

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Antidiskriminatsionnyy Tsentr 'Memorial'

v

Russia

Application No. 48431/14

Written Submissions by the International Service for Human Rights

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19 July 2017

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1. Introduction

1. On 14 June 2017, the European Court of Human Rights (the Court) granted leave to the International Service for Human Rights (ISHR) to intervene and submit written observations in the case of Antidiskriminatsionnyy Tsentr 'Memorial' v. Russia.
2. The case relates to a law requiring non-governmental organisations (NGOs) receiving foreign funding and engaging in 'political activities' to register as 'foreign agents' (Foreign Agents Law).¹ The Applicant, Anti-Discrimination Centre Memorial (ADC), alleges that the decisions of the Leninsky District Court and the City Court of Saint Petersburg requiring registration as a 'foreign agent', and the resulting administrative consequences, violate rights to freedom of expression (article 10), freedom of association (article 11), and non-discrimination (article 14) in the European Convention on Human Rights (ECHR).
3. In characterising ADC as a 'foreign agent' engaged in 'political activity', the Leninsky District Court relied on a report the Applicant submitted to the UN Committee Against Torture as the basis for the charges.²
4. This case raises issues regarding meaningful protection the ECHR provides to individuals exercising their rights to freedom of expression and association with international human rights bodies and mechanisms. While the Court has developed jurisprudence concerning permissible restrictions on freedom of expression and association, it has not developed a clear approach to the right to access and communicate with international human rights bodies and mechanisms, and cases of reprisals and intimidation arising from such engagement.
5. To assist the Court, this intervention addresses the extent to which the rights to freedom of expression and association include a right to access and communicate with international human rights bodies and mechanisms, and submits that interference with this right or retaliation for the exercise of this right violates the ECHR. It does so by examining relevant international human rights law, jurisprudence, commentary, and non-binding international standards.

2. Interest of ISHR

6. ISHR is an independent NGO dedicated to promoting and protecting human rights, and unhindered access to and communication with international human rights mechanisms and bodies. ISHR assists human rights defenders access and communicate with international bodies and mechanisms, including the UN, and works to prevent reprisals and intimidation arising from that engagement. ISHR participates in strategic litigation at international, regional and national levels to ensure defenders have the freedom to effectively and safely protect and promote human rights.
7. ISHR believes this case illustrates a serious systemic human rights problem of reprisals and intimidation against those cooperating with the UN, which remains unaddressed.

3. Context: Reprisals and intimidation against those cooperating with the UN

8. Reprisals and intimidation against individuals and groups seeking to cooperate, cooperating or having cooperated with the UN in the field of human rights remain

¹ The Federal Law Introducing Amendments to Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Noncommercial Organizations Performing the Functions of Foreign Agents.

² ADC MEMORIAL with the support of the International Federation for Human Rights, 'Roma, Migrants, Activists: victims of Police Abuse', St. Petersburg, 2012, http://tbinternet.ohchr.org/Treaties/CAT/Shared Documents/RUS/INT_CAT_NGO_RUS_13007_E.pdf; Committee Against Torture, Letter from Chairperson and Rapporteur on reprisals to Russian Federation, 17 May 2013, <http://tbinternet.ohchr.org/Treaties/CAT/Shared Documents/RUS/INTCATRLERUS13175E.pdf>.

persistent and widespread.³ The UN Secretary-General reported in 2015 that these acts have become more varied and severe, targeting not only individuals or groups concerned but also their families, legal representatives, NGOs and others linked to them.⁴ Reprisals are one means human rights violators and those tolerating them seek to avoid accountability⁵, and can have a serious deterrent effect on people willing to cooperate with the UN.⁶

9. No comprehensive study exists on the nature or extent such acts of reprisals and intimidation against individuals and groups occur. However, reports by the UN Secretary-General and other UN bodies have found that reprisals are often carried out by State agents, such as the police, military or security forces, or judiciary, who act to protect the State from criticism. They are also often carried out by non-State agents, including corporations, private security companies, organised crime, or armed groups, whose links to the State can be direct, indirect, or absent.⁷
10. Such acts of reprisals and intimidation take many forms, including harassment, threats, warnings, surveillance, defamation and smear campaigns, interrogation, deportation, confiscation of travel documents, refusal of exit visas, permit denials, withdrawal of privileges, disciplinary measures, fines, arrests, civil or criminal prosecutions or sanctions, physical assault, disappearances, torture or even death.⁸ Reprisals often take place in the home country, but can occur when an individual or organisation engages with a UN mechanism. For example, organisations engaging with UN bodies in Geneva have faced threats and harassment from members of their country's diplomatic delegation. In some cases, incidents have been combined with press campaigns at home where they are publicly denounced and threatened.⁹

4. Submissions

11. ISHR submits that the rights to freedom of expression (Article 10) and association (Article 11) in the ECHR subsume a right to access and communicate with the UN and that a State's interference with this right, or retaliation for exercise of this right, is a violation of articles 10 and 11 of the ECHR.

4.1 Right to unhindered access to and communication with international bodies International law

12. The right to access and communicate with international bodies is firmly grounded in international law
13. The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (Declaration) reaffirms the right to access and communicate with international bodies:

Article 9(4): 'everyone has the right, individually and in association with others, to unhindered access to and communication with international

³ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (31 July 2013), undocs.org/A/HRC/24/29.

⁴ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (17 August 2015), para 44, undocs.org/A/HRC/30/29.

⁵ Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston (27 May 2009), at para 16, undocs.org/A/HRC/11/2.

⁶ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (7 May 2010), para 54, undocs.org/A/HRC/14/19.

⁷ International Service for Human Rights, 'Reprisals Handbook' (2013), pg.4, http://www.files.ishr.ch/public/ishr_handbook_web.pdf.

⁸ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (31 July 2013), para. 49, undocs.org/A/HRC/24/29.

⁹ Charles Haviland, 'Sri Lanka minister Mervyn Silva threatens journalists,' BBC News (23 March 2012), <http://www.bbc.com/news/world-asia-17491832>.

bodies¹⁰ with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.’

Article 5(c): ‘for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels to communicate with non-governmental or intergovernmental organisations.’

14. The Declaration ‘does not create new rights but articulates existing rights making it easier to apply them to the practical role and situation of human rights defenders.’¹¹ It has been cited and relied on by the Inter-American Court to inform the interpretation of a regional human rights instrument¹² and superior national courts to inform the interpretation of national laws.¹³
15. The broad formulation in the Declaration covers all interactions between individuals or organisations and international human rights bodies; ranging from a request for information, to the submission of a report or individual complaint, to participating in trainings, to attending meetings, to being interviewed by a fact-finding mission.
16. As discussed below, as well as the Declaration, the right to access and communicate with international bodies arises from Articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR). A number of other international human rights treaties explicitly oblige States to protect those who submit complaints or communications to the respective treaty bodies from reprisals and intimidation.¹⁴

United Nations Resolutions

17. The General Assembly and Human Rights Council both reaffirmed the right to unhindered access to and communication with international bodies.¹⁵ Further, in a 2013 Resolution on Protecting Human Rights Defenders, the Council called on States to avoid legislation that has the effect of undermining that right and refrain from acts of intimidation or reprisals against those who co-operate, have co-operated or seek to co-operate with international institutions, including family members and associates.¹⁶
18. A 2016 Human Rights Council Resolution on Protecting Human Rights Defenders addressing economic, social and cultural rights, strongly condemned reprisals against defenders cooperating with national, regional and international mechanisms, calling on States to combat impunity by investigating and pursuing accountability for attacks and threats against defenders, their family members, associates, legal

¹⁰ ‘International bodies’ and ‘intergovernmental organisations’ in this context include UN bodies such as the Human Rights Council, Special Procedures, Universal Periodic Review, treaty monitoring bodies, fact-finding missions, commissions of inquiry, and other UN mechanisms with a mandate to protect human rights such as UN peacekeeping missions, UN country teams, and other specialised agencies. As well as non-UN bodies, such as the African Commission on Human and Peoples Rights or relevant organs of the European Union.

¹¹ OHCHR, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

¹² Valle Jaramillo v Colombia (2008); Human Rights Defender et al. v Guatemala (2014); Luna Lopez v Honduras (2013); Castillo González v Venezuela (2012); Nogueira de Carvalho v Brazil (2006).

¹³ Colombia Decision T-234/12, March 21 2012, <http://www.corteconstitucional.gov.co/relatoria/2012/t-234-12.htm>; Kenya Constitutional Challenge 87/2015, Supreme Court of Justice of the Nation, June 30 2016, http://dof.gob.mx/nota_detalle.php?codigo=5456467&fecha=12/10/2016; Eric Gitari v Non-Governmental Organisations Co-ordination Board & 4 others (2015), <http://kenyalaw.org/caselaw/cases/view/108412/>.

¹⁴ ‘Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’, Article 13; ‘Optional Protocol to the Convention against Torture’, Article 15; ‘Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women’, Article 11; ‘Optional Protocol to the International Covenant on Economic, Social and Cultural Rights’, Article 13; ‘Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure’, Article 4.

¹⁵ Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms: protecting women human rights defenders, Resolution A/RES/68/181, para 18; Cooperation with the UN, its representatives and mechanisms in the field of human rights, Resolution A/RES/24/24, adopted 27 September 2013, para 1.

¹⁶ Protecting Human Rights Defenders, Human Rights Council Res 22/6 adopted 12 April 2013, para. 13 & 14.

representatives, and by publically condemning cases of intimidation and reprisals.¹⁷

19. The General Assembly also called on States to avoid legislation and practices undermining that right; ensure adequate protection from intimidation or reprisal against defenders who seek to cooperate with international institutions, including family members and associates; and end impunity for intimidation or reprisal by ensuring accountability and providing an effective remedy.¹⁸

European policy

20. Statements of European policy reaffirm the right to unhindered access to and communication with international bodies. A Council of Europe 2008 Declaration calls on member States ‘to ensure effective access of human rights defenders to the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms.’¹⁹
21. The Organisation for Security and Co-operation in Europe (OSCE) commitments have repeatedly recognised the right to access and communicate with international bodies.²⁰ The OSCE Guidelines on the Protection of Human Rights Defenders provide that States refrain from action that may frustrate or undermine the right to provide information to international bodies. The Explanatory Report to the Guidelines emphasises that ‘... international human rights mechanisms depend on the information submitted by individuals and groups in order to support the implementation of international human rights standards by States. Therefore, any form of reprisal against human rights defenders for providing information to international bodies, or otherwise obstructing their interaction with these bodies, is both a human rights violation and, at the same time, undermines the functioning of mechanisms with which States have committed to co-operate in good faith.’²¹
22. The Council of Europe Committee of Ministers reaffirmed the right to make an application to the ECHR and called on States to refrain from putting pressure on applicants, their lawyers and family members aiming to deter Court applications; to protect applicants from reprisals; and identify and appropriately investigate all cases of alleged interference with the right of individual application to the Court.²²
23. This echoes a 2007 Council of Europe Parliamentary Assembly resolution expressing grave concern that a number of cases involving the alleged murder, disappearance, beating or threatening of applicants before the Court ‘remain to be fully and effectively investigated by the competent authorities’. The resolution noted illicit pressure applied on lawyers defending applicants, including trumped-up criminal charges, discriminatory tax inspections and threats of prosecution for

¹⁷ Human Rights Council Resolution A/HRC/31/L.28 as orally revised, on Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights, adopted on 24 March 2016, para. 5 & 6.

¹⁸ General Assembly Resolution 70/161 on Human rights defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, paras. 16 & 19.

¹⁹ Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted by the Committee of Ministers on 6 February 2008, para. 2 (vii).

²⁰ 1990 Document of Copenhagen Meeting of Conference on Human Dimension of the Conference for Security and Co-operation in Europe (CSCE), paras. 10.4 & 11.3; 1989 Concluding Document of Vienna Meeting - Third Follow-up Meeting to Helsinki Conference, ‘Questions Relating to Security in Europe: Principles’, para. 26, reaffirming ‘the right of persons to observe and promote the implementation of CSCE provisions and to associate with others for this purpose’, and contains participating States’ commitment to ‘facilitate direct contacts and communication among these persons, organizations and institutions within and between participating States’.

²¹ Guidelines on the Protection of Human Rights Defenders, Explanatory Report, para 261.

²² Resolution CM/Res(2010)25 on member states’ duty to respect and protect the right of individual application to the European Court of Human Rights (Adopted by the Committee of Ministers on 10 November 2010, para 1-2 & 4, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c15fa).

alleged ‘abuse of office’, as well as ‘similar pressure’ on NGOs assisting applicants prepare their cases. Further that ‘such acts of intimidation have prevented alleged victims of violations from bringing their applications to the Court, or led them to withdraw their applications’.²³

4.2 Right to freedom of expression includes the right to access and communicate with international bodies

Scope of the right to freedom of expression

24. ISHR submits that the scope of the right to freedom of expression includes a right to unhindered access to and communication with international bodies.
25. The Commentary to the Declaration clarifies that freedom of expression encompasses a right to unhindered access to and communication with international bodies.²⁴ The scope of the right to freedom of expression in the ICCPR in Article 19(2) supports this: ‘everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.’²⁵
26. The UN Human Rights Committee clarified that freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and the expression of every form of idea and opinion capable of transmission to others, including political discourse, commentary on public affairs, and discussion of human rights,²⁶ as well as political expression.²⁷
27. Furthermore, the Human Rights Committee recognised that the right to freedom of expression guarantees a person’s right to openly evaluate, discuss, and criticize their government and its branches²⁸ and that entities targeted by the obligation include all branches of the State, including executive, legislative, and judicial.²⁹
28. The Committee recognised that freedom of expression is a necessary condition for the realisation of transparency and accountability essential for the promotion and protection of human rights,³⁰ and recognised that communicating freely with it is a

²³ Parliamentary Assembly of the Council of Europe Resolution 1571 (2007), ‘Council of Europe member states’ duty to co-operate with the European Court of Human Rights’, paras. 17.1.-17.3, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17576&lang=en>.

²⁴ Report of the UN Special Rapporteur on the Situation of Human Rights Defenders, ‘Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms’ (July 2011), at page 48, <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

²⁵ International Covenant on Civil and Political Rights, Art. 19(2).

²⁶ UN Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression (12 September 2011), para. 11, undocs.org/ccpr/c/gc/34; UN Human Rights Committee Concluding Observations of review of Malawi in absence of a report (2012) at para 16, undocs.org/CCPR/C/MWI/CO/1, where the Committee expressed concern at reports that freedom of expression is threatened insofar as defenders cannot express their views, including criticizing authorities, without fear of reprisals; UN Human Rights Committee Concluding Observations of review of Angola’s initial report (2013) at para 21, undocs.org/CCPR/C/AGO/CO/1, where the Committee expressed concern at legislative offences that may constitute obstacles to freedom of expression, in particular about threats, intimidation and harassment by security or police forces of journalists, defenders and protesters during political rallies or demonstrations.

²⁷ *Nqalula Mpandanjila et al. v. Zaire*, Communication No. 138/1983, U.N. Doc. Supp. No. 40 (A/41/40) at 121 (1986), *Henry Kalenga v. Zambia*, Communication No. 326/1988, U.N. Doc. CCPR/C/48/D/326/1988 (1993), *Monja Jaona v. Madagascar*, Communication No. 132/1982, U.N. Doc. Supp. No. 40 (A/40/40) at 179 (1985), *Kivenmaa v. Finland*, Communication No. 412/1990, U.N. Doc. CCPR/C/50/D/412/1990 (1994), *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, Communications Nos. 422/1990, 423/1990 and 424/1990, U.N. Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990 (1996), and *Korneenko v. Belarus*, Communication No. 1553/2007, U.N. Doc. CCPR/C/95/D/1553/2007 (2009).

²⁸ *Benhadj v. Algeria*, Communication No. 1173/2003, U.N. Doc. No. CCPR/C/90/D/1173/2003 at 8.10 (2007).

²⁹ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 7, undocs.org/CCPR/C/GC/34.

³⁰ *Ibid* at para. 3.

form of expression for which defenders must be protected from reprisals.³¹

Restrictions on the right to freedom of expression

29. Article 19(3) of the ICCPR, like the equivalent Article 10 of the ECHR, expressly recognises that the exercise of the rights in paragraph 19(2) carries special duties and responsibilities and may be subject to restrictions.
30. ISHR submits, based on the analysis below, that reprisals and intimidation against those who cooperate with UN human rights bodies and mechanisms fall short of the requirements for permissible restrictions under Article 19(3), and its equivalent provision in Article 10 of the ECHR. Regardless of whether measures constituting intimidation or reprisals might be prescribed by law, they would fail the part of the analysis requiring them to be necessary for a proper, enumerated, purpose.
31. The Human Rights Committee clarified that for limitations on freedom of expression to meet the requirement that they be 'provided by law', they must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and must be made accessible to the public. Further, the law cannot confer unfettered discretion on executing it. Finally, laws must provide sufficient guidance to enable those charged with their execution to ascertain what is properly restricted and not.³²
32. The Committee clarified that restrictions must be legitimate in the circumstances. The State must demonstrate the precise nature of the threat, and the necessity and proportionality of action taken, by establishing a direct and immediate connection between the impugned expression and the threat.³³ The Committee is not required to defer to the States' judgment as to whether a restriction complies with 19(3).³⁴
33. Article 19(3) includes legitimate grounds for restriction:
 - a. Rights of Others: Freedom of expression can be limited to enable the exercise of other equally important rights in the ICCPR and international human rights law.³⁵ However, the Committee clarified such restrictions must be construed with care and must not impede political debate.³⁶ The Special Rapporteur on the right to freedom of opinion and expression noted that limitations on freedom of expression intended to protect the rights or reputation of others 'must not be used to protect the State and its officials from public opinion.'³⁷
 - b. Reputation of Others: While restrictions can be justified by reference to the 'reputations' of others, the Committee clarified that a public interest in the subject matter of the criticism should be recognised as a defence and care should be taken to avoid excessively punitive measures and penalties.³⁸ Further, that 'the right to freedom of expression includes the right to criticize or openly or publicly evaluate Governments without fear of interference or punishment,' and that whether a sanction to protect public order or the honour and reputation of government is proportionate must be evaluated in light of the paramount importance of the right to freedom of expression in a democratic society, and

³¹Human Rights Committee, Concluding observations on the fifth periodic report of Sri Lanka CCPR/C/LKA/CO/5 (2014) at para. 21, undocs.org/CCPR/C/LKA/CO/5.

³² Above n 30, para. 25, undocs.org/CCPR/C/GC/34.

³³ Ibid, at para. 35. See e.g. *Shin v. Republic of Korea*, Communication No 926/2000, [U.N. Doc. CCPR/C/80/D/926/2000](https://undocs.org/A/HRC/14/23) at 7.3 (2004).

³⁴ Above n 30, at para. 36, undocs.org/CCPR/C/GC/34.

³⁵ Ibid, at para. 28.

³⁶ *Leonid Svetik v. Belarus*, Communication No. 927/2000, U.N. Doc. CCPR/C/81/D/927/2000 (2004) and *Shchetko v. Belarus*, Communication No. 1009/2001, U.N. Doc. CCPR/C/87/D/1009/2001 (2006).

³⁷ Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, at para. 82 (2010), undocs.org/A/HRC/14/23.

³⁸ Above n 30, para. 47, undocs.org/CCPR/C/GC/34.

that governments by their nature are subject to criticism and opposition.³⁹

- c. National security: While restrictions on freedom of expression can be justified by reference to national security, treason laws and similar provisions relating to national security cannot be used to prosecute defenders for disseminating information of legitimate public interest.⁴⁰ States must specify the precise nature of the threat it contends the exercise of freedom of expression poses.⁴¹
 - d. Public Order: Restrictions on freedom of expression can be justified by reference to public order, which is broader than national security and can be defined as the sum of rules ensuring the peaceful and effective functioning of society.⁴² However, the Committee considers that, while safeguarding and strengthening national unity under difficult political circumstances can be a legitimate objective, ‘it cannot be achieved by attempting to muzzle advocacy of ... democratic tenets and human rights.’⁴³
 - e. Public Health and Morals: Restrictions on freedom of expression can be justified by reference to public health and morals, the former never having been the subject of a complaint before the Committee. The Committee clarified that the concept of ‘morals’ derives from many social, philosophical and religious traditions and consequently limitations must be understood in light of the universality of human rights and the principle of non-discrimination.⁴⁴
34. The Special Rapporteur on the right to freedom of opinion and expression stated that States must not abuse restrictions or limitations for political ends.⁴⁵ He noted that no limitations on freedom of expression are acceptable with regards to ‘[d]iscussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.’⁴⁶

4.3 Right to freedom of association includes the right to access and communicate with international bodies

Scope of the right to freedom of association

35. ISHR submits that the scope of the right to freedom of association includes a right to unhindered access to and communication with international bodies.
36. Freedom of association involves the right to interact and organize among themselves to collectively express, promote, pursue and defend common interests.⁴⁷
37. Article 1 of the Declaration recognises that ‘Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.’
38. Article 5(b) of the Declaration clarifies: ‘For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right,

³⁹ Rafael Marques de Morais v. Angola, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005) at 6.7-6.8.

⁴⁰ Above n 30, para. 30, undocs.org/CCPR/C/GC/34.

⁴¹ Sohn v. Republic of Korea, Communication No. 518/1992, U.N. Doc. CCPR/C/54/D/518/1992, para 10.4; Kim v Republic of Korea, Communication No. 574/1994, CCPR/C/64/D/574/1994, para 12.5.

⁴² UN Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985), para. 22.

⁴³ Womah Mukong v. Cameroon, Comm No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994) at para. 9.7.

⁴⁴ Above n 30, para. 32, undocs.org/CCPR/C/GC/34, and General Comment No. 22 Article 18: Freedom of Thought, Conscience or Religion, at para. 8, undocs.org/CCPR/C/21/Rev.1/Add.4.

⁴⁵ Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, at para. 80 (2010), undocs.org/A/HRC/14/23.

⁴⁶ Ibid.

⁴⁷ Report of the UN Special Representative of the Secretary-General on human rights defenders, Hina Jilani, A/59/401 (1 October 2004), at para 46, http://www.un.org/ga/search/view_doc.asp?symbol=A/59/401.

individually and in association with others, at the national and international levels: [...] to form, join and participate in NGOs, associations or groups’.

39. ISHR submits that promoting and protecting human rights at the international level includes accessing and communicating with international human rights bodies. The scope of the right to freedom of association in the ICCPR supports this.
40. Article 22(1) of the ICCPR states: ‘Everyone shall have the right to freedom of association with others, including forming and joining trade unions for the protection of his interests.’ While the ICCPR does not list possible purposes an association may pursue, the scope of the article is broad and includes human rights organisations.⁴⁸
41. Furthermore, the Commentary on the Declaration clarifies that freedom of association under Article 22 of the ICCPR covers the collective right of an association to perform activities in pursuit of the common interests of its members, including accessing and communicating with international human rights bodies.⁴⁹
42. In that regard, the Special Representative of the Secretary-General on human rights defenders noted regarding the scope of Article 22, that ‘any organisation has the right to defend human rights; that it is the vocation of human rights defenders to examine government action critically; and that criticism of government action, and the freedom to express these criticisms, is an essential component of a democracy and must be legitimized in law and practice. States may not adopt laws or practices that would make activities for the defence of human rights unlawful.’⁵⁰
43. Furthermore, the Special Rapporteur on Freedom of Peaceful Assembly and Association stated that the right to freedom of association - guaranteed at the national level in Article 22 of the ICCPR - is equally fundamental, and protected, at the international level and in multilateral and intergovernmental bodies.⁵¹ Emphasizing that freedom of peaceful assembly and association are inextricably intertwined with other rights, including the right to take part in public affairs, to freedom of opinion and expression, and of access to information and other relevant rights.⁵²
44. The Special Rapporteur expressed concern about the practice of hampering civil society participation in multilateral arenas. In that regard, in 2014 he reported on the present case,⁵³ and warned against the ‘chilling effect’ of reprisals on civil society actors, and stressed the obligation of States to provide full protection to those who participate or seek to participate in multilateral arenas.⁵⁴

Restrictions on the right to freedom of association

45. Article 22(2) of the ICCPR expressly recognises that the exercise of rights in paragraph 22(1) carry special duties and responsibilities, and may therefore be subject to the same restrictions as Article 19, when provided by law and necessary, for respect of the (a) rights or (b) reputations of others; or (c) the protection of

⁴⁸ Commentary to the Declaration (July 2011), at page 35, <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>; Manfred Nowak, *UN Covenant on Civil and Political Rights, CCPR Commentary*, p. 497, 2nd revised edition (N.P. Engel 2005).

⁴⁹ Commentary to the Declaration (July 2011), <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>;

⁵⁰ Report of the UN Special Representative of the Secretary-General on human rights defenders, Hina Jilani, A/59/401 (1 October 2004), at para 49, http://www.un.org/ga/search/view_doc.asp?symbol=A/59/401.

⁵¹ Report of UN Special Rapporteur on Freedom of Peaceful Assembly and Association, Maina Kiai, A/69/365 (1 September 2014), at para 14, undocs.org/A/69/365.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

national security or (d) public order, or (e) public health or morals. While Article 22 has not generated much jurisprudence, the interpretation of these enumerated limitations with regard to Article 19 would be identical with regard to Article 22.⁵⁵

46. ISHR submits that reprisals and intimidation against those who cooperate with UN human rights bodies and mechanisms fall short of requirements for permissible restrictions under Article 22(2). Further, that regardless of whether measures constituting intimidation or reprisals might be prescribed by law, they would fail the part of the analysis requiring them to be necessary for a proper, enumerated, purpose.
47. The requirement that limitations be 'necessary in a democratic society' incorporates a notion of proportionality. Further, the Human Rights Committee said limitations must be the least intrusive measures available to protect an objective under 22(2).⁵⁶
48. The Committee also said, about a 'democratic society', that the existence and operation of associations, including those peacefully promoting ideas not favourably viewed by the government or the majority, is a cornerstone of democratic society.⁵⁷

5. Consequences of the Foreign Agents Law

49. This intervention draws attention to international law and materials relating to freedom of access to, and communication with, international human rights bodies. It also seeks to highlight legal and other effects the Foreign Agents Law has on human rights defenders, and the laws' compatibility with international legal requirements.
50. Despite claims that the Foreign Agent Law promotes transparency and accountability for NGOs, the practicalities indicate otherwise.⁵⁸ Registration as a 'foreign agent' results in a 'chilling effect'.
51. 'Foreign agents' must comply with cumbersome and more frequent financial reporting requirements and supply additional audits.⁵⁹ The practical consequences of being a 'foreign agent' have been described as 'debilitating'.⁶⁰ Many organisations avoid seeking foreign financial support⁶¹ or shut down⁶² rather than complying with burdensome and stigmatising requirements.
52. Organisations must disclose in all official written and oral statements that they are labelled a 'foreign agent', compounding the chilling effect.⁶³ Negative stigma associated with the label, including being regarded as spies or corrupt, discourage domestic donations.⁶⁴

⁵⁵ Joseph, S., Schultz, J., & Castan, M. (2013). The international covenant on civil and political rights: Cases, materials, and commentary. Oxford: Oxford University Press.

⁵⁶ Lee v Republic of Korea, Communication No.1119/02, U.N. Doc. [CCPR/C/84/D/1119/2002](#) (2005) at 7.2.

⁵⁷ Zvozkov v. Belarus, Communication No. 1039/01, U.N. Doc. [CCPR/C/88/D/1039/2001](#) (2006) at 7.2.

⁵⁸ Human Rights Watch, 'Russia: Harsh Toll of 'Foreign Agents' Law' (25 June 2013), <https://www.hrw.org/news/2013/06/25/russia-harsh-toll-foreign-agents-law>.

⁵⁹ Article 32(1) & 32(3) of the Foreign Agents Law.

⁶⁰ ICJ, 'Russian Federation: Report on the Constitutional Court Proceedings and Judgment on the 'Foreign Agent' Amendments to the NGO Law' (September 2014), <http://www.icj.org/wp-content/uploads/2014/09/RUSSIA-FOREIGN-AGENTS-elec-version.pdf>.

⁶¹ Ibid.

⁶² Human Rights Watch, 'Russia: Government vs. Rights Groups' (22 September 2016), <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>.

⁶³ Kate Lyons and Mark Rice-Oxley, 'Harassed and shunned, the Russians labelled foreign agents by Kremlin' The Guardian (27 April 2015), <https://www.theguardian.com/world/2015/apr/26/harassed-and-shunned-the-russians-labelled-foreign-agents-by-kremlin>

⁶⁴ Michael Haggerson 'Russia parliament approves bill labelling many NGOs 'foreign agents' (19 July 2012), <http://www.jurist.org/paperchase/2012/07/russia-parliament-approves-bill-labeling-many-ngos-foreign-agents.php>; Above n 61, <https://www.hrw.org/news/2013/06/25/russia-harsh-toll-foreign-agents-law>.

53. Further, foreigners cannot participate in ‘foreign agents’ and authorities can intervene in its internal processes, including imposing 6 months suspensions.⁶⁵ Pecuniary and penal sanctions further ‘chill’ NGOs’ activities. Punishment for non-compliance can be up to 500,000 rubles (\$8,700),⁶⁶ and directors and members may be prosecuted under article 275 of the Criminal Code for treason.
54. As stated above at 3, engaging in political activity renders an organisation a ‘foreign agent’. ‘Political activity’ involves campaigning against homophobic legislation, promoting human rights issues and corruption, creating awareness about environmental problems, providing human rights information to intergovernmental organisations, providing legal advice to protesters and representing abuse victims.⁶⁷ Human Rights Watch reported that of 105 NGOs registered, most were registered by the Ministry of Justice without consent.⁶⁸ The vague and broad definition of political activity means the onerous requirements are imposed on a number of organisations.
55. The International Commission of Jurists (ICJ) concluded that the Foreign Agents Law interfered with the rights of NGOs that have elected to register as ‘foreign agents’ and those that did not.⁶⁹ Further, that the administrative requirements amount to an interference with the rights under Article 11 ECHR, Article 22 ICCPR and in some cases Article 10 ECHR and Article 19 ICCPR. Further that criminal sanctions for non-compliance have been considered to amount to interference with rights to freedom of association and expression.⁷⁰

6. Conclusion

56. This intervention is designed to assist the Court in a more extended analysis of the scope of the rights to freedom of expression and association in order to recognise the full impact of reprisals and intimidation against those cooperating with international human rights institutions on rights guaranteed in the ECHR.
57. It is vital that human rights defenders have the ability to communicate, publish and disseminate information to international human rights institutions to effectively promote and protect human rights.
58. This analysis of international law finds that accessing and communicating with the UN is protected under the rights to freedom of expression and association, and that reprisals and intimidation against those cooperating with the UN are not permissible limitations of those rights. More specifically, such reprisals and intimidation would violate Article 10 and 11 of the ECHR, as supported by relevant international jurisprudence establishing that such action violates Articles 19 and 22 of the ICCPR.
59. ISHR suggests that the Court set forward a strong statement that the right to access and communicate with international human rights bodies is subsumed in the rights of freedom of expression and association and that reprisals and intimidation against those exercising those rights are violations of those rights that do not meet the requirements for permissible limitation.

⁶⁵ The International Center for Not-for-Profit Law ‘NGO Law Monitor: Russia’ (23 August 2016), <http://www.icnl.org/research/monitor/russia.html>.

⁶⁶ Civic Solidarity ‘Russia: list of NGOs named ‘foreign agents’ (20 September 2013), <http://civicsolidarity.org/article/676/russia-list-ngos-named-foreign-agents-updated-20-september>; RadioFreeEurope, ‘The Crackdown on NGOs in Russia’ (6 June 2013), <http://www.rferl.org/a/russia-persecution-ngos/25009129.html>.

⁶⁷ Above n 58.

⁶⁸ Above n 62.

⁶⁹ Above n 60.

⁷⁰ Ibid.