

**NGO SUBMISSION BY MINBYUN – LAWYERS FOR A DEMOCRATIC SOCIETY
IN RESPONSE TO THE CALL FOR COMMENTS ON DRAFT GENERAL
COMMENT NO. 38 ON ARTICLE 22 OF THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS: THE RIGHT TO FREEDOM OF ASSOCIATION**

MINBYUN – Lawyers for a Democratic Society is an NGO with special consultative status to the United Nations Economic and Social Council (UNECOSOC) and strives to further the development of democracy in Korea through litigation, research, and investigation.

1. The right to freedom of association is a right guaranteed to “everyone,” as expressly provided in the International Covenant on Civil and Political Rights (ICCPR). In light of cases in which individuals are deprived of the effective enjoyment of this right on the basis of their immigration or residence status, MINBYUN considers it necessary for the General Comment to explicitly refer to “undocumented migrants,” “undocumented foreign nationals,” and “stateless persons,” in order to clarify that the right to freedom of association applies to all persons regardless of their immigration status (para. 9).
2. The draft General Comment refers to school- and university- based associations as forms of association protected under the right to freedom of association. However, given that student organizations are among the associations most vulnerable to undue restrictions, particularly through authorization requirements, the General Comment should explicitly clarify that the various associations formed by students are entitled to the protection of the right to freedom of association without discrimination. In the Republic of Korea, school regulations frequently subject student associations to strict authorization requirements. The General Comment should further clarify that requiring prior authorization for the establishment of student organizations, or imposing mandatory notification or similar authorization schemes, does not constitute a legitimate educational measure (para. 12).
3. The draft General Comment rightly states that “the right to freedom of association is not contingent upon formal authorization or approval by the State” and that “laws imposing excessive or burdensome registration requirements are incompatible with article 22.” In doing so, it effectively rejects authorization regimes governing the exercise of the right to freedom of association. However, as the Committee did in its General Comment No. 37 on the right of peaceful assembly, the General Comment should make clear that prior authorization regimes undermine the very essence of the right and that systems of prior authorization, including de facto authorization regimes, should not be permitted (paras. 7 and 13).
4. The draft General Comment appears to require that an “association” protected under the right to freedom of association should, as a general rule, be non-profit in nature. Such an approach may unduly narrow the scope of “associations” protected under international human

rights law. In this regard, the Committee should refer to its existing definition of “association” used in previous international instruments and documents: “Association refers to any groups of individuals or entities which, collectively, act, express, promote, pursue or defend a field of common interests. Examples of freedom of association include joining and participating—or choosing not to participate—in civil society organizations, clubs, cooperatives, NGOs, religious associations, political parties, trade unions, foundations or online associations.” The General Comment should also make clear that organized and independent groups established on a temporary basis likewise fall within the scope of “associations” protected under article 22 (para. 17).

5. With respect to the right to freedom of association of members of the armed forces and the police, the General Comment should make clear that the deprivation of any one of the rights to organize, collective bargaining, or strike is incompatible with the Covenant (para. 27). This clarification is necessary because courts in the Republic of Korea have, on occasion, treated the complete denial of specific rights derived from the right to freedom of association as a permissible “restriction” on that right.

6. MINBYUN welcomes the draft General Comment's clarification of the State's multi-layered obligations under article 22. However, the discussion of the State's obligation to protect, as derived from the right to freedom of association, should be further developed. In particular, violations of trade union rights may be committed not only by the State but also by employers and employers' organizations. Given their social and economic power and their ability to exercise considerable influence over industrial relations, employers and employers' organizations pose a particularly significant risk of interfering with the exercise of trade union rights. The General Comment should therefore elaborate more specifically on the State's obligation to protect individuals against such interference by third parties (Chapter IV).

7. MINBYUN welcomes the draft General Comment's requirement that States conduct human rights due diligence and investigate business-related human rights abuses. However, the General Comment should expressly refer to the United Nations Guiding Principles on Business and Human Rights, which provide the normative framework for the corporate responsibility to respect human rights and for ensuring access to effective remedies for victims (para. 37).

8. The General Comment should further clarify that effective remedies include measures to ensure accountability for perpetrators, as well as forms of satisfaction, including apologies. It should also expressly refer to the remedies set out in the United Nations Guiding Principles on Business and Human Rights, which provide important guidance on the forms of effective remedy available to victims of human rights abuses (paras. 39-40).

9. MINBYUN welcomes the approach taken in the draft General Comment, which frames as State obligations the measures necessary to protect and ensure the effective enjoyment of the

right to freedom of association. This includes, inter alia, the obligation to address hostile acts, rhetoric, and narratives directed against associations and their members (para. 35), as well as the clarification that associations engaging in hatred, discrimination, or hostile rhetoric, conduct, or means are not protected under the Covenant (para. 51).

10. MINBYUN welcomes the draft General Comment's recognition that ensuring access for humanitarian associations is not only a matter of the right to freedom of association but also an essential element of protecting the right to life of others (para. 54). MINBYUN also welcomes the emphasis on States' obligation to respect both international humanitarian law and international human rights law, including during states of emergency. In this regard, we wish to draw the Committee's attention to a recent case in the Republic of Korea in which the passport of a humanitarian activist was revoked after the individual departed to participate in humanitarian activities abroad. MINBYUN further supports the draft General Comment's approach to measures that have a chilling effect on associations receiving funding from foreign sources (para. 15).

11. Finally, MINBYUN considers that, as in the General Comment No. 37, the General Comment should expressly state that the prohibition or dissolution of an association may be considered only as a measure of last resort.