



Comments on Draft General Comment No. 38 on the right to freedom of association

15 July 2026

The European Center for Not-for-Profit Law (ECNL) welcomes the opportunity to provide comments on the draft General Comment No. 38 on Article 22 (right to freedom of association) of the International Covenant on Civil and Political Rights (ICCPR).

Please find below specific suggestions for textual revisions to the draft General Comment.

Our comments focus on aspects that we believe should be further addressed or clarified in the General Comment to ensure an effective protection of freedom of association over time.

I. General Remarks

Paragraph 2:

We welcome the acknowledgment that the right to freedom of association is closely interrelated and interdependent with other human rights. The text highlights, in particular, those rights that are facilitated and reinforced by freedom of association (articles 18, 19, 21 and 25, ICCPR). We recommend **adding that these rights also facilitate and reinforce freedom of association**. We also recommend **adding an explicit reference to the interconnection with the right to privacy (Article 17, ICCPR) here as well**. Therefore, we propose the following revised text (additions in bold):

- *While these essential and instrumental dimensions of the right to freedom of association must be stressed, this right cannot be interpreted in isolation. It is closely interrelated and interdependent to other human rights. In particular, it facilitates and reinforces the right to freedom of conscience and religion (art. 18 of the Covenant), the right to freedom of expression (art. 19), the right of freedom of peaceful assembly (art. 21 and the right to take part in the conduct of public affairs (art. 25) and is facilitated and reinforced by these rights. The exercise of the right to freedom of association is also interdependent on the exercise of the right to privacy of the members of an association, of the association itself and of its donors and beneficiaries.*

The protection of the right to privacy of an organisation is often a pre-condition for the very exercise of the individuals' right to associate.

Paragraph 7:

We recommend slightly revising the initial statement as follows (our additions in bold):

- *The **exercise of the right to freedom of association** ~~is~~ **cannot be** conditioned by a formal State's authorization or acknowledgement. [...]*

We believe this formulation would better clarify that registrations or authorization requirements cannot be used as a pre-condition for setting up associations and/or conduct associational activities.

Paragraph 9:

We welcome the specific examples of marginalized, disenfranchised or disadvantaged persons, groups, communities and peoples that may be particularly affected by restrictions and interferences of the right. While we understand that the list is non-exhaustive, **we recommend also adding a specific reference to “internally displaced people”, “ethnic,**

racial, linguistic and religious minorities” and “political and human rights activists in exile”, who are also particularly affected and subject to transnational repression. Therefore, we propose the following revised text (additions in bold):

- [...] Particularly affected individuals include women, especially women human rights defenders, women journalists and women trade unions members and representatives, **ethnic, racial, linguistic and religious minorities**, Indigenous Peoples, people living in rural or remote areas, people living in overseas territories, environmental and land rights defenders, children and young people, trade union members and representatives, LGBTQI+ persons, persons with disabilities, persons who use drugs, migrants and asylum-seekers, **internally displaced people**, convicted persons, in particular when they are deprived of their voting rights, **political and human rights activists in exile** and members of political parties, especially when they are in opposition to the Government. [...]

Paragraph 10:

We very much welcome the acknowledgment that the right to freedom of association applies also to “ideas, activities and actions that might be seen as controversial, dissent or disruptive”. However, the examples that follow are only limited to what can be deemed as controversial or dissenting. We believe it would be beneficial to clarify what type of disruptive activities may also protected by the right. Therefore, we recommend the following addition (in bold):

- [...] The right to freedom of association applies also to ideas, activities and actions that might be seen as controversial, dissent or disruptive, **including human rights, non-violent collective civil disobedience or direct action campaigns, the denunciation of corruption, and other politically sensitive issues** [...]

This reference is also explicitly included in the UN HRC General Comment No. 37 on freedom of peaceful assembly (para 16). If added here too, we believe it would not only strengthen the associational value of assemblies, but it would clarify that these activities are also protected by the right to freedom of association.

Paragraph 11:

We recommend adding and clarifying that (additions in bold):

- [...] article 22 applies equally to offline and online organizations **or a combination thereof**.

We believe that the current online/offline categorization may not capture associations whose structure and/or activities are of a hybrid nature. This inclusion would also be consistent with the statement in paragraph 16 acknowledging that “individuals may choose how to exercise their freedom, whether offline or online or in both contexts.”

We also welcome in this paragraph the explicit mention of transnational repression, but we recommend replacing “online” with “digital”, so the text would read as follows (our bold):

- [...] For example, digital surveillance, Internet shutdowns, the lack of access to digital tools, ~~online~~ **digital** transnational repression, ~~and~~ **unduly restrictive monitoring of social media and websites and arbitrary online content removal** have a chilling effect on the exercise of freedom of association.”

This revised definition would still capture online transnational repression but would also include other digital forms that are not conducted via the internet and are not a surveillance instrument either. Some States, for example, use digital banking, payment and remittance systems to freeze accounts, block transfers or pressure banks in a

country to deny financial services to human rights defenders in exile or their family members receiving support from them in their home country.

Finally, we recommend adding the example of arbitrary removal of online content on social media and websites.

II. Scope of freedom of association (article 22)

Paragraph 12:

We recommend removing “licit” before goals, so the text would read as follows:

- *Associations are organized, independent, non-profit entities that bring people together voluntarily to pursue common ~~licit~~ goals, interests or activities.*

The text refers to definitions included in OSCE-ODHIR Joint Guidelines on Freedom of Association and in the ACHPR’s Guidelines on Freedom of Association and Assembly, but in both guidelines the reference is merely to “common interest, activity or purpose” (OSCE-ODIHR, para 7; ACHPR, para 1) without a qualifier. We believe this is not an oversight, as the reference to “licit” may be misunderstood as allowing only associations whose objectives are established by law.

Paragraph 15:

We recommend the following text revision (our addition in bold):

- *The freedom of every association to carry out its activities ~~is based on the core principles of independence, autonomy and self-governance. Therefore,~~ entails that associations have the right to freely determine their membership, provided they respect the right to non-discrimination, and their purposes, programmes and actions, without restriction incompatible with article 22(2). ~~In this regard, the designation or inclusion of members of organizations imposed by the authorities, including government representatives, would infringe the right to freedom of association. In the same vein, the oversight powers of the authorities must be strictly defined. A law granting the Government undue power or influence to decide on the registration or deregistration of an association and on authorization of public or foreign funding for an association would be at odds with article 22.~~*

As discussed with other civil society experts, we agree that the principles of independence, autonomy and self-governance underpin the freedom of every association to carry out its activities, but the operationalisation of these principles – with examples of how States may unduly interfere with them – should be addressed in Sections IV and V of General Comment No. 38 further down (dealing, respectively, with State Parties’ Negative and Positive Obligations and Restrictions to Freedom of Association).

Paragraph 17:

We propose the following text revision (our additions in bold):

- *While an association is defined as an independent and a non-profit organization, it is not precluded from performing economic activities. Non-profit status should not be an obstacle as such to commercial activities, provided that they do not become the main purpose of the association. Moreover, ~~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.~~ In this respect, **interest alignment with other entities, including donors, should not be considered as automatically undermining the independence and autonomy of an association, intended as self-governance and freedom to determine internal management structures, rules for selecting governing officers, internal accountability***

mechanisms and other internal governance matters. In particular, States Parties should not instrumentalize the regulations on lobbying activities and transparency to unduly restrict the right to freedom of association. (See Sec. V below).

We believe that the distinction between associations and groups carrying out lobbying activities may be misleading, as some associations may also engage in lobbying activities in pursuit of their statutory missions. The definition of “lobbying” and “policy advocacy” also differ in varying jurisdictions. Therefore, we recommend removing it altogether and only clarify that interest alignment with other entities, including donors, does not necessarily constitute an interference with the independence, autonomy and self-governance of an association. The language proposed also reflects the standards in the above-mentioned OSCE-ODIHR and ACHPR Guidelines on Freedom of Association. The last sentence should also refer to Section V on restrictions of freedom association below.

Paragraph 19:

We recommend **moving up paragraph 19 so that it becomes paragraph 18** (and the current paragraph 18 becomes 19), since it follows more logically from paragraph 17.

IV. State Parties’ negative and positive obligations

Paragraph 30:

We recommend the following additions (in bold):

- *Applied to the right to freedom of association, the obligation to respect means that States Parties must refrain from restricting the right de jure or de facto in a way that would be incompatible with article 22 (2) (see sect. V below). Accordingly, measures that are prohibited include arbitrarily [...] performing surveillance, including online **and via other digital means**, of the organization’s activities, infiltrating an association with covert police or intelligence services, [...] and instrumentalizing defamation proceedings and other means of “strategic litigation against public participation” (SLAPP lawsuits). A **law granting the Government undue power or influence to decide on the registration or deregistration of an association, on establishing special notification or registration for foreign funded organizations and on authorization of public or foreign funding for an association would also be at odds with article 22 (2).** Such measures impede the full realisation of the right and may have a chilling effect on its exercise.*

In these proposed changes, we have included the reference to “**other digital means**” to capture all forms of digital surveillance, not only online. We have also moved here the example a law granting a government undue powers on the life and funding of an association, with some added language on foreign funding restrictions (“**on establishing special notification or registration for foreign funded organizations**”), as we believe it fits the description of ways to restrict associations de jure or de facto.

Paragraph 32:

We recommend the following slight addition for clarification (in bold):

- *As indicated above, in line with article 2 of the Covenant, the obligation to respect Covenant rights is not limited to a State Party’s territory. Therefore, article 22 prohibits a State Party from [...] any similar actions against, for instance, journalists, human rights defenders, **including environmental and land rights** defenders, lawyers and legal aid organizations, media workers and trade union members living abroad.*

We believe it may otherwise inadvertently foster the misconception that environmental **and land rights defenders** (also previously mentioned in paragraph 9) are not human rights defenders themselves.

Paragraph 33:

We recommend the following slight addition (in bold):

*The positive obligations under article 22 require the States Parties to create an enabling environment for the enjoyment and the exercise of the right to freedom of association covering the whole life cycle of an association. Creating such an environment requires a wide range of actions to facilitate the implementation of the right, including relating to registration, policies on tax incentives and tax exemption for associations, pursuit of and access to funding, **access to financial services**, access to and preservation of records and archives, and the manner in which an association carries out its activities, including in relation to the exercise of other rights, such as the right to enjoy in community their own culture, to profess and practice their own religion, or to use their own language; freedom of movement; freedom of expression; or the right to privacy and to freedom of peaceful assembly.*

Access to financial services is a prerequisite for access to funding, as also acknowledged in the OSCE-ODIHR Guidelines on Freedom of Association (para 195). States should prevent restrictive interpretation and application of anti-money laundering standards and measures and ensure compliance with FATF Recommendation 8.

Paragraph 35:

We recommend the following additions (in bold):

- *Under the positive obligations of article 22, States Parties are required to ensure the existence of a functioning environment for associations. They 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 **and officials** or private persons or actors, **in accordance with the provisions of article 19 (freedom of opinion and expression) and article 20(2) of the Covenant (advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence)**. This is especially so where associations focus on issues considered by the majority of the population or the Government to be controversial or sensitive, such as gender issues, migrants' rights, corruption, business projects in the context of extractive industries, opponents to economic development projects or megaprojects or other opposition political issues. **It is also the case where association carry out peaceful disruptive activities, such as non-violent collective civil disobedience or direct action campaigns, to raise awareness of those issues.***

We believe the State Parties should be reminded that their obligations to address hostile discourse against associations should be compatible with the rights to freedom of opinion and expression and the targeting of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. To this extent, a reference may be added in the footnote to the guidelines provided by the UN OHCHR Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Furthermore, we recommend adding a specific reference to controversial disruptive activities that associations may undertake and are still protected by their right to freedom of association and other Covenant rights.

Paragraph 36:

We welcome the explicit reference to transnational digital surveillance. However, as mentioned further up, other forms of attacks and of digital transnational digital repression exist that are not surveillance instruments but still interfere with the right to freedom of

association (see examples mentioned above, among others such as cyberattacks, etc.). Therefore, we recommend the following revision (in bold):

- *In addition, while States Parties have a negative obligation to prevent their officials or agents from harassment or other 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 other forms of digital repression.*

Paragraph 37:

We recommend the following addition (in bold):

- *[...] In this regard, States Parties are obliged not only to adopt measures to require business enterprises to perform human rights due diligence **and impact** assessments, but also to investigate human rights abuses committed by those enterprises both on their territory and abroad.*

We recommend this addition as a clarification of the type of assessments that the State Parties should require from business enterprises, bearing in mind the human rights impact assessment obligations enshrined in regional and global instruments regulating the lifecycle of artificial intelligence systems (see, e.g., the EU AI Act and the global CoE Framework Convention on AI and Human Rights, the rule of Law and Democracy).

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

Paragraph 43:

We welcome the non-exhaustive list of examples included, but we recommend the following addition in the second part (in bold):

- *[...] In the same vein, broad and vague criteria for registering an association, for refusing its registration due its “political objectives”, **for discriminating between domestic and foreign-funded association**, or an open-ended definitions such as “extremist activity” contained in a law providing the basis for the dissolution of a religious organization would not meet the legality condition. [...].*

We recommend adding an explicit reference to overbroad and discriminatory foreign-funding legislations, as these examples can also be found in several Human Rights Committee Concluding Observations on State Parties’ ICPPR review (for a compilation of references to such reports, see ECNL-ICNL Report, Relevant Sources of Law on Article 22 ICCPR: Right to Freedom of Association: <https://ecnl.org/publications/relevant-sources-law-article-22-iccpr>)

Paragraph 44:

We recommend a revision of the text as follows (in bold):

- *In this regard, the use of domestic legislation to criminalize an association **and/or** its members, **including** human rights defenders, **not-for-profit media** 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. The criminal legality principle is non-derogable and therefore no circumstances such as counterterrorism or anti-money-laundering measures can justify its infringement. The same applies to vaguely worded legislation on “**interest representation**” or adopted to combat “extremism”, “extremist activity”, “activities subverting or threatening to*

subvert democracy”, “funding coming from abroad”, “**foreign interference**”, “undesirable” organizations”.

We believe that the previous formulation risks limiting the protection only to associations of human rights defenders and journalists. We also reiterate our recommendation to include vaguely worded legislation on foreign interference and interest representation in the concerning examples.

Paragraph 46:

We very much welcome the reference to the narrow definition of “national security” enshrined in the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR and the strong wording on the State Parties’ need to demonstrate the existence of such threat. We would perhaps suggest strengthening it even more as follows (in bold):

- [...] the existence of any reasonable and objective justification for limiting freedom of association is not sufficient, and the State Party must further demonstrate **unequivocally** that the prohibition of the association and the criminal prosecution of individuals for membership in such organizations are in fact **strictly necessary** to avert a genuine, and not only hypothetical, danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose.

Paragraph 49:

We recommend the following addition (in bold):

- The list of legitimate grounds for restriction set out in article 22 (2) is exhaustive. Motives such as those invoked for justifying “foreign agent” or similar laws, such as “**foreign interference**”, “**sovereignty**”, “public transparency” or “social transparency”, misused for targeting associations that receive funds from abroad are not covered by the legitimate goals listed in article 22 (2).

We recommend this addition because the threat of “**foreign interference**” is used, for example, in some proposed legislations to indicate activities that are carried out by, or on behalf of, a foreign state-level actor, which are deemed coercive, covert, deceptive, or corrupting and contrary to the sovereignty, values, and interests of the State (see, e.g., proposal for a EU Directive on third-country interest representation).

Paragraph 50:

We recommend adding the following text (in bold):

- To meet the requirement of article 22 (2), a restriction must also be necessary in a democratic society to achieve one of these purposes. **To be necessary in a democratic society, the restriction must respond to a pressing social need and be proportionate to achieve such need.** The necessity and proportionality requirements must **also** be read in conjunction with article 5 (1), which provides the following: “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.” Accordingly, the Covenant prohibits ulterior motives that underpin restrictions on freedom of association.

We believe that this addition clarifies the meaning of “necessary in a democratic society”, in line with the language already used by the Human Rights Committee (see, e.g., UN HRC General Comment No. 37 on the right of peaceful assembly, para 40). It also clarified where the “proportionality” requirement mentioned in the following sentence stems from, since only the “necessity” criterion is explicitly mentioned in Article 22(2).