.[228]

156. The restrictions on NGO funding, fundraising activity and financial autonomy therefore disclose violations of the right to free association under Article 10 (1) of the African Charter.

8.7 State oversight in internal governance

157. In Zimbabwe, the Minister responsible for NGO oversight may apply to the High Court to suspend the members of the NGO executive committee from exercising their functions in running the affairs of the organisation if information is received that the NGO has ceased to operate in furtherance of its constitution, if maladministration is affecting the activities of the organisation, or if it is 'necessary or desirable' to do so in the public interest.[229] If the suspension is not revoked within 30 days, the person suspended is deemed to have been removed from office and is disqualified from being nominated as a candidate for office in that NGO until the Minister revokes such disqualification in the Government Gazette.[230] The Minister may also apply to the High Court to appoint a trustee to manage an NGO who can dispose of the property of the NGO with the permission of the Minister.[231]

158. Rwanda has a system of deep controls over the internal governance matters of NGOs, empowering the NGO regulator to order the suspension or dismissal of

[228] A/HRC/23/39, paragraph 20.
[229] Zimbabwe NGO Law, section 21(1)(a)-(d) and (f).
[230] Zimbabwe NGO Law, section 21(5)(a) and (b).
[231] Zimbabwe NGO Law, section 21(1)(e) and (4).

one or all NGO board members in the 'public interest'.[232] The NGO regulator is further empowered to decide on the 'modalities' of suspension and dismissal of board members of NGOs.[233] Should an NGO refuse to suspend or dismiss in disregard of the NGO regulators order, it commits a fault. If an NGO commits two faults, the NGO can be definitively suspended.[234]

159. In Egypt, the Minister responsible for NGO oversight may decide to suspend an NGO for a year or seek a court order for the dismissal of its board of directors if the NGO breaches provisions of the NGO law relating to donations, fundraising and foreign funding.[235] The NGO regulator is entitled to request the public prosecutor to issue a restraining order against the NGO board of directors, preventing them from taking official decisions until a court ruling has been issued.[236]

160. Provisions dictating the internal governance organs and functions are further found in Libya, which dictates the positions of power in an NGO,[237] the method of their election and of deliberative meetings,[238] the powers and responsibilities of each organ[239] along with requirements to convene at particular intervals.[240] Libya even dictates the voting power and procedure needed for particular decisions[241] and determines the competencies of the board and its chairman.[242]

161. The Democratic Republic of the Congo mandates that NGOs will choose and dismiss their management and those responsible for the administration of the NGO by majority vote of its members[243] and further provides that any change to personnel responsible for management or administration must be subject to a

[232] Rwanda NGO Law, Article 45 (1).
[233] Rwanda NGO Law, Article 45(2).
[234] Rwanda NGO Law, Articles 42, 43 and 44.
[235] Egypt NGO Law, Article 29.
[236] Egypt NGO Law, Article 29.
[237] Libya NGO Decree, Article 4.
[238] Libya NGO Decree, Articles 8–12.
[239] Libya NGO Decree, Article 6.
[240] Libya NGO Decree, Article 7.
[241] Libya NGO Decree, Articles 14–18.
[242] Libya NGO Decree, Articles 19 and 20.
[243] DRC NGO Law, Article 10.

approval declaration by the majority of NGO members and must be forwarded to the Minister of Justice and Minister responsible for the sector of NGO activity.[244]

162. The regulation affecting the internal governance of NGOs is delineated by the AComHPR Guidelines which expressly provide in paragraph 31 that matters relating to oversight will be conducted only in relation to essential, minimum internal governance structures and standards. The AComHPR Guidelines further clarify that the 'core matter' of essential and minimum internal governance relates to the prohibition of the distribution of profits.[245] The AComHPR Guidelines therefore do not endorse the ability to determine the internal governing organs of the NGOs, nor to specify their respective procedures, functions and powers.

163. Accordingly, provisions of law that extend beyond the core areas of permissible regulation of internal affairs, namely to prohibition on non-distribution of profits, violate the right to freely associate under Article 10 (1) of the African Charter.

8.8 Restrictions regarding the nature and scope of the activities

164. Some NGO laws severely restrict the ability for NGOs operating in African states to participate in certain activities. Given the community-based nature of NGOs, their reach and scope across national territory and the fact that they assist persons in need, political groups often perceive NGO activity as a threat to their political programmes, popularity or authority to administer a territory. It is therefore of no surprise that NGO regulation impose strict limitations on the ability for NGOs to involve themselves in areas concerning governance and politics.

165. NGOs in Malawi are expressly forbidden from engaging in partisan politics, electioneering and politicking. [246]

166. Similarly, Eritrea restricts the ability for NGOs to only work areas of relief and rehabilitation, which are defined as the provision of food, water, sanitary materials, medicines, shelter and other emergency supplies to victims of natural or man-made disasters or construction work connected to restoring damage

[244] DRC NGO Law, Article 11.
[245] AComHPR Guidelines, paragraph 31 and footnote 24.
[246] Malawi NGO Law, Section 20(3)(a)(vi).

caused by disasters. Eritrea therefore excludes NGOs from pursuing a multitude of objectives.[247]

167. Libya further bans NGOs from political actions, directly or indirectly.[248]

168. Ethiopia excludes NGOs from engaging in lobbying of political parties, engaging in voter's education or election observation only where they are founded by foreigners or are foreign NGOs.[249] Uganda likewise excludes NGOs from fundraising or campaigning to support or oppose political parties or candidates.[250]

169. On the other hand, Algeria bans NGOs from activities that are in conflict with 'national constants and values, public order, good morals, or the provisions of laws and regulations in force', effectively banning NGOs from militating for law reforms.[251] Meanwhile, South Sudan, like Eritrea, lists the sectors in which NGOs may work as health and nutrition, education, water, sanitation and environmental health, agriculture and livestock, capacity building and any other humanitarian and voluntary work.[252]

170. Morocco expressly forbids NGOs from forming or being recognised should they be formed for objectives contrary to laws, public morals or if they aim to harm the Islamic religion, territorial integrity or the royal regime and provides that the formation of such associations shall be considered null and void.[253] Morocco further provides that NGOs that intend to violate territorial integrity or attack the monarchical state shall be dissolved by decree.[254] This should be interpreted in light of the Moroccan society being one where the king wields power as a monarch and within the context of an international and well-known dispute over Moroccan occupation of Western Sahara. In such a society, associations formed to critique or delegitimise the monarchy or definition of Moroccan territory to

[247] Eritrea NGO Proclamation, Article 2(4) and (5), read with Article 7(1).
[248] Libya NGO Decree, Article 27(3).
[249] Ethiopia NGO Law, Article 62(5).
[250] Uganda NGO Law, Section 44(g).
[251] Algeria NGO Law, Article 2.
[252] South Sudan NGO Regulations, Regulation 21(2)(a)-(f).
[253] Morocco 2002 NGO Decree, Article 3.
[254] Morocco 2002 NGO Decree, Article 29.

include the land and resources of Western Sahara are banned, restricting the areas of advocacy and objectives that can be adopted by NGOs in Morocco.

171. The Democratic Republic of the Congo only permits registration of NGOs if they are 'motivated by humanitarian concerns' and if they define their sectors of intervention within their internal statutes in compliance with the framework for national policy on economic, social and cultural development.[255] NGOs are further mandated to comply in their interventions with the governments developmental guidelines.[256]

172. Egypt widely prohibits NGOs from performing activities that have not been expressly authorised by the government, and excludes NGOs from undertaking political, partisan or union activity or from funding, supporting or promoting parties and electoral campaigns for any candidate in elections or referenda. Egypt further prohibits the conducting of opinion polls and the publishing of their results without prior government authorisation and vetting of the results of the poll prior to publication[257], restricts the day-to-day activities of NGOs by requiring them to seek a licence to implement campaigns or initiatives to accomplish the purposes for which they were registered, with such licences only lasting a year [258], imposes that, for NGOs to work in border areas specified in resolutions by the Prime Minister of Egypt, the NGO has to obtain yet another permit after consulting with the governor, imposes that, to become affiliated with, to participate or deal with a foreign organisation, an NGO will need an approval by the relevant government Minister[259], imposes that, where NGOs want to open branches outside of Egypt, they need a permit from government[260], and forbids NGOs to operate shelters for children, the elderly, the chronically sick and others in need of social care including special needs persons unless they obtain a permit.[261]

[255] DRC NGO Law, Article 36.
[256] DRC NGO Law, Article 41.
[257] Egypt NGO Law, Article 15.
[258] Egypt NGO Law, Article 13.
[259] Egypt NGO Law, Articles 14 and 19.
[260] Egypt NGO Law, Article 20.
[261] Egypt NGO Law, Article 22.

173. The wide-ranging restrictions on NGOs, from outright limiting the scope of their activities to parochial areas in society, to preventing them from engaging in any form of political activity which may change the electoral landscape of the state as well as preventing them from freely associating with foreign organisations that are involved in politics, are unwarranted restrictions on the free association of NGOs as they unlawfully inhibit the right of associations to determine their purposes and activities freely, as provided for in paragraph 23 of the AComHPR Guidelines[262]. They further unlawfully restrict the right of associations to be involved in all matters pertaining to public policy and public affairs such as governance, economic affairs and human rights which violates paragraph 25 of the AComHPR Guidelines[263] and paragraph 23, which provides for the free determination of purpose and activity of associations.

174. The limitations of imposed restrictions on NGO activities has further been addressed by the Inter-American Juridical Committee in their Declaration of Inter-American Principles on the Creation, Operation, Financing, and Dissolution of Non-profit Civil Entities, which declares in Principle 6 that NGOs may pursue their functions with a broad purpose in the public interest with no restrictions other than those permissible under international human rights treaties and without illegal or arbitrary interference.[264]

175. In ***Socialist Party and Others v Turkey***, the European Court of Human Rights (ECtHR) held that dissolving a political party because of its political programme was not necessary in a democratic society and violated Article 11 of the European Convention on Human Rights.[265] A blanket bar on NGOs engaging in 'political activity' would be at least as difficult to justify.

176. The undue restrictions on different areas of NGO activity violate the right to freedom of association, enshrined in Article 10 (1) of the African Charter.

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[262] AComHPR Guidelines, paragraph 23.
[263] AComHPR Guidelines, paragraph 25.
[264] Inter-American Declaration of Principles on the Creation, Operation, Financing, and Dissolution of Nonprofit Civil Entities (2023), Reference: CJI/RES.282 (CII-O/23) rev.3, Principle 6; https://www.oas.org/en/sla/iajc/docs/CJI-RES_282_CII-O-23_rev3_ENG.pdf.
[265] Socialist Party and Others v. Turkey, Case Number 20/1997/804/1007, Judgment of 25 May 1998, paragraphs 50-54.

8.9 Reporting obligations to government

177. PALU understands that the requirement to report audited financials on an annual basis is permissible in terms of the African Charter and the AComHPR Guidelines. Worryingly, however, is the development of laws on the continent that require extensive and repetitive reporting which hamper the ability for NGOs to pursue their objectives and monopolise their time with compliance procedures as opposed to NGO work.

178. The AComHPR Guidelines provide clarity about the extent of permissible reporting requirements by stipulating in paragraph 48(b) that reporting shall be for the purpose of securing financial propriety.

179. Malawi[266] and Tanzania[267] require NGOs to submit activity reports, unrelated to their financials. Eritrea further requires that all NGOs submit a quarterly "progress" report along with an annual report on their accomplished work.[268]

180. The Gambia requires that NGOs deposit a detailed plan of its annual work programme along with its proposed budget and a detailed annual report which highlights progress on activities undertaken in the year.[269]

181. Rwanda requires that an annual activity report, action plan for the following year and financial report be disclosed by NGOs.[270] Similarly, in Angola, NGOs are obliged to submit annual reports which include forecasts of internal and external grants receivable in the year[271], interim, monthly, quarterly, semi-annual and annual reports during and at the end of projects which must include information about source of funds, imported and locally purchased goods, an action plan for the next year and an evaluation established partnerships to the NGO regulator.[272]

[266] Malawi NGO Law, Section 22(a)(ii).
[267] Tanzania NGO Law, Section 29(1)(a).
[268] Eritrea NGO Proclamation, Article 6(3)(a) and (b).
[269] The Gambia NGO Decree, Protocol of Accord, Article 13.
[270] Rwanda NGO Law, Article 9(1)(c).
[271] Angola NGO Decree, Article 23(1)(k).
[272] Angola NGO Decree, Article 23(1)(g) and (2).

182. In Sierra Leone, NGOs are mandated to report on projects whenever requested by government and are obliged to provide annual implementation reports for all projects undertaken in a prescribed format which includes a full account of the funds utilised and the beneficiaries thereof, the project costs and support costs along with disclosure of cooperation and collaboration with other NGOs.[273] NGOs are further mandated to submit all details of the funds committed by donors, including about the amount received, the source, details of the donor and all other requirements of the donor, including payment arrangements.[274]

183. Libya requires foreign NGOs to produce quarterly reports that contain information about the projects and programmes undertaken, an assessment of progress made in percentage terms and an evaluation of participants in the projects.[275]

184. Egypt requires NGOs to formulate technical reports on their spending and activities on a 'periodic' basis along with a report on each donation received.[276] Each donation from a foreign source must be reported within 30 working days of receiving it.[277]

185. The Democratic Republic of the Congo requires that NGOs 'periodically' transmit activity reports to the government for a process of evaluation which will be performed by the minister responsible for the sector of the NGO's work.[278]

186. The abundant requirements to report to government on the activities, successes, partnerships and the evaluation thereof, to disclose sources of funding and to produce said reports on a frequent basis have the effect of draining the operational capacity of NGOs, creating an unwelcoming regulatory environment that does not enable the right to freedom of association as provided for in the AComHPR Guidelines.[279]

[273] Sierra Leone NGO Policy, Article 2.6.1 at bullet-point 7, read with Articles 2.12.5.1–2.12.5.3 and Forms C and D.
[274] Sierra Leone NGO Policy, Article 2.7.1.
[275] Libya NGO Decree, Article 61(1)(A)-(C).
[276] Egypt NGO Law, Article 24.
[277] Egypt NGO Law, Article 27.
[278] DRC NGO Law, Article 45.
[279] AComHPR Guidelines, Fundamental Principle II.

187. Paragraph 48 of the AComHPR Guidelines further requires that reporting be simple and not overly burdensome,[280] with reporting requirements only being aimed at financial propriety which includes basic description of projects and activities to account for the use of funds.[281] Reporting is further supposed to respect rights to privacy and confidentiality of NGOs and be proportionate to the size and scope of the organisation.[282]

188. The Special Rapporteur has raised concerns in several separate reports about the excessive reporting requirements for NGOs which stifles the right to free association[283] and the imposition of over-burdensome reporting obligations[284], along with outright calling for states to repeal laws and regulatory measures that require additional burdensome and overly intrusive reporting from civil society seeking to access foreign funds.[285]

189. The United Nations Human Rights Council has further adopted a Resolution stating that states must ensure that reporting requirements placed on NGOs do not inhibit their functional autonomy and that restrictions are not discriminatorily imposed on potential sources of funding.[286]

190. The ECtHR, in ***Ecodefence v Russia***,[287] assessed whether the imposition of additional reporting requirements on NGOs were lawful. The ECtHR concluded that the significant and excessive strain imposed by the administrative burdens undermined the capacity for the NGOs to engage in their core activities and were therefore not necessary in a democratic society, nor were they proportionate.[288]

191. Turkmenistan and Kyrgyzstan have been criticised by the Human Rights Committee[289] for imposing unnecessarily burdensome reporting requirements

[280] AComHPR Guidelines, paragraph 48.
[281] AComHPR Guidelines, paragraph 48(b) and footnote 38.
[282] AComHPR Guidelines, paragraph 48(c) and (d).
[283] A/HRC/38/34, paragraph 32.
[284] A/HRC/56/50, paragraph 38.
[285] A/HRC/53/38/Add.4, paragraph 50(iii).
[286] A/HRC/RES/22/6, paragraph 9(a) and (b).
[287] Ecodefence and Others v. Russia, Case Number 9988/13, Judgment of 14 June 2022, https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-217751%22]}.
[288] Ibid, paragraph 159.
[289] Human Rights Committee, Concluding Observations for Turkmenistan (2012), Reference: CCPR/C/TKM/CO/1, paragraph 19 (noting "onerous obligations on associations to report to authorities"); Human Rights Committee, Concluding Observations for Kyrgyzstan (2014), Reference:

that allow state intrusiveness and restrict the independence of associations. Turkmenistan's law on Public Associations provides for compulsory registration of public associations and contains onerous obligations on associations to report to authorities. Associations undergo cumbersome administrative processes for registration so that in some instances associations are forced to wait for several years before they obtain a registration certificate.

192. The excessive regulation compelling NGOs to report on several topics which exhaust their internal capacity and have implications for their ability to remain financially viable, violates the right to free association under Article 10 (1) of the African Charter.

8.10 Criminal penalties for transgressing NGO laws

193. Some member states impose criminal penalties for operating without proper registration.

194. In Zambia[290] operating an unregistered NGO can result in a 3-year jail sentence and a ban on holding NGO office for 10 years and in Zimbabwe, up to a 2-year imprisonment.[291] Tanzania punishes non-compliance with its NGO laws with a potential year of imprisonment and a suspension of up to 5 years from leadership positions in NGOs.[292] In Eritrea, exceeding the scope of an NGO work permit results in its revocation, and the individuals responsible may face criminal liability under the Penal Code.[293] The penal code of Eritrea stipulates that the range of imprisonment for conviction for sabotage is 13 to 16 years' imprisonment.[294]

CCPR/C/KGZ/CO/2, paragraph 25 (noting "reports of possible restrictions on non-governmental organizations in several legislative proposals, including restrictive reporting obligations to State authorities").
[290] Zambia NGO Law, section 10(3)-(4).
[291] Zimbabwe NGO Law, section 6(5)(a)-(c).
[292] Tanzania NGO Law, Section 35(1)(e) and (2).
[293] Eritrea NGO Proclamation, Article 7(3).
[294] Penal Code of the State of Eritrea, 2015, Article 116; https://www.refworld.org/legal/legislation/natlegbod/2015/106143.

195. Morocco provides that foreign NGOs operating without recognition or that may 'harm the public security' may be dissolved by the courts and that the founders and directors face up to two years of imprisonment.[295]

196. This trend of potential criminal sanction effectuates a chilling effect as it forces NGOs to adapt to restrictive regulatory frameworks under the threat of criminal sanctions.

197. The imposition of criminal penalties on offences relating to free association is a flagrant violation of paragraph 55 of the AComHPR Guidelines which prohibits criminal sanctions in the context of laws governing NGOs and fails to meet the test set out in paragraph 56 of the AComHPR Guidelines for sanctions to only be applied in narrow circumstances and being proportionate to the gravity of misconduct.

198. The Special Rapporteur has observed that restrictive laws often threaten associations with deregistration, loss of legal existence or even criminal prosecution for non-compliance, which "has the effect of destabilizing and intimidating associations by generating confusion and increasing the administrative burden of continuing their activities…".[296] The Special Rapporteur has further called on states to ensure that minor infractions of NGO laws, such as the failure to comply with reporting obligations, should not lead to closure of the association or criminal prosecution.[297]

199. The criminalisation of breaches of NGO regulations entails a violation of the right to free association under Article 10 (1) of the African Charter.

8.11 Authority and discretion of NGO regulators, nominated government officials or courts

200. The various NGO laws that span the African continent often provide for creation of a subordinate body, tasked with the monitoring, regulation, evaluation of the

[295] Morocco 2002 NGO Decree, Article 27.
[296] A/HRC/38/34, paragraph 28; https://docs.un.org/en/A/HRC/38/34.
[297] A/HRC/23/39, paragraph 38; https://docs.un.org/en/A/HRC/23/39.

NGO. For the purposes of this Request, said bodies are collectively referred to as “NGO regulators”.

201. The authority delegated by governments to NGO regulators is often excessively broad, granting regulators sweeping powers that can significantly hinder the operations of NGOs. These powers include the ability to arbitrarily refuse accreditation, suspend, or even dissolve organisations’ actions that, in many cases, constitute clear violations of the right to freedom of association. Even where not outright illegal, such powers enable regulators to interfere with NGO activities in a manner that is disproportionate, opaque, and susceptible to abuse, ultimately undermining the independence and effectiveness of civil society.

202. In other instances, the delegated authority mentioned above is vested into government focal points, such as ministers within cabinet, who can interfere with NGO operation and freedoms. In some instances, courts of law have legislation directing them to dissolve or sanction NGOs should certain criteria be met and should a party bring an action before the court.

8.11.1 Broad powers to refuse registration or to suspend or deregister an NGO

203. The Rwandan NGO regulator is empowered to refuse registration of an NGO if they fail to meet the requirement to align their annual action plan with the Rwandan governments development goals or if there is evidence indicating that the NGO is or intends to jeopardise security, peace, unity, public health, public order, good morals or good conduct of Rwandans.[298] The Rwandan NGO regulator is further empowered to suspend the activities of an NGO if it breaches the NGO laws twice or fails to rectify an initial transgression after being warned by the NGO regulator. [299] The period of suspension is permitted to extend up to 3 months and may result in definitive suspension if it fails to rectify the breach of NGO laws, if it no longer fulfils the conditions it initially did to register as an NGO or if it is engaged in any activities that jeopardise the unity, peace and security, public order and health, good morals, good conduct of Rwandans. [300] Should an NGO be definitively suspended, the NGO regulator may manage the property of

[298] Rwanda NGO Law, Article 7(a)-(b), read with Article 29(h).
[299] Rwanda NGO Law, Article 42, 42(1) and (2), 43, 44(1), (2)(a).
[300] Rwanda NGO Law, Article 44(2)(a)-(d).

the NGO. [301] The NGO regulator may further, in the public interest, compel the suspension or dismissal of NGO members.

204. In Egypt, the NGO regulator is empowered to suspend or pursue dissolution of an NGO where it undertakes any unlicensed activity, including initiating any campaign or initiative that is unapproved by the NGO Regulator, if it uses its funds for purposes the association wasn't established for, if it engages in any political or partisan activity, if it performs activities that violate public order, public morals, national unity or national security or if it conducts an opinion poll or publishes said opinion poll or concludes any agreements of any kind with any foreign entity. [302] The suspension of an NGO disables it from using its funds and the NGO regulator is empowered to appoint an officer to run the NGO during the suspension period. The NGO regulator is thereafter empowered to request dissolution of the NGO from a competent court, which is instructed via the NGO laws to dissolve the NGO if it repeats any violations of the NGO law.[303]

205. In Tanzania, the NGO regulator is permitted to refuse registration of an NGO if the activities of an NGO are not for the "public interest" [304] and is empowered to suspend or cancel the registration of an NGO if it operates in variance with its constitution or transgresses the terms and conditions appended to its certificate of registration. [305]

206. In Malawi, the NGO regulator is empowered to refuse registration of an NGO if it engages in partisan politics, electioneering and politicking. The NGO regulator is further empowered to suspend or cancel an NGO's registration if it breaches the NGO laws, engages in "partisan politics" or has "ceased to exist or function for the purposes for which it was constituted".[306]

207. In Angola, the NGO regulator is permitted to suspend an NGO if they do not perform 'activities beneficial to the community' for 2 years or when their purpose

[301] Rwanda NGO Law, Article 44(3).
[302] Egypt NGO Law, Articles 15(b), (d), (j) and (k), 45 and 48.
[303] Egypt NGO Law, Article 48 read with Article 45.
[304] Tanzania NGO Law, Section 14(1)(a).
[305] Tanzania NGO Law, Section 20(1)(a)-(d).
[306] Malawi NGO Law, Sections 20(3)(a)(vi), 20(4) and 23(1)(a)-(c).

has exhausted or become impossible or is pursued through immoral means.[307] Similarly, in Zimbabwe, the NGO regulator is empowered to refuse registration of an NGO if it appears that the NGO is not bona fide operating in furtherance of the objects mentioned in its application for registration.[308] The NGO regulator is further empowered to cancel an NGOs registration if any remuneration or reward which is deemed excessive in relation to the total contributions made to the NGO has been received by a person other than a target beneficiary of the NGO[309] or if the regulator considers that the objects in respect of which the NGO was registered are ancillary or incidental to the other objects of the NGO.[310]

208. In Eritrea[311], NGOs have their work permits revoked if they conduct any act of political or economic sabotage or subversive activity against Eritrea or its national interests. The revocation of work permits amounts to a material suspension of the NGO activity as NGOs can only operate in Eritrea through work permits.

209. In Ethiopia[312], the NGO regulator may refuse to register an NGO if its aims and activities are contrary to public morals.

210. In Algeria, an NGO shall be suspended or dissolved in the event of interference in the country's internal affairs or an infringement of national sovereignty.[313]

211. In Libya, the NGO regulator may suspend an NGO for 6 months if it performs activities that exceeds the objectives that established it or violates the NGO laws and if it breaches the NGO laws or exceeds the scope of its objectives again during the 6 month period, the NGO regular may cancel its registration and approach the courts of law to liquidate it.[314] The NGO regulator may cancel the registration of an NGO if it can prove that it is unable to achieve the goals that founded it, if it used funds "in ways other than the purposes assigned or if it

[307] Angola NGO Decree, Article 38(1) and (2).
[308] Zimbabwe NGO Law, section 9(5)(b)(i).
[309] Zimbabwe NGO Law, section 10(1)(b).
[310] Zimbabwe NGO Law, section 10(1)(e).
[311] Eritrea NGO Proclamation, Article 7(3).
[312] Ethiopia NGO Law, Article 59(1)(b).
[313] Algeria NGO Law, Article 39.
[314] Libya NGO Decree, Article 31.

receives funds or donations without authorization".[315] The NGO regulator may further refuse to register an NGO if they have inappropriate objectives.[316]

212. These delegated powers are excessively discretionary and rely heavily on subjective interpretations of broad and ambiguous concepts. Terms such as public morals, decency, public interest, national interest, good conduct, and basic national values lack clear, objective definitions and are not further clarified in any of the applicable NGO laws. As a result, regulators or government officials are empowered to make arbitrary decisions, enabling unlawful interference with the fundamental right to freedom of association for NGOs.

213. Paragraph 58 of the AComHPR Guidelines provide clearly that suspension or dissolution of an organisation may only be applied where there has been a serious violation of a national law in compliance with international human rights law, and as a measure of last resort, following a court order and after exhaustion of all appeals processes.[317]

214. This further portends that even where domestic courts are bound to dissolve NGOs, that the grounds for dissolution cannot be nebulous or wide-ranging to permit arbitrary closure of NGOs on political whim through the veneer of an independent court-led process.

215. Addressing the revocation of the legal status of NGOs, the Inter-American Commission produced a comprehensive report, titled "Closure of civic space in Nicaragua",[318] wherein it found that one of the most severe restrictions[319] on free association is the revocation of the legal status of civil society organisations.

216. The Special Rapporteur has clarified that, should an association fail to meet its reporting obligations, such a violation should not lead to involuntary dissolution, but the association should be instructed to rectify the breach instead.[320]

[315] Libya NGO Decree, Article 32.
[316] Libya NGO Decree, Article 3(2), (5).
[317] AComHPR Guidelines, paragraph 58.
[318]Inter-American Commission on Human Rights, "Closure of civic space in Nicaragua" https://www.oas.org/en/iachr/reports/pdfs/2023/Cierre_espacio_civico_Nicaragua_ENG.pdf.
[319] Ibid, page 58.
[320] A/HRC/23/39, paragraph 38.

217. The Human Rights Committee has similarly found that the dissolution of an organisation has severe consequences and that this must be considered when assessing the proportionality of restrictive measures taken.[321]

218. In the instances where NGO regulators or government officials are endowed with broad discretionary powers to order the revocation of accreditation, dissolution and/or suspension of NGOs and their activities, Article 10 (1) of the African Charter is violated. Article 10 (1) of the African Charter is similarly violated where courts are deprived of discretion to impose appropriate sanction through a mandatorily severe sanction such as dissolving of an NGO on grounds that are nebulous or wide ranging, as such grounds violate the premise that only serious violations of law should lead to NGO dissolution.

8.12 Governmental authority to investigate

219. In Zimbabwe, the Minister responsible for regulating NGOs may appoint any officer in the public service as an inspecting officer who shall have the power to inspect any aspect of the affairs or activities of any NGO and to examine all documents relating thereto and to further examine the books, accounts or other documents relating to the NGOs financial affairs.[322]

220. In Uganda, an NGO regulator may dispatch an inspector to the NGO premises at 'any reasonable time' and may request any information that appears necessary for purposes of giving effect to the NGO laws. The NGO laws prescribe that 3 days' notice shall be given and 'any reasonable time' refers to 8:00 am to 5:00 pm on working days. The NGO laws further provide for inspections to be carried out. [323]

221. In Angola, the NGO laws merely prescribe that the NGO regulator may order 'inquiries, investigations and inspections'[324] into NGOs while Sierra Leone

[321] Aleksander Belyatsky et al. v. Belarus, Communication Number 1296/2004, paragraph 7.5; https://digitallibrary.un.org/record/605207?ln=en&v=pdf.
[322] Zimbabwe NGO Law, section 20(1)(a) and (b).
[323] Uganda NGO Law, Section 41(1), (5) and (6).
[324] Angola NGO Decree, Article 32.

provides for investigation only where a criminal or illegal act is committed by NGO's employees.[325]

222. Egypt provides that government inspectors may enter the offices of NGOs after notifying it to provide 'technical support' or to monitor its activities, review its records and inspect the administrative, technical or financial aspects of their work, without notice if there has been an official complaint lodged.[326]

223. Endowing subordinate government bodies with vast powers to investigate breaches of NGO laws are a violation of paragraph 34 of the AComHPR Guidelines which states that inspections of associations shall only be performed following a judicial order in which clear and factual grounds justify the need for inspection[327] and where there is a well-founded evidence-based allegation of a serious legal violation.[328]

224. Unfettered powers to compel the production of any document are further unreasonable as they violate paragraph 34(d) of the AComHPR Guidelines which provides that the ability to compel production of documents during an inspection should be limited to defined and reasonable documentary requests.[329]

225. The ECtHR has determined that imposing inspections which inhibit an organisation's activities constitutes an interference with the right to free association in the case of ***Cumhuriyet Halk Partisi v Turkey***.[330]

226. The ECtHR has similarly ruled in ***Ecodefence v Russia***, that powers of inspection may very well be necessary, but those powers should never be used to exercise control over NGOs and that intrusive inspections that impose a significant burden on NGOs are not necessary in a democratic society or proportionate to the declared aims and therefore unlawful.[331]

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[325] Sierra Leone NGO Policy, Article 2.13.7.
[326] Egypt NGO Law, Article 30.
[327] AComHPR Guidelines, paragraph 34(a).
[328] AComHPR Guidelines, paragraph 34(b).
[329] AComHPR Guidelines, paragraph 34(d).
[330] Cumhuriyet Halk Partisi v. Turkey, Case Number 19920/13, Judgment of 26 April 2016, paragraphs 71-72.
[331] Ecodefence and Others v. Russia, Case Number 9988/13, Judgment of 14 June 2022, paragraphs 158-159; https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-217751%22]}.

227. Overly intrusive powers of inspection without proper judicial or legislative authorisation constitute an infringement of the ability of NGOs to accomplish their objectives and entails a violation of Article 10 (1) of the African Charter.

8.13 Discriminatory practices towards foreign NGOs

228. The variety of differential treatment (see below) to foreign NGOs includes higher registration fees, the duty to seek governmental permissions, being subjected to additional monitoring and amendments of their purposes and goals, being forced to sign agreements with governments to operate as an NGO and being afforded lesser protection from suspension and dissolution at the hands of NGO regulators.

229. The AComHPR Guidelines make it clear that any limitations placed on the ability for foreign NGOs to operate in African states must be in line with international standards.[332]

230. Article 2 of the African Charter provides for the enjoyment of the rights enshrined within it without distinction of any kind. In ***APDH v Côte d'Ivoire***, the AfCHPR stated that non-discrimination is a fundamental principle of international human rights law, and that discrimination is defined by the differentiation of persons or situations based on unlawful criterion.[333]

231. In ***African Commission on Human and Peoples' Rights v Kenya***, the AfCHPR developed its jurisprudence on discrimination, stating that distinction only amounts to discrimination when it does not have an objective and reasonable justification and where the circumstance do not render such distinction necessary and proportional.[334]

232. In ***Isiaga v Tanzania***, the AfCHPR stated that non-discrimination as a legal concept strictly forbids the differential treatment of persons existing in similar

[332] AComHPR Guidelines, paragraph 20.
[333] *APDH v Côte d'Ivoire* (2016) 1 AfCLR 668, paragraphs 142 and 147.
[334] *African Commission on Human and Peoples' Rights v Kenya* (merits) (2017) 2 AfCLR 9, paragraph 139.

contexts based on one or more of the prohibited grounds in Article 2 of the African Charter.[335]

233. The aim of the different regime governing local and foreign NGOs, which has not been justified in the various legislation promulgated by states and examined in this Request, is to treat NGOs differently based on their national origin. That different treatment results in a functional impairment of the right to free association by reducing or restricting it in a manner that sometimes renders the tenure of enjoyment of freedom of association a privilege to be sought from governments.

234. This distinction is not buttressed by any justification. What is evident is that both local and foreign NGOs operate in the same national territory, are both civil society organisations, both strive for public benefit of some sort and are both in receipt of funds that are to be distributed to the public.

235. The different regulatory regime, in all its forms, violates the right to non-discrimination and freedom of association as provided for by Articles 2 and 10 (1) of the African Charter.

8.13.1 Costs for foreign NGOs to register

236. Freedom of association applies not only to local associations, but also to those formed locally but managed, controlled or guided by foreign persons or associations. These can take the form of international NGOs that seek to open a local branch or subsidiaries to extend their impact globally. Irrespective of their structure, extent of foreign influence, or sources of funding, these NGOs are permitted the same right of freedom of association as local NGOs under the domestic law. Any discrimination against them without lawful justification is a breach of their rights to freedom of association and non-discrimination.

237. The rights of freedom of association and non-discrimination apply to the administrative fees and charges levied by governments regulating the NGO sector. Arbitrarily higher costs are an unjustified act of discrimination which stifles

[335] *Isiaga v Tanzania* (merits) (2018) 2 AfCLR 218, paragraph 89.

the potential for foreign-based or foreign-run NGOs to achieve their objectives within their respective countries.

238. Uganda charges registration fees of 28 US Dollars for local NGOs, 141 US Dollars for foreign NGOs and 217 US Dollars for international NGOs.

239. Uganda's newly enacted Protection of Sovereignty Act, 2026, assented to on 17/05/2026, further compounds this discriminatory treatment of foreign-linked NGOs. The Act requires any person deemed an 'agent of a foreigner', a category extending to NGOs, individuals, partnerships and corporations that receive financial assistance from, or act at the direction of, a 'foreigner', to register with the Ministry of Internal Affairs and to declare to the Minister any foreign financial support above 20,000 currency points (about UGX 400 million) in a 12-month period.[336] The Act criminalises a broad range of conduct, including 'promoting the interest of a foreigner' and 'interfering with the operations of Government', with penalties of up to 10 years' imprisonment and fines of up to UGX 2 billion for legal entities, and separately prohibits financial institutions from disbursing funds to an 'agent of a foreigner' absent proof of that declaration. International human rights bodies have condemned the Act as incompatible with Uganda's obligations under regional and international human rights law.[337]

240. In South Sudan, there is a similar discrepancy in the price for registering a local NGO versus registering a foreign NGO, with local NGOs paying 600 US Dollars in total registration charges and foreign NGOs 900 US Dollars.[338]

241. Sierra Leone also has a charge discrepancy, charging local NGOs 95 Dollars to register and international NGOs 2000 US Dollars. Sierra Leone further demands a 1000 US Dollar renewal fee for international NGOs but only Le1,000,000 (about 48 US Dollars) for local NGOs.[339]

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[336] Uganda Protection of Sovereignty Act, 2026, ss 1, 3, 14–15 and 22(1); see also ss 5(4), 12(2) and 25(1).
[337] International Federation for Human Rights (FIDH)/World Organisation Against Torture (OMCT) Observatory for the Protection of Human Rights Defenders 'Uganda: Protection of Sovereignty Act threatens activities of human rights defenders and civil society organisations' (27 July 2026) https://www.fidh.org/en/region/Africa/uganda/uganda-protection-of-sovereignty-act-threatens-activities-of-human.
[338] South Sudan NGO Regulations, Regulation 13(a) and (b).
[339] Sierra Leone NGO Policy, Section 5 (page 36).

242. Liberia also follows the trend of more onerous registration frees, charging local NGOs 18 US Dollars but foreign NGOs 400 US Dollars.[340] Egypt charges foreign NGOs a licence fee of up to EGP 50,000 (or its equivalent in US Dollars), which increases by 20% on each renewal, up to four times the original fee.[341]

243. Not all African countries have adopted this stance, with Rwanda mandating that both international and local NGOs pay the same 208 US Dollar cost.[342]

244. The difference in costs between local and foreign NGOs consequently strongly discourages foreign NGOs from forming and operating in various African jurisdictions. These elevated fees often appear arbitrarily set and disproportionately high, lacking any legitimate justification. This practice contravenes paragraph 18 of the AComHPR Guidelines, which mandates that registration fees be modest and limited to covering administrative costs, rather than serving as a barrier to registration.[343] Given that local NGOs are frequently registered at a fraction of the cost, it is implausible that the excessive fees imposed on foreign NGOs reflect actual administrative expenses. Instead, the disparity suggests discriminatory treatment in violation of Article 2 of the African Charter, and functions as a deterrent to the formation of foreign associations, thereby breaching their rights under Article 10(1) of the African Charter.

8.13.2 Additional registration requirements

8.13.2.1 Governmental permissions

245. Foreign NGOs are subjected to differential treatment by being required to obtain additional approvals not imposed on local NGOs, often from high-ranking government ministers.

246. On top of the existing requirements to register an NGO, Egypt[344] requires foreign NGOs to obtain permission from the Minister responsible for associations and

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[340] Liberian Business Registry 'Fee Schedule for New Enterprise Registrations' https://moci.gov.lr/sites/default/files/documents/LBR_Fee_Schedule.pdf.
[341] Egypt NGO Law, Article 67.
[342] Rwanda Governance Board 'non-governmental Organizations' https://www.rgb.rw/1/civil-society-faith-based-and-political-organisations/non-governmental-organisations.
[343] AComHPR Guidelines, paragraph 18.
[344] Egypt NGO Law, Article 65.

civil work. Meanwhile Ethiopia[345] requires foreign NGOs to produce a letter of recommendation from the embassy of their country of incorporation or, failing that, from the Ministry of Foreign Affairs. Importantly, Ethiopia may also require a letter of recommendation from their embassy in the NGOs country of origin.

247. In Rwanda, foreign NGOs must conclude a partnership agreement with the Minister responsible for the sector that the NGO intends to work in.[346]

248. South Sudan requires that foreign NGOs conclude country agreements with the Ministry of Humanitarian Affairs and Disaster Management and requires that every registration certificate be certified by the embassy located in the NGO's country of origin[347], Sudan likewise requires that foreign NGOs sign a country agreement with the government of Sudan to operate in the territory.[348]

249. Morocco prohibits foreign NGOs from operating in the territory unless registered and permits the Moroccan government to oppose a foreign association from registering.[349]

250. The Democratic Republic of the Congo requires that foreign NGOs require authorisation directly from the President which will be issued by decree.[350] NGOs must further sign a framework agreement with the Ministry responsible for planning and must produce, for their expatriate staff, a certificate of good conduct, lifestyle and morals legalised by the embassy or consulate of the Democratic Republic of the Congo in that foreign NGO's country of origin.[351]

251. To the extent that none of these additional requirements have been justified in their legislation in any form, these constitute disproportionate and unnecessary restrictions on the right of foreign NGOs to operate and enjoy their right of freedom of association.

[345] Ethiopia NGO Law, Article 58(2)(c).
[346] Rwanda NGO Law, Article 29(k).
[347] South Sudan NGO Regulations, Regulation 5(1)(g)-(h).
[348] Sudan NGO Law, Section 9(3)(g).
[349] Morocco 2002 NGO Decree, Articles 23 and 24.
[350] DRC NGO Law, Article 30.
[351] DRC NGO Law, Article 37.

252. Subjecting foreign NGOs to extra layers of bureaucratic approval, effectively requiring them to seek special permission to function within the country, violate paragraph 20 of the AComHPR Guidelines. Moreover, the fact that such requirements apply exclusively to foreign NGOs amounts to discriminatory treatment and therefore constitutes a violation of Article 2 of the African Charter and further infringes upon their right to freedom of association as guaranteed under Article 10(1) of the African Charter.

8.13.2.2 Governmental oversight/monitor requirements

253. To be able to register themselves, Rwanda requires that foreign NGOs submit an annual action plan aligned with the country's development plan.[352]

254. Egypt allows foreign NGOs to only execute licensed activities. A licence will only be granted when the activities align with the developmental plans of the Egyptian government and will determine a slew of additional terms and conditions as prescribed by the NGO regulatory authority.[353] Egypt further imposes additional supervisory obligations on foreign NGOs, such as requiring their bank accounts to be open to government inspection, mandating the submission of frequent progress reports covering their operational period, and granting authorities the right to request additional reports on any of their activities at any time.[354]

255. Libya requires that foreign NGOs obtain work permits prior to commencing work in the territory which local NGOs are not subjected to. The work permit requires the submission of various documents, including the parent organisation statutes, the parent organisation's decision to open a branch in Libya, the last budget and activity report of the parent organisation, the proposed organisational structure of the foreign NGO inside Libya, a detailed technical workplan, a detailed budget and a statement from the donor breaking down the technical details of the funding disbursed and the conditions attached to it.[355] The required documents must further be approved by the embassy of Libya in the country of origin of the NGO

[352] Rwanda NGO Law, Article 29(h).
[353] Egypt NGO Law, Articles 65 and 68.
[354] Egypt NGO Law, Article 71.
[355] Libya NGO Decree, Article 45(1)-(8).

or by the Libyan foreign ministry inside Libya.[356] Libya further requires foreign NGOs to notify the NGO regulator 2 weeks prior to implementing seminars, conferences, workshops, campaigns or publishing with details on the data of activities, the target population and selection criterion and the content of the publications.[357]

256. South Sudan imposes additional requirements on foreign NGOs, such as submitting a detailed project plan, which the government will review with technical staff, and additional reporting and evaluation procedures.[358]

257. The modification of the purposes of NGOs and requiring them to sign additional agreements with the government are explicit violations of paragraph 23 of the AComHPR Guidelines which provides that associations freely determine their purpose and activities and those limitations thereupon be necessary, legitimate and proportionate.

258. These additional supervisory requirements for foreign NGOs violate Article 2 of the African Charter. The additional requirements further limit the capability of foreign NGOs to freely associate which violates Article 10 (1) of the African Charter.

8.13.2.3 Financial restrictions

259. Egypt further restricts foreign NGOs from moving, transferring or sending their monies unless it is approved by government and further prohibits receiving donations from sources of funding other than those in its licence unless government has granted prior approval.[359] Libya similarly requires a foreign NGO to obtain the Commission's prior approval before receiving cash or donations in kind, transferring funds outside Libya or granting funding or in-kind support to any Libyan or foreign NGO inside Libya[360] and prohibits foreign NGOs from fundraising inside or outside Libya using the name of the Libyan branch.[361]

[356] Libya NGO Decree, Article 47.
[357] Libya NGO Decree, Article 57(1).
[358] South Sudan NGO Regulations, Regulation 21(3)(a)-(e).
[359] Egypt NGO Law, Article 70.
[360] Libya NGO Decree, Article 58(1), (2) and (5).
[361] Libya NGO Decree, Article 66(1)-(2).

260. The AComHPR Guidelines provide in paragraph 20 that foreign NGOs may establish their branches and may operate within the law, with limitations imposed by states needing to accord with the principles of legality, be in pursuit of a legitimate public purpose and be necessary and a proportionate means of achieving that purpose within a democratic society.[362] The AComHPR Guidelines, in paragraph 38, further provide that associations shall be able to seek and receive funds from all sources without requiring prior government authorisation.[363]

261. The Court of Justice of the European Union, in ***Commission v Hungary***,[364] determined that increasing regulatory burdens and restrictions on funding on associations on account of their status as a foreign or foreign funded organisation was a limitation to their right to free association.[365]

262. By introducing additional restrictions on foreign, the NGO laws contemplate violations of Article 2 and 10(1) of the African Charter in that they unduly restrict the right of foreign NGOs to associate and to enjoy their rights to free association on equal terms to local NGOs.

8.13.2.4 Less rigorous safeguards against suspension or dissolution

263. Egypt permits the suspension or cancellation of a foreign NGOs licence if it violates the NGO law but further permits suspension and dissolution of foreign NGOs for "reasons related to any threats" to national security, public safety, or public order or in "accordance with the reciprocity principle".[366] Libya permits the NGO regulator to cancel a foreign NGO work permit if it has "advertised in incorrect ways", if it used funds for purposes other than what they were allocated for, if it exceeds the scope of any work permit issued to it and if it violates the NGO laws.[367]

[362] AComHPR Guidelines, paragraph 20.
[363] AComHPR Guidelines, paragraph 38.
[364] Commission v. Hungary, Case Number C-78/18, Judgment of 18 June 2020.
[365] Ibid, paragraphs 112-119.
[366] Egypt NGO Law, Article 74.
[367] Libya NGO Decree, Article 67.

264. Failing to comply with administrative obligations enshrined in national law is not a sufficient ground for dissolution. The Special Rapporteur specifically clarified that, should an association fail to meet its reporting obligations, such a violation should not lead to involuntary dissolution, closure of association or prosecution of its members. Instead, the association should be given an opportunity to rectify the situation.[368]

265. The AComHPR, in ***Interights v Mauritania***,[369] stated that regulations impacting on freedom of association, in particular those permitting dissolution of an association, imply a restriction of the right and should therefore be accomplished under the limitations clause of the African Charter and therefore done where necessary and proportional without rendering the right to free association an illusion.[370] The AComHPR further held that the dissolution was not strictly proportional to the nature of the harm occasioned by the organisation and was therefore unlawful.[371]

266. Where the NGO laws permit for easier dissolution or suspension of foreign NGOs on the basis that they introduce obligations that are more difficult to comply with and increase the probability of the NGOs committing infractions which result in attracting sanction of suspension or dissolution, they violate Articles 2 and 10(1) of the African Charter.

9 HOW SHOULD LIMITATIONS OF RIGHTS BE ASSESSED?

267. The right of freedom of association is not unconditional in the sense that its exercise by individuals cannot be limited by the state. International human rights standards set out the grounds of permitted limitation. Two categories of limitation are envisaged. First, the freedoms may be legitimately regulated by law to protect the rights and freedoms of others. In other words, any limitation on a freedom must be prescribed by law, in that a restriction cannot be the fruit of the arbitrary whim of an official. Second, limitation may be justified for different public interest

[368] A/HRC/23/39, paragraph 38.
[369] Interights and Others v Mauritania, Comm No. 242/2001 (2004).
[370] Ibid, paragraph 79.
[371] Ibid, paragraph 85.

reasons, namely, public order, health, morality, or national security. The limitation must follow a legitimate purpose and be necessary and proportionate to the legitimate aim pursued.

268. In ***Elgak v Sudan***, the AComHPR held that the right to free association may be limited in terms of Article 27 (2) of the African Charter, which provides that the rights and freedoms contained in the African Charter shall be exercised with due regard to the right of others, collective security, morality and common interest. The AComHPR further explained that interference with rights, that is not proportionate and cannot be justified under Article 27 (2) of the African Charter, would be considered unlawful. [372]In ***TLS and Others v Tanzania***, the AfCHPR stated that restrictions of rights in the African Charter may be justified in that the restrictions are provided for in law, that it serves one or more of the purposes enshrined in Article 27(2) of the African Charter and that the limitation be proportional to the goal it seeks to achieve in terms of weighing the impact, nature and extent of the limitation against the legitimate interest of serving a particular goal. The AfCHPR further clarified that the restriction itself must be necessary for the advantages which must be obtained[373]

269. It therefore emerges from the jurisprudence that restrictions must serve a legitimate purpose enshrined in Article 27(2) of the African Charter, must be necessary and must be proportionate.

270. Similarly, paragraph 20 of the AComHPR Guidelines provides that any limitations to the right of free association should be in accordance with the principle of legality, have a legitimate public purpose and be a necessary and proportionate means of achieving that purpose within a democratic society.

271. In ***Lohé Issa Konaté v Burkina Faso***[374], this Honourable Court clarified the legal position regarding imposed restrictions under the African Charter. It held that the law providing for the restriction must exist and be clear enough to allow

[372] Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan, Comm. No. 379/09 (2014), paragraph 118.
[373] TLS and Others v Tanzania (merits) (2013) 1 AfCLR 34, paragraphs 106.1 and 107.1-107.2.
[374] Lohé Issa Konaté v Burkina Faso (merits) (2014) 1 AfCLR 314, paragraphs 125, 128-134, 145 and 148-149.

individuals to conform their conduct to it, that the restriction must serve a legitimate purpose in terms of Article 27 of the African Charter (collective security, morality and common interest) and that the restriction must be necessary/proportionate to achieve the objective, prompting the following considerations: are there adequate grounds to justify the action? Is there a less restrictive alternative? Does the action undermine the essence of the rights guaranteed by the African Charter?

272. The United Nations Human Rights Committee addressed the type of activities that constitute an interference with the right of association in ***Korneenko et al v Belarus***.[375] In that case, the authorities stripped a human rights organisation of its recognition because it had violated domestic regulations governing associations. Its official documentation was said to suffer from deficiencies, and it was accused of using equipment, purchased with foreign grants for propaganda purposes. A domestic court ordered the dissolution of the group. The Human Rights Committee held that the ICCPR protected all activities of an association. Dissolution of a group amounts to severe interference with the freedom of association and must be strictly justified by reference to the grounds of limitation in Article 22 (2) of the ICCPR. The government had failed to do this. Even if the NGO's documentation had been defective, the extreme step taken of dissolving it, was a disproportionate response.

273. The general comments of the United Nations Human Rights Committee on Articles 19 and 21 of the ICCPR, which is applicable to the States concerned pursuant to Article 4(1) of the Protocol, support the same approach. While general comments are not binding in themselves, they are the Committee's authoritative interpretation of the ICCPR and are consistent with the AComHPR Guidelines. In relation to Article 19, the Human Rights Committee has held that restrictions may not put the right itself in jeopardy, must conform to the strict tests of necessity and proportionality, and must be the least intrusive instrument among those which might achieve the protective function.[376] The State must

[375] Human Rights Committee, Korneenko et al. v. Belarus, Communication No. 1274/2004, Views adopted 31 October 2006, paragraphs 7.2-7.7.
[376] Human Rights Committee, General Comment No. 34 (2011): Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, paragraphs 21, 22 and 34.

demonstrate, in specific and individualised fashion, the precise nature of the threat and the necessity and proportionality of the specific action taken.[377] In relation to Article 21, the Human Rights Committee has likewise held that the onus is on the authorities to justify any restriction, and that restrictions must be necessary and proportionate in the context of a society based on democracy and must not impair the essence of the right.[378] The Court is respectfully invited to apply a similar approach to the restrictions analysed in this Section.

274. The proportionality standard under Article 27(2) of the African Charter finds domestic illustration in *NGOs Co-ordination Board v Eric Gitari & 5 Others* (2023)[379]. While the Supreme Court of Kenya, by a majority, affirmed the right to freedom of association under Article 36 of the Constitution, the Supreme Court divided on how the limitation test under Article 24 of the Constitution ought to be applied. The dissenting judges confined their analysis to establishing formal lawfulness and a legitimate state aim, asserting without further analysis that the proportionality threshold was met. The majority, by contrast, went on to examine whether a rational connection existed between the restriction and the State's stated objectives. This divergence in the application of the proportionality test within a single court illustrates a broader and recurring risk: where courts decline to enforce strict proportionality under provisions such as Article 27(2) of the African Charter, disproportionate restrictions on NGOs are liable to remain impermissibly in place.

[377] General Comment No. 34, paragraphs 27 and 35.
[378] Human Rights Committee, General Comment No. 37 (2020) on the right of peaceful assembly (article 21), CCPR/C/GC/37, 17 September 2020, paragraphs 36, 40 and 41; https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=WEtyW87uznJql0nPB0R%2BjvIANofAyBdf7Aw9oQ77nX58%2Fy%2BuM8cxMUWb93tupOebEKI%2FMANbswS4GcF1CgqyOg%3D%3D.
[379] NGOs Co-ordination Board v EG & 4 others; Katiba Institute (Amicus Curiae) (Petition 16 of 2019) [2023] KESC 17 (KLR) (24 February 2023), paragraphs 54 and 60-65, https://judiciary.go.ke/download/supreme-court-petition-no-16-of-2019-ngos-co-ordination-board-vs-eric-gitari-5-others-judgement/.

9.1 NGO laws imposing (mandatory) registration, periodic accreditation renewals, disproportionate (registration) costs, requirement of having more than 2 founding members, and restrictions on acquirement of resources limiting financial autonomy are not permissible limitations to the right of freedom of association.

275. Regimes of mandatory registration, unreasonable requirements for registration documents, requirements for government permissions to register or operate or to sign agreements with government, mandatory periodic renewal, steep registration or affiliated costs, requirements to have a determined number of founding members and the undue restriction on funding, fundraising and financial autonomy are all understood as restrictions on the right to free association.

276. For a restriction to be justified, it must satisfy the 3-tier test.

277. While the restrictions are formally "provided by law" and generally drafted with sufficient clarity for the public to understand their scope and conform their conduct accordingly, the 7 impugned restrictions are expressly inconsistent with the AComHPR Guidelines. These Guidelines provide an authoritative interpretation of the right to freedom of association under the African Charter and assist in determining whether a law breaches the Charter. Accordingly, all NGO laws containing one or more of the 7 identified restrictions must be considered unlawful, as they contravene the essential content of the right to freedom of association set out in the AComHPR Guidelines and affirmed in the African Charter, which guarantees inalienable human rights that may be limited only in accordance with Article 27(2).

278. The United Nations Human Rights Committee's approach to Article 21 reinforces this conclusion. Mandatory registration required governmental permissions and burdensome documentary requirements operate as prior-authorisation regimes over the formation and functioning of associations, which are the principal vehicles through which individuals organise, take part in assemblies and engage in collective advocacy. The Human Rights Committee has stated that requiring permission undercuts the idea that peaceful assembly is a basic right, and that

authorisation regimes must in practice operate as notification systems.[380] It has further held that blanket restrictions are presumptively disproportionate.[381] By parity of reasoning, regimes that make the very existence of an NGO conditional on State approval, and which apply across the board without individualised justification, cannot be regarded as necessary and proportionate.

279. Assuming that the slew of NGO laws is found to qualify as restrictions 'provided for in law', they still have to serve a legitimate purpose.

280. The laws examined in this Request provide little substantive justification for the extensive restrictions they impose. Any such limitations must be grounded in legitimate aims, namely, the rights of others, collective security, morality, or the common interest. [382] It is further impermissible to impose limitations under the African Charter without clearly articulating the specific purpose such limitations are intended to serve. [383]

281. Sierra Leone's NGO laws provide in the preamble that the goal is "*effective coordination and monitoring of the activities of both National and International NGOs in order to enhance their cooperation and collaboration with the Government of Sierra Leone (GOSL) and ensure maximum benefits to the people of Sierra Leone*".[384]

282. The Gambia provides for NGOs "*Increasing their level of contributions and impact on the socio-economic development of the Gambia*".[385]

283. The above laws come the closest to articulating the intention of the legislature in words other than just legal provisions governing the NGO sector. Accordingly, the explanation for the NGO laws that exist in written form are to ensure that aid has a better impact in the domestic setting and that NGO activity can be better

[380] General Comment No. 37, paragraphs 70–73.
[381] General Comment No. 37, paragraph 38.
[382] Report of the African Commission on Human and Peoples' Rights Study Group on Freedom of Association, page 21.
[383] Ibid.
[384] Sierra Leone NGO Policy, Article 1.1.7.
[385] The Gambia NGO Decree, Section 4(g).

coordinated. Such purpose, being recorded in Article 27(2) of the African Charter, finds expression as 'common interest'.

284. The restrictions also need to be necessary and proportionate. Necessity and proportionality were interpreted in the ***Advisory Opinion on the Right to Participate in the Government of One's Country in the Context of an Election Held During a Public Health Emergency or a Pandemic such as the Covid 19 Crises*** where this Honourable Court stated that necessary limitations are those necessary in a democratic society in the sense that no alternative measures less burdensome for the rights of individuals and peoples exist.[386] This Honourable Court further held that the measures restricting rights may not negate the essential content of the restricted rights such that the practical effect of the restriction may not imply annulment of the essential features of the restricted rights.[387]

285. Moreover, the mere fact that a restriction purports to serve a legitimate interest does not exempt it from the requirement of proportionality. Any restriction must constitute the least intrusive measure capable of achieving the stated protective purpose.[388]

286. The measures taken to excessively regulate the NGO sector, which in detailed fashion set out in preceding paragraphs violate international law, including provisions of the African Charter, are not necessary in a democratic society and serve to annul the essential content of the rights to free association and assembly respectively by extinguishing the ordinarily understood content of the right and leaving behind a husk for far fewer associations and individuals to benefit from. This is because pluralism and civic space are fundamental to democracies, and the dismemberment of free association and replacement with an authorisation regime would imply a society that is not democratic in the first place. Accordingly, such restrictions to the core substance of the right to free association cannot be countenanced as necessary. The restrictions therefore fail the requirement that

[386] Pan African Lawyers Union (PALU) (Advisory Opinion) (2021) 5 AfCLR 856, paragraph 78.
[387] Ibid, paragraph 79.
[388] Report of the African Commission on Human and Peoples' Rights Study Group on Freedom of Association, page 22.

limitations must not undermine the essential content of the rights concerned and are accordingly unlawful.

287. In any event, there are alternatives to the regulatory regimes adopted by states that have been analysed in this Request. Alternatives being laws formulated in consonance with international legal obligations to permit a flourishing, pluralistic and vibrant civic space that enhances public participation, deepens democracy and permits accountability.

288. The restrictions are therefore not necessary in a democratic society and serve as unjustifiable limitations on the right to free association. They are furthermore disproportionate as there are less restrictive options available to achieve whatever identifies purpose governments seek to pursue.

9.2 NGO laws imposing intrusive state oversight in internal governance and limiting areas of operation are not permissible limitations to the right of freedom of association.

289. Oversight in internal governance was bifurcated into an analysis of provisions relating to NGOs regulator powers to remove or suspend NGOs leadership and of NGO laws that prescribe internal governance structures. The extreme levels of control afforded by certain NGO laws permit the state to thrust its system of influence and control into the inner workings of NGOs.

290. Rwanda[389] permits the removal or suspension of management members in the 'public interest'. Through this provision, the Rwandan NGO laws constitute an abuse of power by allowing nebulous and subjective restrictions on NGOs' free associational right to determine their own internal governance. These laws thereby prevent NGO members from foreseeing the consequences of their behaviour in relation to the NGO laws and render NGOs incapable of conforming their conduct to a standard that will avoid the harsh and potentially criminal penalties of each countries respective NGO laws. This provision can therefore not be considered as a restriction 'provided for in law'.

[389] Rwanda NGO Law, Article 45(1).

291. In relation to Egypt, while the restrictions on receipt of foreign funding are clearly in terms of law, they do not permit NGO leadership and members to conform their conduct to its standards[390] because the provisions provide for liability, irrespective of whether intention to contravene the provisions exist. The net effect of this provision is to attribute lawbreaking to Egyptian NGOs if they receive any foreign funding without prior NGO regulator permission irrespective of the NGOs prior knowledge of such payment.

292. In relation to restriction of areas of activity, the NGO laws that prescribe that NGOs remain apolitical,[391] banned from 'political activities'[392] or having any 'organic or structural' relations with political parties[393] or from performing any direct or indirect political action[394] are too vaguely worded and have too much subjective interpretive leeway to permit these restrictions from being 'provided for in law'. Provisions that prevent NGOs from aiming 'at violating the Islamic religion or the unity of the national soil or the royal regime' are extraordinarily vague and permit authorities to apply large leeway to sanction NGOs for potentially sectarian, royalist or nationalist motives despite no crime having occurred.[395] Likewise, prohibitions on NGOs that 'may affect the unity of the national soil' or 'may assault the royal regime of the state'[396] are unworkable in practical terms because they hinge on the ability to divine the intention of the NGO and pre-emptively pursue prejudicial action against it and its members without any action having taken place.

293. Furthermore, NGOs are given a right to freely determine their own purposes and scope of activity because the activities of associations are a matter for themselves, not the state, to determine.[397]

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[390] Report of the African Commission on Human and Peoples' Rights Study Group on Freedom of Association, page 20.
[391] Libya NGO Decree, Article 1.
[392] Egypt NGO Law, Articles 15(b) and 68.
[393] Algeria NGO Law, Article 13.
[394] Libya NGO Decree, Article 27(3).
[395] Morocco 2002 NGO Decree, Article 3.
[396] Morocco 2002 NGO Decree, Article 29(3).
[397] Report of the African Commission on Human and Peoples' Rights Study Group on Freedom of Association, page 24.

294. The provisions of the NGO laws, prescribing the organs, functions, powers and competencies of NGOs, in particular for the NGO laws of Libya[398], are precise. It is straightforward for NGO leaders and members to conform their conduct to them because they provide an accessible and comprehensive template for which organs NGO must have, what their competencies should be and even how their meetings should proceed. The restrictions are therefore provided for in law. However, the restrictions do not serve a legitimate purpose as the Libyan law contains no statement of intent (its recitals only list its legal bases) nor any other in-text justifications for why the structures, powers and procedures are prescribed so strictly inside the NGO law.[399]

295. Other NGO laws, such as the Democratic Republic of the Congo's law, stipulates how the NGO will choose or dismiss management or administrative staff or how changes of personnel responsible for management will occur (through majority vote or declaration signed by the majority). These provisions are similarly straightforward but unjustified because the legislature did not provide justifications within the law for a reader to determine the intent behind the provision[400].

296. The NGO restrictions on partisan politics,[401] lobbying,[402] conducting voter education and election observation (in Ethiopia, for foreign and foreign-funded organisations only)[403], fundraising or campaigning to support a political candidate[404], conducting and publishing opinion polls, gathering and publishing data, needing to work within the government's development guidelines or to being confined to specific sectors of work that automatically excludes all other dimensions by virtue of areas of work needing to be pre-agreed upon[405] are restrictions which are understandable and to which people can adapt their conduct to. However, the restrictions have to be for a purpose recognised in

[398] Libya NGO Decree, Articles 4–22.
[399] Libya NGO Decree.
[400] DRC NGO Law, Articles 10 and 11.
[401] Malawi NGO Law, section 20(3)(a)(vi); see also section 23(1)(c).
[402] Ethiopia NGO Law, Article 62(5).
[403] Ethiopia NGO Law, Article 62(5).
[404] Uganda NGO Law, Section 44(g).
[405] South Sudan NGO Regulations, Regulations 4(m), 5(1)(r) and 21(2); Eritrea NGO Proclamation, Articles 7(1) and 8(1)(b); DRC NGO Law, Article 41.

Article 27(2) of the African Charter and all these restrictions are therefore incapable of being recognised as supporting a legitimate purpose for the obvious reasons that electoral, partisan politics, lobbying and the conducting and publishing of opinion polls are part of the democratic process which NGOs are permitted to partake in by virtue of their inherent role in democratisation, contributing to civic awareness and in playing a part in ensuring that policy promotion and amendment can occur. Should NGOs be limited from this sector of activity, they would become toothless and their right to free association would have its substance annulled.

297. Furthermore, the exclusion of NGOs sectors other than those pre-agreed to by government agreements and permits are not pursuant to any legitimate purpose and serve to needlessly cripple their ability to engage with human rights, governance and policy problems as is their rights under the African Charter and international law.

298. The United Nations Human Rights Committee's General Comment No. 34 on Article 19 supports this conclusion. The Committee has affirmed that political discourse and commentary on public affairs are protected expression,[406] that the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential,[407] and that Article 19(3) may never be invoked to justify the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.[408] Laws that bar NGOs from advocacy, public communication, lobbying, voter education, election observation and the gathering and publication of data and opinion polls restrict precisely this kind of expression. The States concerned have not demonstrated, in the specific and individualised fashion required, a direct and immediate connection between such expression and a threat to a legitimate aim,[409] and the restrictions therefore fail the necessity and proportionality test under both Article 9 of the African Charter and Article 19 of the ICCPR.

[406] General Comment No. 34, paragraph 11.
[407] General Comment No. 34, paragraph 20.
[408] General Comment No. 34, paragraph 23.
[409] General Comment No. 34, paragraph 35.

299. Even if it were to be assumed that the Libyan, the Democratic Republic of the Congo and Nigerien law accords with a limitation couched in Article 27(2) of the African Charter, for example, the common interest of having a well-functioning NGO sector, the limitation does not become lawful upon demonstration of 'good intent' or legitimate interest, it further has to be concordant with the principle of necessity in a democratic society.

300. The requirement of "necessity in a democratic society" means that no less restrictive alternative is available. In the case of laws that prescribe the internal governance structures of NGOs and prevent their members from determining their own organisational arrangements, this standard is not met. The strict provisions found in the laws of Libya and the Democratic Republic of the Congo do not avert any demonstrable harm; rather, they impose regulatory control for its own sake. There is no evidence that such measures improve NGO governance. A less restrictive and more effective approach, consistent with the AComHPR Guidelines, would be to require NGOs to submit audited annual financial statements with basic explanations of project-related expenditure.

301. Accordingly, the restrictions that curtail internal governance systems are not necessary and denote breach of Article 10(1) of the African Charter.

302. State oversight in internal governance and limitation to areas of operation therefore fails the 3-tier test for lawful restrictions and therefore violates the right of freedom of association under Article 10 (1) of the African Charter.

9.3 NGO laws imposing excessive reporting requirements and criminal sanctions are not permissible limitations to the right of freedom of association.

303. Reporting obligations allows NGOs to foresee their conduct and adapt their behaviours accordingly and ensures that financial propriety is being maintained in the NGO sector.

304. As elaborated above, any restriction must be provided by law, serve a legitimate purpose and meet the test of necessity, meaning there must be no less burdensome means of achieving the intended objective.

305. Amongst others, excessive reporting obligations fails the necessity test, as financial integrity can be effectively ensured through existing legal mechanisms for investigating and prosecuting financial crimes such as fraud, embezzlement, and corruption. These mechanisms, alongside internationally recognised standards requiring only basic, certified annual financial statements submitted to NGO regulators, offer a less intrusive alternative. The disproportionate burden imposed by excessive reporting can effectively paralyze NGO operations, rendering the restriction unjustifiable.

306. Also criminalising the violation of NGO law, particularly for operating without authorisation, may be grounded in law and pursue a legitimate public interest, fails the proportionality test.

307. The AComHPR has confirmed that States shall not impose criminal sanctions in the context of laws governing not-for-profit associations, "*All criminal sanctions must be specified in the penal code and not elsewhere, and civil society must not be governed by criminal provisions that differ from the generally applicable provisions of the penal code*".[410]

308. The severity of these sanctions is not commensurate with the nature of the offence, its actual impact on society, or the harm caused. Moreover, such punitive measures are not necessary in a democratic society, where less restrictive alternatives, such as administrative penalties or compliance orders, can effectively ensure adherence to NGO regulations without resorting to imprisonment.

309. Morocco likewise has imposed potential custodial sentences for the directors or founders of a foreign NGO from operating without recognition. Whilst this is enshrined in law and may even pursue a legitimate interest of an orderly NGO sector, it plainly fails the test of proportionality by providing for jail time for an act that can otherwise be corrected through a host of other means such as a voluntary registration system with government incentives such as grants to participate in.

[410] AComHPR Guidelines, paragraph 55.

310. Criminalising such conduct, especially when less intrusive remedies are available, undermines fundamental principles of necessity and proportionality in the application of law because they are excessive and are therefore plainly forbidden in terms of the African Charter.

9.4 NGO laws delegating broad discretion (investigating) powers to NGO regulators are not permissible limitations to the right of freedom of association.

311. The discretion, given to NGO regulators to suspend, dissolve or refuse NGOs registration on nebulous grounds, which has been detailed in receding paragraphs, are vaguely described and consequently too broad. Concepts serving as the litmus test include the public interest, the national interest, decency and public order. These descriptions do not allow the citizen/NGO to understand precisely what conduct is being prohibited and therefore what conduct should be avoided. The restrictions are too overbroad to be considered being 'enshrined in law' and do not mee the international legal standard for lawful restrictions.

312. Even if these extraordinarily broad terms were considered precise and could therefore qualify as restrictions 'provided for in law', they are unnecessary in a democratic society where laws already prohibit hate speech, armed violence, secessionism outside of the international legal framework and other comparably serious (international) crimes, including incitement and hate speech. These broad and discretionary powers therefore run afoul of the right to free association provided for under Article 10 (1) of the African Charter.

313. Similarly, the granting of overly broad investigative powers, without judicial oversight, regulatory guidelines, or legislative safeguards, raises serious concerns. While these powers are legally prescribed and may compel compliance through inspections, they are not the least restrictive means available and fail to protect fundamental rights such as privacy, dignity, and the legitimate confidentiality of property. For instance, a less restrictive way of ensuring that inspections can occur is by approaching the courts of law and obtaining a warrant, even under urgent circumstances, which will permit a search

and seizure of specified documents. Permitting unrestricted inspections at any time, in any manner, and without prior judicial approval poses a significant risk of abuse. The sweeping nature of these powers infringes upon the right to freedom of association protected under Article 10 (1) of the African Charter, giving a chilling effect on civil society activity.

314. The AComHPR has further expressly stated that authorities are prohibited from interfering with organisations in a manner that violates their privacy, and intrusive searches without restraints, particularly judicial restraints, are a clear intrusion into the private property and private affairs of NGOs.[411] The AComHPR has further clarified that providing government-stacked bodies with wide discretionary powers in order to control the civil society space is proscribed, meaning offering NGO regulators draconic powers to curtail civil society is further unlawful.[412]

315. The eventual outcome of the broad sweep of discretionary regulatory authority to dissolve, refuse registration or otherwise suspend an NGO is therefore patently unlawful and the investigative powers are grave infringements of the right to free association given the lack of procedural safeguards.

9.5 NGO laws, differentiating local and foreign NGOs, are discriminatory

316. Compared to local NGOs, foreign NGOs face higher costs to register, additional registration permissions, additional requirements regarding supervision, activities/ goals and finances as detailed above.

317. In his preface to the AComHPR Study Group report, the UN Special Rapporteur Maina Kiai identified a persistent trend of accusing foreign-funded organisations of being neo-colonial fronts despite the same accusing governments courting and accepting foreign funding themselves, pointing to the politically charged-nature of foreign agent accusations and how removed from legal and factual

[411] Report of the African Commission on Human and Peoples' Rights Study Group on Freedom of Association, page 24; AComHPR Guidelines, paragraphs 34(a) and 35.
[412] Report of the African Commission on Human and Peoples' Rights Study Group on Freedom of Association, page 24.

justification they are.[413] The use of spurious reasoning to crack down on foreign NGOs serves the interests of elites who seek to remain unaccountable for their own internal governance failures.

318. Although the restrictions are grounded in law, they do not serve a legitimate aim recognised under the African Charter. Unlike measures such as the suspension or dissolution of NGOs, which may be justified under international law as last-resort mechanisms to protect the public interest, there is no legal basis in international law for imposing differential treatment on foreign NGOs solely due to their origin. The unequal treatment lacks justification and falls outside the scope of permissible restrictions under established human rights standards. In particular, the differential treatment serves no aim related to the rights of others, collective security, morality or common interest.

319. Even if the restrictions are considered to have a legitimate purpose, *sine qua non,* discriminatory regimes will invariably be unnecessary in a democratic society where pluralism is encouraged and required. The differential regulatory treatment of foreign NGOs is further disproportionate, imposing steep charges upon them based on presumptions of wealth, complicating their registration processes, interfering with their otherwise lawful purposes and intentionally imperilling their funding sources for no discernible advantage, legitimate or otherwise, gained by government. The end consequence will invariably be to discourage foreign NGOs from operating, which is a net loss to society. The restrictions that single out foreign NGOs therefore are unnecessary in an open and democratic society as they serve to weaken the civic space, putting them in stark contrast to the requirements for limiting rights under Article 27(2) of the African Charter.

320. Lastly, there are different grounds for dissolving foreign NGOs in Egypt and Libya. Egypt[414] permits the suspension or dissolution of a foreign NGO for reasons 'related to any threats to national security, public safety, public order' or based on the 'reciprocity principle' and Libya permits the dissolution of a foreign

[413] Report of the African Commission on Human and Peoples' Rights Study Group on Freedom of Association, Preface by Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, page 7.
[414] Egypt NGO Law, Article 74.

NGO where it has 'advertised in incorrect ways.[415] Both countries permit dissolution or suspension of foreign NGOs on the basis of laws which are vague and nebulous and can be abused as individuals in the NGO sector cannot reasonably foresee how to conform their conduct to avoid being penalised.

321. Accordingly, the sweep of differentiating NGO laws breaches the right to non-discrimination and therefore also the right of freedom of association as provided for by the African Charter.

10 HOW VIOLATIONS OF RIGHTS AND FREEDOMS OF RIGHTS PROTECTED BY THE AFRICAN CHARTER ALSO CONSTITUTE VIOLATIONS OF THE DUTIES ON INDIVIDUALS, AS PER ARTICLES 1, 27 AND 29(2), (4), (5), (7), AND (8) OF THE AFRICAN CHARTER

322. The UN Guidance Note on the Protection and Promotion of Civic Space defines civic space as the environment that enables people and groups to participate meaningfully in the political, social and cultural life of their societies. Importantly, the UN has further identified that states shape the legal and policy space within which people express views, assemble, associate and engage in dialogue with one another.[416]

323. CIVICUS has called civic space the bedrock of any open and democratic society, pointing out that when civic space is open, citizens and civil society organisations are able to organise, participate and communicate without hindrance and can claim their rights and influence the political and social structures around them.[417]

324. A report of the UN High Commissioner for Human Rights to the Human Rights Council further records that civil society taking advantage of an open civic space will further the achievement of the purposes and principles of the UN, and that

[415] Libya NGO Decree, Article 67(1).
[416] United Nations 'Guidance Note on Protection and Promotion of Civic Space Executive Summary' https://www.ohchr.org/sites/default/files/Documents/Issues/CivicSpace/UN_Guidance_Note_Executive_Summary.pdf.
[417] CIVICUS 'What is civic space?' https://monitor.civicus.org/about/how-it-works/what-is-civic-space/.

undue restriction on the civic space therefore has a negative impact on this being achieved.[418]

325. The array of restrictions on free association laid out from paragraphs 8.1 to 8.13 have the chilling effect of closing the civic space, preventing Africans from collectively engaging in activities and analysis targeting common problems facing them, their communities and their country. With the vast sweep of restrictions, NGOs across the continent are facing an existential threat to their operations, their ability to disburse staff salaries and their ability to engage in effective advocacy and promotion of human rights. Equally so, the capacity of NGOs across the continent has been badly damaged by undue restrictions on their formation, conditions of operation, requirement to engage government for permissions and agreement, the overly burdensome reporting requirements and by the general burden they shoulder of onerous restriction, harsh penalties and hostile approach of governments.

326. This document has set out above the threat that restrictive laws pose to NGOs. Together with restrictive practices, these laws have contributed to a repressed, closed or obstructed civic space in 44 of the 50 African countries and territories rated by the CIVICUS Monitor, and over 80 per cent of the region's people live in countries rated repressed or closed. Only Botswana, Mauritius, Namibia and Seychelles are rated "narrowed", and only Cabo Verde and São Tomé e Príncipe are rated "open".[419]

327. It is our further contention that states, frustrating or rendering impossible the discharge of lawful treaty obligations, are themselves responsible for breaches of international law. Articles 27 and 29 of the African Charter imposes duties on African individuals and groups that, under Article 1 of the African Chater, must be respected by states through recognition of said duties and the adoption of legislation and other measures to give effect to said duties. States, as a duty

[418] Report of the United Nations High Commissioner for Human Rights, Procedures and practices in respect of civil society engagement with international and regional organizations, A/HRC/38/18, paragraph 1.
[419] CIVICUS Monitor, 'People Power Under Attack 2025 – Africa'; https://monitor.civicus.org/globalfindings_2025/africa/.

bearing third party, are in violation of Article 1 of the African Charter when adopting laws and state policies which frustrates the fulfilment of said duties.

328. In ***Sir Dawda K. Jawara v The Gambia***[420] the AComHPR stated that Article 1 gives the African Charter a legally binding character and that where states fail to recognise provisions of the Charter, the failure would itself be a violation.

329. In ***Noah Kazingachire and 3 Others v Zimbabwe***,[421] the AComHPR found that states may not merely recognise the rights and duties under the African Charter. Instead, failing to take measures to give effect to these rights and duties, even if not the immediate cause, constitutes a violation of the African Charter.

330. In ***Amnesty International v Sudan***,[422] AComHPR explicitly established that ratification of the African Charter "obliges a state to diligently undertake the harmonisation of its legislation to the provisions" of the Charter.

331. It is further submitted that the four-fold typology of State obligations articulated by the AComHPR in ***Social and Economic Rights Action Center (SERAC) and Centre for Economic and Social Rights v Nigeria***[423], to respect, protect, promote and fulfil, applies equally to the duties provisions of the African Charter as to its rights provisions. The duty to fulfil is not satisfied by a passive posture of non-interference; it includes a positive obligation to adopt measures creating the legal, administrative and material conditions in which duty-bearers can actually discharge their Articles 27 and 29 duties. In relation to those duties, this positive obligation crystallises into an obligation on the State not to adopt NGO laws whose predictable effect is to render such duties impossible to fulfil.

332. PALU anticipates that States may seek to invoke Article 27(2) and Article 29(4) as "claw-back" provisions, authorising restrictions on freedom of association. This argument is answered by this Honourable Court's holding in ***Tanganyika***

[420] Sir Dawda K. Jawara v. The Gambia, Comm. Nos. 147/95 & 149/96 (2000), paragraph 46.
[421] Noah Kazingachire and 3 Others v. Zimbabwe, Comm No. 295/04 (2012), paragraph 141 (citing Commission Nationale des Droits de l'Homme et des Libertés v Chad, Communication 74/92, para 20).
[422] Amnesty International and Others v Sudan, Communications 48/90, 50/91, 52/91, 89/93 (1999), para 40.
[423] Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights v Nigeria, Communication 155/96, African Commission on Human and Peoples' Rights, 15th Annual Activity Report (2001–2002), paragraph 44.

Law Society and Legal and Human Rights Centre, and Reverend Christopher R. Mtikila v United Republic of Tanzania[424], where the Court held that Article 27(2) is the only permissible basis for the limitation of rights under the African Charter, and that any restriction must be prescribed by law, pursue a legitimate purpose enumerated in Article 27(2), and be proportionate, a standard reaffirmed in ***Lohé Issa Konaté v Burkina Faso***. The duties enumerated in Article 29 are, on the face of the Charter, owed by the individual to the State and community; they are not granted to the State and cannot be converted into a freestanding limitation clause capable of justifying restrictive NGO laws.

333. This functional link between associational freedom and the fulfilment of Charter duties is expressly recognised in the AComHPR's own ***Guidelines on Freedom of Association and Assembly in Africa*** (2017)[425] and in the United Nations *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (UNGA Resolution 53/144, 1998), the latter of which affirms that States bear a "prime responsibility and duty" to create the conditions necessary for individuals, individually and in association with others, to discharge their responsibilities towards their communities.

334. This Request has contended that NGO laws across Africa constitute the illegal closure of civic space and lead to a direct inability for Africans (individuals and groups) to discharge the duties accorded to them under Article 29 of the African Charter. Without the ability to organise, raise funds and to operate freely within their countries, Africans/African groups from all sectors of society are precluded from availing their intellectual and physical abilities to society, which is in direct contravention of Article 29(2) of the African Charter. Where Africans are prevented from engaging in communal problem solving or assisting their fellow

[424] Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher R. Mtikila v United Republic of Tanzania, Applications 009/2011 and 011/2011, African Court on Human and Peoples' Rights, Judgment of 14 June 2013, paragraphs 106.1, 107.1–107.2 and 109; Lohé Issa Konaté v Burkina Faso, Application 004/2013, African Court on Human and Peoples' Rights, Judgment of 5 December 2014, paragraphs 125–137 and 145–149.

[425] AComHPR Guidelines on Freedom of Association and Assembly in Africa (2017), Fundamental Principles ii and iii and paragraph 25; 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, UNGA Resolution 53/144 (9 December 1998), Articles 1, 2(1) and 18(1).

citizens to attain a better life through litigation, community work, advocacy or by engaging in human rights conscientisation, their ability to discharge the duty under Article 29(2) becomes constrained or impossible because said duty is entirely contingent upon an open civic space.

335. Where organisations and associations are prevented from operating freely, the civic duties expressed in the African Charter are steadily suppressed. States regress into uncooperative regimes where the targeting of organisations that promote the principles of the African Charter through advocacy and litigation becomes the norm.

336. In ***Mohochi v Attorney General of Uganda***,[426] the applicant, a human rights lawyer, was denied entry into Uganda without lawful basis while travelling with an ICJ-Kenya delegation to meet the Chief Justice of Uganda. The East African Court of Justice found Uganda's conduct incompatible with the EAC Treaty's foundational principles of rule of law, emphasising that the State's arbitrary action as per its national laws could not exempt it from its Community law obligation. The African Court may draw on this reasoning to affirm that a State that frustrates civic space through restricting organisations, excluding individuals and frustrating the conditions under which civic participation is in direct contradiction of the African Charter.

337. The duty under Article 29(4) of the African Charter, namely, to strengthen and preserve social and national solidarity, becomes impossible where NGOs are frustrated or prevented from operating. During the ear of decolonisation, national liberation movements achieved enormous social progress through emancipating millions of Africans from colonial yokes that were only lifted because the movements were organised to raise national social and political consciousness. It was central to their strategy that the African people became aware of the poor conditions of life and began to agitate for a better future for the continent. This type of national social solidarity requires organisational capacity, access to funding and the ability to work within communities without impediment. NGOs

[426] Samuel Mukira Mohochi v The Attorney General of the Republic of Uganda, Reference No 5 of 2011, EACJ First Instance Division [2013], paragraphs 76 and 84.

are a modern expression of this liberatory mode of organising and cannot play a role in the growth of democratic culture if suppressed as such.

338. Strengthening national solidarity in a democracy is best achieved through shared frameworks for progress and the free expression of human rights, often advanced by NGOs. By protecting rights, seeking redress for violations, and advocating legal and policy reforms, NGOs harness social solidarity to address national challenges, ranging from abuse by security forces to communal poverty, through collective action and civic engagement.

339. Social and national solidarity cannot be realised where NGOs face strict restrictions and limited access to funding. Building solidarity requires sustained time and financial resources that are difficult to martial without a legal vehicle to facilitate an association. By constricting NGOs from operation, the capability for Africans attempting to raise and preserve national solidarity is heavily undermined, effectively placing states and their restrictions in contravention of Article 29(4) and, in turn, of Article 1 of the African Charter.

340. The duty under Article 29(5) of the African Charter, to preserve and strengthen the national independence and territorial integrity of one's country and to contribute to its defence in accordance with the law, is likewise frustrated where NGOs are prevented from operating. States frequently invoke sovereignty, national security or the defence of national independence as grounds to justify restrictive NGO laws, characterising civil society as a vector for foreign interference in domestic affairs. This inverts the true relationship between NGOs and national independence. A resilient, self-reliant civic space, capable of holding public and private power to account, identifying corruption, monitoring exploitative arrangements with foreign actors, and building the institutional capacity of local communities, is what allows a nation to withstand external interference rather than succumb to it. NGOs are, in this sense, a primary vehicle through which ordinary Africans discharge their Article 29(5) duty: contributing to the defence of their country not through arms, but through vigilance, transparency and the strengthening of domestic institutions independent of both foreign and domestic capture. By suppressing this capacity, restrictive NGO laws do not protect national independence, they erode the very civic infrastructure

through which that independence is defended and sustained, placing states squarely in violation of Article 29(5) and, in turn, of Article 1 of the African Charter.

341. Next to that, Article 29(7) obliges African citizens to strengthen African cultural values and to contribute to the promotion of moral well-being of society. Human rights are the bedrock of human well-being as they contain a set of principles, entitlements and prohibitions on maltreatment that are generated and protected through representative and international consensus. The late twentieth-century international shift towards human rights as a liberatory politics coincided with the emergence of the modern NGO. NGOs serve as a focal point for persons to gather and collectively deliberate upon and work towards solving common problems that contribute to a people's well-being. Modern NGOs' collective method of problem solving may, in this manner, be seen as a manifestation of African communitarian principles. The African Charter's Article 9 duty to strengthen positive African cultural values can only be fulfilled when peoples have sufficient cultural and political power in society to resist activities that are both politically entrenched and harmful. NGOs and associations provide the fundamental bedrock of organisation that facilitates the promotion of positive African culture and the promotion of national well-being through upholding human rights.

342. By closing the civic space, either through making NGO work far more difficult or through terminating the ability for NGOs to register and perform work altogether, African states are closing the civic space and further preventing Africans from fulfilling their duty under Article 29(7), which is therefore a violation of Article 1.

343. The African Charter was penned with the awareness that centuries of erosion of traditional African institutions during colonisation made agitating for social change uniquely difficult across the continent. As such, the Charter seeks to enshrine the principles of solidarity, communitarianism, and Pan-Africanism as the vehicle for continent-wide development. The closure of civic space directly harms African unity, the prerequisite to the African Charter's aspirations. Without organisation, individual Africans bear the brunt of the segregated nature of the African continent. Persons living inside African states are at the forefront in trying

to bridge regional divides and to ensure intensified intra-African trade, travel and social engagement.

344. By closing off NGOs by banning their activities, hindering their financial prowess and otherwise hindering them from performing their functions, the achievement of human rights and the goals of Pan-Africanism are set back. The restrictions that violate freedom of association therefore also violate Article 29(8) and, accordingly, also Article 1 of the African Charter.

345. The sweep of freedom of association restrictions has the outcome of making NGO work more difficult or impossible. In all instances, this leads to a reduction in the ability of African people to serve their national community, to preserve and strengthen social and national solidarity, to strengthen positive African cultural values, to promote the moral well-being of society and to contribute to the best of their ability to the promotion and achievement of African unity.

346. To prevent Article 29 duties from being fulfilled, whether through negligence, through the promulgation of restrictions in law or through intentional state practices, is a plain violation of both Article 29 and therefore Article 1 of the African Charter.

347. In ***Monim Elgak v Sudan***, the AComHPR found that a state party's failure to respect, protect, promote or fulfil any of the rights guaranteed in the African Charter constitutes a violation of the African Charter.[427] In ***Lawyers for Human Rights v Swaziland***[428], the AComHPR found that ratifying the Charter without bringing domestic laws into conformity with it violates Article 1.

348. The European Court of Human Rights (ECtHR) draws a similar connection between state responsibility and the protection of NGOs as a vehicle for the freedom of association.[429]

[427] Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan, Comm. No. 379/09 (2014), paragraph 141.
[428] Lawyers for Human Rights v. Swaziland, African Commission on Human and Peoples' Rights, Comm. No. 251/2002 (2005), paragraphs 50-51 and 61.
[429] European Court of Human Rights, Case of Ecodefence and Others v Russia, Application no. 9988/13 and 60 others, 14 June 2022.

349. In the instant case, the rapid onset of laws restricting free association have significantly imperilled the promotion and protection of human rights. Not only are many NGOs facing significant funding constraints, but prohibitions on activity, freezes on funding and harassment of staff by regulatory authorities will continue to impede the ability for Africans to vibrantly engage with each other, promote national solidarity, realise African unity and otherwise empower the marginalised. This is as a direct result of concerted state conduct, embodied through the passage of laws that have the direct effect of freezing the civic space and obstructing NGO work.

350. Comparative jurisprudence recognises that human rights are defended collectively through associations and requires a State that restricts them to justify the restriction as lawful, necessary and proportionate.[430]

351. It cannot be doubted that the passage of these restrictive NGO laws have reduced or nullified the essential content of Article 29 and have abandoned the spirit of communal activity that was intended to be preserved and respected in the African Charter. These same laws, in the first instance, violate the substantive rights to non-discrimination under Article 2, to freedom of association under Article 10(1), and to freedom of assembly under Article 11 of the African Charter, each of which is a necessary precondition for the meaningful exercise of civic life on the continent. Accordingly, through unlawfully reducing or intentionally crippling the ability for African populations to discharge their duties under Article 29, it is contended that state parties passing restrictive NGO laws have not only failed to recognise Article 29 and the duties placed on their populations but have actively obstructed it. It follows that the restrictive NGO laws examined in this Request are in flagrant violation of Articles 1, 2, 10(1), 11, 27 and 29 of the African Charter, taken individually and cumulatively: they deny individuals and organisations their substantive rights to associate, assemble and participate in society free from discrimination, while simultaneously foreclosing the very civic

[430] See, e.g., Human Rights Committee, *Korneenko et al v Belarus*, Comm. 1274/2004, Views of 31 October 2006, paras 7.2–7.6; *Belyatsky et al v Belarus*, Comm. 1296/2004, paras 7.1–7.7; General Comment 37, paras 23, 36; ECtHR, *Ecodefence and Others v Russia* (14 June 2022); *United Communist Party of Turkey and Others v Turkey* (30 January 1998); *Sidiropoulos and Others v Greece* (10 July 1998).

space through which the corresponding duties owed to the community, the nation and the continent under Article 29 can be discharged.

11 PREFERRED LANGUAGE OF CORRESPONDENCE

352. English

Signed and Dated in Arusha, Tanzania this 2nd day of November 2026

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