

Joint Submission on Draft General Comment No. 38 on Article 22 of the ICCPR

Submitted by: The Network of Organizations for Children of Serbia (MODS), the Union of Secondary School Students of Serbia (UNSS) and Child Rights Connect

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The Network of Organizations for Children of Serbia (MODS) – A national coalition representing over 100 member organizations dedicated to protecting, monitoring and promoting children’s rights in Serbia. As a result of this monitoring, MODS has published the following reports: [High School Students in Protest in Serbia: Their Perspective](#) and [Child Human Rights Defenders in Serbia’s Civic Protests – Risks and Rights Violations Faced by High School Students in Peaceful Protests](#) and submitted two joint reports to the Special Rapporteur on Freedom of Peaceful Assembly and Association: *Informal School-Based Plenums, Digital Mobilization, and the Realities of Secondary School Students’ Activism – A Case Study from Serbia (2024–2025)* and *A Rights-Based Analysis of Legal, Institutional, and Administrative Restrictions on Children’s Freedom of Assembly and Association in Serbia (2024–2025)*. Additionally, MODS facilitated a meeting between the UN Special Rapporteur on Human Rights Defenders, Mary Lawlor, and young people from Serbia, following which she published an article titled: [Hearing with young human rights defenders from Serbia](#).

The Union of Secondary School Students of Serbia (UNSS) – A national network of nearly 200 school student councils representing 110,000 secondary school students, dedicated to national and international student advocacy. UNSS has designed and deployed the [School in Crisis: Traffic Light Tracker](#), a youth-led instrument to monitor the erosion of student rights and academic autonomy amid systemic state-sponsored retaliation and institutional pressure. UNSS also submitted a joint report to the UN Special Rapporteur on Freedom of Peaceful Assembly and Association: *School Student Movement and Activism in Serbia. Input for UNGA-81st thematic report: Freedom of Peaceful Assembly and of Association Youth Activism Report: Gen-Z and the Future of Civic Space*.

[Child Rights Connect](#) is the leading global civil society network dedicated to ensuring that every child enjoys the rights guaranteed under the UN Convention on the Rights of the Child (CRC). For more than 40 years, the organization has served as the primary bridge between civil society—including children themselves—and the UN human rights system, working in close partnership with the UN Committee on the Rights of the Child. Through a network of 130+ member organizations in over 190 countries, Child Rights Connect amplifies local realities into global influence and translates international standards back into national-level advocacy for real change.

As part of its bridging role, Child Rights Connect facilitates children's consultations to ensure that international human rights processes are directly shaped by children's own input. This includes the [consultation organised between children and a member of the UN Human Rights Committee on the draft General Comment No. 38](#).

I. Introduction

The Network of Organizations for Children of Serbia (MODS), Union of Secondary School Students of Serbia (UNSS) and Child Rights Connect welcome the Human Rights Committee's draft of General Comment No. 38 (GC38) on Article 22 of the ICCPR. We commend the explicit acknowledgement of "children and young people" as distinct groups, each facing differentiated and heightened impacts from restrictions, alongside the valuable protections extended to "informal, unregistered de facto associations" and "school-based associations".

This input serves as a direct follow-up to [MODS initial submission](#) to the Committee's first call for input, which laid out empirical evidence regarding the de facto barriers and state suppression confronting informal, school-based associations of children. It also builds on the [Outcomes of the children's consultation on the draft General Comment No. 38 on the right to freedom of association](#) co-organised by Amnesty International and Child Rights Connect.

While the current GC38 draft establishes the important baseline that Article 22 applies to children's and school-based groups, further clarification would strengthen **the practical application of this protection**. In practice, age and childhood status may be invoked by authorities as broad justifications for measures that should instead be assessed under the strict requirements of legality, necessity and proportionality in Article 22(2). When children associate collectively, particularly within educational environments, their actions may be treated primarily as matters of school discipline, parental authority, or protection, rather than as exercises of civil and political rights.

To address these implementation issues, GC38 should reflect a child-rights approach.

Such an approach would help ensure that protection, discipline and parental guidance are applied in ways that support children's safe and meaningful exercise of Article 22 rights, rather than operating as categorical restrictions. MODS therefore submits the following targeted textual recommendations to integrate standards of child protection, evolving capacities and accessible remedies into the General Comment.

In sum, MODS recommends that GC38 further clarify how Article 22 applies to children, especially in educational settings. The submission proposes five targeted amendments:

- recognizing age-appropriate civic and human rights education as part of an enabling environment;
- affirming that school-based associations must be protected from direct and indirect restrictions;
- ensuring child-sensitive remedies and standing;
- clarifying that any limitation on children's exercise of freedom of association must be assessed under Article 22(2), and that age, protection, best interests and evolving capacities considerations cannot be used to introduce broader or categorical restrictions; and
- expressly referencing international child rights law as a relevant interpretive framework for Article 22.

These changes would strengthen the draft's practical guidance while preserving the Covenant's requirements of legality, necessity and proportionality.

II. Recommendations

1. Amendment to Paragraph 33 (Section IV: States Parties' negative and positive obligations)

Recommendation: Consider amending Paragraph 33 to include human rights education as a core component of an enabling environment, specifically addressing how the right to freedom of association can be exercised by children in practice, as follows:

"33. The positive obligations under article 22 require the States Parties to create an enabling environment for the enjoyment and the exercise of the right to freedom of association covering the whole life cycle of an association.[1] Creating such an environment requires a wide range of actions to facilitate the implementation of the right, including relating to registration, policies on tax incentives and tax exemption for associations, pursuit of and access to funding, **the provision of accessible, age-appropriate civic and human rights education that enables children to understand and exercise their human rights in practice, in particular, the rights to freedom of expression, association and peaceful assembly,**[X] access to and preservation of records and archives, and the manner in which an association carries out its activities..."

Insert New Footnote:

"[X] This positive obligation should be interpreted consistently with Article 29 of the Convention on the Rights of the Child (CRC) and the CRC Committee's General comment No. 1 on the aims of education. Accessible and age-appropriate civic and human rights education supports children's ability to understand and exercise their civil and political rights in practice. See also UN Committee on the Rights of the Child, [*Comments on Human Rights Committee's Revised Draft General Comment No. 37 on Article 21*](#), 21 February 2020, para. 5."

Justification: This reflects the recommendation from MODS initial submission by linking civic and human rights education to the positive obligation to create an enabling environment under Article 22. It would ensure that the concept of an enabling environment is not limited to administrative conditions for associations but also includes the knowledge and support children need to exercise their associational rights safely and meaningfully. This positive obligation should also be read in accordance with the Human Rights Committee interpretation of Article 2 which "requires that State Parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their international obligations."¹ For children, this implies the need to ensure that information on how to exercise the rights to freedom of association is made available in an age-appropriate and child friendly manner to enable children to exercise this right in practice.

¹ UN Human Rights Committee, [*General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*](#), 2004, para. 6 and 7.

2. New Standalone Paragraph under Section IV (States Parties' negative and positive obligations)

Recommendation: Consider inserting a new standalone paragraph under Section IV to read as follows:

"The protections of Article 22 apply fully within educational and school settings. States parties have a positive obligation to facilitate and maintain an enabling environment for the exercise of the right to freedom of association, including by supporting student councils and child- and youth-led organizations and initiatives. This obligation requires ensuring that school-based associations, whether formal or informal, can form and operate without direct or indirect administrative interference inconsistent with Article 22. Educational and disciplinary frameworks should not be applied in a manner that operates as a de facto restriction on Article 22 rights. States should prevent and provide appropriate remedies for retaliatory or punitive measures directed at children or adults supporting them – including threats of lower grades, disciplinary exclusion, administrative or salary sanctions against teachers, arbitrary student relocation, or premature termination of semesters – which cumulatively create a chilling effect on children's freedom of association."

Justification: This addresses the school-based barriers documented in MODS initial submission, including the use of administrative or disciplinary measures that may indirectly restrict student association. By identifying such measures as relevant to Article 22 analysis, the paragraph would clarify that states' positive obligations extend to the institutional settings in which children commonly exercise associational life. This necessity is underscored by continuous monitoring by the Union of Secondary School Students of Serbia (*Unija srednjoškolaca Srbije* - UNSS) documenting structural retaliation by school administrations, including the arbitrary relocation of student bodies and the suppression of student councils.² Moreover, based on the recent consultations with children on the right to association, and in reference to the UN Committee on the Rights of the Child, *Comments on Human Rights Committee's Revised Draft General Comment No. 37 on Article 21, 21 February 2020, para. 5 and 7*, these positive obligations include facilitating and maintaining an enabling environment for exercise of the right to freedom of association including by supporting student councils and child- and youth-led organisations and initiatives.

3. New Standalone Paragraph 40 bis Section IV (States Parties' negative and positive obligations / Effective Remedies)

Recommendation: Consider inserting a new standalone paragraph (Paragraph 40 bis) immediately following paragraph 40 to read as follows:

"40 bis. To guarantee the right to an effective remedy under Article 2(3), and where applicable Article 14, states must ensure that procedural guarantees, standing, representation and remedial mechanisms are adapted to children as independent rights-holders. Redress and oversight bodies, including National Human Rights Institutions and Ombudspersons, should maintain independent, child-sensitive channels capable of reviewing measures affecting

² Union of Secondary School Students of Serbia (*Unija srednjoškolaca Srbije* - UNSS), "Semafor ocene" (School Grades Indicator) available at <https://www.srednjoskolci.org.rs/semafor-ocene/>.

children's associational activities through a child-rights lens. These mechanisms should prevent the reclassification of children's associational activities as mere matters of school governance or protection risks, and ensure children retain accessible avenues for rights-based scrutiny and redress."

Justification: This responds to the institutional barriers identified by MODS, where children's associational activities may be treated only as an internal disciplinary or protection matter. The proposed paragraph would help ensure that effective remedies are practically accessible to children who face distinct procedural and institutional barriers within school and child-protection systems.

4. New Standalone Paragraph under Section V (Restrictions on the right of freedom of association - Art. 22 (2))

Recommendation: Consider inserting a new standalone paragraph under Section V to read as follows:

"Any limitation on children's exercise of the right to freedom of association must be assessed in accordance with the requirements of Article 22(2). The same standards of legality, legitimate aim, necessity and proportionality apply to children as to all other rights-holders. States parties may not introduce broader, categorical or age-based limitations on children's freedom of association, nor rely on the best interests of the child, protection, dependency, maturity or evolving capacities to avoid or dilute the Article 22(2) test. Such child-rights principles may inform how children are supported to exercise their rights safely and meaningfully, but they must not be used to diminish the substance of the right. Where restrictions are considered in relation to children, any reliance on children's capacities, maturity, dependency or protection must be consistent with the principle of evolving capacities and, where relevant, an individualized assessment. States should ensure that any processes that may lead to restrictions on children's right to freedom of association are transparent, accessible to children, seek and give due weight to their views. Justifications for any restrictions must be rights-based and proactively explained to children in a child-friendly manner. Blanket or pre-emptive restrictions based on age or childhood status alone are unlikely to satisfy the requirements of Article 22(2). "

Justification: This amendment makes clear that the Article 22(2) limitation framework is the starting point for any restriction on children's associational rights. It addresses the risk that age, protection, best interests or evolving capacities considerations may be used to introduce broader restrictions than the Covenant permits, or to avoid the strict scrutiny required under Article 22(2). This approach is consistent with the [UN Committee on the Rights of the Child's comments on the Human Rights Committee's draft General Comment No. 37 on Article 21](#), which compared Article 15 of the CRC with Article 21 of the ICCPR and addressed restrictions on children's peaceful assembly. The same reasoning is applicable here because the limitation clauses in ICCPR Articles 21 and 22, and CRC Article 15(2), are materially aligned: restrictions must be prescribed by law and necessary in a democratic society for one of the enumerated legitimate aims. **Furthermore, the required transparency, accessibility, and child-friendly communication preserve interpretive coherence with Article 12 of the CRC, ensuring that child-rights principles should guide supportive and child-sensitive**

implementation, but cannot replace the requirements of legality, legitimate aim, necessity and proportionality.

5. Amendment to Paragraph 57 (Section VII: Relationship between article 22 and other international legal regimes)

Recommendation: Consider amending Paragraph 57 to include a specific reference to international child rights law as follows:

"57. [...] In the same vein, international refugee law might be relevant when dealing with the right of refugees to freedom of association,[3] **international child rights law when dealing with the right of children to freedom of association,[Y]** as well as international environmental law,[4] or international economic law..."

Insert New Footnote:

"[Y] Convention on the Rights of the Child (CRC), arts. 3, 5, 12, 13, 15 and 19. In interpreting Article 22 as it applies to children, the Covenant should be read consistently with the CRC, including the child's right to be heard, freedom of expression, freedom of association, evolving capacities, protection from violence and the best interests of the child as a primary consideration. See also *UN Committee on the Rights of the Child, Comments on Human Rights Committee's Revised Draft General Comment No. 37 on Article 21, 21 February 2020, paras. 4.1 and 5.*"

Justification: This would make explicit the cross-treaty coherence needed when Article 22 is applied to children. It follows the methodology already reflected in paragraph 57, which recognizes that other areas of international law may be relevant to the interpretation and application of Article 22 in specific contexts. A reference to international child rights law would help ensure that assessments of children's associational rights are informed by the CRC's standards on participation, expression, evolving capacities, protection and best interests.