INTERNATIONAL HUMAN RIGHTS CLINIC
FACULTY OF LAW, UNIVERSITY OF TORONTO

To: **Renee Redman**
Cc: **Diana Juricevic**
From: **Aneesa Walji**
Date: **Friday 16 October 2009**

Memorandum on Freedom of Association

Introduction

You have asked the International Human Rights Program ("IHRP") to research "freedom of association" standards to determine whether the events surrounding the election in Iran on 12 June 2009 were in accordance with Iranian and International law.

Based on evidence provided by the Iran Human Rights Documentation Center ("IHRDC"), it is the understanding of the IHRP that many citizens who are members of reformist parties have been "semi-systematically" targeted. Leading party officials have experienced raids on their personal homes by state forces and subsequent arrests. In fact, many continue to be detained.[1] This memorandum explores the applicability of the right to freedom of association to the situation in Iran, with special attention to arbitrary arrests and protests surrounding the Iranian election. A summary of international law on freedom of association is also provided which informs legal arguments to be submitted by the IHRDC.

[1] Facts provided by IHRDC.

Legal Protections of Freedom of Association

INTERNATIONAL LAW

Freedom of association is formally and explicitly protected in international law. It is enshrined in many treaties including article 20(1) of the *Universal Declaration of Human Rights*, article 22 of the *International Covenant on Civil and Political Rights* ("*ICCPR*"), article 8 of the *International Covenant on Economic, Social and Cultural Rights*, article 7(c) of *Covenant on the Elimination of All Form of Discrimination Against Women* and article 15 of the *Convention on the Rights of the Child*. In addition to these international treaties, the right is also found in regional treaties such as article 10 of the *African [Banjul] Charter on Human and Peoples Rights* ("*ACHPR*") and article 28 of the *Arab Charter on Human Rights*. The widespread and formal protection of this right demonstrates its acceptance and importance in international law.

While the right is most commonly found with language referencing trade unions, it has strong relevance outside the realm of worker rights.[2] Eminent scholar Manfred Nowak expresses this simply: "freedom of trade unions represents only a sub-case of freedom of association."[3] The *Declaration of Principles and Criteria Relating to the Freedom of Association in the Arab Countries* articulates the general and broad relevance of this right. It affirms that freedom of association is important to "achieving sustainable human development, promoting citizen interest in public issues...and enhancing democracy, democratic culture and strengthening civil society."[4]

---

[2] See for example the reference to trade unions in *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Article 22(1). There are also many international labour treaties protecting freedom of association exclusively in a labour context. See for example: *The Freedom of Association and Protection of the Right to Organise Convention* (C87), *The Right to Organise and Collective Bargaining Convention* (C98), *The Rights and Association and Combination of Agricultural Workers* (C11) and *The Worker's Representatives Convention* (C135).

[3] Manfred Nowak, Chapter on Article 22 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at 13.

[4] Unable to locate original document. Quoted retrieved from "Freedom of Association" *Association for Women Rights in Development (AWID)* (2 December 2008), online: AWID <http://www.awid.org/eng/Issues-and-Analysis/Library/Freedom-of-Association>. The same quote is found in "General Introduction" *Euro-Mediterranean Human Rights Network (EMHRN)*, online: EMHRN <http://www.euromedrights.net/480>.

Since Iran is a State Party to the *ICCPR*, a key treaty protecting freedom of association with a significant amount of affiliated case law and literature, the remainder of this memorandum will explore the international law around freedom of association with a special focus on the *ICCPR*.[5] However, there is a lack of relevant jurisprudence from the United Nations ("UN") Human Rights Committee. With this in mind, Human Rights Committee case law will be discussed as much as possible but when required, case law from the European Court of Human Rights ("ECHR") will also be employed. The language protecting freedom of association in the *European Convention for the Protection of Human Rights and Fundamental Freedoms* is very similar to that found in the *ICCPR* so although the ECHR applies a different treaty than the UN Human Rights Committee, its case law is nonetheless relevant and applicable.[6] For easy reference, Article 22 of the *ICCPR* is provided in full below:

> 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 (her) 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 (ordre public), 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 Organization 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.

---

[5] United Nations Treaty Collection, *Chapter IV: Human Rights: International Covenant on Civil and Political Rights*, online: < http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en>. Iran is a State Party to the *ICCPR* and it has not made any reservations. The fact that Iran has not signed the *Optional Protocol* to the *ICCPR* does not diminish the relevance and importance of its existing human rights obligations under the *ICCPR*.

[6] *The European Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 11. "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 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."

IRANIAN LAW

Freedom of association has long been a norm in Iranian society, even before the right received formal protection in international law. There is a history of trade unions in Iran, well before the founding of constitution.[7] Article 21 of the *Supplement to the Constitution of 1906* provides that, "Associations and assemblies that do not generate religious or worldly disturbance are free throughout the land."[8]

The existing *Constitution of the Islamic Republic of Iran* ("*Constitution*") provides continued protection to freedom of association. Article 26 reads as follows:

> The formation of parties, societies, political or professional associations, as well as religious societies, whether Islamic or pertaining to one of the recognized religious minorities, is permitted....No one may be prevented from participating in the aforementioned groups, or be compelled to participate in them.[9]

Iranian legislation such as the *Ahzab (Political Parties) Activities Act* may be relevant to a discussion on the right to freedom of association in Iran.[10] However, it has not been possible to directly identify or retrieve any domestic legislation on the right to freedom of association. Relevant legislation may very well exist in an un-translated form that is inaccessible. In any case, given the lack of familiarity and available information on the domestic legal system in Iran, the remainder of this discussion focuses in large part on Iran's international legal obligations as they relate to freedom of association under the *ICCPR*.

---

[7] Adineh Abghari, *Introduction to the Iranian Legal System and the Protection of Human Rights in Iran* (London: British Institute of International and Comparative Law, 2008) at 139.
[8] Quote retrieved from Adineh Abghari, Introduction to the Iranian Legal System and the Protection of Human Rights in Iran (London: British Institute of International and Comparative Law, 2008) at 139.
[9] *The Constitution of the Islamic Republic of Iran*, Article 26, online: Iran Human Rights Documentation Center <http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>. Note that article 26 also permits restrictions on the right to freedom of association.
[10] Discussed briefly in Adineh Abghari, *Introduction to the Iranian Legal System and the Protection of Human Rights in Iran* (London: British Institute of International and Comparative Law, 2008) at 139. The Iranian penal code may also be relevant. Sections of it are available in English but given the limited facts available, it is difficult to ground any sort of analysis in it.

Defining Freedom of Association

Unlike other rights under the *ICCPR*, the Human Rights Committee has not issued a general comment on freedom of association and this makes defining the right difficult. However, there are a few key components that can be readily identified. Article 22(1) of the *ICCPR* explicitly provides for a right to both *create* and *join* associations. Human Rights Committee views go further to suggest that it includes the right to *internally regulate* the affairs of an association and *choose which organizations* one joins.[11]

In discussing the content of the right, one must also ask when it applies. In other words, what constitutes an association? Both international and domestic case law from different jurisdictions suggest that the right applies to organizations with some sort of minimal structure, as opposed to merely a group of citizens gathering informally. For instance, in the case of *Ouranio Toxo and Others v. Greece* at the ECHR, two out of three of the applicants were formal members of a political party's secretariat,[12] which served as a factual basis for an argument that freedom of association was violated. Due to a group of demonstrators that "ransacked" their headquarters in combination with the "inactivity of the police,"[13] a violation of the right to freedom of association was found. Similarly, in Canadian jurisprudence, courts have dealt with freedom of association predominantly as it relates to the rights of trade unions, which meet the requirement of having a formal minimal structure.[14]

Like international law, the *Constitution* of Iran does not provide a clear or comprehensive definition of freedom of association. It should be noted however that in providing for freedom of association, article 26 of the *Constitution* makes explicit reference to the

---

[11] Concerning the issue of internal regulation, see for example *Hasan and Chaush v. Bulgaria* (26 October 2000), European Court of Human Rights, Application no. 30985/96. Concerning the issue of freedom *not* to associate, see for example *Le Compte, Van Leuven and De Meyere v. Belgium* (23 June 1981), European Court of Human Rights, Application no. 6878/75; 7238/75

[12] *Ouranio Toxo and Others v. Greece* (20 October 2005), European Court of Human Rights, Application no. 74989/01 at para. 9.

[13] *Ouranio Toxo and Others v. Greece* (20 October 2005), European Court of Human Rights, Application no. 74989/01 at para. 31.

[14] See for example *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27.

ability to *form* associations, *participate in* associations and *choose which associations* one joins. There may be Iranian legislation further defining freedom of association but as mentioned earlier, we have not been able to identify any such legislation.

A RIGHT TO PROTEST

Within the right to freedom of association, there is a right to "perform activities to protect the interests of…members."[15] Whether this includes the right to protest is debatable.[16] Thus far, the issue of protest has largely arisen in the case law in the context of trade union strikes, perhaps partially explaining the contentious nature of the debate given the opposing employee and employer interests at stake.

The few instances in which the Human Rights Committee has taken to addressing this issue, its stance has been contradictory or ambiguous. In the case of *Alberta Union v. Canada*, a right to strike was not found. In that case, provincial legislation prohibited members of the Alberta Union of Provincial Employees from striking. The Human Rights Committee concluded that the right to strike was not guaranteed by article 22 of the *ICCPR* and that therefore, the communication was inadmissible.[17] More recently however, a 2004 concluding comment by the Human Rights Committee criticized restrictions on the right to strike and thereby suggested that the right to strike is protected to at least some extent by article 22.[18]

---

[15] Manfred Nowak, Chapter on Article 22 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 15.

[16] Manfred Nowak, Chapter on Article 22 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at paras. 15-19.

[17] *J. B. et al. v. Canada*, Communication No. 118/1982, U.N. Doc. Supp. No. 40 (A/41/40) at 151 (1986). For a discussion of the reasons of the majority as compared to the individual opinion and an explanation in support of the individual opinion, see Manfred Nowak, Chapter on Article 22 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at paras. 17-18.

[18] UN Human Rights Committee, *Concluding observations of the Human Rights Committee: Lithuania*, 4 May 2004, CCPR/CO/80/LTU, online: <http://www.universalhumanrightsindex.org/documents/825/446/document/en/text.html> at para. 18. "The Committee is concerned that the new Labour Code is too restrictive in providing, inter alia, for the prohibition of strikes in services that cannot be considered as essential and requiring a two-thirds majority to call a strike, which may amount to a violation of article 22. The State party should make the necessary amendments to the Labour Code to ensure the protection of the rights guaranteed under article 22 of the Covenant."

In other instances, the Human Rights Committee has remained ambiguous on the issue. For example, in *Sohn v. Republic of Korea*, a trade union leader was convicted and sentenced to imprisonment for his support in a strike. As a result, a violation of article 19 on freedom of expression was found but notably, the Human Rights Committee did not address the question of whether the right to strike was protected by article 22.[19]

Despite the ambiguity, I believe that a right to protest is protected by article 22. A number of factors support this conclusion. First, the most recent indication from the Human Rights Committee supports this conclusion.[20] Second, Manfred Nowak explains that case law from the International Labour Organization's ("ILO") Committee on Freedom of Association as well as case law from the ECHR supports the right to strike.[21] International law on freedom of association should, as much as possible, strive for consistency, suggesting that the *ICCPR* should then also protect the right to protest. Finally, freedom of association cannot be limited merely to the right to form an association. In order for freedom of association to have real meaning, *the right to engage in association activities that support the interests of members* must be protected.[22]

Despite these arguments in support of the right to protest under article 22, the inconclusive nature of the right to protest and the fact that freedom of association tends to only apply to formally organized groupings suggest that it would be wise to avoid grounding any discussion of mass protests in Iran under the right to freedom of association. The existing case law supports this opinion. Most of the case law dealing with freedom of association does not pertain to factual circumstances where general political demonstrations have occurred. Rather, most of it includes circumstances relating to trade unions, mandatory membership in associations, state registration of

---

[19] *Jong-Kyu Sohn v. Republic of Korea*, Communication No. 518/1992, U.N. Doc. CCPR/C/54/D/518/1992 (1995).
[20] UN Human Rights Committee, *Concluding observations of the Human Rights Committee: Lithuania*, 4 May 2004, CCPR/CO/80/LTU, online: <http://www.universalhumanrightsindex.org/documents/825/446/document/en/text.html> at para. 18.
[21] Manfred Nowak, Chapter on Article 22 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 18.
[22] Manfred Nowak, Chapter on Article 22 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 19.

associations and legally mandated dissolution of associations. Therefore, the right to freedom of *assembly* is more applicable when it comes to a discussion about election protests.[23]

It should be noted however that there may be some room to argue that general protests fall under the right to freedom of association. Even if the demonstrations were ad hoc political demonstrations and those participating in them were not all formal members of a political party, if some association played a key role in organizing the demonstrations, freedom of association could be implicated. What is unclear in the law is whether demonstrations would need to be engaged in by members of an association to fall under the protection of freedom of association or whether demonstrations would only need to be *organized* by members of an association. In a concluding comment on Uganda, the Human Rights Committee stated that they were "concerned that peaceful demonstrations *organized by* opposition political parties have been forcibly dispersed by the police…The State party should ensure the full enjoyment of the *right to freedom of association*, in particular in its political dimension."[24]

NEGATIVE AND POSITIVE STATE OBLIGATIONS

Freedom of association can require that the state avoid interfering in the affairs of associations. However, according to case law from the ECHR, there can also sometimes be a positive obligation on the part of the state to actively protect freedom of association.[25] For example, in *Ouranio Toxo and Others v. Greece*, it was found that there existed a positive obligation on state authorities to prevent a predictable outbreak of violence against a political party. Since state authorities did not protect members of the

---

[23] Donna Gomien, *Short guide to the European Convention on Human Rights* (Council of Europe, 2005), online: <http://www.coe.int/T/E/Human_rights/h-inf%282002%295eng.pdf> at 74. "[A]n association is more formal and organized than an assembly."

[24] UN Human Rights Committee, Concluding observations of the Human Rights Committee: Uganda, 4 May 2004, CCPR/CO/80/UGA, online: <http://www.universalhumanrightsindex.org/documents/825/593/document/en/text.html> at para. 22. [emphasis added]

[25] I was unable to find any Human Rights Committee jurisprudence that discusses the question of positive obligations on States Parties with an attention to freedom of association.

political party, a violation of freedom of association was found. This positive duty on the state was described as follows:

> [T]he Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective… It follows from that finding that a genuine and effective respect for freedom of association cannot be reduced to a mere duty on the part of the State not to interfere; a purely negative conception would not be compatible with the purpose of Article 11 nor with that of the Convention in general. There may thus be positive obligations to secure the effective enjoyment of the right to freedom of association.[26]

Similarly, in *Özgür Gündem v. Turkey*, the ECHR found that the Turkish state had a positive obligation to investigate and take protective measures in a situation where staff members of a newspaper with a particular political alignment were targets of violence and intimidation.[27] The existence of this positive obligation arguably applies in the context of the *ICCPR* as well. In concluding observations issued by the Human Rights Committee on Togo, the Committee requested that the State Party "ensure the safety of all members of civil society, particularly the members of the opposition" during upcoming elections.[28] This is of particular relevance, suggesting that a positive obligation on the state to protect freedom of association may exist under the *ICCPR*.

However, a positive obligation on the state to protect a right does not always exist. In *Appleby and Others v. United Kingdom*, the ECHR found that the state did not have any "direct responsibility" for an interference with freedom of expression and no positive obligation to protect the right.[29] In that case, the complainants were prevented from distributing leaflets by a private company as opposed to the state. The Court explained that there are many factors that must be considered in determining whether or not a positive obligation exists including the need to balance the interests of community against

---

[26] *Ouranio Toxo and Others v. Greece* (20 October 2005), European Court of Human Rights, Application no. 74989/01 at para. 37.
[27] Özgür Gündem v. Turkey (16 March 2000), European Court of Human Rights, Application no. 23144/93.
[28] UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Togo*, 28 November 2002, CCPR/CO/76/TGO, online: <http://www.universalhumanrightsindex.org/documents/825/583/document/en/pdf/text.pdf> at 20.
[29] *Appleby and others v. United Kingdom* (6 May 2003), European Court of Human Rights, Application no. 44306/98 at para. 41.

those of individuals as well as the burden on state authorities, priority considerations and resource constraints. It also noted that the scope of any such obligation will vary according to the circumstances of the particular case.[30] Keeping this in mind, any argument proposing that Iran may have a positive obligation to protect freedom of association would need to be strongly grounded in the specific evidence available.

RIGHT TO BE FREE FROM ARBITRARY DETENTION (Article 9 of ICCPR)

There is little Human Rights Committee jurisprudence where violations of both articles 9 and 22 are successfully argued based on the same set of facts. However, if an individual is arbitrarily arrested *due to their association activities*, a violation of both articles 9 and 22 could be found. This was the case in *Delia Saldias de Lopez v. Uruguay*, where an individual was arbitrarily arrested for his trade union activities and violations of articles 9 and 22 were found. In its conclusions, the Human Rights Committee found a violation of article 9(1) as well as a violation of article 22(1) "in conjunction with" article 19 because the victim had experienced "persecution" in the form of arbitrary arrest (among other modes of persecution) for his trade union activities."[31] This sort of reasoning could apply in Iran. Those who are formal members of opposition parties and have been arbitrarily arrested for their activities are arguably experiencing arbitrary arrest as a *means whereby* the state is curtailing their right to freedom of association.

However, there are at least two reasons why this sort of argument is a difficult one to make successfully in the case of Iran. First, one could reasonably argue that the same set of facts should not be used to find two violations.[32] A possible response to this line of reasoning is that if the method of unlawfully restricting freedom of association is a method that is in direct violation of another *ICCPR* provision, there is no reason to be

---

[30] *Appleby and others v. United Kingdom* (6 May 2003), European Court of Human Rights, Application no. 44306/98 at para. 40.
[31] *Delia Saldias de Lopez v. Uruguay*, Communication No. 52/1979, U.N. Doc. CCPR/C/OP/1 at 88 (1984) at para. 13.
[32] See for example *Steel and Others v. The United Kingdom* (23 September 1998), European Court of Human Rights, Application no. 67/1997/851/1058 at para. 113; *Süheyla Aydin v. Turkey* (24 May 2005), European Court of Human Rights, Application no. 25660/94 at para. 203.

lenient in assessing the State Party's obligation as they are acting in a manner that is *doubly* contrary to the *ICCPR*.

A second reason why it is difficult to successfully argue that arbitrary arrests are the *cause* of a violation of the right to freely associate is one of supporting evidence. If the arrest of opposition party members is "semi-systematic"[33] (as opposed to systematic), it will be onerous to show that arbitrary arrests have not only occurred, but that they have occurred *for the purpose of and with the effect of* curtailing the right to freely associate.[34] It is thus a two-step argument and therefore, a more difficult one to make than simply one of arbitrary arrest.

FREEDOM OF EXPRESSION (Article 19 of ICCPR)

Freedom of association also has a close relationship with freedom of expression in international law. The relationship between the two has been described as one that is "mutual."[35] The ECHR has similarly explained that:

> Freedom of thought and opinion and freedom of expression, guaranteed by Articles 9 and 10 of the Convention respectively, would thus be of very limited scope if they were not accompanied by a guarantee of being able to share one's beliefs or ideas in community with others, particularly through associations of individuals having the same beliefs, ideas or interests.[36]

In another case, the ECHR described the very purpose of freedom of association as relating to expression. It explained that, "the protection of opinions and the freedom to

---

[33] Fact provided by IHRDC.

[34] As discussed elsewhere in this memorandum (under the heading of 'Establishing Interference'), it is possible to argue that one need not establish that the state had the intention to limit freedom of association. It may be sufficient to show that the right has been effectively curtailed. There is jurisprudence to support this argument but I have not come across jurisprudence from the Human Rights Committee specifically that would support this assertion.

[35] Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence* (Cambridge University Press: Cambridge, 2002) at 742.

[36] *Chassagnou and Others v. France* (29 April 1999), European Court of Human Rights, Applications nos. 25088/94, 28331/95 and 28443/95 at para. 100.

express them is one of the objectives of the freedom of association as enshrined in Article 11."[37]

This close relationship between the two rights is exemplified in the case of *Delia Saldias de Lopez v. Uruguay*, which was described briefly above. In that case, an individual was persecuted for his trade union activities and the Human Rights Committee found that there was a violation of "Article 22(1) *in conjunction with* article 19(I) and (2), because Lopez Burgos has suffered persecution for his trade union activities."[38] While this sort of finding is rare at the Human Rights Committee, it is nevertheless applicable to the situation in Iran. Members of opposition parties who have been harassed, intimidated and arbitrarily arrested due to their party activities are arguably experiencing a restriction on both their right to freedom of expression and association.

FREEDOM OF ASSEMBLY (Article 21 of ICCPR)

Freedom of association and assembly also have a close relationship, as evidenced by the fact that they are often found within the same provision in key documents such as the *Universal Declaration of Human Rights* (article 20) and the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (article 11).[39] Often, the rights are referred to interchangeably, especially by institutions applying law that protects them in the same provision.[40] Indeed, some may argue that freedom of assembly is part of freedom of association.[41] In fact, the rules governing what constitutes a permissible limitation on the right are also almost exactly the same[42] and concluding observations issued by the Human Rights Committee show that freedom of association is often

---

[37] *Ouranio Toxo and Others v. Greece* (20 October 2005), European Court of Human Rights, Application no. 74989/01 at para. 35.
[38] *Delia Saldias de Lopez v. Uruguay*, Communication No. 52/1979, U.N. Doc. CCPR/C/OP/1 at 88 (1984) at para. 13. [emphasis added]
[39] Manfred Nowak, Chapter on Article 22 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 1.
[40] See for example *Adali v. Turkey* (31 March 2005), European Court of Human Rights, Application no. 38187/97 at paras. 262-266.
[41] This argument is more likely to be supported by those who believe that freedom of association includes the right to protest.
[42] *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Articles 21, 22(2).

implicated in conjunction with freedom of assembly where restrictions have been placed on protests or demonstrations.[43]

However, there are a few noteworthy differences between the two rights. First, as mentioned earlier, international case law suggests that freedom of association tends to apply only to members of formal associations and this restricts its applicability to political protests in Iran. Second, there is a more demanding duty on an *ICCPR* State Party to justify the restriction of freedom of association since restrictions must be "prescribed by law" as opposed to merely being "inconformity with the law."[44] Another difference lies in the fact that "special restrictions" on freedom of association may be applied to members of armed forces and police. Finally, article 22(2) contains a distinctive clause giving particular relevance to the *ILO Convention No. 87*. Nothing similar is found in article 21 concerning freedom of assembly.[45]

POLITICAL RIGHTS (Article 25 of ICCPR)

In *General Comment 25*, the Human Rights Committee emphasized the important role of political freedoms including freedom of association in the occurrence of elections and political participation generally. It wrote that, "The right to freedom of association, including the right to form and join organizations and associations concerned with

---

[43] UN Human Rights Committee, *Concluding observations of the Human Rights Committee: Democratic Republic of Congo*, 26 April 2006, CCPR/C/COD/CO/3, online: <http://www.universalhumanrightsindex.org/documents/825/849/document/en/text.html> at para. 23. "The Committee is concerned that many human rights defenders cannot freely carry out their work because they are subjected to harassment or intimidation, prohibition of their demonstrations or even arrest or arbitrary detention by the security forces (articles 9, 21 and 22 of the Covenant). The State party should respect and protect the activities of human rights defenders and ensure that any restriction on their activities is compatible with the provisions of articles 21 and 22 of the Covenant."

[44] Manfred Nowak, Chapter on Article 22 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 1; *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Articles 21, 22(2).

[45] For a discussion about the meaning of the reference to this ILO Convention, see *J. B. et al. v. Canada, Communication No. 118/1982, U.N. Doc. Supp. No. 40 (A/41/40) at 151 (1986)*; Manfred Nowak, Chapter on Article 22 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 36. Manfred Nowak explains that article 22(3) does not require all States Parties to the *ICCPR* to ratify the ILO Convention or take any extra measures. However, state obligations under article 22(3) must be interpreted in light of the ILO treaty and its accompanying jurisprudence.

political and public affairs, is an *essential adjunct to the rights protected by article 25*. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process."[46] Similarly, in a concluding observation, the Human Rights Committee drew a link between the two rights by urging Uganda to ensure the "full" protection of freedom of association and "in particular…its political dimension."[47]

This connection between freedom of association and political rights has also been emphasized in case law at the ECHR. For instance, in *Ouranio Toxo and Others v. Greece*, the Court reaffirmed "the essential role played by political parties in democratic systems."[48] It went on to state that, "In view of the essential nature of freedom of association and its *close relationship with democracy* there must be *convincing and compelling reasons to justify such interference* with this freedom."[49] With particular relevance to the situation in Iran, the Court then discussed the importance of political pluralism and freedom of association as part of that pluralism:

> The emergence of tensions is one of the unavoidable consequences of pluralism, that is to say the free discussion of all political ideas. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing political groups tolerate each other.[50]

In light of the special relationship between article 22 and 25 of the *ICCPR*, one can argue that interference with freedom of association as it relates to the activities of *political*

---

[46] UN Human Rights Committee, *General Comment No. 25: The Right To Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25),* 12 July 1996, CCPR/C/21/Rev.1/Add.7, online: <http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument> at 26. [emphasis added]

[47] UN Human Rights Committee, *Concluding observations of the Human Rights Committee: Uganda*, 4 May 2004, CCPR/CO/80/UGA, online: <http://www.universalhumanrightsindex.org/documents/825/593/document/en/text.html> at para. 22.

[48] *Ouranio Toxo and Others v. Greece* (20 October 2005), European Court of Human Rights, Application no. 74989/01 at para. 34.

[49] *Ouranio Toxo and Others v. Greece* (20 October 2005), European Court of Human Rights, Application no. 74989/01 at para. 36.

[50] *Ouranio Toxo and Others v. Greece* (20 October 2005), European Court of Human Rights, Application no. 74989/01 at para. 40.

parties is particularly difficult to justify in international law. This will bolster any sort of argument proposing a violation of article 22 in the context of Iranian elections.

Establishing Interference with the Right

NEED FOR SPECIFIC EVIDENCE

In some cases at the ECHR, the Court has been quite critical of whether or not there has been an actual interference with the right. For example, in *The Holy Monasteries v. Greece,* the complainants suggested that a domestic law would serve to limit an increase in monks but the court decided that this argument was "hypothetical."[51] In other cases as well, the ECHR has noted a lack of information and evidence provided by applicants about interference with the right to freedom of association.[52]

In order to establish that there has been a restriction on the right, *specific* evidence to demonstrate that there has been interference with freedom of association must be presented. A lack of specific evidence can lead to a finding that the claim is unsubstantiated. For example, the complainant's argument was considered unsubstantiated by the Human Rights Committee in *Primo Jose Essono Mika Miha v. Equatorial Guinea.*[53]

DEFINING INTERFERENCE

In order for there to be a violation of freedom of association, there need not have to be evidence of a direct curtailment of right, just interference that has the effect of limiting

---

[51] *Holy Monasteries v. Greece* (09 December 1994), European Court of Human Rights, Application no. 13092/87; 13984/88 at para. 87.

[52] See for example *Cyprus v. Turkey* (10 May 2001), European Court of Human Rights, Application no. 25781/94 at para. 367. "[N]othing was brought to its attention to the effect that during the period under consideration there had been attempts…to establish associations…which were prevented by the authorities. On that account the Commission found the complaint to be unsubstantiated."

[53] *Essono Mika Miha v. Equatorial Guinea*, Communication No. 414/1990, U.N. Doc. CCPR/C/51/D/414/1990 (1994) at para. 5.3. Based on the information available, there does not seem to be any particular argument that was advanced by the complainant to illustrate the nexus between the facts as presented and the law on freedom of association.

right. For example, in the case of *John D Ouko v. Kenya*, the complainant alleged that he was a victim of political persecution and thereby his right to freely associate was limited. The African Commission found that the persecution experienced as well as the resulting departure to the Democratic Republic of Congo "greatly jeopardised his chances of enjoying his right to freedom of association."[54] With this in mind, a violation of the *Banjul Charter* was found based on guarantees of freedom of association.

This reasoning could be applied to occurrences of arbitrary arrest in Iran, where citizens are *effectively prevented* from exercising their right to freely associate. However, I have not come across jurisprudence from the Human Rights Committee specifically that would support this assertion.

Permissible Restrictions on Freedom of Association

IRANIAN LAW

Article 26 of the Iranian *Constitution* provides conditional protection for freedom of association. The right is protected provided that the exercise of the right does not violate "the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic Republic."[55] Other permissible reasons for interference with the right are found elsewhere in the *Constitution*. Freedom of association can be restricted under article 9 in the name of independence. It can also be restricted under article 40 in the name of public interest.[56]

While the *Constitution* provides a set of permissible purposes for restricting the right, it does not provide any other conditions or requirements that must be met in order for a restriction to be lawful. This is in contrast to the *ICCPR* that requires not only that the restriction be in conformity with a set of particular purposes, but also that the restriction

---

[54] *John D. Ouko v. Kenya*, African Commission on Human and Peoples' Rights, Comm. No. 232/99 (2000) at paras. 29-30.
[55] *The Constitution of the Islamic Republic of Iran*, Article 26, online: Iran Human Rights Documentation Center <http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>.
[56] *The Constitution of the Islamic Republic of Iran*, Articles 9, 40, online: Iran Human Rights Documentation Center <http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>.

be "prescribed by law" and "necessary in a democratic society."[57] Thus, domestic Iranian law provides much more room for state discretion when it comes to interfering with the right to freedom of association. There are fewer conditions that must be met by the Iranian state and those requirements that do exist, provide more flexibility than those found in the *ICCPR*.[58]

INTERNATIONAL LAW

According to article 22(2) of the *ICCPR*, there are circumstances when state interference with freedom of association may be justified. It provides that:

> 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 (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.[59]

The conditions restricting the right in the *ICCPR* are largely similar to the limitations found in other international treaty documents.[60] The requirements for lawful restrictions are that they must be prescribed by law, necessary in a democratic society and for one of the acceptable purposes listed. The only general difference in language as compared to article 21 of the *ICCPR* on freedom of assembly is the use of the phrase "prescribed by law" as opposed to "in conformity with the law."[61]

There is little or no published case law from the Human Rights Committee discussing the question of whether a restriction on freedom of association is permissible. However,

---

[57] *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Article 22(2).

[58] The number of permissible purposes for restricting the right in Iranian law are numerically greater than those found in the *ICCPR*. They are also arguably much broader and possibly unlawfully vague. For more discussion on this, see the accompanying memorandum on the right to freedom of association.

[59] *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Article 22(2).

[60] Manfred Nowak, Chapter on Article 22 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 20. He suggests that the only major difference lies in the law concerning permissible restrictions for members of armed forces or police

[61] *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Articles 21, 22(2).

there is existing case law discussing restrictions on other rights, using applicable legal reasoning. With this in mind, the remainder of this discussion on permissible interference will focus primarily on exploring the meaning of the phrase "prescribed by law" in the context of Iranian domestic law. For a discussion on permissible purposes and the meaning of the phrase "necessary in a democratic society," please see the accompanying memorandum on freedom of assembly.[62] The same rules and principles are applicable under article 22.

In light of the fact that the "prescribed by law" standard serves as a low benchmark (discussed below) and the permissible purposes in international law are almost as broad and vague as the permissible purposes in Iranian law, the most difficult aspect of this test for the Iranian government to meet will probably be to show that any interference with freedom of association is "necessary in a democratic society." This requirement goes to questions of necessity and proportionality and is discussed in greater depth in the accompanying memorandum on freedom of assembly.

"PRESCRIBED BY LAW" REQUIREMENT

The phrase "prescribed by law" is found in article 22(2) on freedom of association as well as article 18(3) on freedom of thought, conscience and religion. The phrase is used in both provisions to describe a condition that must be met in order for a restriction on these rights to be permissible. Unfortunately, there is no case law that has been published by the Human Rights Committee discussing the meaning of this phrase in the context of either of these two rights in any depth. Neither are there any concluding observations

---

[62] An example of a case that deals with the requirement that interference be "necessary in a democratic society" in the context of freedom of association under the *European Convention for the Protection of Human Rights and Fundamental Freedoms* is *Young, James and Webster v. The United Kingdom* (13 August 1981), European Court of Human Rights, Application no. 7601/76; 7806/77 at paras. 62-65. The Court finds a violation of the right to freedom of association and this conclusion hinges on the lack of necessity of the restriction imposed. An example of a case that deals with the question of permissible purposes in the context of freedom of association under the same European convention is *Chassagnou and Others v. France* (29 April 1999), European Court of Human Rights, Applications nos. 25088/94, 28331/95 and 28443/95. In that case, the interference with the right to freedom of association was found unlawful due to an invalid purpose. The purpose was considered invalid by the Court because it was to protect a right *not found in international law*.

that shed light on its meaning.[63] According to Manfred Nowak, the phrase requires that any interference on the right to freedom of association be "set down in a general-abstract parliamentary act or an equivalent unwritten norm of common law with sufficient definitiveness."[64]

Case law from the ECHR supports this interpretation. A seminal case from the ECHR on this issue is that of *Sunday Times*. Although the case concerns freedom of expression, the concepts are applicable due to the existence of the same phrase in article 10 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. In that case, the British judiciary restricted the right of the *Sunday Times* newspaper to publish certain information based on the common law of contempt. It was argued that the law of contempt did not meet the requirement of being "prescribed by law" because it was not codified in legislation. In the end, the ECHR found that the interference with freedom of expression was lawful for two main reasons. First, it decided that the common law rule of contempt was *sufficiently accessible* to the public. Second, it decided that the common law rule had a sufficient amount of precision and therefore the application of the law was *foreseeable.*[65]

This reasoning by the ECHR suggests that in order for a restriction to be "prescribed by law" it must both be sufficiently accessible and sufficiently precise to be foreseeable.[66] These requirements support the general principles of "rule of law and freedom of arbitrariness."[67]

---

[63] Even General Comment 22 on article 18 does not discuss the meaning of the phrase. UN Human Rights Committee, *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, online: <http://www.unhcr.org/refworld/docid/453883fb22.html>.

[64] Manfred Nowak, Chapter on Article 22 in *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl, Germany; Arlington, USA: N.P. Engel, 2005) at para. 21.

[65] *The Sunday Times v. The United Kingdom* (26 April 1979), European Court of Human Rights, Application no. 6538/74. For discussion on what it means to be "foreseeable", see also *Djavit An v. Turkey* (20 February 2003), European Court of Human Rights, Application no. 20652/92 at para. 65. "A rule cannot be regarded as 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."

[66] It is implied that part of this requirement is that the wording should be "clear." *Patyi and Others v. Hungary* (7 October 2008), European Court of Human Rights, Application no. 5529/05 at para. 31.

[67] *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria* (22 January 2009), European Court of Human Rights, Applications nos. 412/03 and 35677/04 at para. 117.

The ECHR provided further guidance on this issue in the case of *Malone v. The United Kingdom*. In that case, the ECHR discussed the meaning of the phrase "in accordance with the law," which is found in article 8 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and protects the right to privacy. The Court made clear that the phrases "in accordance with the law" and "prescribed by law" can be interpreted "in the light of the same general principles."[68] In doing so, the Court suggested a third requirement that might need to be met in order to find that interference is "prescribed by law" – the concept of legality.[69] Legality requires the existence of mechanisms to prevent the abuse of state power. The ECHR explained that:

> Since the implementation in practice of measures of secret surveillance of communications is not open to scrutiny by the individuals concerned or the public at large, it would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference.[70]

The three requirements that might be met in order to find that a restriction is "prescribed by law" (accessibility, precision and legality) could be used to criticize the Iranian *Constitution*. While the *Constitution* may be sufficiently accessible, it is not clear that it meets the standard of providing foreseeability or that it meets general requirements associated with the rule of law and the need to have state legal discretion fettered. In this way, if Iran were to argue that their interference with the right to freedom of association

---

[68] *Malone v. The United Kingdom* (2 August 1984), European Court of Human Rights, Application no. 8691/79 at para. 66. "The Court held in its *Silver and Others* judgment of 25 March 1983 (Series A no. 61, pp. 32-33, para. 85) that, *at least as far as interferences with prisoners' correspondence were concerned*, the expression "in accordance with the law/ prévue par la loi" in paragraph 2 of Article 8 (art. 8-2) should be interpreted in the light of the same general principles as were stated in the *Sunday Times* judgment of 26 April 1979 (Series A no. 30) to apply to the comparable expression "prescribed by law/ prévues par la loi" in paragraph 2 of Article 10 (art. 10-2)." [emphasis added].

[69] Donna Gomien, *Short guide to the European Convention on Human Rights* (Council of Europe, 2005), online: <http://www.coe.int/T/E/Human_rights/h-inf%282002%295eng.pdf> at 74.

[70] *Malone v. The United Kingdom* (2 August 1984), European Court of Human Rights, Application no. 8691/79 at para. 68.

should be considered lawful, they may faces challenges in successfully showing that the interference is "prescribed by law."

Like the ECHR case law, the Human Rights Committee case law on freedom of expression similarly serves as a useful reference in determining the meaning of the phrase "prescribed by law." Article 19(3) of the *ICCPR* requires that any restriction on freedom of expression be "provided by law." The wording of this requirement creates a *less onerous* standard since the term "prescribed" suggests more than mere provision in the law but also that the law be meaningful and "intelligible,"[71] providing guidance and avoiding arbitrariness. With this in mind, Human Rights Committee case law on interference with article 19(3) can serve as a minimum benchmark for the interpretation of the phrase "prescribed by law."

In any case, the standard embodied in the phrase "prescribed by law" is not a very onerous one, even if it is more onerous than the requirements of being "provided by law" or "in conformity with the law." In the case of *Malcolm Ross v. Canada*, a teacher was transferred to another position due to his activities outside of work publishing books and pamphlets and making public statements that were discriminatory to Jewish persons. The fact that the legislation criteria allowing for a transfer of positions was "vague"[72] did not lead the Human Rights Committee to the conclusion that the restriction on freedom of expression was impermissible. Rather, the Human Rights Committee noted that the existence of a "legal framework" in place and then explored the question no more, deferring instead to the Supreme Court of Canada's ruling on the issue.[73]

So the question that arises is that of determining threshold. In a concluding observation on the Russian Federation, the Human Rights Committee gives some indication of what may not meet the minimum threshold requirement. In discussing a piece of domestic legislation, the Human Rights Committee decided that the term "extremist activity" found

---

[71] *Irwin toy ltd. v. Quebec (Attorney general)*, [1989] 1 S.C.R. 927. "Absolute precision in the law exists rarely, if at all. The question is whether the legislature has provided an *intelligible standard* according to which the judiciary must do its work." [emphasis added]

[72] *Malcolm Ross v. Canada*, Communication No. 736/1997, U.N. Doc. CCPR/C/70/D/736/1997 (2000) at para. 11.4.

[73] *Malcolm Ross v. Canada*, Communication No. 736/1997, U.N. Doc. CCPR/C/70/D/736/1997 (2000) at paras. 11.3-11.4.

in the legislation was too vague and urged the state to "revise the above law with a view to making the definition of 'extremist activity' more precise, to exclude any possibility of arbitrary application and to give notice to persons concerned regarding actions for which they will be held criminally liable (arts. 15 and 19 to 22)."[74] Similarly, in a comment on Korea's *National Security Law*, the Human Rights Committee noted that, "issues...are defined in somewhat vague terms, allowing for broad interpretation that may result in sanctioning acts that may not truly be dangerous for State security."[75] These comments by the Human Rights Committee can serve as guidelines of what may be considered unacceptable in meeting the requirement of being "prescribed by law."

Conclusion

In this memorandum, the right to freely associate has been defined with special attention to international law and specifically, the *ICCPR*. The law suggests that a number of factors will make it difficult to argue that freedom of association has been compromised in the crackdown on protests. First, in order to successfully argue a violation of article 22, a *formal association* must be implicated in some way. For example, if the facts suggested that those protesting were all members of an association (e.g. opposition party), this would support an assertion that there was a violation. The second reason why it is difficult to argue that Iran's restrictions on protesting constitute a violation of article 22 is because it is not generally accepted or definitively clear that article 22 protects the right to protest in the first place. Freedom of assembly is easier to apply to a fact scenario involving protests and it is likely that a violation of freedom of assembly has occurred.[76]

International law also suggests that there are many hurdles in arguing that freedom of association was curtailed in Iran through the arbitrary arrests of opposition party

---

[74] UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Russian Federation*, 1 December 2003, CCPR/CO/79/RUS, online: <http://www.universalhumanrightsindex.org/documents/825/525/document/en/text.html> at 20.
[75] UN Human Rights Committee, *Concluding Comment: Republic of Korea*, 1992, CCPR/C/79/Add.6 at paras. 6, 9, cited in *Keun-Tae Kim v. Republic of Korea*, Communication No 574/1994 CCPR/C/64/D/574/1994 (4 January 1999) at para 3.3.
[76] For arguments in support of this assertion, see the accompanying memorandum on freedom of assembly.

members. This is a difficult argument to put forth because it involves first proving a violation of article 9 of the *ICCPR* (arbitrary arrest) and then, as a second step, proving that those arrests have a strong connection to the activities of opposition parties (associations), either because the arrests were done for the purpose of restricting freedom of association and/or the arrests had a negative effect on free association.[77] Another reason why an argument criticizing Iran based on the right to freely associate may not succeed is because one would be basing it on the same facts as those presented under article 9 or 19 of the *ICCPR*. However, this concern may not play a role in a Universal Periodic Review. While the Human Rights Committee case law reflects a hesitancy to find two violations based on the same set of facts, this is not reflected in its concluding comments.[78]

As more facts come to light through investigations conducted by the IHRDC, the law of freedom of association can be applied to the facts to test applicability. In the end however, whether the discussion about human rights in the Iranian election takes place in terms of the right to freedom of association or other rights under the *ICCPR*, Iran as a State Party has a legal obligation to ensure that its domestic law and its actions are in compliance with the *ICCPR*.

---

[77] See for example *Delia Saldias de Lopez v. Uruguay*, Communication No. 52/1979, U.N. Doc. CCPR/C/OP/1 at 88 (1984).

[78] See for example UN Human Rights Committee, *Concluding observations of the Human Rights Committee: Democratic Republic of Congo*, 26 April 2006, CCPR/C/COD/CO/3, online: <http://www.universalhumanrightsindex.org/documents/825/849/document/en/text.html> at para. 23. "The Committee is concerned that many human rights defenders cannot freely carry out their work because they are subjected to harassment or intimidation, prohibition of their demonstrations or even arrest or arbitrary detention by the security forces (articles 9, 21 and 22 of the Covenant). The State party should respect and protect the activities of human rights defenders and ensure that any restriction on their activities is compatible with the provisions of articles 21 and 22 of the Covenant."