OHCHR Consultation Call Comments on Draft General Comment No. 38 on Article 22 of the ICCPR (the Right to Freedom of Association)

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In 2020, the United Nations created General Recommendation Number 38, focusing on policies to prevent trafficking of women and girls and address related human rights concerns. Specifically, GC 38 on Article 22 directly affects unions and human rights defenders by restricting certain human rights freedoms. It defines and protects the right to freedom of association, meaning that people can create, leave, or join groups without government intervention or oversight. As global restrictions on society, trade unions, and human rights increase, many people hold differing opinions about the scope and power of Article 22.

We determine the success of Article 22 by analyzing its major issues and emphasized points. The prominent points of the article include the misuse and misinterpretation of national security laws, as well as digital surveillance and online association. Article 22 also limits access to funding for marginalized communities, which undermines the policy's strength.

Article 22 applies to both informal and formal groups and associations. Additionally, it addresses the strength of restrictions imposed on the basis of unjust discrimination. In doing

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so, it helps make it easier to join organizations, especially by enabling digital groups and associations. Such actions help increase people's power and rights under Article 22 while still maintaining strong policy restrictions. Reinforcing the policy on discrimination, association, and funding would help make GC 38 more sustainable and better geared toward future interpretations of Article 22.

Article 22 of the International Covenant on Civil and Political Rights recognizes the right to form groups and associate with them without undue government interference or control (The Carter Center). Such groups include trade and labor unions, clubs, and other organizations of people with similar goals or beliefs. The Article does suggest some restrictions; however, these are only when there are concerns about national security or the safety of other people or groups.

In July of 2025, the Human Rights Committee held its 144th session. During it, members decided to develop General Comment No. 38 to provide stronger text and interpretation of Article 22 in light of modern challenges and questions regarding the suggested policy. To begin, the committee asked many groups for input on the various interpretations of the Article to better understand the ambiguities. The first draft of General Comment No. 38 was read for the first time on March 226 during the 145th session, and the text was opened to public comment before the second reading (CCPR Centre).

General Comment No. 38's primary goal is to clarify the scope and reach of Article 22 to help provide greater stability for governments around the world when implementing and creating policies regarding social interaction and the formation of groups (Woolcock, 1998).

It includes both formally and informally recognized groups and unions, both online and in person. It seeks to empower the marginalized groups who are considered vulnerable because their ability and freedom to organize themselves is restricted unfairly compared to other groups of people.

The Article recognizes the importance of people being able to interact and experience the freedom to associate in groups without punishment. It encourages more people to participate in social and public life and helps protect people's fundamental rights.

Gaps in the Draft

The Digital and Online Dimension of Association:

The draft's treatment of the digital and online dimension of associate requires further development. More specifically, the current text does not thoroughly articulate how Article 22 will apply to online-only associations, algorithmic content moderation that disrupts associational activity, or state surveillance of digital communication channels between association members. In the initial 2025 call for input, civil society submissions emphasised that associative activity increasing occurs through digital platforms, encrypted communications and transborder online networks, the current text does not adequately address such contexts.

Funding Restrictions:

The draft insufficiently addresses funding restrictions as a distinct and increasingly prevalent method of interference. Many states have adopted 'foreign agent' laws – restrictive registration requirements that are tied to funding sources, or burdensome financial reporting

obligations that structurally incapacitate associations without formally banning them. The Eastern Europe and Central Asia regional submissions directly reinforced this point regarding funding-based restriction. Although eleven countries in the region formally recognise the right to expand state control – furthering their control over civil society organisations, and restricting access to funding – the practical environment for NGOs and community-led organisations remain highly inconsistent.

Lack of Clarity on Positive Obligations:

Additionally, there is also a lack of clarity on the State's 'positive' obligations: actions that states should be dedicating resources to, including duties to protect associations from third-party (non-state) interference, such as corporate retaliation against trade unions or vigilante attacks on civil society organisations.

Vague and Overboard "National Security" and "Public Order" Limitations

The draft's treatment of national security and public order limitation remain vague, especially in the context of the relative scale of contemporary abuse of such ambiguity. This includes the weaponisation, justification of counter-terrorism framing, and punitive bail conditions to restrict activity by associations and civil society actors. The International Network of Civil Liberties Organisations' (INCLO) submission addresses said conditions in the broader context which drafts the Article in the global context marked by a growing closing of civic space and democratic backsliding. With States increasingly relying on restrictive legal frameworks, discretionary administrative practices, and broad security-based narratives to limit, a more detailed and specific review is encouraged.

Insufficient Attention to Vulnerable and Stigmatized Categories of Associations

The draft does not adequately address the specific vulnerabilities of informal/unregistered groups, Indigenous and minority associations, and associations defending stigmatized causes. The INCLO submissions also referenced indigenous communities, it ties security-based targeting to Indigenous associations specifically.

Superficial Integration with Article 21 and International Labour Organisation (ILO) Standards

The interaction between Article 22, Article 21 (assembly), and ILO convention No. 87 standards is treated somewhat superficially, despite frequent overlapping restrictions. It is imperative to recognise that trade unionism is a fundamental expression of the freedom of association in Article 22 of the ICCPR, and that the right to organise in the workplace must be interpreted consistently with the broader body of human rights and ILO standards.

Limited Guidance on Remedies and Accountability

The draft offers limited guidance on remedies for unlawful interference - dissolution, registration denial, or prosecution of members – beyond restating the general Article 2(3) remedy obligation. The Advocates for Human Rights submission outlines how restrictions may be imposed only to protect national security, public safety, public order, health, or morals, and must be necessary in a democratic society and the least severe measures available in range, duration and applicability.

Priority drafting points

1. The draft general comment no. 38 on article 22 of International Covenant of civil and political right (ICCPR), must strengthen to enhance clarity, consistency and practical direction on what freedom of association rightly covers and from where its limits begin. A first way priority is to bring forward a more exact explanation of the normative reach of

Article 22 and in this way it should reaffirm that the rights safeguards both the formal and informal associations. Which includes various trade unions, professional bodies, students groups, digital ecosystem and civil society organisations. It would be beneficial if a general comment states or declares that the protection applies along the entire life cycle of an association, like from formation to registration and then operating, funding affiliation. Without a gap, consistently so that no phase of an association development is left outside the scope of protection. Not only the articulation of this principle would strengthen legal certainty, reduce interpretive inconsistency among the states but also address common bottlenecks e.g registration delays and unclear funding authorization processes which are used in civic environment.

2. The draft also should improve and optimize how permissible restrictions are read under article 22(2). Limitations need to be interpreted narrowly, in a way that follows legally and proportionality. The text should make clear that vague or overly broad concepts like “public order” or “national security” should not become a blanket justification for curtailing associational rights. Those terms should be described in a narrow manner and there should be a evidence showing why the restriction is genuinely required, not just presumed and strictly subject to the necessity test.

3. The general comment should tackle de facto restrictions and indirect restrictions, because those aren't always obvious. Examples may include surveillance, harassment, and discriminatory financial restrictions. Even though these actions do not constitute a formal ban they may nevertheless create a similar chilling effect. So they should be made explicit that such conduct may result in violations of article (22) , depending on the context and impact

4. Overall, the document would benefit from being operational in tone, with guidance that

facilitate implementation for states, courts and monitoring bodies to apply standards consistently and for individuals and associations to understand that the protections should not only be effectively realized in practice but also should be applied in reality.

Recommendations

The Human Rights Committee should strengthen General Comment No. 38 by providing clearer guidance on the emerging challenges to freedom of association and by expanding several provisions that currently lack detail. The following recommendations identify areas where the Draft can be strengthened during the second reading.

First of all, the General Comment should clearly state the scope of Article 22, particularly the diverse forms of association it protects. It fails to explicitly affirm that its protection extends to formal and informal associations alike, regardless of their legal status or organizational structure. Additionally, individuals should not lose protection because they are involved with unregistered, informal, or virtual organizations. Registration should be understood as a facilitative mechanism instead of a prerequisite to ensure the enjoyment of the aforementioned rights.

Beyond clarifying the scope of protection, the General Committee should also provide a clearer outline of the obligations of the States, aside from refraining from interference. States should be required to create an enabling environment where associations can operate freely, safely, and effectively. The General Comment should clarify that national security and public order limitations must be interpreted narrowly. Particular attention should be given to preventing the misuse of counterterrorism legislation, emergency powers, and public order regulations. The General Comment should emphasize that Article 22 protects all peaceful

associations without discrimination. The Committee should acknowledge the challenges faced by Indigenous, racialized and marginalized associations, such as youth- and student-led organizations and trade unions.

The Committee should recognize access to resources as an integral component of the freedom of association. The Draft should clearly state that associations have the right to seek, receive, and use resources, including domestic and foreign funding. Contemporary restrictions on funding have become one of the most significant challenges facing society worldwide. The Committee should expand its discussion of access to resources and financial dependence. The Comment should state that associations have the right to seek, receive, and use resources, including foreign funding, where their activities remain lawful.

The General Comment should provide a more robust protection for digital, virtual, and online forms of association. Associational life increasingly takes place through digital platforms, encrypted communications, online communities, and transnational virtual networks. Restrictions in digital spaces can impose the same impact as seen in physical spaces. Accordingly, the Committee should provide additional guidance on state surveillance, internet shutdowns, algorithmic content moderation, platform restrictions, and digital monitoring practices that may interfere with associational activity.

The Draft should clearly state what happens when Article 22 is violated and address its consequences more directly. It should provide a stronger statement regarding accountability so that the freedom is not only protected in theory, but also enforced in practice. Furthermore, associations and their members should have access to prompt, effective, and practice remedies when their freedom is restricted unlawfully.

Finally, the Draft should provide greater clarity regarding the indirect forms of interference. Indirect restrictions like arbitrary audits, financial restrictions, account freezes, travel bans, and other forms of administrative harassment may violate Article 22 by hindering the association's ability to function. Certain actions may still violate Article 22 if it interferes with the association's ability to operate, form, and continue working.

Comparative international standards and new emerging Challenges

The human rights committee should make sure that general comment no. 38 is read in a way that matches the wider international set up around freedom of association. Even if article 22 of ICCPR is the main legal anchor for protecting the right to freedom of association. , the way it is interpreted ought to be helped along by other, complementary human rights standards, as both international and regional levels. If they do this, it would improve alignment across different legal systems and push for more steady application of associational rights.

Particularly, the committee should recognize how tightly linked Article 22 is with ILO Convention no. 87 on freedom of association and protection of the Right to organise. Now, convention no. 87 mostly covers workers and employers organisation , but its core ideas basically back up the broader viewpoint that people should be able to set up, join and run associations without needless state interference. A clear answer to this connection would make the interpretation of Article22 stronger, especially when the focus is on trade unions and other professional associations.

The GC would also benefit from a bit more participation with regional human rights jurisprudence. Decisions from the European Court of Human Rights under article 11 of the european convention on human rights , alongside the jurisprudence of the inter-america court of human rights and the African commission on humans and people' Rights, have for a long time stressed that any limits on freedom of association must pass tight tests of legality and proportionality. Even though these regional systems work independently of the ICCPR, they yet offer persuasive direction that mirrors an emerging international consensus, about keeping civic space protected.

The committee should also recognize that contemporary threats to freedom of association increasingly come up through technological and regulatory development rather than direct legal Prohibitions. Digital surveillance, algorithmic monitoring and heavy administrative / financial requirements may substantially interfere with associational activity, even when there aren't any formal bans

These developments show the freedom of association now goes beyond free traditional physical organisations and moves into digital and transnational environments. As a result , GC 38 ought to take a forward looking interpretation that tackles emerging forms of state interference while still staying consistent with the well established principles of international human rights law.

Bringing Article 22 in line with complementary international standards and addressing these emerging technological challenges would help with legal certainty and promote more consistent implementation by state parties. Finally bolster the long term effectiveness of the GC

Implications and Trade offs

Strengthening General Comment No. 38 would be helpful in reinforcing international standards on freedom of association , it must add more interpretative clarity and consistency among states, parties, domestic courts, national human rights institutions e.t.c If the scope of Article 22 were clarified more precisely then legal certainty would increase and the covenant could be applied in a formal / uniform way across administrations. Protection would be strengthened against blocking interferences which appeal to increasingly sophisticated e.g restrictions that do not take the forms of outright bars. Instead they work through administrative steps , financial controls, or digital mechanisms, not only through formal prohibitions or limitations on paper.

At the same time, there are a few trade-offs that deserve merit consideration. Some states might see a stricter reading of article 22(2), especially in connection to national security and public order, as reducing their regulatory discretion. This could play a crucial part in regulatory contexts such as counter-terrorism, as a result, stronger language might face a pause or pushback during implementation. Particularly in places where governments rely on broad security justifications to regulate associations.

Also, a more expansive acknowledgment of indirectness may increase compliance expectations. For example, burdensome registration requirements, restriction on cross border funding and digital mechanisms can prompt various states to revisit their existing regulatory frameworks. Even if these reforms are created and their purpose is to enlarge civic space, the government may argue that the changes create both administrative and compliance burdens.

Another thing which is very important to keep in mind is how goal settings meet the practical implementations realities. A further consideration is the balance between what we want to be normative and, what we can actually put in place. If the general comment could adopt highly expansive standards but does not include enough operational guidance then the gaps in implementation may widen across legal systems that have various institutional capacities. Yet, an overly cautious approach could also backfire, because it might mean missing contemporary threats to freedom of association, particularly when limits are introduced through informal practices not through clear legal limitations.

Ultimately, the main problem is basically to make sure general comment stays grounded in principle but also usable in practice.It has to be robust enough to respond efficiently to emerging restrictions on civic participation, meanwhile still giving guidance to states that they can realistically implement and the fact that courts can apply in a consistent and predictable way.

General Comment No. 38 is not official law for any states, including those in the United Nations. Idt does, however, provide strong context and policy recommendations for all nations by interpreting the Human Rights Committee's Article 22. Once it is officially approved and adopted, it will help nations better implement and clarify existing policies, allowing more people the freedom to form groups (Florini, 2013). The work of the General Committee is incredibly important because it affects human rights institutions and advocacy by providing greater clarity through the protection of freedom of association (ECNL).

Conclusion

Draft general comment no. 38 presents significant opportunity to clarify and strengthen the protection of freedom of association under Article 22 of the ICCPR, in an increasingly complex civic environment. If the committee strictly addresses contemporary challenges such as administrative barriers or “Indirect” restrictions or even more like digital forms of interference, can provide clearer guidance to state parties and institutions too. The General Comment still has to strike a careful balance between having a normative clarity and making sure the practical side is realistic so the standards stay both authoritative and actually achievable