



Introduction

On behalf of the undersigned organizations, we hereby submit our joint comments¹ regarding draft General Comment No. 38 on Article 22 of the International Covenant on Civil and Political Rights. In the comments below, we provide suggestions for textual additions and revisions that could further strengthen the general comment and ensure it addresses key challenges facing freedom of association.

Generally speaking, we find the draft general comment to be a strong, progressive document, providing comprehensive guidance on the right to freedom of association and summarizing and setting forth key principles for the protection and facilitation of the right. In addition to the specific textual suggestions provided below, we would note a few overarching areas where the draft general comment could be strengthened:

1. *Protecting civil society from state overreach.* We would urge stronger language against registration barriers, disproportionate reporting requirements, and misuse of counter-terrorism or anti-money laundering measures to restrict associations.
2. *Expanding scope of protection.* We would recommend more explicit reference to the right to freedom of association of informal and unregistered groups; environmental

¹ These comments were compiled on behalf of the contributing organizations by the International Center for Not-for-Profit Law.

defenders; human rights defenders; academic associations; exiled activists and diaspora organizations; and community-based groups.

3. *Ensuring digital rights.* We would urge that the general comment more systematically treat internet shutdowns, surveillance, algorithmic monitoring, and compromising encrypted communications as restrictions on associational rights.
4. *Preventing regression in emergencies.* The general comment should urge States parties not to use crises – including climate emergencies – as pretexts to impose restrictions on freedom of association.
5. *Promoting participation.* We would recommend that the general comment more regularly highlight the duty of States parties to actively enable participation of associations in public policy and democratic governance.

Contributing organizations:

- AJUCRE (Mozambique)
- Associação Construindo Comunidades (Angola)
- Associação Luterana para o Desenvolvimento de Angola (Angola)
- Associação Viver Saudável (Mozambique)
- AVUDS RDC (Democratic Republic of Congo)
- Centre for Human Rights and Rehabilitation (Malawi)
- EAC Think Tank Association (Tanzania)
- Nepal Anusandhan Tatha Bikas Pratisthan (Nepal)
- Tanzania Safety Alliance (Tanzania)

Suggested Revisions

I. General Remarks

Paragraph 1

Consider adding to fifth sentence: “It also constitutes the very foundation of a system of participatory governance, *including in electoral and transitional contexts*, based on democracy and the rule of law.”

Paragraph 2

In the third sentence, consider highlighting the interrelationship between the right to freedom of association and the right to access information, the right to privacy and data protection, and digital rights more generally.

To strengthen the link with economic, social and cultural rights, consider adding at the end: “The right is also essential for the realization of the Sustainable Development Goals and for ensuring meaningful participation in development processes, climate governance, and public decision-making.”

Paragraph 3

To highlight other issues as to which the exercise of the right to freedom of association is often constrained, consider adding at the end: “accountability and anti-corruption”.

Paragraph 7

To clarify that informal associations have an identical protection status with formal associations, consider revising the final sentence: “... while the authorities *have an obligation to proactively enable and safeguard* the establishment and functioning of *both formal and informal* associations.”

To expressly prohibit mandatory registration regimes that effectively criminalize unregistered civic activity, consider adding at the end: “Associations should be able to operate lawfully even where they choose not to register, and States Parties should not compel registration as a precondition for the lawful exercise of freedom of association.”

To emphasize that informal associations should be accorded full rights of participation and access to public services, consider further adding at the end: “States Parties should recognize that many community-based, Indigenous, grassroots, volunteer, and social movement organizations operate informally and should not be disadvantaged, excluded from consultation processes, or denied access to public services and opportunities solely because they lack formal legal registration.”

Paragraph 8

To expand recognition of social movements and informal groups, consider adding at the end: “The protection of article 22 extends equally to decentralized networks, social movements, community-based initiatives, online groups, and other collective formations that may not possess formal organizational structures.”

Paragraph 9

Additional particularly affected individuals that could be included in the second sentence include: whistle-blowers; academics and researchers; sex workers; stateless persons; and members of caste-affected communities.

Paragraph 10

To protect dissent, consider adding to the second sentence: “The right to freedom of association applies also to ideas, activities and *forms of collective* actions that might be seen as controversial, dissent or disruptive, *or that challenge prevailing political, social, economic or cultural norms*, including human rights, the denunciation of corruption, *criticism of governments or public institutions*, and other politically sensitive issues.”

Paragraph 11

To address other modern methods used to chill mobilization and stifle associations, consider adding to the final sentence: “For example, digital surveillance, Internet shutdowns, the lack of access to digital tools, *algorithmic censorship, misuse of biometrics*, online transnational repression ...”

To strengthen digital rights protections, consider adding at the end: “States Parties should ensure that digital technologies, including artificial intelligence systems, biometric technologies, algorithmic profiling, and content moderation practices, are not used in a manner that disproportionately interferes with the exercise of freedom of association.”

To address the fact that digital exclusion is increasingly becoming a freedom of association issue, consider further adding at the end: “Furthermore, States Parties should ensure affordable, equitable, and non-discriminatory access to digital technologies and internet services, particularly for marginalized and rural communities, as a prerequisite for effective participation in digital civic space.”

II. Scope of freedom of association (art. 22 (1))

Paragraph 12

To better encompass the variety of forms taken by associations, and lessen the emphasis on formal “organization”, consider revising the first sentence as follows: “Associations are independent, *self-governing* entities, *primarily non-profit in nature, whether formally organized or informally constituted*, that bring people together voluntarily to pursue common licit goals, interests or activities.” This revision also ensures that the definition is consistent with paragraph 17 (addressing economic activities), and encompasses cooperatives and social enterprises whose primary purpose is social/collective.

Similarly, consider adding the following examples of associations to the second sentence: networks; platforms; decentralized civic initiatives; and digital communities and advocacy networks and other technology-enabled forms of collective organization.

Paragraph 13

To strengthen protection against mandatory registration, consider adding to the end of the second sentence: “... and States Parties shall not impose criminal, civil, or administrative penalties solely on the basis that an association has chosen not to register.”

However, the paragraph should also clarify that the right to freedom of association includes the right to secure legal personality, by adding the following to the fourth sentence: “In this regard, *associations have the right to obtain legal personality through procedures that are accessible, inexpensive, expeditious, transparent, non-discriminatory and subject to effective judicial review, and legislation that imposes ...*”

Paragraph 14

To illustrate the range of protected activities associations may engage in, consider adding the following to the second sentence: “... to carry out their activities freely, *including advocacy, campaigning, strategic litigation, public interest litigation, monitoring of public authorities, election observation, anti-corruption activities, and participation in public policy processes.*”

To clarify the myriad forms of permissible domestic and cross-border support, consider revising the third sentence: “... other material resources, *including domestic, foreign, international, public, and private funding, secured through grants, donations, membership contributions, philanthropic support, digital fundraising mechanisms, and other lawful sources of support, as well as in-kind support, technical assistance, and digital resources,* without the risk of *stigmatization, criminalization, or being labelled ...*”

To assert protection not only for foreign funding but for other forms of transnational engagement, the draft should include the following before the final sentence: “The right to freedom of association further includes the right to communicate, cooperate, join, affiliate, form, and enter into partnerships with international organizations, networks, and confederations, and foreign associations, without requiring prior state approval.”

Paragraph 15

To recognize that state interference often targets the executive or leadership boards of associations rather than general membership, consider revising the third sentence as follows: “In this regard, the designation or inclusion of members *or leadership* of organizations imposed by the authorities ...”

To address forms of oversight other than registration/de-registration and authorization of funding, consider adding the following at the end: “Periodic reporting requirements imposed on associations should be proportionate, necessary, and designed to facilitate transparency rather than control or discourage legitimate civic activity.”

Paragraph 16

To further safeguard the autonomy described in this paragraph, consider adding at the end: “Associations should be free to determine the locations where they will carry out activities, including during election periods, without the need for prior approval from the authorities.”

To address the specific needs of individuals, consider further adding at the end: “Particular attention should be paid to ensuring the right to freedom of association of persons with disabilities, Indigenous Peoples, refugees, migrants, stateless persons, older persons and LGBTQ+ persons, who may face compounded barriers to organizing collectively.”

Paragraph 17

To further clarify the legitimate role of associations in conducting advocacy, recommend adding at the end: “... to unduly restrict the right to freedom of association, *and lobbying regulations must not be used to stigmatize the advocacy of associations.*”

Paragraph 18

To strengthen this negative dimension of the right to freedom of association, consider adding after the second sentence: “Individuals should not suffer adverse consequences in employment, education, public services, political participation or access to benefits because of their refusal to join or support an association.”

Paragraph 19

To clarify that dissolution should be subject to appropriate procedural safeguards, consider revising the second sentence: “Compulsory dissolution can occur only as an exceptional measure *pursuant to independent judicial authorization*, and must strictly follow ...”

Consider further adding, following the above: “The deregistration, suspension or dissolution of political parties should be subject to the highest level of scrutiny, given their essential role in democratic participation and pluralism.”

III. Trade unions (art. 22 (2) and (3))

Paragraph 21

Consider emphasizing the indivisibility of rights in the second sentence: “... reflect *the indivisibility of rights and* the fact that the right of each individual ...”

Paragraph 23

Consider noting the importance of freedom from surveillance as a component of the right to participate in trade unions, by revising the second sentence: "... without any fear of violence, reprisals, *surveillance*, undue intervention by the State ..."

Address the historical prevalence of enforced disappearance as a means of silencing labor organizers, and the frequent targeting of those defending trade unionists, with the following revisions to the third sentence: "Harassment, arbitrary arrest, *enforced disappearance*, and killing of trade union activists *and their legal representatives* infringe not only the right to life (art. 6) and the right to liberty and security of person (art. 9) but also the right to freedom of association."

Paragraph 24

Consider noting the role of infiltration in impermissible anti-union activities, by revising the second sentence: "... functioning and activities of trade unions, including surveillance, *infiltration*, and interception of trade union data ..."

Paragraph 25

To elaborate on the right to strike, consider adding following the second sentence: "The right to strike extends to peaceful solidarity strikes, protest strikes, and digital forms of collective labour action."

Paragraph 26

Recommend including agricultural and migrant workers, as frequently operating in the informal economy and in conditions of insecurity, in the first sentence: "... whether they are domestic, *agricultural, migrant*, or platform workers ..."

Paragraph 27

States Parties should not use regulation to effectively strip police or military personnel of all collective bargaining or representational rights. Recommend revising the first sentence as follows: "... to regulate the exercise of those rights, *provided such regulation remains proportionate and does not impair the essence of the right.*"

IV. States Parties' negative and positive obligations

Paragraph 29

Consider emphasizing digital dimensions of these obligations by revising the fourth sentence: "... and before international bodies, *and to the digital dimensions of associations operating online or otherwise with technological mediation, including across borders.*"

Paragraph 30

To expand the list of prohibited measures, consider adding, following the second sentence: “Other prohibited forms of interference may include restrictive and burdensome funding approvals, arbitrary denial of banking services, exclusion from digital payment systems, unjustified freezing of assets, abusive tax audits, algorithmic monitoring, biometric surveillance, and coordinated online harassment conducted or facilitated by public authorities. States Parties should likewise refrain from Internet shutdowns, network disruptions, platform blocking, or other digital restrictions that disproportionately interfere with the exercise of freedom of association.”

Recommend strengthening transnational and cross-border dimensions of this paragraph, by adding before the final sentence: “States Parties further shall not impede cooperation between domestic associations and international organizations, foreign associations, donors, academic institutions, regional organizations or United Nations mechanisms, whether such cooperation takes place in person or via digital means.”

Paragraph 31

To strengthen the treatment of State obligations pertaining to the most severe infringements, consider adding: “States Parties are obligated to exercise due diligence to prevent, investigate, punish and remedy attacks against associations by private individuals, corporations, organized groups or non-State armed actors.”

Paragraph 33

Recommend addressing additional dimensions of the duty to create an enabling environment in the second sentence: “... including relating to *ease and accessibility* of registration, *access to digital infrastructure and secure communications*, policies of tax incentives and tax exemption ...”

To clarify the duty to create an enabling environment and its application respecting private actors, consider adding the following at the end of the paragraph: “States Parties should take appropriate measures to ensure that business enterprises do not interfere with freedom of association through intimidation, retaliation, surveillance, strategic litigation against public participation, union-busting practices or interference with community organizations. States Parties should also take measures to prevent arbitrary denial of banking, payment-processing, or financial services to associations and their members.”

Further consider elaborating on the relationship between an enabling environment and participation: “An enabling environment includes meaningful participation of associations in law-making, policy development, budgeting processes, and public decision-making.”

Paragraph 34

Consider providing further details regarding measures with cumulative impacts, by revising the second sentence: “Cumulative and indirect measures, *including reporting, licensing, approval, and registration requirements*, can breach the right to freedom of association ...”

Paragraph 35

To address the State obligation to adopt proactive measures to address threats to associations, consider adding after the first sentence: “Where associations or their members face credible threats, States Parties should adopt preventive protection measures, including risk assessments, security measures, witness protection mechanisms and rapid-response procedures.”

The primary obligation of States with respect to hostile narratives is to avoid advancing such narratives. Consider adding after the second sentence: “Public officials and State-affiliated media should refrain from language that stigmatizes associations as anti-national, foreign-controlled, politically motivated, or threats to public order without evidence.”

Organizations leading community-level trauma-informed mediation or resource-conflict resolution are frequently targeted by hostile narratives from local power brokers. Consider revising the third sentence to read: “... such as gender issues, migrants’ rights, corruption, *peacebuilding and conflict mediation*, business projects ...”

Paragraph 36

Access to secure digital technologies is essential to protecting associations against transnational repression. Consider adding at the end: “States Parties should ensure that associations and individuals subject to their jurisdiction are able to use encryption, secure communications technologies and digital security tools without undue restrictions.”

Paragraph 37

Consider specifically highlighting importance of due diligence and transparency requirements for deployment of new technologies, by revising the third sentence: “... to adopt measures to require business enterprises, *especially those deploying new or developing technologies*, to adhere to transparency requirements and perform ...”

Paragraph 38

Smallholder agricultural cooperatives, local environmental defenders, and youth networks operating outside major urban centers face unique structural barriers to association, and States should adapt their protective measures to reach these populations. Consider revising the final sentence as follows: “... organizations working in prisons and other

detention facilities, *groups operating in remote or rural communities*, and organizations providing life-saving assistance ...”

Consider revising the second sentence to emphasize obligations at different levels of government, and need to facilitate participation: “Specific measures might be required, *at central, provincial, and local levels, to facilitate participation by women-led organizations, Indigenous Peoples' organizations, disability rights groups, and organizations representing marginalized and caste-affected communities*, and to address the *de facto situation* ...”

Paragraph 39

Recommend elaborating on meaning of an effective remedy, by adding after the first sentence: “Remedies should be prompt, accessible, affordable and capable of preventing irreparable harm, including through interim and injunctive measures where appropriate, which may include interim protection measures.”

Paragraph 40

Consider providing further examples of appropriate remedies, by adding after the third sentence: “Appropriate remedies may also include reinstatement of legal status, restoration of assets, removal from restrictive registries, return of confiscated property, public acknowledgment of violations, guarantees of non-repetition, and protective measures for affected members.”

V. Restrictions on the right of freedom of association (art. 22 (2))

Paragraph 41

To strengthen the presumption in favor of free exercise of the right, consider adding after the final sentence: “Accordingly, any ambiguity concerning the scope or application of a restriction should be interpreted in favor of the exercise of freedom of association.”

Paragraph 42

Consider clarifying the specific nature of procedural safeguards, by revising the final sentence as follows: “and *prompt and effective access to review by an independent and impartial judicial authority capable of granting interim, injunctive, and final relief.*”

It would be helpful to clarify the state obligation to justify any restrictions, by adding at the end: “States parties have the burden of justifying as permissible under Article 22(2) any restrictions imposed on the right to freedom of association.”

Paragraph 43

Restrictions and denials of association rights frequently occur at the administrative or regional/local levels, where authorities may exploit vague laws to block community initiatives. Delegation of authority to algorithmic decisionmaking processes is another developing challenge to legality. Consider adding the following after the fifth sentence: “Restrictions should be formulated with sufficient precision to prevent arbitrary interpretation and selective enforcement, and states may not confer excessive discretion upon or delegate arbitrary denial or approval powers to administrative agencies, regional or local authorities, or algorithmic or automated decisionmaking processes. Where automated or algorithmic systems are used in regulatory, security or financial decision-making affecting associations, States Parties remain responsible for ensuring legality, transparency, accountability and effective avenues for review.”

To more explicitly circumscribe improper application of counter-terrorism measures, consider adding at the end: “Counter-terrorism measures affecting associations must be evidence-based, individually justified, and subject to effective judicial review.”

Paragraph 44

Consider explicitly addressing additional problematic criminal provisions in the digital sphere, by revising the final sentence as follows: “... adopted to combat ‘*cybercrime*’, *misinformation and disinformation*, ‘*extremism*’ ...”

Paragraph 46

To clarify the scope of “national security” as a legitimate ground under Art. 22(2), consider adding after the first sentence: “States parties bear the burden of demonstrating the existence of a concrete, direct, and imminent threat warranting restrictions on the basis of national security, and the peaceful advocacy of constitutional, legal, political, social, environmental or economic reform, including advocacy for self-determination conducted by peaceful means, shall not in itself constitute a threat to national security.”

Consider clarifying that proportionality is assessed not in the abstract but by reference to the danger identified to national security or the democratic order, by revising the final sentence as follows: “... are in fact necessary to avert a genuine, and not only hypothetical, danger to the national security or democratic order, *and that such danger cannot be mitigated by less intrusive measures.*”

Paragraph 47

Consider specifying the close connection needed to justify restrictions based on protection of rights and freedoms of others, by adding after the first sentence: “States

Parties should demonstrate a direct and specific connection between the conducts of associations and any alleged harm to the rights and freedoms of others.”

Consider clarifying the limited and temporary nature of restrictions based on public health, by adding at the end: “Restrictions on freedom of association justified on the ground of public health must be evidence-based and non-discriminatory, should be periodically reviewed to ensure their continued necessity, and should not be maintained beyond the duration of the public health risk.”

Paragraph 48

Consider elaborating on the narrow nature of “public morals” as a ground for restriction, by adding at the end of the second sentence: “... social sensibilities, *and references to tradition, culture, religion, family values or prevailing social attitudes cannot by themselves justify restrictions that undermine equality, non-discrimination or pluralism.*”

Consider including a specific reference to gender identity in the final sentence: “... or “non-traditional” sexual orientations, *gender identities, and sex characteristics*, or for ...”

Paragraph 49

Consider adding after the first sentence: “Political convenience, protection of governmental reputation, preservation of ideological conformity, economic interests of the State, or the avoidance of criticism are not legitimate grounds under article 22(2).”

Consider further elaborating upon financial transparency requirements applied to associations, by revising the second sentence as follows: “... or similar laws *imposing administrative burdens on cross-border transfers*, such as ‘public transparency’ ...”

Consider further including an unequivocal statement respecting receipt of foreign funding not justifying restrictions, by adding at the end: “Receipt of foreign funding, by itself, shall not constitute a legitimate basis for restrictions under Article 22.”

Paragraph 50

Consider additional guidance regarding necessity and proportionality requirements, by adding after the first sentence: “The burden of demonstrating necessity and proportionality rests on the State Party. Before imposing restrictions, States Parties should demonstrate that less intrusive alternatives were considered and found insufficient, and restrictions imposed should be subject to independent oversight and periodic review.”

Paragraph 51

Consider further cabining actions taken pursuant to Art. 20, by revising the fourth sentence and adding an additional sentence: “... rather than against the organization as a whole, *and should not be used to suppress legitimate political dissent. Dissolution or prohibition of an association should be considered only where the association itself, rather than isolated members, intentionally and systematically promotes conduct falling within article 20.*”

VI. Freedom of association in contexts of states of emergency, armed conflicts, occupation and humanitarian assistance

Paragraph 52

Severe disruptions to civic space frequently occur during localized tensions over natural resources or communal violence. Consider revising the first sentence as follows: “... internal and international armed conflicts, occupations, *localized communal or resource-based conflicts*, and struggles against non-State groups.”

Paragraph 53

For additional clarity, consider adding at the end: “Emergency measures should not be used to suppress criticism, advocacy, monitoring, humanitarian action, or accountability activities conducted by associations, nor does the existence of an emergency justify disruptions to internet services or platforms.”

Paragraph 54

Grassroots mediation and peacebuilding are critical, life-saving interventions during conflicts that are frequently subjected to restrictions. Consider adding to the final sentence: “... ensuring access to humanitarian *and peacebuilding* associations that provide humanitarian relief *and trauma-informed mediation* raises issues ...”

Paragraph 55

Based on the experience with Covid, consider adding, at the end of the paragraph: “Measures derogating from obligations under the Covenant should further be subject to parliamentary and judicial oversight and requirements for periodic re-authorization.”

Paragraph 56

Consider adding to the second sentence: “... governing the access of the civilian population to basic supplies, *and protection of medical and humanitarian personnel.*”

VII. Relationship between article 22 and other international legal regimes

Paragraph 58

Given the importance of implementation of humanitarian exemptions, consider adding at the end: “Such humanitarian exemptions must be implemented effectively in practice.”

VIII. Safeguards and prohibition of retrogression

Paragraph 60

States often exploit the concept of retrogression to enact permanent restrictions. Consider adding to the final sentence: “Any retrogressive measure must be carefully justified by States Parties, *should where possible be strictly temporary*, and must fully meet ...”