Submission by the Norwegian Government
Draft General Comment No. 38 on article 22 (freedom of association) of the International Covenant on Civil and Political rights

The Norwegian Government refers to the Human Rights Committee's invitation to submit written contributions to the draft for a General Comment No. 38 on article 22 (freedom of association).

Norway has been a party to the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) since 1972. The Government would first like to underline the importance it attaches to the Covenant, and confirm its commitment to fully comply with Norway's treaty obligations.

Norway welcomes the Committee's efforts to formulate General Comments with regard to articles or specific themes concerning the Covenant and appreciates this opportunity to submit its observations on the draft General Comment concerning article 22.

Please note that where Norway has not provided specific comments on issues raised in the draft General Comment, this should not be interpreted as either agreement or disagreement with its substance.

Norway would also like to reiterate Norway's input 18 December 2025 to inform the Committee's preparation of the first draft, see attached.

1. General remarks

A general comment should be focused and operational, considering the needs of legal practitioners when interpreting the Covenant. The Committee should always clarify whether comments are intended to express the Committee's legal interpretation of the Covenant or recommendations concerning best practices.

2. Trade unions and the right to strike

In **paragraph 25**, the Committee refers to the right to strike as a dimension of the freedom of association protected under article 22 of the Covenant.

Norway recognises that the ability of workers and their organisations to organise and engage in collective action, including strike action, constitutes an important element in ensuring the effective protection of their interests. In line with this, Norway considers that the right to strike may be understood as forming part of the activities of trade unions and workers' organisations protected under article 22.

At the same time, Norway underlines that the right to strike is not absolute. As with other dimensions of the freedom of association, its exercise may be subject to restrictions that are prescribed by law and are necessary in a democratic society in pursuit of legitimate aims.

In Norway's view, the draft General Comment does not sufficiently reflect how the general framework for permissible restrictions under article 22, paragraph 2, applies in the context of strike action. The regulation of strike action requires a balancing of interests, which needs to be approached with due sensitivity. Measures relating to strike action must therefore be assessed in light of the specific circumstances, including the nature and consequences of the industrial action in question. Norway also notes that the approaches adopted by State Parties in regulating strike action may differ, reflecting different national systems of labour relations.

Against this backdrop, Norway suggests the following addition to **paragraph 25**:

"While the right to strike constitutes an important component of the freedom of association, it is not absolute. In applying article 22, paragraph 2, any restrictions on strike action must be prescribed by law and necessary in a democratic society for the purposes set out in that provision. The regulation of strike action requires a balancing of interests, which needs to be approached with due sensitivity. Measures relating to strike action must therefore be assessed in light of the specific circumstances, including the nature and consequences of the industrial action in question. Approaches adopted by State Parties in regulating strike action may differ, reflecting different national systems of labour relations."

Alternatively, text concerning restrictions on the right to strike could be included in section V of the draft General Comment concerning restrictions on the right of freedom of association.

3. Jurisdiction

In Norway's view, there is a need for clarification of several of the Committee's statements concerning jurisdiction.

The Committee deals with the general notion of jurisdiction in **paragraph 29**, where the fifth sentence reads as follows:

"Obligations also extend extraterritorially, when States Parties exercise effective control over a situation, persons or a territory under the well-established conditions set forth by the Covenant and the Committee."

As a matter of principle, Norway emphasises that human rights obligations are primarily territorial. Extraterritorial jurisdiction, i.e. when a State Party is responsible for human rights violations outside that State's territory, is only applicable in exceptional circumstances. By comparison, this is also reflected in the case-law of the European Court of Human Rights (see for example Banković and Others v. Belgium and Others [GC], no. 52207/99, paragraph 67).

In Norway's opinion, the cited sentence is somewhat ambiguous. It partly repeats the second sentence of paragraph 29. To the extent that the sentence merely repeats the foregoing, it seems superfluous. However, the word "situation" is added ("exercise effective control over a situation, persons or territory"), as well as a reference to conditions set forth by the Committee, without further elaboration. This could potentially imply an extension of the scope of jurisdiction. Against this background, Norway proposes to delete **paragraph 29 fifth sentence**. This would also bring paragraph 29 more in line with the wording of General Comment No. 31.

In **paragraph 32** the Committee to Norway's understanding deals with the situation where a State Party's actions in different ways affect individuals outside its territory:

"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 torturing, disappearing, arbitrarily arresting and detaining, intimidating, harassing, cyber-repressing or committing any similar actions against, for instance, journalists, human rights defenders, environmental defenders, lawyers and legal aid organizations, media workers and trade union members living abroad".

Since not every conduct or omission on the part of the State Party would amount to exercising power or effective control over the person concerned, Norway proposes a slight adjustment to paragraph 32, for example:

*"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 torturing, disappearing, arbitrarily arresting and detaining, intimidating, harassing, cyber-repressing or committing any similar actions against, for instance, journalists, human rights defenders, environmental defenders, lawyers and legal aid organizations, media workers and trade union members living abroad**, provided that the person concerned is within the power or effective control of that State Party.**"*

In **paragraph 36** the Committee deals with a State Party's positive obligations vis-à-vis human right violations risks stemming from third parties, particularly third States:

"In addition, while States Parties have a negative obligation to prevent their officials or agents from harassment of 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 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."

Although the cited sentence is limited to "individuals subject to [State Parties'] jurisdiction", and does not explicitly spell out in which cases individuals in such cases would be under a State Party's jurisdiction, it could imply or give the impression that States Parties generally are obliged to protect individuals against risks stemming from third States. In Norway's opinion, a person subject to the mentioned forms of violence by a third State, would often be under the jurisdiction of that State or at least often not under that of the State Party. It is also unclear when a person would be under the State Party's jurisdiction in the mentioned cases, for example in cases where the person is subject to digital surveillance from a third State. In the latter cases, the violation is not confined to a territory, at least not in the traditional sense.

Norway therefore proposes to redraft **paragraph 36**, to reflect that State Parties are not generally responsible for third States' human violations**:**

""~~In addition, while~~ State Parties have a negative obligation to prevent their officials or agents from harassment of individuals ***within the power or effective control of that State Party*** *~~extraterritorially~~.; ~~t~~They* ***should*** *also****, without prejudice to the starting point that a State Party are not generally responsible for other States' human rights violations,*** *~~have a positive obligation to protect individuals subject to their jurisdiction against~~* ***take appropriate steps to prevent and combat*** *such a risk coming from third States* ***against individuals subject to their jurisdiction****, whether the harassment, attacks, kidnapping, enforced disappearance or any other acts of violence are carried out offline or through transnational digital surveillance."*

In **paragraph 37 third sentence** the Committee states that States Parties are obliged not only to adopt measures to require business enterprises to perform human rights due diligence assessments, *"but also to investigate human rights abuses committed by those enterprises both on their territory and abroad".*

Particularly with regard to the States Parties' obligations vis-à-vis enterprises *abroad,* Norway has reservations. Norway agrees with the Committee that, in line with principle 2 of the UN Guiding Principles on Business and Human Rights, State Parties should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. However, as is also stated in in the commentary to Guiding Principle 2, "States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction". Norway is concerned that the Committee's statement in paragraph 37 would impose legal obligations on States that go beyond the wording of the Covenant article 2.

Against this background, Norway is of the view that **paragraph 37 third sentence** should be redrafted, to for instance:

"In this regard, States Parties ***should*** ~~*are obliged*~~ ***set out clearly the expectation*** ~~*not only to adopt measures to require*~~ ***that all activities in whole or in part within their territory and in other areas subject to their jurisdiction, including activities taken by*** *business enterprises,* ***are consistent with article 22, taking due account of related international standards of corporate social responsibility*** ~~*to perform human rights due diligence assessments, but also to investigate human rights abuses committed by those enterprises both on their territory and abroad*~~*."*

4. Remedies

In **paragraph 40** the Committee states the following regarding the right to remedies:

"The remedies must be effective in theory and in practice and they must not impose undue restrictions on the individuals concerned. The measures of reparation must be tailored to the situation of the rights holder. For instance, in the case of the dissolution of an association, including a political party, in violation of article 22, an effective remedy might be access to domestic proceedings to review the denial of registration, the reregistration of the association, in addition to other measures such as compensation, reimbursement of court fees and legal expenses. […]»

For the sake of good order, Norway underlines that although an effective remedy in a specific case may be cessation of the violation concerned, e.g. reregistration of the association, *in addition to compensation* and so forth, specific remedies such as compensation is not always necessary. In fact, also the finding of a violation may constitute sufficient remedy. This has also been recognised by the Committee, see for example A.B. and B.D. v. Poland (CCPR/C/135/D3017/2017) paragraph 11: "The Committee is of the view that in the present case its Views on the merits of the claims constitute sufficient remedy for the violations found." Norway proposes the following addition in **paragraph 40** to reflect this:

"The remedies must be effective in theory and in practice and they must not impose undue restrictions on the individuals concerned. The measures of reparation must be tailored to the situation of the rights holder. For instance, in the case of the dissolution of an association, including a political party, in violation of article 22, an effective remedy might, be access to domestic proceedings to review the denial of registration, the reregistration of the association, in addition to other measures such as compensation, reimbursement of court fees and legal expenses. ***Which measures are necessary to ensure full reparation to the individual whose Covenant rights have been violated, must be determined in the specific case. In some cases, the finding of a violation itself may constitute sufficient remedy.*** *[…]»*

5. Miscellaneous

In **paragraph 30 second sentence** the Committee states:

"Accordingly, measures that are prohibited include arbitrarily register an association, dissolving or banning an association, imposing a travel ban on association members or making it compulsory for them to request travel authorization, ban on the right to enter their own country, withdrawing association members' nationality, cancelling their passports and identity documents, performing surveillance, including online, of the organization's activities, infiltrating an association with covert police or intelligence services, carrying out police raids and search of private homes, reprisals, and harassment of association's members, including through administrative proceedings and requirements, misuse of counter-terrorism and anti-money-laundering measures, imposing restrictive and burdensome funding or tax regulations on associations, criminalizing association activities or membership or criminalizing legal aid associations, and instrumentalizing defamation proceedings and other means of "strategic litigation against public participation"

In Norway's opinion, it is unclear whether the word "arbitrarily" refers to all the mentioned prohibited measures or whether some of the measures are deemed prohibited even without being of an arbitrary nature.

In **paragraph 35 second sentence**, the Committee states that *"They [State Parties] are also obliged to address hostile actions, discourse and narratives, including online, vis-à-vis associations and their members, whether they emanate from public figures or private persons or actors".*

While Norway supports the notion that the positive obligations under article 22 may require States Parties to contribute to the existence of a functioning environment for associations, Norway is of the opinion that this sentence is too broad and lacks the necessary reservations. The wording is ambiguous and vague regarding when a State Party has to address e.g. discourses or narratives published online from either public figures or private actors, including when those would amount to "hostile". In any event, any action on the part of the State party that would interfere with the right to freedom of expression pursuant to the Covenant article 19 (2), must fulfil the criteria laid down in article 19 (3).

In Norway's opinion, the cited sentence should be rephrased, to for instance:

"States may under certain circumstances be obliged to take appropriate measures to** address hostile actions, discourses and narratives **from public figures or private persons or actors**, including online **.**~~,vis-à-vis associations and their members, whether they emanate from public figures or private persons or actors~~ **Where such measures interfere with freedom of expression pursuant to article 19 (2), such actions must fulfil the criteria laid down in article 19 (3) of the Covenant."

30 June 2026