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**PROCEDURES SPECIALES ASSUMEES
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**SPECIAL PROCEDURES ASSUMED BY THE
HUMAN RIGHTS COUNCIL**

**Mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and
association**

Amicus Brief

Presented by

**The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of
Association**

Before the

African Court of Human and Peoples' Rights

In the case of

**Laurent Munyandikirwa versus The Republic of Rwanda
Application No. 23 of 2015**

I. STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

1. Maina Kiai is the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association.
2. Special Rapporteurs are part of the special procedures mechanism of the Human Rights Council, made up of independent human rights experts with the mandate to report and advise on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social. As of 11 October 2016 there were 43 thematic and 14 country mandates.
3. The mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association was established by Human Rights Council resolution 15/21 in October 2010. The mandate was renewed for three years by Human Rights Council resolution 24/5 adopted in September 2013, and another three years by Human Rights Council resolution 32/32 in 2016. Maina Kiai took up his duties as the first Special Rapporteur on the rights to freedom of peaceful assembly and of association on 1 May 2011.
4. The Special Rapporteur examines, monitors, advises and publicly reports on the freedoms of assembly and association worldwide. He does this by receiving individual complaints and sending correspondences to States and other stakeholders to bring alleged violations or abuses to their attention, conducting country visits, issuing thematic reports, providing technical assistance to governments, and engaging in public outreach and promotional activities – all with the ultimate goal of promoting and protecting the rights to freedom of peaceful assembly and of association worldwide.
5. This brief is submitted to the African Court of Human and Peoples' Rights by Maina Kiai in his capacity as Special Rapporteur on the rights to freedom of peaceful assembly and association pursuant to Human Rights Council resolution 32/32. This submission is provided by him on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.
6. Authorization for the positions and views expressed by Maina Kiai, in full accordance with his independence, was neither sought nor given by the United Nations, the Human Rights Council, the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.
7. The Special Rapporteur shares his expertise on the international law, standards and principles with regard to the rights to freedom of association, in first instance and in second instance the right to freedom of peaceful assembly. He does so taking into account the obligations of Rwanda under international law. The Special Rapporteur has also conducted an official visit to Rwanda between 20 and 27 January 2014 to assess the situation of freedom of peaceful assembly and association in the country and believes some of his findings are relevant to the case before the Court. In June 2014, the Special Rapporteur

submitted a report to the United Nations Human Rights Council on his country visit to Rwanda.¹

II. SUMMARY OF FACTS AND ISSUES

8. This summary of facts is taken from the application. The facts as asserted by the Applicant give rise to a number of legal questions and matters the amicus curiae wishes to share insights and experiences, as well as comparative analysis and material on. The amicus curiae is *not* making any judgment on the veracity or otherwise of these facts. In view of ensuring clarity of the legal analysis, reference to the facts is included in this brief. It scrutinizes the extent to which the rights to freedom of association and of peaceful assembly ought to be protected and respected as provided for by international law, standards and principles.
9. The Rwandan League for the Promotion and Defense of Human Rights (LIPRODHOR) is a non-profit human rights organization based in Kigali. On 3 July 2013, the LIPRODHOR board voted to withdraw from the Collective of Leagues and Organizations for the Defense of Human Rights in Rwanda (CLADHO), after which the Rwanda Governance Board threatened to withhold LIPRODHOR's registration renewal.²
10. On 21 July 2013, a group of LIPRODHOR members organized a meeting in violation of the organization's by-laws and voted in a 'new' board, ousting the previous leadership of the organization.³ LIPRODHOR's 'old' board raised concerns about this change in leadership and, following its by-laws, immediately initiated efforts to resolve the situation through LIPRODHOR's internal dispute resolution process. On 22 July 2013, the same 'old' board sent a letter of grievance to the Rwanda Governance Board indicating the procedural violations of the election.⁴ On 23 July 2013, the Dispute Resolution Organ ruled in favor of the ousted board. On 24 July 2013 despite receipt of notice on the internal dispute organ, and without conducting any further investigations, the Rwanda Governance Board sent a

¹ Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mission to Rwanda, addendum, Mission to Rwanda* [hereinafter *Special Rapporteur Report on Mission to Rwanda*], U.N. Doc. A/HRC/26/29/Add.2 (Sept. 16, 2014). All UN Docs referred to in this brief can be easily retrieved at <http://www.un.org/en/documents/index.html>. The Special Rapporteur wishes to thank Alexandra Francis, Claire Kim, Paul Strauch and Alisha Bjerregaard of the Allard K. Lowenstein International Human Rights Clinic at Yale Law School, for their assistance in the preparation of this brief.

² *Laurent Munyandilikirwa. v. The Republic of Rwanda*, Appl. No 023/2015 [hereinafter *Munyandilikirwa*, Appl. No 023/2015], African Court on Human and People's Rights [Afr. Ct. H.P.R.], para. 28 (Sept. 23, 2015).

³ *Munyandilikirwa*, Appl. No 023/2015, para. 29–31. The Applicant alleges that the new board violated LIPRODHOR's internal rules in two ways. First, the new board failed to provide any written notice of the meeting to all LIPRODHOR members; LIPRODHOR's internal by-laws require at least eight days written notice to all members and the notification should be signed by either the President, the Vice-President or at least one-third of the members. None of these requirements were met. Key leaders of the organization, including the president, the vice-president, and the executive secretary, were not notified about the 21 July 2013 meeting. Second, those present at the meeting did not constitute a quorum sufficient to elect a new board, as required by LIPRODHOR's internal statutes. The internal statutes state that a general assembly meeting, in which board members may be elected or dismissed, "shall validly meet by the absolute majority of full members." There were only 47 of LIPRODHOR's then 115 members in attendance at the 21 July 2013 meeting. This constituted less than half of LIPRODHOR's overall membership at the time.

⁴ *Munyandilikirwa*, Appl. No 023/2015, ¶ 34.

letter to LIPRODHOR in which it formally recognized the new board.⁵

11. On 24 July 2013, Rwandan state security forces prevented the association and its 'old' board members from holding a previously scheduled training workshop to provide information on the United Nations universal periodic review.⁶ On the same day, the ousted LIPRODHOR president, Laurent Munyandilikirwa, challenged the formation of the new board in Rwandan courts in a suit against the Rwanda Governance Board.⁷ In March 2015, the High Court in Kigali dismissed the case on appeal on the ground that the applicant had not attempted to resolve the conflict through LIPRODHOR's internal dispute organ.
12. Mr. Munyandilikirwa received death threats after filing the claim. In addition, he and other old board members received threats in connection with their human rights work with LIPRODHOR. Eventually several 'old' board members were arrested and detained.⁸ Mr. Munyandilikirwa ultimately fled the country in March 2014 in response to continued intimidation. Despite the fact that he left the country, Mr. Munyandilikirwa continues to receive threats against his safety.⁹
13. In November 2014, government authorities arrested members of the 'old' board for attempting to hold an extraordinary session to review the status of LIPRODHOR.¹⁰
14. After the dissolution of the 'old' board some of LIPRODHOR's main funders decided not to renew their financial support to the organization—the loss of funds contributed to the closure of six sections of the organization that were represented throughout the country.¹¹ Unlike in the past, LIPRODHOR has not taken critical positions towards the Government under the leadership of the 'new' board. Facing intimidation and threats, members of the old board have been unable to continue their human rights work in Rwanda.¹²
15. When analyzing the obligations of the State to ensure the protection of the rights to freedom of association and peaceful assembly the following facts will be of particular relevance to determine whether a violation of rights took place: (1) interference by third parties (in this case, the 'new' board) with an association; (2) threats against people who wish to exercise their associational rights; (3) the recognition by the NGO Rwanda Governance Board of a 'new' board while being aware of the disputed character of the election and its effects upon the association and (4) the interruption of planned associational activities by authorities.

III. APPLICABLE INTERNATIONAL HUMAN RIGHTS LAW FRAMEWORK IN RWANDA

16. Rwanda is party to a number of instruments of international law that explicitly guarantee

⁵ *Munyandilikirwa*, Appl. No 023/2015, ¶ 34–35. Article 27 of Rwandan National Law 04/2012 states that any conflict arising in a local NGO must first be resolved by the organization's internal conflict resolution organ, set up under Article 6.

⁶ *Id.* at para.35.

⁷ *Id.* at para.36.

⁸ *Id.* at para.40–42.

⁹ *Id.* at para.40.

¹⁰ *Id.* at para.41.

¹¹ *Id.* at para.46.

¹² *Id.* at para.8.

the rights to freedom of association and peaceful assembly, including the International Covenant on Civil and Political Rights (ICCPR) (art. 22 and art. 21)¹³, the African Charter on Human and People's Rights (art. 10 and art. 11) and the African Charter on Democracy, Elections and Governance (art. 2[10], 3[7], 12[3], 27[2] and 30).¹⁴ Rwanda is party to other treaties, which additionally or specifically recognize the right to freedom of association for particular groups of people, such as the Convention on the Elimination of All Forms of Discrimination against Women¹⁵ and the Convention on the Rights of the Child.¹⁶

17. International law refers to legally binding obligations. The amicus curiae also makes reference to standards and principles that emanate from legal and institutional frameworks, coming from international treaty bodies, and international or regional courts or form part of an existing or emerging practice. These standards and principles provide a clearer understanding on what precisely international legal obligations entail.
18. Rwanda is a full member of the United Nations. Therefore, the findings of bodies or of experts under the special procedures within this system are of utmost relevance. Further, given that the African Charter, the ICCPR, the American Convention on Human Rights¹⁷, and the European Convention on Human Rights¹⁸ all use similar wording for the right to

¹³ International Convention on Civil and Political Rights art. 22, Dec. 16, 1996, 999 U.N.T.S. 171 (“(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. (3) Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.”). Rwanda acceded to the Convention in 1975; *see also* G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 20, (Dec. 10, 1948) (“(1) Everyone has the right to freedom of assembly and of association. (2) No one may be compelled to belong to an association.”).

¹⁴ African Charter on Human and Peoples' Rights, art. 10, Jun. 27, 1981 (“Article 10. Every individual shall have the right to free association provided that he abides by the law.”).

¹⁵ Convention on the Elimination of All Forms of Discrimination Against Women, art. 7(c), Dec. 18, 1979, 1249 U.N.T.S. 13 (“(C) To participate in non-governmental organizations and associations concerned with the public and political life of the country.”) Ratified by Rwanda in 1981.

¹⁶ Convention on the Rights of the Child, art. 15, Nov. 20, 1989, 1577 U.N.T.S. 3 (“1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly. 2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”). Ratified by Rwanda in 1991.

¹⁷ American Convention on Human Rights, art. 16, Nov. 22, 1969, 1144 U.N.T.S. 143 (“1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes. 2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others. 3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.”)

¹⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 11, Nov. 4, 1950, ETS no. 5 (“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic

freedom of association and of peaceful assembly, the decisions of the Inter-American Court of Human Rights and the European Court of Human Rights¹⁹ are relevant and shall be referred to in this brief. Similarly the Report of the Study Group of the African Commission on Human and People's Rights, and guidelines of the Organization for Security and Co-operation in Europe (OSCE) on the rights to freedom of association and peaceful assembly shall be mentioned. The Report of the Study Group and the OSCE guidelines offer a practical toolkit for implementing laws²⁰.

IV. THE RIGHT TO FREEDOM OF ASSOCIATION (ACHPR ART. 10)

19. The right to freedom of association protects any group of individuals or legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests.²¹ It includes a group's right to 'to set into motion their internal structure, activities and action program, without any intervention by the public authorities that could limit or impair the exercise of the respective right.'²² Associations must be free to pursue a wide range of activities, including exercising their rights to freedom of expression and assembly²³. Indeed the Report of the Study Group of the African Commission on Human and People's Rights recognizes that "the government should refrain from interfering with a citizen's capacity to join associations, or stacking associations with government representatives and then providing such bodies wide discretionary powers in an effort to control civil society space."²⁴

20. The international obligations stemming from the right to freedom of association are twofold. On the one hand, States have a positive obligation to create an enabling environment in which the right to freedom of association can be exercised. States must also

society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.")

¹⁹ Links to the cited cases from the Inter-American Court are included in the footnotes. In general this case law can be easily retrieved at <http://www.corteidh.or.cr/cf/Jurisprudencia2/index.cfm?lang=en> Cited case law from the European Court of Human Rights can be easily found in the HUDOC database: <http://hudoc.echr.coe.int>

²⁰ The OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's Commission for Democracy through Law (Venice Commission) have been providing legislative support and use the guidelines as a basis for this work.

²¹ African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], *Report of the Study Group on Freedom of Association & Assembly in Africa* 23 (2014); also Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association* [hereinafter *Report of the Special Rapporteur* 2012], para.51, U.N. Doc. A/HRC/20/27 (May 21, 2012) http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf ; Hina Jilani (U.N. Special Rapporteur of the Secretary-General on Human Rights Defenders), *Report of the Special Rapporteur on human rights defenders*, para. 46, U.N. Doc. A/59/401 (Oct. 1, 2004).

²² Inter-American Court of Human Rights, *Case of Baena Ricardo et al. v. Panama*, Merits, Reparations, Costs, February 2001, Series No. 72, para. 156. http://www.corteidh.or.cr/docs/casos/articulos/seriec_72_ing.pdf See also Human Rights Council, *Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/20/27, para. 65.

²³ *Report of the Special Rapporteur* 2012, para. 24, 32.

²⁴ Afr. Comm'n H.P.R., *Report of the Study Group on Freedom of Association & Assembly in Africa* 24 (2014).

protect associations from others who might seek to interfere with them.²⁵ On the other hand, States have the negative obligation to refrain from interference with the rights guaranteed. The State must not interfere with these rights unless the interference falls within the legitimate restrictions under international law.²⁶

A. Positive Obligation of the State

21. Rwanda has a positive obligation to create an enabling environment, in law and in practice, for the exercise of the right²⁷. Several factors contribute to the cultivation of this enabling environment, or failure of it.
22. **First**, the State must protect individuals from the acts of third parties.²⁸ The Human Rights Committee has stated that the positive obligations of State parties “will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights.”²⁹ The States’ failure to take appropriate measures or exercise due diligence to prevent, punish, investigate or redress the harm caused by non-state actors may constitute a violation of the right of freedom of association.³⁰ The State’s positive duty to prevent violations includes refraining from acquiescing to or enabling violations.³¹ When rights are interfered with, authorities have to provide adequate remedies to secure or restore the exercise of human rights.
23. Regional human rights bodies also recognize the positive obligations of the State to prevent third-party interference in the exercise of the right. The European Court of Human Rights recognizes a State’s duty to provide protection against third party individuals seeking to disrupt the right to freedom of association.³² In *Ouranio Toxo and Others v. Greece*, the European Court of Human Rights stressed that it is “incumbent upon public authorities to guarantee the proper functioning of an association or political party, even when they annoy or give offence to persons opposed to the lawful ideas or claims that they are seeking to

²⁵ *Report of the Special Rapporteur 2012*, *supra* note 21, para. 63; *see also Report of the Study Group on Freedom of Association & Assembly in Africa*, *supra* note 21, at para. 65.

²⁶ *Id.* and conform to article 22, para. 2. ICCPR and article 10, African Charter on Human and People’s Rights.

²⁷ *Report of the Special Rapporteur 2012*, *supra* note 21, at para.63; *see also Report of the Study Group on Freedom of Association & Assembly in Africa*, *supra* note 21, at 12; Inter-Am. Comm’n H.R., *Second Report on the Situation of Human Rights Defenders in the Americas*, para.157 OEA/Ser/L/V/II Doc. 66 (Dec. 31, 2011); *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 196, para.146 (Apr. 3, 2009) http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_esp.pdf (“Given the important role of human rights defenders in democratic societies, the free and full exercise of this right [to freedom of association] imposes upon the State the duty to create the legal and factual conditions for them to be able to freely perform their task.”).

²⁸ Human Rights Comm., *CCPR General Comment No. 31* (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant), CCPR/C/21/Rev.1/Add.13, ¶8 (May 26, 20014); *see also Ouranio Toxo and others v. Greece*, App. No. 74989/01, Eur. Ct. H.R., para.43 (Oct. 20, 2005).

²⁹ *General Comment No. 31*, *supra* note 28, at para.8.

³⁰ *Id.*

³¹ Maina Kiai (U.N. Special Rapporteur on Freedoms of Peaceful Assembly and of Association), *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, para.25, U.N. Doc. A/HRC/32/36 (May 31, 2016).

³² *Ouranio Toxo v. Greece*, *supra* note 28, at para.43; *see also Kawas Fernández v. Honduras*, *supra* note 28, para.145.

promote”³³ and held that States are obligated to take appropriate measures to prevent acts by third parties restricting the right to freedom of association, especially when the interference was foreseeable.³⁴

24. Authorities have to provide time and room for an association and its members to deal with the internal governance issues according to the organization’s bylaws and its internal dispute resolution organ³⁵. When being informed about an internal dispute, authorities should not act hastily. Also, when knowing that an election is disputed, authorities should and can foresee that its quick approval may endorse the interference by third parties as opposed to prevent it³⁶. In addition, State authorities have to provide an adequate remedy to deal with the third party interference. When Courts do not deal with the substance of the matter, such adequate remedy is not provided for.

25. **Second**, States have to create an enabling environment free from fear, threats, and intimidation to exercise the right to freedom of association³⁷. The *Declaration on Human Rights Defenders* says that States bear the primary responsibility to “create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice” and specifically to take measures to protect individuals from threats.³⁸ This responsibility includes the elimination of impunity.³⁹

26. Both the Inter-American Court of Human Rights and the European Court of Human Rights

³³ *Id.*, at para.37.

³⁴ *Ouranio Toxo v. Greece*, *supra* note 28, para.43. The European Court of Human Rights held that in cases of interference with freedom of association by acts of individuals, the competent authorities have an additional obligation to take effective investigative measures; it held that Greek authorities violated Article 11 of the European Convention on Human Rights when they failed to protect a political party from third party violence.

³⁵ According to the application, this internal dispute resolution organ declared the election of the new board illegitimate. *Munyandilikirwa*, Appl. No 023/2015, para.34.

³⁶ For the purposes of this analysis, the members of LIPRODHOR who held the election in violation of LIPRODHOR’s internal bylaws constitute the third party interferers.

³⁷ *Report of the Special Rapporteur 2012*, *supra* note 21, at para.63; *see also Valle-Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, para.91 (Nov. 27, 2008) http://www.corteidh.or.cr/docs/casos/articulos/seriec_192_ing.pdf (“To this end, the States must implement the necessary measures to ensure that those who denounce human rights violations can carry out their activities freely; to protect human rights defenders when they are threatened in order to avoid attacks on their life and personal integrity...”); *Kawas Fernández v. Honduras*, *supra* note 27, para.145 (“[T]he States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety...”); *Nogueira de Carvalho et al. v. Brazil*, Preliminary Objections and Merits, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 161, para. 77 (Nov. 28, 2006) http://www.corteidh.or.cr/docs/casos/articulos/seriec_161_ing.pdf (“The States have the duty to provide the resources necessary for human rights defenders to conduct their activities freely; to protect them when they are subject to threats and thus ward off any attempt against their life and safety...”).

³⁸ G.A. Res. 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Dec. 9, 1999) [referred to as *Declaration on Human Rights Defenders*], article 2 and 12; *see also Report of the Special Rapporteur 2012*, *supra* note 21, at para.8.

³⁹ *Declaration on Human Rights Defenders, Article 12 (2)*. *See also* U.N. Docs A/61/312, para 101.

have held that States have an obligation "to investigate violations of this freedom."⁴⁰ This is all the more true for human rights defenders. The Inter-American Court has found that "States have the obligation to take special measures to protect human rights defenders in keeping with their functions ... and investigate seriously and effectively the violations committed against them, in order to combat impunity."⁴¹

27. The Applicant alleges that he and the old board members continued to face threats. In fact, the Applicant (Mr. Munyandikirwa) was forced to flee the country. A failure to investigate such threats would constitute a violation of the State's positive obligation under the right to freedom of association. We therefore encourage the Court to clarify whether appropriate investigations and protective measures for these human rights defenders were undertaken by the Respondent (Government of Rwanda.)
28. **Finally**, States' obligation to create an enabling environment includes facilitating the creation of associations. The Rwandan Law 04/2012 governs the organization and functioning of NGOs. In his 2014 country report on Rwanda, the Special Rapporteur shared his concern that under this law legal personality is not granted automatically upon submission of documentation⁴². It is the view of the Special Rapporteur that a "notification procedure" rather than a "prior authorization procedure" should be in force⁴³, as echoed by the *Report of the Study Group on Freedom of Association and Assembly in Africa* published by the African Commission⁴⁴. All threats, at any time, towards associations to withhold registration renewals constitute a clear violation of the positive obligation under the right to freedom of association. In addition, the overall framework as created by the Law 04/2012 does not provide a truly enabling environment⁴⁵.

B. Negative Obligations of the State

29. In addition to a positive obligation, States have a negative obligation to refrain from interfering with the exercise of fundamental rights.⁴⁶ The African Commission on Human and Peoples' Rights has indeed explained that States have an obligation to refrain from interfering with an individual's capacity to form and join an association and from stacking

⁴⁰ *Lysias Fleury et al. v. Haiti*, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 236, (Nov. 23, 2011) at para.100 http://www.corteidh.or.cr/docs/casos/articulos/seriec_236_ing.pdf; see also *Garcia and Family v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 258, para.130 (Nov. 29, 2012) http://www.corteidh.or.cr/docs/casos/articulos/seriec_258_eng.pdf ("The obligation to investigate human rights violations is one of the positive measures that States must adopt in order to guarantee the rights recognized in the Convention."); see also *Ouranio Toxo v. Greece*, *supra* note 28, at para.43 ("In cases of interference with freedom of association by acts of individuals, the competent authorities have an additional obligation to take effective investigative measures.")

⁴¹ *Fleury v. Haiti*, *supra* note 40, at para.81.

⁴² Human Rights Council, *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mission to Rwanda*, U.N.Doc. A/HRC/26/29 Add.2., para 46.

⁴³ *Report of the Special Rapporteur 2012*, *supra* note 21, at para.58.

⁴⁴ *Report of the Study Group on Freedom of Association & Assembly in Africa*, *supra* note 21, at 31.

⁴⁵ Human Rights Council, *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mission to Rwanda*, U.N.Doc. A/HRC/26/29 Add.2., para 32-73.

⁴⁶ Art. 22, para 2 ICCPR and art 11 of the African Charter on Human and Peoples' rights.

associations with government representatives.⁴⁷ The *Resolution on the Right to Freedom of Association*, adopted by the African Commission on Human and Peoples' Rights, similarly reiterates that the State should not enact provisions that unduly interfere with an individual's freedom of association.⁴⁸ The African Commission's *Report of the Study Group on Freedom of Association and Assembly in Africa* outlines clear limitations on States' abilities to regulate both the formation of associations and to determine associations' aims and activities.⁴⁹

30. The same is well established under international human rights law and confirmed by international jurisdictions.⁵⁰ The Human Rights Committee established in several cases that the right to freedom of association encompasses not only the right to form an association but also guarantees the right of an association to carry out its statutory activities without interference.⁵¹ Both the Inter-American Court of Human Rights and the European Court of Human Rights have affirmed that freedom of association includes the right to associate free from pressure or interference in order to pursue a lawful objective⁵². The internal affairs of an association should equally be free from State interference⁵³. Effectively, authorities should not be entitled to condition decisions and activities of the association, reverse the election of board members, condition board members' decisions on the presence of a Government representative at the board meeting or request that an internal decision be

⁴⁷ *Civil Liberties Organisation (in respect of Bar Association) v. Nigeria*, Comm. No 101/93, Afr. Comm'n H.P.R., para.14–16 (Mar. 22, 1995); see also *International Pen and Others (on behalf of Saro-Wira) v. Nigeria*, Comm. 137/94, 139/94, 154/96 and 161/97, Afr. Comm'n H.P.R., para.107–10 (Oct. 31, 1998) (A violation of the right to freedom of association exists where the Government takes action against an association because it does not approve of its positions). On State harassment of individuals for positions it disapproves of violating the right to freedom of association, see, e.g., *Aminu v. Nigeria*, Comm. 205/97, Afr. Comm'n H.P.R., para.22–23 (May 11, 2000); *Huri-Laws v. Nigeria*, Comm. 225/98, Afr. Comm'n H.P.R., para.47–49 (Nov. 6, 2000); *Ouko v. Kenya*, Comm. 232/99, Afr. Comm'n H.P.R., para.28–30 (Nov. 6, 2000). See also *Report of the Special Rapporteur 2012*, supra note 21 at para.64 (Associations must be able to “express opinion, disseminate information, engage with the public and advocate before Governments and international bodies for human rights, for the preservation and development of a minority's culture or for changes in law, including changes in the Constitution.”);

⁴⁸ Afr. Comm'n H.P.R., *Resolution on the Right to Freedom of Association*, Res. 5(XI), para.1–2 (Mar. 9, 1992).

⁴⁹ *Report of the Study Group on Freedom of Association & Assembly in Africa*, supra note 21, at 31–41.

⁵⁰ See, e.g., By the Inter-American Court on Human Rights, specifically on the internal affairs of an association: *Baena Ricardo et al. v. Panama*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 72, para.156 (Feb. 2, 2001) http://www.corteidh.or.cr/docs/casos/articulos/seriec_72_ing.pdf; By the European Court on Human Rights: see generally: *Islam-Ittihad Assoc. and Others v. Azerbaijan*, Appl. No. 5548/05, Eur. Ct. H.R., para. 39–40; *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, Appl. No. 37083/03, Eur. Ct. H.R., para.52; *Fleury v. Haiti*, supra note 40, at para.100. See also *Report of the Special Rapporteur 2012*, supra note 21, at para.65; See OSCE, *Guidelines on Freedom of Association* [hereinafter *OSCE Guidelines on Freedom of Association*], at p. 62, para.171 (Jan. 1, 2015) <http://www.osce.org/odihr/132371>.

⁵¹ See, e.g., Human Rights Comm., *Viktor Korneenko v. Belarus*, Comm. No. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004, para.7.2 (Oct. 31, 2006) (“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.”); Human Rights Comm., *Boris Zvozkov et al. v. Belarus*, Comm. No. 1039/2001, U.N. Doc. CCPR/C/88/1039/2001, para.7.4 (Oct. 11, 2006); Human Rights Comm., *Aleksander Belyatsky et al. v. Belarus*, Comm. No. 1296/2004, U.N. Doc. CCPR/C/90/D/1296/2004, para.7.3 (July 24, 2007).

⁵² *Fleury v. Haiti*, supra note 40, at para.99; *Baena Ricardo et al. v. Panama*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 72, para.156 (Feb. 2, 2001) at para.156 http://www.corteidh.or.cr/docs/casos/articulos/seriec_72_ing.pdf; *Zhechev v. Bulgaria*, Appl. No. 57045/00, Eur. Ct. H.R., para.35–36.

⁵³ Specifically on the internal affairs of an association: *Baena Ricardo et al. v. Panama*, supra note 52.

withdrawn, or request an association to submit reports in advance of publication.⁵⁴

31. As this Court has previously elaborated, States are “allowed some measure of discretion [on] the freedom of association in the interest of collective security, morality, common interest and the rights and freedoms of others” in accordance with Article 27(2) of the Charter.⁵⁵ This Court has recognized that such limitations on the right must take the form of “law of general application;” and “be proportionate to the legitimate aim pursued.”⁵⁶ Furthermore, the African Commission’s explanatory note on freedoms of association and peaceful assembly affirms that restrictions to the right of association “(1) must be provided by law, (2) must serve a legitimate aim and (3) must be necessary and proportionate steps towards that aim within a democratic society.”⁵⁷
32. This approach corroborates the one articulated by the Human Rights Committee, the IACtHR and the ECtHR that “any restriction on the right to freedom of association must cumulatively meet the following conditions: (a) it must be provided by law; (b) may only be imposed for one of the purposes set out in paragraph 2 (of ICCPR Art. 22); and (c) must be “necessary in a democratic society” for achieving one of these purposes.”⁵⁸ In *Tanganyika Law Society et al v. Tanzania*, this Court has already taken into account jurisprudence of other regional courts in addition to that of the African Commission when assessing restrictions to the rights⁵⁹.
33. This brief will proceed to examine whether two types of interferences with the right to freedom of association are in conformity with international law, standards and principles. The first interference concerns the rapid official recognition of a new board by the authorities while being aware of procedural deficiencies and irrespective of the internal dispute resolution mechanisms provided for by the associational by-laws. The second interference concerns restrictions or preventions of meetings from taking place, taking into account the right of associations to carry out statutory activities.

⁵⁴ *Report of the Special Rapporteur* 2012, *supra* note 21, at para.65.

⁵⁵ *Tanganyika Law Society, Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. United Republic of Tanzania* Consolidated Applications Nos. 009/2011 and 011/2011, Decision, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], para.112 (June 14, 2013); African Charter on Human and Peoples' Rights, Art. 27(2).

⁵⁶ *Tanganyika Law Society, Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. United Republic of Tanzania* Consolidated Applications Nos. 009/2011 and 011/2011, *supra* note 55, at para.106.1, 112, & 113.

⁵⁷ Afr. Comm’n H.P.R., *Explanatory Note to the African Commission Human and Peoples’ Rights Guidelines on Freedom of Association as Pertaining to Civil Society & Guidelines on Peaceful Assembly* 4 (2016); see also Afr. Comm’n H.P.R., *Draft of African Commission Human and Peoples’ Rights Guidelines on Freedom of Association as Pertaining to Civil Society & Guidelines on Peaceful Assembly* 5 (2016).

⁵⁸ *Zvozkov v. Belarus*, *supra* note 51, at para.7.2; *Belyatsky v. Belarus*, *supra* note 51, at para.7.3; Human Rights Comm., *Kungurov v. Uzbekistan*, Comm. No. 1478/2006, U.N. Doc. CCPR/C/102/D/1478/2006, para.3.20 (Sept. 15, 2011). For the regional Courts see *Case of Escher et al. v. Brazil*, Preliminary Objects, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 200, para 173 (July 6, 2009) http://www.corteidh.or.cr/docs/casos/articulos/seriec_200_ing.pdf; *Koretsky v. Ukraine*, App. No. 40269/02, Eur. Ct. H.R. (2008), para.43, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-85679>; *Gorzelik v. Poland*, App. No. 44158/98, Eur. Ct. H.R. (2004), para.53, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61637>; *Sidiropoulos*, App. No. 26695/95, para.32;

⁵⁹ *Tanganyika Law Society v. Tanzania*, *supra* note 55, at para.106.1–106.5.

Condition 1: Restrictions Must be Prescribed by Law

34. Any interference with the right to freedom of association must be prescribed by law.⁶⁰ The African Court of Human and Peoples' Rights explained that such laws must be laws of general application.⁶¹ The African Commission in the *Study Report on Freedom of Association* has clarified that 'prescribed by law' means the law "must be accessible, and formulated in clear language of sufficient precision to enable persons to regulate their conduct accordingly."⁶² The Human Rights Committee in its *General Comment No. 34* clarifies that to meet the principle of legality, a law may not confer unfettered discretion and it must provide sufficient guidance to those charged with its execution to enable right holders to ascertain or foresee what sort of behavior is restricted and what is not⁶³. The European Court shares the same understanding: the law itself must be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and also foresee the likely consequences of any such breach.⁶⁴
35. Article 27 of the Rwandan Law 04/2012, explicitly stipulates that "any conflict that arises in the national non-government organization . . . shall be first resolved by the organ charged with conflict resolution."⁶⁵ Law 04/2012 provides no exception to that rule. Not respecting the internal conflict resolution mechanism is thus directly contravening the prescribed law.
36. If, before this Court, the argument were to be made that articles 29 and 30 of Law 04/2012 granting the Rwanda Governance Board supervisory authority over NGOs as the legal basis for the actions of the Board, it should be noted that the broad discretionary powers given by these provisions are not "precise, certain and foreseeable" as required under international law. Indeed as noted in the Special Rapporteur's country report, the broad provisions provide unjustifiable room for the Board to interfere.⁶⁶ Specifically, the Law 04/2012 is vague – and in fact silent – on when the Board possesses the authority for "conducting effective supervision" under Article 30. In *Islam-Ittihad Assoc. v. Azerbaijan*, the European Court of Human Rights ruled that a law providing the government supervisory powers to dissolve NGOs was not foreseeable because the law was worded in "general terms."⁶⁷ In addition and as a general principle⁶⁸ a vague provision (Article 30) does not override a precise and foreseeable provision such as in Article 27 of Law 04/2012.
37. The Special Rapporteur is not aware of any legal basis in Rwandan Law to halt human rights

⁶⁰ *Zvozkov v. Belarus*, *supra* note 51, at para.7.2; *Belyatsky v. Belarus*, *supra* note 51, at para.7.3; *Tanganyika Law Society et al v. Tanzania*, *supra* note 55, at para.106.1; *see also* American Convention on Human Rights, Art. 30.

⁶¹ *Tanganyika Law Society et al v. Tanzania*, *supra* note 55, at para.107.1, 112, & 113.

⁶² *Report of the Study Group on Freedom of Association & Assembly in Africa*, *supra* note 21, at 20.

⁶³ U.N. Human Rights Committee, *General Comment No. 34*, para. 25.

⁶⁴ ECtHR, *Hashman and Harrup v. United Kingdom*, Application no. 25594/94, 25 November 1999, para. 31; ECtHR, *Gillan and Quinton v. United Kingdom*, Application no. 4158/05, 12 January 2010, para. 76. *Islam-Ittihad Assoc. v. Azerbaijan*, *supra* note 50, at para.43; *see also Kungurov v. Uzbekistan*, *supra* note 58, at para.8.5–8.7. *See also* "the law concerned must be precise, certain and foreseeable." *OSCE Guidelines on Freedom of Association*, *supra* note 50, at p. 24, para.34.

⁶⁵ Law Governing the Organisation and the Functioning of National Non-Governmental Organisations (Law 04/2012), Art. 27 (Rwanda) [hereinafter Rwanda NGO Law].

⁶⁶ *Id.* at Art. 29–30; *Special Rapporteur Mission to Rwanda*, *supra* note 1, at para.61.

⁶⁷ *Islam-Ittihad Assoc. v. Azerbaijan*, *supra* note 50, at para.47–50.

⁶⁸ 'Generalia specialis non derogant': provisions of a general statute must yield to those of a special one.

meetings or internal organizational meetings. However, even if there were an applicable law, both instances of interference fail under other conditions.

Condition 2: Restrictions Must be in Furtherance of a Legitimate Aim

38. Any government interference with the right to freedom of association must be in furtherance of a legitimate aim. The general limitation clause, Article 27(2) of the African Charter, provides that “[t]he rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.”⁶⁹ Any restriction on the right to freedom of association must therefore be justified on one of these grounds. In assessing a similar limitation clause on the right to freedom of expression in the ICCPR, the Human Rights Committee has made clear that the State bears the burden to identify the particular interest it seeks to protect⁷⁰ and arguments need to be reasonable, objective and specific⁷¹. Indeed, the UN Human Rights Committee found that a State’s restriction on a right was impermissible solely on the basis of the State’s failure to provide evidence of a legitimate interest in limiting the right.⁷² In making this demonstration, the State must establish that the interference “is necessary to avert a real and not only hypothetical danger.”⁷³
39. It is hard to identify any potential corresponding legitimate aim for the described interferences with holding human rights meetings or respecting internal conflict resolution mechanisms. Such interferences do not further collective security, morality, or the common interest.

Condition 3: Restrictions Must be Proportionate to the Legitimate State Interest

40. As described by this Court, the proportionality test is one that “weighs the impact, nature and extent of the limitation against the legitimate State interest [in] serving a particular goal.”⁷⁴ Proportionality implies use by the national authorities of the least intrusive means to achieve the desired legitimate objective.⁷⁵ This Court has clarified that the proportionality analysis is based on an assessment of the “demands of general interest” that led to the interference and the nature of the interference itself.⁷⁶ The Human Rights Committee explained that for a restriction to be proportionate, the State “must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and

⁶⁹ African Charter, art. 27(2).

⁷⁰ Human Rights Comm., *General Comment No. 6 on Right to Life*, U.N. Doc. CCPR/C/GC/34 para.27 (2011); Human Rights Committee, *Vladimir Petrovich Laptsevich v. Belarus*, Comm. No. 780/1997, U.N. Doc. CCPR/C/68/D/780/1997, para.8.5 (2000).

⁷¹ U.N. Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, Communication No. 1119/2002, U.N. Doc. CCPR/C/84/D/1119/2002, ¶7.2 (2005); Committee, *Kim v. Republic of Korea*, Communication No. 574/1994, CCPR/C/64/D/574/1994, ¶12.5 (1998).

⁷² Human Rights Comm., *Sergey Kovalenko v. Belarus*, Comm. No. 1808/2008, U.N. Doc. CCPR/C/108/D/1808/2008, para.8.8 (2013).

⁷³ Human Rights Comm. *Lee v Republic of Korea*, Comm. No 1119/2002, UN Doc CCPR/C/84/D/1119/2002 para.7.2 (2005); *Belyatsky v. Belarus*, *supra* note 51, at para.7.3.

⁷⁴ *Tanganyika Law Society et al v. Tanzania*, *supra* note 55, at para.106.1–106.2

⁷⁵ *Lee v. Republic of Korea*, *supra* note 73, at para.7.2; *Vona v. Hungary*, App. No. 35943/10, Eur. Ct. H.R., para.71 (July 9, 2013).

⁷⁶ *Tanganyika Law Society et al v. Tanzania*, *supra* note 55, at para.106.4.

proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”⁷⁷

41. As confirmed by this Court in the *Tanganyika Law Society* case, the proportionality requirement incorporates the requirement that the restriction be necessary in a democratic society. This Court stated, “[j]urisprudence regarding the restrictions on the exercise of rights has developed the principle that, the restrictions must be necessary in a democratic society; they must be reasonably proportionate to the legitimate aim pursued.”⁷⁸ “[N]ecessary in a democratic society” also implies that the restriction must not harm democratic values of pluralism, broad-mindedness, and tolerance.⁷⁹ As affirmed by the Human Rights Committee, “the existence and functioning of a plurality of associations, including those which peacefully promote ideas not favorably received by the government or the majority of the population, is one of the foundations of a democratic society.”⁸⁰ The European Court of Human Rights and Inter-American Court of Human right have similarly underscored the importance of opposition voices for the proper functioning of democracy.⁸¹
42. When authorities rapidly and with no regard for internal rules approve a new board which is going to head the organization, this leads to *de facto* ousting of the ‘old board’ in an involuntary manner and contrary to organisational rules. The association as construed by the members, board and associational rules therefore does no longer exist; the ‘original’ association is *de facto* dissolved.
43. The Special Rapporteur argues that such hasty approval, especially against the background of earlier threats by authorities not to renew the association’s registration, had the effect of an involuntary dissolution of the association. Involuntary dissolution amounts to one of the most severe forms of restrictions on the right to freedom of association. When assessing the proportionality, the Human Rights Committee has highlighted the particularly “severe consequences” of an organization’s dissolution.⁸² The *Study Report on Freedom of Association* by the African Commission affirmed that dissolution may only be applied if there is “a clear and imminent danger.”⁸³ Dissolution should be strictly proportional to the

⁷⁷ Human Rights Comm., *General Comment No. 34 on the Freedoms of Opinion and Expression*, U.N. Doc. CCPR/C/GC/34, para.35 (2011). This interpretation of the proportionality limitation is applicable to the freedom of association. See SARAH JOSEPH & MELISSA CASTAN, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY* 645, 663 (3d ed. 2013).

⁷⁸ *Tanganyika Law Society et al v. Tanzania*, *supra* note 55, at para.106.1; *Report of the Study Group on Freedom of Association & Assembly in Africa*, *supra* note 21, at p. 14.

⁷⁹ *Special Rapporteur Report on Mission to Rwanda*, *supra* note 1, at para.86(a); see MANFRED NOWAK, *UN COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY, Article 22*, para.21, p. 394 (1993).

⁸⁰ *Lee v. Korea*, *supra* note 73, at para.7.2; *Belyatsky v. Belarus* *supra*, note 51, at para.7.3; *Korneenko v. Belarus*, *supra* note 51, at para.7.3.

⁸¹ *Manuel Cepeda Vargas v. Colombia*, Preliminary objections, merits, reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 213, para.173 (May 26, 2010) http://www.corteidh.or.cr/docs/casos/articulos/seriec_213_ing.pdf; *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, *supra* note 50, at para.53 (“The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.”).

⁸² *Belyatsky v. Belarus*, *supra* note 51, at para.7.5; *Korneenko v. Belarus*, *supra* note 51, at para.7.7.

⁸³ Afr. Comm’n H.P.R., *Report of the Study Group on Freedom of Association & Assembly in Africa*, *supra* note 21, at p. 24; see also *Interights and Others v Mauritania*, Comm. No. 242/2001, Afr. Comm’n H.P.R., para.80–84

legitimate aim pursued and used only when softer measures would be insufficient.⁸⁴ On multiple occasions, the European Court of Human Rights has underscored the extreme and severe nature of an involuntary dissolution in finding this form of interference to be disproportionate.⁸⁵ The Inter-American Commission finds that dissolution of an association may only result from a determination by a court, as opposed to an administrative body.⁸⁶

44. With regard to the interference with associations' activities, a total prevention of the activities from taking place is the most extreme measure. Even when authorities identify the existence of a threat to one of the legitimately protected aims, a total ban on the activity seldom constitutes the least intrusive means. Other less intrusive measures, such as discussing a change of a venue or time with the organizers might in certain circumstances be considered proportionate.

V. FREEDOM OF PEACEFUL ASSEMBLY (ACHPR ART. 11)

45. Article 11 of the African Charter provides that each individual possesses the right to assemble freely with others⁸⁷. Freedom of peaceful assembly is connected to the freedom of association,⁸⁸ and is similarly subject only to the limitations allowed under international human rights law.⁸⁹ In *Law Offices of Ghazi Suleiman v. Sudan*, the African Commission held that the Government violated both the rights to freedom of association and assembly by stopping activists from gathering together peacefully to discuss and address human rights issues.⁹⁰ When authorities prevent associations and individuals from holding a training session on the universal periodic review mechanism or an administrative and financial meeting, the right to freedom of peaceful assembly is at stake.. Any interference with such meetings or gatherings needs to meet the three-pronged test as described above.

VI. CONCLUSION

46. The Special Rapporteur notes that the interferences of rapidly and contrary to internal associational rules recognizing a new board and of preventing associational activities from taking place, do not meet the strict standards under international law; they are not

(June 4, 2004); *OSCE Guidelines on Freedom of Association*, *supra* note 50, at p. 25 (“A restriction shall always be narrowly construed and applied and shall never completely extinguish the right nor encroach on its essence. In particular, any prohibition or dissolution of an association shall always be a measure of last resort, such as when an association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law, and shall never be used to address minor infractions.”).

⁸⁴ *Report of the Special Rapporteur 2012*, *supra* note 21, at para.75.

⁸⁵ *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, *supra* note 50, at para.82; *United Communist Party of Turkey v. Turkey*, Appl. No. 19392/92, Eur. Ct. H.R., para.46, 54, & 61 (Jan. 30, 1998).

⁸⁶ Inter-Am. Comm'n H.R., *Second Report on the Situation of Human Rights Defenders*, *supra* note 27, at para.168; *see also Report of the Special Rapporteur 2012*, *supra* note 21, at para.75–76.

⁸⁷ African Charter, art. 11.

⁸⁸ *See. e.g.*, Human Rights Council Res. 21/16, *The rights of freedom of peaceful assembly and of association*, 21st Sess., U.N. Doc. A/HRC/RES/21/16 (Oct. 11, 2012); European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 11; G.A. Res. 53/144, *Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, arts. 5, 7 & 8 (Dec. 9, 1998).

⁸⁹ African Charter, art. 27(2).

⁹⁰ *Law Offices of Ghazi Suleiman v. Sudan*, Comm. 228/99, Afr. Comm'n H.P.R, para.56 (May 29, 2003).

provided for by law, do not serve a legitimate aim and are disproportionate. Such actions are contrary to the rights to freedom of peaceful assembly and of association, as guaranteed by articles 10 and 11 of the African Charter on Human and People's Rights and articles 21 and 22 of the International Covenant on Civil and Political Rights. In addition, to conform with the positive obligations under international law, State authorities have to protect individuals against the interference with their rights by third parties, to provide an enabling environment for the exercise of the rights at issue, and investigate threats against them.

47. The Special Rapporteur invites the honorable Court to assess the obligations of the Republic of Rwanda, both positive and negative, in view of ensuring the effective protection and realization of the rights under articles 10 and 11 of the African Charter on Human and People's Rights. International law, standards and principles, as duly embraced by this Court at several occasions, provide systematic criteria, which warrant application in this particular case. Given the critical role of the Court on the continent, the meaning of this decision will reach beyond this individual case and contribute to foster the protection of the relevant rights in all the countries that are party to the African Charter on Human and Peoples' Rights.