

FREEDOM OF ASSOCIATION

A Checklist for Law Reform Advocates



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INTRODUCTION

This checklist aims to help legislators, policymakers, and legal reform advocates ensure their country's laws comply with the African Commission on Human and Peoples' Rights' Guidelines on Freedom of Association and Assembly in Africa. The checklist highlights key issues to help drafters confirm that the provisions within the relevant laws meet the standards laid out in the Guidelines and identify the provisions that may not fully protect the rights to the freedom of association and assembly.

Kindly note that within the context of this survey, the term "organizer" means the person who convenes the assembly, which may include demonstrations, protests, or other public gatherings. The "organizer" usually handles logistics related to the event.

How to Use the Checklist

The "→" sign next to the response options indicates that your country's legal framework may not comply with the Guidelines. This sign prompts readers to look at the next column for a "Suggested Action" to bring the country's laws, policies, or practices more in line with international and regional standards. The column under "Notes on Actions Taken" contains fillable text fields, where readers can type notes.



GENERAL PRINCIPLES

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Has your country signed any international and regional treaties that protect the freedom of association?	Please select all that apply: International Covenant on Civil and Political Rights → African Charter on Human and Peoples' Rights →	Ensure that the laws governing the freedom of association comply with requirements to protect the freedom of association under the ICCPR and ACHPR.	
2. Does your country's Constitution protect right to the freedom of association?	Yes. No. →	Ensure that the Constitution explicitly recognizes and protects the right to the freedom of association.	
3. Is there a law or policy in place that explicitly governs non-profit organizations? <i>Laws or policies governing organizations may include but are not limited to NGO regulations, directives, and policies.</i>	Yes. No. →	Ensure that there is a law or policy that governs organizations in line with the Guidelines.	



GENERAL PRINCIPLES (CON'T)

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
<p>4. If no laws or policies explicitly govern organizations, are there any broader laws that regulate organizations?</p> <p><i>*For example, a section of the Civil Code may lay out guidelines for the regulation of organizations.</i></p>	<p>Yes. →</p> <p>No.</p>	<p>Review any other laws and policies using this Checklist to ensure that the provisions governing organizations is in line with the Guidelines.</p>	
<p>5. Must all organizations obtain formal legal status?</p> <p><i>For example, is an organization such as a voluntary book club or recreational sports league permitted to operate without filing for registration?</i></p>	<p>Yes. →</p> <p>No, some organizations must obtain formal legal status. →</p> <p>No.</p>	<p>Ensure that the relevant law or policy does not require organizations to obtain formal legal status to operate.</p>	
<p>6. Will an informal organization be punished if it does not register?</p>	<p>Yes. →</p> <p>No.</p>	<p>Ensure that the relevant law or policy does not punish informal or non-registered organizations solely due to their choice not to register.</p>	



ESTABLISHMENT/FORMATION: DOMESTIC ASSOCIATIONS

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. How many people are required to establish an organization?	At least 2 people More than 2 people →	Ensure that the relevant law or policy requires only a minimum of 2 people to establish an organization.	
2. Can any person establish an organization? <i>“Any person” includes citizens, non-citizens/legal residents, children, refugees or asylum-seekers, individuals with a history of criminal convictions, etc.</i>	Yes. No. →	Ensure that the relevant law or policy allows “any person” to establish an organization.	
3. Do the relevant laws clearly name the regulating body that is responsible for registering an organization?	Yes. No. →	Ensure the relevant law or policy clearly names the government body that is responsible for regulating organizations.	
4. Can an organization register by simply notifying the regulating body of its intention to operate?	Yes. No, there are additional steps to registering an association. →	Ensure that relevant law or policy presumes that an organization is registered once the organization has submitted its registration materials.	



ESTABLISHMENT/FORMATION: DOMESTIC ASSOCIATIONS

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
5. Is there a fee to register an organization?	Yes. → No.	Review the registration fee to ensure that it is not burdensome for an organization. For example, consider if a smaller organization can afford the fee without expending a large proportion of its funds to register.	
6. May the registering authority refuse to register an organization?	Yes. → No.	Review the relevant law or policy to ensure that the grounds for refusing to register an organization are clearly stated, non-discriminatory, and limit the discretion of the regulating authority. Failure to abide by the registration process laid out in law is a common permissible ground for refusing to register an organization. For example, ensure that the same grounds for refusing registration apply to all organizations, regardless of an organization's objectives or activities.	
7. When the regulating authority refuses to register an organization, must the authority provide a clear written explanation of the grounds for his or her decision?	Yes. No. →	Ensure that the relevant law or policy requires the regulating authority to provide the applicant with a clear explanation of the basis for refusing to register the organization in writing.	



ESTABLISHMENT/FORMATION: DOMESTIC ASSOCIATIONS

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
8. Do authorities have to respond to a registration application within a set time limit?	Yes. No. →	Ensure that the relevant law or policy requires the regulating authority to respond to the registration application within a reasonable time period. For example, the authority could be required to make a decision on the application within 30 days.	
9. Are organizations required to renew their registrations?	Yes. → No.	Ensure that the relevant law or policy does not automatically require renewal of registration. For example, limit the requirement to renew registration to situations where an organization has materially changed, and require the regulating authority to issue notification to the organization to re-register, along with a sufficient transitional period for the re-registration process.	



ESTABLISHMENT/FORMATION: FOREIGN OR INTERNATIONAL ASSOCIATIONS

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Are foreign and international organizations permitted to establish branch offices in your country?	Yes. No. →	Ensure the relevant law or policy allows foreign and international organizations to establish branch offices.	
2. Are foreign and international organizations subject to the same registration process and requirements as domestic organizations?	Yes. No. →	Ensure that the relevant law or policy allows foreign and international organizations to follow the same or largely the same registration process and registration requirements as domestic organizations. For example, ensure that the law or policy does not require foreign or international organizations to submit to restrictions on their activities that are not applied to domestic organizations.	



PURPOSES AND ACTIVITIES

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Can an organization pursue any lawful objective and activity?	Yes. No. →	<p>Review the relevant law or policy to ensure that the restrictions on an organization's objectives and activities are limited and subject to international human rights standards.</p> <p>For example, the law could presume the lawfulness of an organization's objectives and activities unless proven otherwise. The law might restrict objectives and activities that promote propaganda for war, incitement of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, or otherwise undermines democratic values.</p>	
2. Can organizations engage freely in activities related to political, social, and cultural issues, democracy and governance, and the formulation of law and policy?	Yes. No. →	<p>Ensure that the relevant law or policy permits organizations to freely engage in all types of activities, including those related to political, social, and cultural issues, democracy and governance, and the formulation of law and policy.</p>	
3. Is the Government bound by the law to protect organizations from threats, harassment, interference, intimidation and reprisals by third parties?	Yes. No. →	<p>Ensure that the relevant law or policy requires the Government (such as through law enforcement) to actively respond to and protect organizations from threats, harassment, interference, intimidation, and reprisals by third parties.</p>	



GOVERNMENT OVERSIGHT

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Is the government body that oversees organizations clearly specified in the relevant law or policy?	Yes. → No. →	Ensure that the government body overseeing organizations is clearly named. Ensure that the government body's oversight powers are clearly delimited in the law or policy. See following questions for more guidance.	
2. Are organizations required to submit information such as minutes of meetings, lists of members, or members' personal information to authorities?	Yes. → No.	Ensure that the relevant law or policy does not require organizations to submit such information to the authorities unless the information is necessary in a democratic society to promote 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. Note: "Necessary" means that the measure taken is the least restrictive means.	
3. Does the law permit (or require) government agents or officials to attend organization meetings?	Yes. → No.	Ensure that the relevant law or policy states that government agents or officials may only attend organization meetings when they are invited by the organization itself.	



GOVERNMENT OVERSIGHT

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
4. Can the government oversight body conduct inspections of an organization to verify if the organization is complying with its own internal governance rules?	Yes. → No.	Ensure that the relevant law or policy does not grant the government oversight body the power to inspect an organization to ensure compliance with the organization's own internal governance rules.	
5. Is the government oversight body required to obtain a court order prior to conducting an inspection of an organization?	Yes. No. →	Ensure that the relevant law or policy requires the oversight body to obtain a court order that includes clear legal and factual grounds justifying the need for an inspection prior to conducting an inspection of an organization.	
6. Does the law limit investigations of organizations to instances where there is an allegation of a serious legal violation?	Yes. No. →	Ensure that the relevant law or policy limits investigations of organizations to instances where there are well-founded evidence-based allegations of serious legal violations.	
7. Are organizations guaranteed the right to contest an unjustified inspection to an independent court?	Yes. No. →	Ensure that the relevant law or policy explicitly protects an organization's right to contest an inspection before an independent court.	



INTERNAL GOVERNANCE

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Are organizations permitted to determine their internal management structures and rules?	Yes. No. →	Ensure that organizations may determine their internal management structures and rules. For example, encourage organizations to draft their own codes of conduct.	
2. Are organizations required to obtain permission from authorities before changing their internal management structures and rules?	Yes. → No.	Ensure that organizations are not required to obtain permission from authorities before revising their internal management structures or rules.	
3. If permission from the authorities is required to change internal management structures or rules, under the law, will an organization be punished for failure to obtain permission before changing its internal management structures and rules?	Yes. → No.	Ensure that organizations are not punished for revising their internal management structures or rules without permission from authorities.	



INTERNAL GOVERNANCE

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
<p>4. Is there a self-regulatory body that has oversight over organizations?</p> <p><i>A self-regulatory body is a body typically composed of representatives of associations established to oversee associations. Self-regulatory bodies might engage in activities such as drafting and implementing a Code of Conduct or setting other standards of operations for associations.</i></p>	<p>Yes.</p> <p>No. →</p>	<p>Enable and support organizations to create and run a self-regulatory body, if they so choose.</p>	
<p>5. Does the law require all organizations to hold physical (i.e. in-person) meetings?</p>	<p>Yes. →</p> <p>No.</p>	<p>Ensure that the law does not require organizations to hold physical meetings where it is possible to meet in an alternative format.</p>	



FINANCING

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
<p>1. May organizations freely seek, receive and use funds for their non-profit aims?</p>	<p>Yes. No. →</p>	<p>Ensure that the relevant law or policy does not place barriers on an organization's ability to seek, receive, and use funds in support of their aims. See the following questions in this section for guidance on the types of restrictions that may violate the ACHPR Guidelines.</p>	
<p>2. Must organizations obtain prior approval from the regulating authority before seeking and receiving funds?</p>	<p>Yes. → No.</p>	<p>Ensure that the relevant law or policy does not require organizations to obtain approval from the regulating authority before seeking and receiving funds.</p>	
<p>3. Does the law permit organizations to seek and receive funds from foreign sources?</p>	<p>Yes. No. →</p>	<p>Ensure that organizations are permitted to seek and receive funds from foreign sources.</p> <p>The law or policy could require organizations to notify the home government of receipt of funding from foreign sources, but not require organizations to obtain permission from the government to receive such funding.</p>	
<p>4. May organizations seek and receive funds from private sources, such as for-profit corporations?</p>	<p>Yes. No. →</p>	<p>Ensure the relevant law or policy allows organizations to seek funds from any source, including private sources.</p>	



FINANCING

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
5. May organizations conduct economic activities that support the non-profit aims of the organization?	Yes. No. →	<p>Ensure the relevant law or policy allows organizations to conduct economic activities that support their non-profit aims.</p> <p>For example, organizations might be permitted to sell merchandise if the profits from the merchandise are wholly put towards their non-profit activities.</p>	
6. Are organizations subject to the same laws and policies governing money laundering, fraud, corruption, trafficking, and other offenses as individuals and for-profit enterprises?	Yes. No. →	<p>Ensure that non-profit organizations are subject to the same laws governing issues of money laundering, fraud, corruption, trafficking, and other offenses, ensure that the rules and punishments for violations as those generally governing individuals and for-profit enterprises.</p> <p>Ensure that the heightened scrutiny applied to higher risk organizations such as banks and security firms are not broadly applied to non-profit organizations.</p>	



PUBLIC SUPPORT

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Does the Government provide tax benefits or other forms of public support to non-profit associations?	Yes. No. →	Consider offering tax benefits to non-profit organizations, such as tax exemptions on the income of non-profit organizations.	
2. If tax benefits and public support are available, are the criteria and process to obtain the benefits simply and clearly stated in the relevant law?	Yes. No. →	Ensure that the criteria and process for organizations to obtain tax benefits and public support is clearly stated.	
3. Are tax benefits and public support available to all types of organizations, regardless of their purposes and membership?	Yes. No. →	Ensure that the criteria for obtaining tax benefits and public support are non-discriminatory.	
4. If an organization receives public funds or public support, does it have additional reporting requirements (i.e. reporting obligations beyond what is required for an organization that does not receive public benefits)?	Yes. → No.	Review reporting obligations for organizations receiving public funds or public support to ensure that any additional reporting obligations tied to receiving the funds are not overburdensome. For example, if the purpose of the reporting is to ensure that organizations receiving public funds or public support meet the required criteria, consider whether the normal reporting process (such as an annual report) would suffice to confirm these details.	



REPORTING

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Does an organization have to submit a report to the regulating authority more than once per year?	Yes. → No.	Ensure that the law only requires the submission of an annual report.	
2. What information is required in a report?	Please check all that apply: Basic description of organization projects and activities Financial statement and balance sheet prepared in accordance with standard accounting principles Other →	The purpose of reports should be to ensure the financial propriety of organizations. Thus, information outside of a basic description and accounting of projects and activities (such as a detailed list of funders, personal information of beneficiaries if any) is inappropriate, and should not be required within a report.	
3. Is the information that an organization must submit comparable to the information that other entities (such as businesses) are required to submit?	Yes. No. →	Review the relevant law or policy and consider whether organizations are asked to submit more information or more details in their annual report than their private counterparts, such as businesses.	
4. Are smaller organizations permitted to submit a simplified version of the required report?	Yes. No. →	Consider allowing smaller organizations to submit a basic description of projects and activities and statement of funds expended for activities, rather than a full report.	



FEDERATIONS AND COOPERATION

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. May a group of domestic organizations establish and register a federation or coalition?	Yes. No. →	Ensure that organizations may form and register federations.	
2. May a group of domestic organizations informally establish a federation? <i>For example, may a group of domestic organizations form an informal alliance that meets regularly and co-sponsors activities, but does not have legal personality?</i>	Yes. No. →	Allow organizations to create informal federations.	
3. May a domestic organization join an international federation? <i>An international federation could include an alliance of NGOs established in different countries.</i>	Yes. No. →	Ensure that the relevant law or policy allows any organization to join any federation, whether domestic, regional, or international.	
4. Are all organizations required to join a particular federation?	Yes. → No.	Ensure that the relevant law or policy does not compel organizations to join any federations.	



SANCTIONS AND REMEDIES

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Are organizations subject to criminal sanctions or monetary penalties for violations of the laws or policies governing organizations?	Yes. → No.	Ensure that criminal sanctions are contained in the Penal Code or comparable law. Consider reviewing monetary penalties to ensure that they are not overburdensome.	
2. Is it clear from the law what sorts of actions will result in punishment?	Yes. No. →	Review the law or policy to ensure that it is clear which violations will lead to which punishments.	
3. Does the law explicitly require sanctions applied to be proportional to the violation? <i>"Proportional" means that the sanction is similar in severity or gravity as the misconduct in question.</i>	Yes. No. →	Ensure that sanctions in the relevant law or policy are proportional to the misconduct in question.	
4. Can an organization be penalized for an offense committed by a particular member of the organization, even though the member acted independently? <i>"Independently" means without going through the official decision-making structure of your organization.</i>	Yes. → No.	Ensure that liability is not imputed from individuals to organizations such that offenses committed by particular members of an organization shall not be taken as grounds to penalize the organization itself, where the official decision-making structure of the organization was not employed to pursue those offenses..	



SANCTIONS AND REMEDIES

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
5. Can individual members of an organization be penalized for actions taken by an organization?	Yes. → No.	Ensure that individual members are not liable for actions undertaken by the organization as a legal entity.	
6. Can the regulating authority only suspend or dissolve an organization when there has been a serious violation, and as a last resort?	Yes. No. →	Consider amending the law so that the regulating authority may only suspend or dissolve an organization if there has been a serious violation and where the suspension/dissolution is a last resort (i.e. all other means of addressing the issue have been attempted).	
7. Does the regulating authority have to submit to a full judicial hearing to suspend or dissolve an organization?	Yes. No. →	Consider requiring the regulating authority to submit to a full judicial hearing to suspend or dissolve an organization.	
8. Can an organization appeal a decision by the regulating authority to an impartial and independently established court?	Yes. No. →	Ensure that an organization may appeal a decision by the regulating authority to an impartial and independently established court.	