

PRESENTED TO

UN HUMAN RIGHTS COMMITTEE

COMMENTS

Draft General Comment No. 38 on the Right to Freedom of Association

Introduction

The International Center for Not-for-Profit Law (ICNL) is grateful for the opportunity to provide comments on the draft General Comment No. 38 on Article 22 (on the right to freedom of association) of the International Covenant on Civil and Political Rights (ICCPR). In our view, the draft General Comment does an admirable job of cogently expressing key principles relating to the respect and facilitation of the right to freedom of association. We set out below specific suggestions for textual revisions to the draft General Comment that may clarify potential areas of ambiguity, address key challenges facing the exercise of the right, and enunciate important requirements relevant to the regulation and enabling of the right.

Of these suggested revisions, we would like to highlight two in particular, as priority matters for the Committee's consideration:

- In **paragraph 17**, the draft General Comment currently states that “associations covered by article 22 must be distinguished from groups of individuals who carry out lobbying activities, which are a different form of public and political participation.” The meaning of “lobbying” varies across jurisdictions and may by some stakeholders be understood to encompass a range of policy advocacy, including that undertaken by nonprofit associations in furtherance of their missions and not at the behest of external principals. ICNL has also seen lobbying restrictions wielded to bar or limit permissible policy advocacy and public participation by associations.¹ The current

¹ See, e.g., ICNL, *Civic Space and Anti-Corruption: Toward a Virtuous Cycle* (Dec. 2025) at 12-16, available at <https://www.icnl.org/post/report/icnl-report/civic-space-and-anti-corruption-toward-a-virtuous-cycle>; ICNL, “Eight Things to Know About Argentina’s Draft Law on Transparency and

drafting of paragraph 17 is susceptible to mis-reading that might justify broad restrictions on legitimate advocacy and expression by associations. We would recommend that this paragraph be revised to instead make clear that associations may permissibly engage in, and should not face undue obstacles to, public and political participation, as suggested below.

- **Paragraph 35** currently provides that States Parties “are also obliged to address hostile actions, discourses and narratives, including online, vis-à-vis associations and their members, whether they emanate from public figures or private persons or actors.” Given the lack of an accepted and objective understanding of what constitutes “hostile actions, discourses and narratives” under international law, we are concerned that this language could be cited to justify the imposition of restrictions on legitimate criticisms of specific actors, including anti-rights groups and organizations affiliated with the government, by other members of civil society, including associations. Such restrictions would in many cases be inconsistent with ICCPR art. 19(3). We would recommend clarifying that hostile discourse concerning associations originating with state officials should be addressed by States Parties, and that other actions to promote positive discourse regarding associations must be consistent with arts. 19 and 20 of the ICCPR. Please see further below.

Recommended Revisions

In the following recommendations, we denote new suggested text by use of italics.

Paragraph 7

To clarify the meaning of the first sentence, and address the use of registration requirements as a condition for exercising the right, we recommend revising:

- “The right to freedom of association is not *conditional upon, and may be exercised independent of, State authorization, registration, or recognition.*”

The second sentence would benefit from first stating that the right does not require affirmative state permission, and then by noting the non-discrimination principle. We would recommend revising as follows:

- “This means that, while States may impose some restrictions on the exercise of the right under the strict conditions set forth in article 22 (2), the right *may be exercised by anyone without the need for affirmative State action or permission, and must be extended to everyone without direct, indirect, multiple or intersectional discrimination.*”

Disclosure of Interest Management” (June 2026), <https://www.icnl.org/post/analysis/eight-things-to-know-about-argentinas-draft-law-on-transparency-and-disclosure-of-interest-management>.

The final sentence sets up a distinction between formal and informal associations, but it may be more precise to speak of “registered” and “unregistered” associations, to avoid implying that unregistered organizations are necessarily less structured than registered organizations. We would recommend the following revision:

- “It also means that any decision on whether individuals exercise their collective activities as part of a *legally registered entity, or opt to proceed without formal registration*, should be a decision that rests solely with the individuals themselves, while the authorities should enable the establishment and functioning of associations.”

Paragraph 9

We expect that restrictions facing stateless and internally displaced persons will only increase in the future, with greater prevalence of conflict and climate emergencies. Specifically noting the impact of restrictions on minorities would be helpful, as well. We would recommend adding the following categories of particularly affected individuals to the second sentence: members of ethnic, racial, linguistic, and religious minorities; stateless persons; and internally displaced persons.

Paragraph 11

Many associations may have a hybrid quality and not fall neatly into categories of “online associations” or “offline associations”. We would recommend revising the second sentence to read:

- “Given the development of new technologies that have significantly affected the way in which associations pursue their collective activities, article 22 applies equally to offline and online organizations, *and to activities of associations taking place offline and online.*”

The final sentence of this paragraph currently addresses monitoring of social media and websites. In our view, such monitoring falls within the broader category of “digital surveillance” already addressed in this sentence. It would be helpful instead to specifically address takedowns of social media accounts and websites. We would accordingly recommend the following revision:

- “For example, digital surveillance, Internet shutdowns, the lack of access to digital tools, online transnational repression and *arbitrary takedowns* of social media *accounts* and websites have a chilling effect on the exercise of freedom of association.”

Paragraph 13

As the draft General Comment appropriately notes, informal, unregistered associations are still entitled to protection under international law. To avoid implying

that such associations generally lack legal status and protection, even if they lack legal personality, we recommend omitting “*de facto*” from the first sentence.

Registration requirements may sometimes be imposed by administrative decrees and decisions that do not qualify as “legislation”. Furthermore, we have seen authorities impose sweeping re-registration requirements upon the adoption of new legal regimes, which function in practice to deprive many associations of legal personality. To address such practices, the ACHPR *Guidelines on Freedom of Association and Assembly in Africa*² provide that “Associations shall not be required to register more than once or to renew their registration” (para. 17). In the fourth sentence, we would accordingly recommend the following revision:

- “In this regard, *measures* that impose burdensome or onerous registration requirements, *including re-registration requirements*, do not meet the requirements of article 22.”

Paragraph 14

In practice, life-cycle restrictions more frequently apply to effect the involuntary dissolution of associations, than to prevent associations from engaging in voluntary termination. We would thus recommend revising the first sentence:

- “Article 22 (1) covers the whole life cycle of an association, *protecting associations from involuntary termination except in accordance with Art. 22(2), and* including the right to terminate an association when its members consider it is not in their interest to continue with the association.”

We would recommend stating more emphatically that the right to freedom of association includes the right to access resources, rather than presenting this as just an example of the right. In particular, we would replace the third sentence with:

- “*It also includes the right of associations to freely seek, receive and expend funding and other material resources, including those coming from outside the State party. Associations should be allowed to fundraise and access domestic and foreign resources* without the risk of being labelled a ‘foreign agent’ or a threat to national security.”

A further consideration related to access to resources from foreign sources is the right of associations to access international cooperation, including through travel, cross-border collaboration, and participation in transnational confederations. We would recommend adding to this paragraph, before the final sentence:

² African Commission on Human and Peoples’ Rights (ACHPR), *Guidelines of Freedom of Association and Assembly in Africa* (2017), available at <https://achpr.au.int/en/soft-law/guidelines-freedom-association-and-assembly-africa>.

- *“The right to freedom of association further covers the right of associations and their members to engage in international cooperation, including through international travel, cross-border collaboration, and participation in regional and international confederations and coalitions of associations.”*

Paragraph 15

It may be worth emphasizing that principles of independence, autonomy, and self-governance extend not only to membership, purposes, programs, and actions, but to matters of governance and structure, as well. As the ACHPR Guidelines state, “Associations shall be self-governing and free to determine their internal management structures, rules for selecting governing officers, internal accountability mechanisms and other internal governance matters” (para. 36). We therefore recommend revising the second sentence of this paragraph:

- “Therefore, associations have the right to freely determine their membership, provided they respect the right to non-discrimination, and their purposes, programmes, *governance, structure*, and actions, without restriction incompatible with article 22(2).”

Paragraph 17

This paragraph addresses two concepts – freedom to engage in economic activities, and lobbying activities by associations – that are not necessarily connected. Treating them in the same paragraph may engender some confusion. We would recommend splitting this paragraph into two, following its second sentence.

Furthermore, the statement that associations covered by article 22 are distinct from groups engaged in lobbying activities is likely to be mis-read, as suggesting that associations may not permissibly engage in lobbying. In some jurisdictions, including the United States,³ “lobbying” may encompass a wide variety of policy advocacy, including advocacy not undertaken at the specific request of a client. We would recommend revising the third sentence as follows:

- *“Associations covered by article 22 may permissibly engage in policy advocacy and otherwise engage in public and political participation.* In this respect, States Parties should not instrumentalize regulations on lobbying activities to unduly restrict the right to freedom of association.”

Paragraph 18

In some contexts compulsory membership in NGO federations and networks can function as a restriction, by forcing NGOs to join state-mandated or aligned federations/networks. The ACHPR Guidelines address this by providing that “The

³ See, e.g., U.S. Code of Federal Regulations § 200.450(c).

decision to form or not to form federations shall be made freely by civil society actors” (para. 52), and “The law shall not stipulate mandatory state membership of particular federations” (para. 53). We accordingly recommend revising the second sentence:

- “Therefore, membership of an association, political party, trade union, *or network or confederation of associations* must be based on the principle of free consent exercised without any coercion.”

Paragraph 19

We would recommend strengthening the language regarding involuntary termination, in line with other regional guidelines and to stress that such measures may be undertaken only as a last resort in the presence of a serious violation of law. The ACHPR Guidelines state, for example, that “Suspension or dissolution of an association by the state may only be applied where there has been a serious violation of national law, in compliance with regional and international human rights law and as a matter of last resort” (para. 58). The OSCE/ODIHR *Joint Guidelines on Freedom of Association*⁴ similarly state: “... any prohibition or dissolution of an association shall always be a measure of last resort, such as when an association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law, and shall never be used to address minor infractions” (para. 35). We would accordingly recommend revising the second sentence to read:

- “Compulsory dissolution can occur only as an exceptional measure, *as a last resort when an association has engaged in a grave violation of national law*, and must strictly follow the restriction requirements set out in article 22 (2).”

Paragraph 30

We would recommend adding to the list of prohibited measures in the second sentence: overly burdensome reporting requirements; and arbitrary flagging of members of associations on travel watchlists.

Paragraph 35

We are concerned that the second sentence of this paragraph may be construed to permit restrictions on free expression inconsistent with art. 19 of the ICCPR. As General comment No. 34⁵ on the right to freedom of opinion and expression notes, “The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the

⁴ Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) & Venice Commission, *Joint Guidelines on Freedom of Association* (2016), available at <https://odihr.osce.org/odihr/132371>.

⁵ UN Human Rights Committee, *General comment No. 34 on freedoms of opinion and expression* (2011), available at <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

provisions of article 19, paragraph 3 and article 20” (para. 35). We would recommend cabining this sentence to more specifically address state-sponsored hostile discourse:

- “They are also obliged to address hostile actions, discourses and narratives, including online, *originating with state officials and affecting associations and their members, and otherwise to promote positive discourses and narratives regarding the right to freedom of association, in accordance with the provisions of article 19, paragraph 3 and article 20.*”

Paragraph 36

We welcome the reference to transnational digital surveillance but note that extra-territorial threats may be carried out through other forms of digital repression as well, including cyberattacks, doxxing, and online harassment. We would further note that government officials should refrain from both extraterritorial harassment of individuals, as noted in the draft paragraph, and other attacks as well. We would therefore recommend revision of this paragraph as follows:

- “In addition, while States Parties have a negative obligation to prevent their officials or agents from harassment *or attacks upon* individuals extraterritorially, they also have a positive obligation to protect individuals subject to their jurisdiction against such a risk coming from third States, whether the harassment, attacks, kidnapping, enforced disappearance or any other acts of violence are carried out offline or through transnational digital surveillance *or repression.*”

Paragraph 37

The obligation to respect human rights, especially in the deployment of technology, applies not only to business enterprises, but to State cooperation with these enterprises. We would recommend revision of the final sentence as follows:

- “In this regard, States Parties are obliged not only to adopt measures to require business enterprises to perform human rights due diligence assessments, *but to ensure respect for freedom of association and other human rights in State deployment of technology, including in cooperation with business enterprises,* and also to investigate human rights abuses committed by those enterprises both on their territory and abroad.”

Paragraph 43

We appreciate that the Committee has suggested in its jurisprudence that the test of legality under article 22(2) is whether a restriction is “provided by law”.⁶ However, the text of article 22(2) states that no restrictions may be placed on the exercise of the right to freedom of association other than those which are “prescribed by law”. This may give rise to some confusion about the appropriate test for legality. We would recommend inserting a footnote to paragraph 43 noting that the Committee has interpreted “prescribed by law” and “provided by law” to have the same meaning.

Respecting the second sentence of this paragraph, we would note the importance of stressing that any administrative acts imposing restrictions on the right to freedom of association must be based on law, to avoid appearing to validate unconstrained exercises of authority by administrative agencies. As the second sentence notes, the legality condition applicable to the right to freedom of association is similar to the legal regime applicable to the right to freedom of peaceful assembly. In fact, the phrase “prescribed by law” would appear by its natural meaning to impose a more stringent test than the analogous phrase used in art. 21 (“in conformity with the law”). General comment No. 37⁷ on freedom of assembly notes: “The second sentence of article 21 provides that no restrictions may be placed on the exercise of the right of peaceful assembly other than those imposed in conformity with the law. This poses the formal requirement of legality, akin to the requirement that limitations must be ‘provided by law’ in other articles of the Covenant. Restrictions must thus be imposed through law or *administrative decisions based on law*” (para. 39, emphasis added). We would recommend inclusion of a similar qualifier in the second sentence of this paragraph:

- “Similarly to the legal regime applied to the restrictions on freedom of expression and freedom of peaceful assembly, the legality condition requires the legal basis - whether a domestic constitution, a law enacted by a parliament, a judicial decision or an administrative act *based on law* - to be clear, precise and accessible to the public.”

The third sentence of this paragraph makes an important point that appears to be more relevant to the legitimate grounds on which restrictions can be based: racial and religious harmony and tolerance are not legitimate grounds for restricting the right to freedom of association under art. 22(2), even if restrictions on these grounds were to be formulated with a high degree of precision. We would recommend removing this sentence and adding “religious harmony and tolerance” to paragraph 49 (see below).

⁶ See, e.g., UN Human Rights Committee, Communication No. 1296/2004, *Belyatsky v. Belarus* (24 July 2007), para. 7.3; Communication No. 1039/2001, *Zvozkov v. Belarus* (17 October 2006), para. 7.2; Communication No. 1119/2002, *Lee v. Republic of Korea* (20 July 2005), para. 7.2.

⁷ UN Human Rights Committee, *General comment No. 37 on freedom of peaceful assembly* (2020), available at <https://docs.un.org/en/CCPR/C/GC/37>.

Paragraph 44

In the first sentence, the reference to human rights defenders and journalists is welcome but may be read to exclude other actors exercising associational rights recognized throughout the draft (e.g., trade union members, lawyers and legal aid organizations, media workers). We would recommend revising this sentence:

- “In this regard, the use of domestic legislation to criminalize an association, its members, *or other members of civil society, including* human rights defenders or journalists, for their activities must not only respect article 22 but also meet the strict criminal legality principle as enshrined in article 15 of the Covenant.”

In the final sentence, another vague concept that we have seen used to impose restrictions in the context of counter-terrorism efforts is “material support”. We would recommend revising this sentence as follows:

- “The same applies to vaguely worded legislation adopted to combat ‘extremism’, ‘extremist activity’, *‘material support’ for disfavored activities*, funding coming from abroad or ‘undesirable’ organizations.”

Paragraph 48

Our view is that this paragraph could benefit from borrowing some of the formulations of these principles from General comments No. 34 and 37. General comment No. 34 states at para. 32, quoting from General comment No. 22, that “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations ... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.” General comment No. 37, at para. 46, provides: “Restrictions on peaceful assemblies should only exceptionally be imposed for the protection of ‘morals’. If used at all, this ground should not be used to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition ...” We would recommend importing these concepts by revising the second sentence of this paragraph:

- “Public morals, *which may be invoked only exceptionally* as grounds for a restriction, are not equivalent to social sensibilities, and *must be based on principles not deriving exclusively from a single social, philosophical or religious tradition.*”

Respecting the final sentence of this paragraph, laws restricting free expression regarding non-traditional sexual relations have not been limited in their application to the sharing of information among minors. The Anti-Homosexuality Act, 2023 enacted in Uganda, for instance, criminalizes the offense of “promotion of homosexuality,” and permits the suspension or cancellation of the licenses of

organizations which promote homosexuality, without reference to whether such promotion involves minors. We would recommend that the final sentence of this paragraph omit the phrase “among minors”. The final sentence, as currently drafted, is also susceptible to mis-reading, with “among minors” modifying “sexual relations” rather than “propaganda”; our suggested edit would address this point.

Paragraph 49

We would recommend providing examples of non-legitimate grounds for restricting the right, by revising the first sentence of this paragraph:

- “The list of legitimate grounds for restriction set out in article 22 (2) is exhaustive, *and does not include frequently cited grounds for restricting the right to freedom of association such as racial and religious harmony or tolerance, or national sovereignty.*”

See also point relating to para. 43 above.