

CENTRE ZAGROS POUR LES DROITS DE L'HOMME (ZAGROS HUMAN RIGHTS CENTER)



The right to freedom of association

Comments on the Draft General Comment No. 38 of the Human Rights Committee

Article 22 of the International Covenant on Civil and Political Rights

Right to Freedom of Association

Submitted for the 146th Session — June 2026

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I. PRESENTATION OF CENTRE ZAGROS AND PURPOSE OF THIS SUBMISSION

1. Centre Zagros pour les Droits de l'Homme is a civil society organization that documents human rights violations and advocates for their protection from a global perspective. Its work covers women's rights, the rights of ethnic and religious minorities, freedom of expression, freedom of association, and the rights of human rights defenders. Centre Zagros operates primarily in Iran, Iraq, Syria, Turkey, and other contexts characterized by systematic restrictions on civic space. It works alongside diverse communities, ethnic and religious minorities, women human rights defenders, trade unionists, journalists, lawyers, and members of cultural associations, who face State repression. It is from this daily field work that we submit these observations.

2. We submit these observations to the Committee in the framework of the call for contributions for the second reading of Draft General Comment No. 38 (hereinafter "the Draft"). These observations focus primarily on two dimensions: the protection of civil society space, and the relationship between Article 22 and the rights to freedom of expression (Article 19) and peaceful assembly (Article 21).

3. Centre Zagros requests that this submission be made public.

II. GENERAL OBSERVATIONS: WHAT THE DRAFT ACHIEVES AND WHAT CAN BE STRENGTHENED

4. Centre Zagros welcomes the overall quality of the Draft. Several points merit recognition as valuable achievements. Paragraph 7 affirms that the right to freedom of association is not conditioned on formal State authorization, an essential protection for unregistered associations, whose situation is particularly precarious in States where we work. Paragraph 14 explicitly recognizes the right of associations to seek, receive, and use funding from abroad, without risking designation as "foreign agents." Paragraph 34 introduces the concept of cumulative assessment of measures, an innovation we strongly welcome. Finally, paragraph 49 closes the door to "public transparency" justifications advanced in support of foreign agent laws, by recalling that the list of legitimate aims under Article 22(2) is exhaustive.

5. These elements form a solid foundation. Our observations aim to strengthen specific points, fill certain gaps, and anchor the text more firmly in the lived realities of associations representing ethnic minorities and human rights defenders in authoritarian contexts.

III. OBSERVATIONS ON PARAGRAPH 9: INDIVIDUALS PARTICULARLY AFFECTED

6. Paragraph 9 lists individuals whose right to freedom of association is subject to differentiated and heightened impact. Centre Zagros welcomes the intersectional approach adopted and the mention of environmental and land rights defenders, migrants, and asylum-seekers.

7. We nonetheless recommend that the Committee strengthen this paragraph on two points.

Associations representing ethnic, linguistic, and religious minorities. While paragraph 9 mentions “indigenous peoples,” it does not explicitly name national and ethnic minorities, whose associations are nonetheless subject to heightened surveillance and systematic restrictions in many States parties. In the contexts documented by Centre Zagros, Iran, Iraq, Syria, Turkey, and beyond, associations representing diverse minority communities (Kurds, Baluchis, Arabs, Azeris, Mandaeans, Yazidis, Assyro-Chaldeans, and other ethnic and religious minorities) are regularly designated as threats to “national unity” or “national security.” This designation is based not on violent conduct but on the very identity these associations represent. The Committee should clarify that restrictions disproportionately affecting associations formed on an ethnic, linguistic, or religious basis are presumptively incompatible with Article 22, read in conjunction with Articles 26 and 27 of the Covenant.

Associations submitting information to treaty bodies. Centre Zagros has documented numerous cases in which association members were prosecuted, detained, or subjected to travel bans directly following the submission of observations to UN treaty bodies or meetings with Special Rapporteurs. This practice constitutes a particularly grave form of interference, as it aims to sever civil society from the international human rights protection architecture. Paragraph 9 should explicitly name associations engaging with international mechanisms as entities particularly vulnerable to reprisals.

Recommendation 1 (paragraph 9). *Add explicit reference to associations representing ethnic, national, or linguistic minorities, and to those engaging with international human rights bodies, as categories particularly exposed to differentiated impact from restrictions.*

IV. OBSERVATIONS ON PARAGRAPH 10: THE RIGHT TO “CONTROVERSIAL” ASSOCIATIONS

8. Paragraph 10 rightly recalls that freedom of association also protects ideas and activities that may be perceived as controversial, dissenting, or disturbing, and that the reference to “democratic society” in Article 22 provides its foundation. Centre Zagros considers this paragraph to be one of the most important in the Draft and believes it deserves further development.

9. In authoritarian States, the label “controversial” is precisely the rhetorical tool used to justify restrictions. Associations representing ethnic and religious minorities, independent trade unions, women’s movements, human rights defender organizations, and LGBTQI+ organizations are systematically portrayed by governments as actors who “divide” society or “threatened traditional values.” The strength of paragraph 10 lies in the fact that it turns this argument around: it is precisely the existence of associations carrying non-majority views that defines a democratic society.

10. We suggest the Committee strengthen this paragraph by clarifying that:

- (a) the fact that an association advocates positions disapproved of by the government or a majority of the population constitutes *never* in itself a legitimate ground for restriction under Article 22(2);
- (b) designating an association as “extremist,” “subversive,” or similar does not constitute legal justification for a restriction: such a designation must itself satisfy the requirements of legality, legitimacy, and necessity in a democratic society; and
- (c) attacks on associations of minority groups constitute a warning sign of broader repression — and accordingly, the Committee should encourage States to adopt proactive measures to prevent such attacks, not merely to respond after the fact.

V. OBSERVATIONS ON PARAGRAPHS 14 AND 15: FUNDING AND AUTONOMY

11. Paragraph 14 explicitly recognizes the right to seek, receive, and use funding, including from abroad, and mentions the risk of being designated a “foreign agent.” Paragraph 49 complements this protection by clarifying that the justifications advanced for foreign agent laws do not fall among the legitimate aims under Article 22(2). Centre Zagros welcomes both provisions and considers them a major contribution of the Draft.

12. We wish the Draft to deepen these points on two aspects.

A. Stigmatization as a restriction in itself

13. Foreign agent laws produce their chilling effects primarily through public stigmatization, not only through the formal sanctions they provide for. When an organization is required to affix the label “foreign agent” to all its communications, it is in effect discredited in the eyes of the public, potential donors, and the public authorities with whom it interacts. This chilling effect is deliberate and constitutes a restriction on the right to association independently of any subsequent sanction.

14. We recommend that the Committee clarify, in this context or under paragraph 14, that reporting or labelling obligations that create public stigmatization of an association on account of its foreign funding sources constitute a restriction under Article 22(2) and must accordingly satisfy the requirements of legality, legitimacy, and necessity in a democratic society.

B. Asset freezing as de facto dissolution

15. Paragraph 30 mentions the misuse of counter-terrorism and anti-money laundering measures. Centre Zagros draws the Committee’s attention to asset freezing as a particularly potent tool: an association whose accounts are frozen is effectively dissolved without formal procedure, without a judicial decision, and without rapid recourse. This mechanism is regularly used against human rights associations in the contexts we observe.

Recommendation 2 (paragraphs 14 and 30). *Clarify that measures which in practice prevent an association from functioning financially — such as asset freezes or banking restrictions based on vague designations — constitute restrictions on Article 22 requiring prompt judicial oversight and effective remedy.*

Recommendation 3 (paragraph 14). *Clarify that labelling or reporting obligations imposed on associations on account of their foreign funding themselves constitute a restriction on Article 22 and must satisfy the three-part test in paragraph 2.*

VI. OBSERVATIONS ON PARAGRAPHS 30 AND 34: THE LOGIC OF CUMULATION

16. Paragraph 34 introduces a concept that Centre Zagros considers one of the Draft’s most important contributions: the *in globo* assessment of the environment in which associations operate. As the Draft states, “cumulative and indirect measures may violate the right to freedom of association even where any single action or omission by the authorities does not appear determinative.” This approach corresponds exactly to what Centre Zagros documents in the field.

17. In Iran, for example, a human rights association defending minorities, whether representing Baluchis, Arabs, Azeris, Mandaeans, Yazidis, or other communities, may simultaneously face: a registration refusal based on vague criteria; an informal designation as “linked to separatism” in unpublished intelligence reports; repeated tax audits; the practical impossibility of opening a bank account; and regular summonses of members before security forces. None of these measures, taken in isolation, formally constitutes a dissolution. Together, they make any associational activity impossible. International human rights law cannot ignore this reality.

18. We suggest the Committee develop paragraph 34 by clarifying:

- (a) that States parties have an obligation to assess the cumulative effect of their policies on the capacity of associations to function, and not merely the conformity of each individual measure in isolation;
- (b) that informal harassment, repeated summonses, verbal intimidation, overt surveillance, constitutes a form of interference incompatible with Article 22 even when unaccompanied by formal sanctions; and
- (c) that when the Committee examines individual communications or periodic reports, it must take into account the overall context in which an association operates, and not only the formal acts reported to it.

Recommendation 4 (paragraph 34). *Strengthen the principle of cumulative assessment by clarifying that it applies not only to the Committee in its examination of communications, but also to States parties in the drafting and review of their association legislation.*

VII. OBSERVATIONS ON PARAGRAPHS 43 TO 50: THE RESTRICTIONS REGIME

19. Section V of the Draft, on restrictions, constitutes a solid analytical framework. Centre Zagros offers the following additional observations.

A. Legality (paragraph 43): the membership offence

20. Paragraph 43 rightly recalls that the legality requirement means the legal basis must be clear, precise, and accessible. Centre Zagros wishes to draw the Committee’s attention to a phenomenon that merits explicit naming: in several States where we operate, the mere fact of being a member of a designated association, without any violent act attributable to the individual, constitutes a criminal offence carrying severe penalties. This legal construction violates both Article 22 and the principle of criminal legality under Article 15 of the Covenant, which paragraph 44 recalls as non-derogable.

Recommendation 5 (paragraphs 43–44). *Explicitly clarify that the criminalization of mere membership in an association, without requiring an individual harmful act, is incompatible with Article 22 read in conjunction with the principle of criminal legality under Article 15.*

B. Necessity in a democratic society (paragraph 50)

21. Centre Zagros wishes to emphasize the importance of the standard “necessary in a democratic society” as an autonomous and demanding criterion. A democratic society is defined by pluralism, tolerance, and broadmindedness. A restriction that is aimed precisely at suppressing pluralism, at preventing associations representing minority identities or dissenting opinions from existing, is by definition incompatible with a democratic society, regardless of the legitimate aims invoked. This point merits explicit formulation in the Draft.

Recommendation 6 (paragraph 50). *Clarify that the criterion of “necessity in a democratic society” entails compatibility with the fundamental requirements of pluralism and tolerance. A restriction specifically targeting associations representing non-majority viewpoints cannot satisfy this criterion.*

C. National security as a systematic ground (paragraph 46)

22. Centre Zagros welcomes paragraph 49, which closes the door to “public transparency” justifications advanced for foreign agent laws. We urge the Committee to go further: in the States we observe, “national security” is invoked as a ground for restriction in an almost automatic manner, without the State being required to demonstrate a concrete link between the association’s activities and a real threat to the nation’s existence, territorial integrity, or political independence.

23. The Committee should clarify that mere criticism of government policy, documentation of human rights violations, or representation of a minority identity do not constitute threats to national security within the meaning of Article 22(2). This clarification, which may seem obvious, is indispensable in the context of States that have institutionalized the conflation of rights defence with threats to State security.

Recommendation 7 (paragraph 46). *Clarify that criticism of government policy, documentation of human rights violations, and representation of a minority identity cannot, in themselves, constitute a threat to national security within the meaning of Article 22(2).*

VIII. THE INTERSECTION OF ARTICLES 19, 21, AND 22

24. Paragraph 2 of the Draft recognizes the interdependence between Article 22 and Articles 18, 19, 21, and 25. We consider this interdependence deserves development in the section on restrictions, as it has direct practical consequences for the assessment of the conformity of State measures.

25. Centre Zagros has documented a systematic practice in several States: associations are sanctioned, through suspension, withdrawal of registration, or prosecution of their members, not for their organizational activities, but for what they *say*. Monitoring reports, press releases, public statements, or submissions to UN bodies give rise to proceedings brought under association law rather than ordinary criminal law. This technique allows States to circumvent the requirements of Article 19 by framing the restriction as an administrative measure.

26. The Draft would benefit from clarifying that:

- (a) any restriction on the expressive activity of an association, publications, public positions, communication with international bodies, must satisfy *both* the requirements of Article 19(3) and those of Article 22(2); States may not use association law to circumvent the guarantees of Article 19;
- (b) organizing a peaceful assembly, calling publicly to demonstrate, or facilitating a protest are fully-fledged associational activities falling under the joint protection of Articles 21 and 22; and
- (c) where a restriction simultaneously affects the expression, assembly, and association of the same group, the Committee must assess the *cumulative* effect of those restrictions on civic space as a whole, in accordance with the approach introduced in paragraph 34.

27. It should also be noted that certain associations are themselves created to facilitate the exercise of other rights: journalists' associations, bar associations, minority cultural associations, electoral monitoring organizations. For these actors, an infringement of freedom of association is not only a violation in itself, it is the means by which a State simultaneously restricts a series of other rights guaranteed by the Covenant. The Draft would benefit from highlighting this structural dimension.

Recommendation 8 (Section V). *Clarify in the section on restrictions that measures targeting the expressive activity of an association must satisfy the cumulative requirements of Articles 19 and 22, and that their assessment must take into account the overall effect on civic space.*

IX. THE DIGITAL DIMENSION: BEYOND GENERAL PRONOUNCEMENTS

28. Paragraph 11 recognizes that Article 22 applies equally to organizations operating online, and identifies digital surveillance, Internet shutdowns, and monitoring of social media as threats to freedom of association. Centre Zagros fully supports this approach and wishes to draw attention to two specific aspects.

A. Surveillance as interference, independently of any sanction

29. In the contexts documented by Centre Zagros, digital surveillance of associations, even where it does not immediately give rise to prosecution, produces a powerful and documented chilling effect: members withdraw from online groups, leaders self-censor, associations avoid engaging on sensitive issues. This chilling effect is in itself a restriction on freedom of association.

Recommendation 9 (paragraph 30). *Clarify that surveillance of an association's communications, including digital surveillance, without a precise legal basis, demonstrated necessity, and independent judicial oversight, constitutes interference incompatible with Article 22, even in the absence of a subsequent formal sanction.*

B. Platform injunctions as de facto dissolution

30. In practice, States obtain the suspension of accounts or removal of associational content by issuing injunctions addressed to digital platforms, without going through judicial procedure. Such injunctions constitute a form of de facto dissolution of an association's digital presence, equivalent in effect to a formal restriction.

Recommendation 10 (paragraphs 11 and 37). *Clarify that State injunctions addressed to digital platforms with a view to removing associational content or suspending accounts constitute restrictions on Article 22 and must satisfy the conditions of paragraph 2, with independent judicial oversight.*

X. OBSERVATIONS ON SECTION VI: STATES OF EMERGENCY

31. Centre Zagros welcomes the fact that the Draft devotes an entire section to the issue of states of emergency. This section is of crucial importance in the contexts in which we work, where states of emergency have become tools of permanent governance rather than exceptional responses to specific threats. In Turkey, the state of emergency that followed the failed coup of 2016 enabled the dissolution of thousands of associations by decree, without judicial decision.

32. We wish the Committee to strengthen paragraph 55 by clarifying that:

- (a) derogations from Article 22 cannot be indefinite in time and must be regularly re-evaluated; a state of emergency declared years ago cannot justify permanent restrictions without continuous demonstration of their necessity;
- (b) derogation measures cannot target specific associations on account of their ethnic or religious identity, even if presented as general security measures; and
- (c) associations that document violations committed during a state of emergency, or that provide humanitarian assistance in conflict zones, cannot be subjected to additional restrictions solely on account of those activities.

Recommendation 11 (paragraph 55). *Clarify that derogations from Article 22 are time-limited, must be subject to periodic re-evaluation, and may in no case discriminatorily target associations formed on an ethnic or religious identity basis.*

XI. CONCLUSION

33. Centre Zagros pour les Droits de l’Homme hopes that these observations will contribute to a General Comment equal to the challenges faced every day by associations defending the rights of minorities, women’s rights, freedom of expression, and the rule of law in contexts where these values are actively combated.

34. We work with activists who have been imprisoned simply for attending an association meeting, with lawyers whose bar association has been dissolved by decree, with journalists whose professional association has been designated a terrorist threat. For them, a strong General Comment on Article 22 is not a doctrinal text, it is a concrete instrument of protection.

35. It is in this spirit that we submit these observations, and we thank the Committee for the considerable work accomplished during the first reading. A summary of our recommendations appears below.

Summary of Recommendations

Rec. 1 (§ 9). Add explicit reference to associations of ethnic/linguistic minorities and those engaging with international mechanisms as categories particularly exposed.

Rec. 2 (§ 14/30). Asset freeze or banking restrictions are restrictions on Art. 22 requiring prompt judicial oversight.

Rec. 3 (§ 14). Labelling or reporting obligations linked to foreign funding constitute a restriction under Art. 22(2).

Rec. 4 (§ 34). Cumulative assessment applies equally to States in the drafting of their legislation.

Rec. 5 (§ 43–44). Criminalization of mere association membership, without an individual harmful act, is incompatible with Art. 22 and Art. 15.

Rec. 6 (§ 50). “Necessity in a democratic society” requires compatibility with pluralism: a restriction targeting non-majority associations cannot satisfy this criterion.

Rec. 7 (§ 46). Criticism of government, documentation of violations, and representation of a minority identity do not constitute threats to national security.

Rec. 8 (Section V). Restrictions on the expressive activity of an association must satisfy the cumulative requirements of Art. 19 and Art. 22.

Rec. 9 (§ 30). Digital surveillance without a legal basis constitutes interference incompatible with Art. 22.

Rec. 10 (§ 11/37). Platform injunctions targeting associational accounts are restrictions on Art. 22 requiring judicial oversight.

Rec. 11 (§ 55). Derogations from Art. 22 are time-limited and may not discriminatorily target associations based on ethnic or religious identity.

