15 July 2026

Ms C. Rosniansky
Office of the United Nations High Commissioner for Human Rights (OHCHR)
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Dear Ms Rosniansky

CALL FOR COMMENTS – DRAFT GENERAL COMMENT NO. 38 ON ARTICLE 22 (ON THE RIGHT TO FREEDOM OF ASSOCIATION) OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

AfriForum is a South African civil rights organisation that has held consultative status with the United Nations Economic and Social Council (ECOSOC) since 2020. The organisation has approximately 300 000 active members who voluntarily pay monthly fees to support its activities. AfriForum is committed to the protection and promotion of human rights, constitutional democracy and the rule of law. Although its primary focus is advancing and protecting minority rights, particularly those of the Afrikaner community, its work also extends to safeguarding the rights and freedoms of all communities in South Africa.

AfriForum aligns itself with the values that are expressed in the Preamble to the Constitution of the Republic of South Africa, which declares that "South Africa belongs to all who live in it, united in our diversity." The organisation is committed to the constitutional values of human dignity, equality, freedom, the advancement of human rights, constitutionalism and democratic governance. The Constitution specifically guarantees that "[e]veryone has the right to freedom of association" (section 18), and that "[p]ersons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community […] to form, join and maintain cultural, religious and linguistic associations and other organs of civil society" (section 31(1)(b)). In addition, in terms of article 185 of the

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Registration number: 2005/042861/08 • **NGO number:** 054 - 590

Constitution, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities has been established to protect and promote this freedom of association.

At the same time, AfriForum recognises that constitutional guarantees must be translated into practical realities. Through its engagement with minority communities and other vulnerable groups, the organisation has observed a gap between constitutional commitments and their implementation in practice. For various reasons, the abovementioned Commission is also not able to find solutions to some of these challenges.

As we recognise the responsibility of civil society to intervene where the government and constitutional bodies such as the Commission are not able to address all challenges, AfriForum remains committed to promoting and protecting the constitutional rights and freedoms guaranteed to all who live in South Africa. It advocates for the consistent and impartial application of constitutional principles and the equal protection of all rights, irrespective of political, cultural, linguistic or other differences. While challenges remain in ensuring the effective protection of minority rights, AfriForum continues to support the full implementation of the rights and obligations that are enshrined in the Constitution.

Against this background, AfriForum welcomes the opportunity to make comments on the Draft General Comment on article 22 of the International Covenant on Civil and Political Rights. Freedom of association is one of the foundational principles of every democratic society. As I mentioned above, it is also protected by section 18 of South Africa's Constitution, as well as article 22 of the Covenant and article 10 of the African Charter on Human and Peoples' Rights (ACHPR). AfriForum's *Civil Rights Charter* similarly recognises freedom of association as an indispensable safeguard for democratic participation, constitutional accountability and the effective protection of minority communities. It is from this perspective that AfriForum respectfully submits the following comments.

Paragraph 7

The Committee may wish to include a reference to article 26 to reflect that the enjoyment of the right to freedom of association must be guaranteed without discrimination and in

accordance with the Covenant's general guarantee of equal protection of the law. This would also be consistent with articles 2 and 3 of the ACHPR.

Paragraphs 9, 10 and 38

These paragraphs could place greater emphasis on both minority groups and the unique contribution of organisations that represent minority communities to protect cultural, linguistic, religious and other internationally recognised rights. For many minority communities, such associations provide the principal means through which individuals preserve their identity, engage constructively with government, participate in public affairs and advocate for equal treatment before the law. The right to freedom of association therefore extends beyond the mere ability to establish organisations. It enables communities to organise collectively, sustain their institutions and participate meaningfully in democratic governance.

Where members of minority communities act through representative associations, they are less likely to be isolated, singled out or exposed to intimidation, victimisation or other forms of retaliation. Collective organisation therefore strengthens the practical enjoyment of rights by enabling individuals to raise concerns and pursue lawful remedies through an institutional structure that offers support, legitimacy and protection.

This understanding is reflected in the ACHPR. Articles 17, 19, 20(1) and 22 recognise the rights of peoples to preserve their culture, participate in their own development and pursue their social, economic and cultural advancement. These rights are often exercised collectively through independent associations, which makes freedom of association an indispensable mechanism for the practical protection of minority rights.

Paragraph 15

The Committee should further clarify that this autonomy includes the freedom of associations to adopt membership criteria that are objectively and reasonably connected to their lawful purposes. This is particularly important for associations that are established to represent or advance the interests of identifiable cultural, linguistic, religious or other minority communities, whose ability to define their own membership may be essential to preserving

their representative character and effectively exercising the rights that are protected by the Covenant.

Paragraph 30-39

The Committee could recognise that the obligation to respect article 22 governments to refrain from conduct, including sustained official campaigns or unfounded public allegations, that unjustifiably interferes with the effective exercise of freedom of association by lawful associations because of their objectives, viewpoints or the communities they represent. Such conduct may expose associations or their members to hostility or harassment, discourage participation and substantially impair the exercise of the rights protected by article 22, even in the absence of formal legal restrictions. The Committee may also wish to clarify that unlawful conduct that interferes with the exercise of freedom of association should be distinguished from the legitimate exercise of freedom of expression, including robust public debate and peaceful criticism of associations. Governments should protect associations from threats, intimidation and incitement to violence, while ensuring that measures that are adopted for this purpose do not unnecessarily restrict lawful expression protected under article 19 of the Covenant.

Paragraph 33

The General Comment could clarify that strategic litigation, constitutional litigation, public interest litigation, legislative advocacy, policy engagement, public education and participation in administrative and judicial processes all constitute protected manifestations of freedom of association. Independent civil society organisations strengthen democratic governance by enabling individuals and communities to maintain their rights, challenge unlawful government action, contribute to legislative and policy development and promote accountability through lawful advocacy. These activities are central to democratic participation and should not be viewed as exceptional or ancillary to freedom of association. Articles 9, 10 and 13 of the ACHPR similarly protect freedom of expression, freedom of association and participation in public affairs. AfriForum's *Civil Rights Charter* likewise affirms meaningful public participation, access to justice and the ability of civil society organisations to pursue lawful advocacy without fear of discrimination or retaliation.

Paragraph 57

AfriForum welcomes paragraph 57, which recognises the importance of interpreting article 22 consistently with regional human rights instruments. The Committee could strengthen this paragraph by making express reference to the *African Charter on Human and Peoples' Rights*. Articles 2, 3, 9, 10, 11, 13, 17, 19, 20(1) and 22 collectively protect equality before the law, freedom of expression, freedom of association, peaceful assembly, democratic participation, cultural rights, equality of peoples, self-determination and -development. Taken together, these provisions demonstrate that independent civil society organisations perform an essential function in protecting human rights, promoting accountable governance and enabling communities – including minority communities – to participate effectively in public life. AfriForum's *Civil Rights Charter* reflects these same principles by recognising the importance of independent institutions, meaningful public participation, cultural self-determination and equal protection under the law.

Conclusion

A general comment that recognises the important role of minority associations addresses both direct and indirect forms of government interference, and affirms the protection afforded to lawful civic advocacy would enhance the practical implementation of the right to freedom of association across diverse constitutional systems. In doing so, it would reinforce the Covenant's commitment to democratic pluralism, the rule of law and the equal enjoyment of human rights by all individuals and communities.

Kind regards

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