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Freedom of Association is the Freedom to Organise: Why International Human Rights Standards Must Confront Class Realities

*Manushya Foundation's submission to the call for comments on the **draft General Comment No. 38** on Article 22 (right to freedom of association) of ICCPR (International Covenant on Civil and Political Rights)*

Introduction

Manushya Foundation welcomes that the draft is, in many places, a useful document. The protections laid down are real gains. Nonetheless, we will not pretend that this draft document sees the world as it is. If anything, this draft is written in a grammar devoid of class and property. And in our experience dealing with political documents such as this, silence is itself a political standing. The current draft as it stands creates an image of a levelled playing field wherein every group stands somehow as equals. Yet this is far from what is happening on the ground.

Power, wealth and property are what separate a community from the corporation that moves onto its land to 'develop' it. The right to association matters precisely because of this divide. For most of history, freedom of association was fought for by working people who had no money to bargain with. What they only had was the numbers and the conviction to refuse to accept the status quo. Every protection mentioned in this draft General Comment No 38, framed through measured language, was first and foremost written in the streets with the blood and the sweat of workers. The Committee should not forget this.

A General Comment is only worth the authority it carries. We hope the final document will not smooth the hard edges out of a fear of being 'too prescriptive', something that we have been hearing too often during consultations--much to our disappointment. **A document, and, for that matter, the institution behind it, that refuses to prescribe should ask itself a question. Who does that vagueness serve?** Vague guidance is exactly what allows states and businesses to claim compliance whilst changing nothing. With authoritarianism on the march in all corners of the globe and ecological collapse closing in, we need to be clear on how to hold power to account. The world needs people who are free to organise and demand better from those who hold power over their lives. So we ask the Committee to remember who this right is for as you engage in the text that follows.

Overall Comments

1. We recommend the Committee acknowledge what every civic organiser knows. Civic space is a battlefield, and the right to association exists because society is divided by class and not despite it. Pluralism that refuses to name power and class is pluralism in the service of the powerful. We therefore urge the Committee to state plainly that protecting freedom of association requires attending to the

unequal conditions under which different groups exercise it, and that the purpose of the right is above all to protect those with the least power to protect themselves.

2. We want to remind the Committee that 'peace, social justice, sustainable development' were won through strikes that laws of the time criminalised, including the 80hour day and the very legality of unions.[1] We recommend the text name the labour movement as the historical author of these gains rather than reducing it into a generic figure hollowed out of context and dignity. The General Comment must honour how the right to association was actually secured by working class people instead of presenting its fruits as a gift of some benevolent state.

3. On **paragraph 9**, on the long list of 'particularly affected' groups. We urge naming the marginalised whilst at the same time naming the class relations that cut across all of them. The draft presents vulnerability as a catalogue of identities. This kind of presentation insinuates that the remedy is to persuade society to just value each group, which completely misreads the problem. At Manushya Foundation, we have seen this directly. For more than a decade, we have served as international human rights counsel to the villagers of Phichit and Phetchabun, whose land, water and bodies were poisoned by toxic runoff from the Australian-owned Chatree Gold Mine, Thailand's largest. Their crime, in the eyes of the company, was to speak in the course of their struggle. The mine's operator weaponised more than forty Strategic Lawsuits Against Public Participation (SLAPPs), defamation cases filed against villagers, academics and defenders to drain, frighten and silence them.[2] We urge the Committee to state that SLAPPs are themselves violations of article 22.

The 'particularly affected' groups are not unprotected because society has not yet valued them. They are unprotected because their disempowerment serves concrete material interests. We therefore recommend that the Committee state expressly that these vulnerabilities are produced and reproduced by material and economic structures, not merely by attitudes to be corrected. **Securing the right to associate for these groups requires confronting those structures, including the interests that profit from keeping them unorganised.**

4. On **paragraph 11**, on the words 'digital surveillance, Internet shutdowns…chilling effect.' Surveillance technology is a commodity, produced and sold for profit by private firms to states.[3] As example, Pegasus, the spyware produced by the Israeli firm NSO Group, can infiltrate a smartphone without the user's knowledge and turn it into a surveillance device. A forensic investigation by Citizen Lab, iLaw and DigitalReach confirmed that at least 30 Thai pro-democracy activists, human rights defenders and academics had their devices infected with Pegasus between 2020 and 2021.[4] One of those targeted is the Thai activist Jatupat 'Pai' Boonpattararaksa whose case shows exactly what this technology does to the freedom to association.[5] We therefore urge the Committee to name the surveillance industry expressly in paragraph 11, and to make clear that states' obligations under articles 2 and 22 extend to the production, sale and export of these tools, including the duty to regulate and prohibit the manufacture and transfer of targeted surveillance technology. States must refuse to be a market for it

and must provide an effective remedy to those whose freedom of association it has been used to suppress.

Scope of Freedom of Association

5. On the **online/offline dimension and the word 'organised' in paragraph 12**, we urge the Committee to resist hardening any formal doctrinal split between online and offline association. These two are not in tension. When talking about freedom of association in contemporary times, we need to consider informal, digitally-constituted networks as the now dominant form of association. Nowhere is this clearer than in how a generation of young people now organises. The Milk Tea Alliance began in 2020 and grew into a decentralised, borderless and deliberately leaderless network of young activists spanning Thailand, Hong Kong, Taiwan, Myanmar, Indonesia, the Philippines and beyond. The Alliance has no registration, no officers, no statutes and yet it has done the essential work of association at scale.[6] On the draft's current definition laid down in paragraph 12, almost none of them qualify, because none are 'organised' in any sense the text recognises. The definition must be widened so that the most exposed are not the least protected.

6. On **paragraph 12**, on the word 'licit.' We remind the Committee that the label 'illicit' is a political verdict, handed down by those with the power to criminalise. Every worker's fight that ever mattered was, at its birth, branded unlawful. Early unions, for instance, were prosecuted as conspiracies whilst strikes were labelled as sedition. In the colonised world, organisations of the colonised peoples and the dispossessed were outlawed as threats to order long before they were recognised as 'human rights'. And we are seeing this happen in real time through the UN Cybercrime Treaty as it is being used by governments to legalise repression. The broad and ill-defined notion of 'cybercrime' hands governments wide discretion to decide what online conduct is criminal, which in practice means the discretion to criminalise dissent, journalism and the digital organising of the very groups the Covenant exists to protect.[7] To write 'licit goals' into the very definition of a protected association is to concede in advance the state's power to decide which associations count. This is the same power that once made a union a conspiracy and now lets a government recast a cross-border solidarity network as a 'cybercrime.'

Further, on extraterritorial obligations and transnational repression. The draft rightly recognises in **paragraph 36** that a state's duties do not stop at its border, and that states must protect those within their jurisdiction from repression reaching across frontiers. Yet the draft treats transnational repression as something a state suffers from third countries, not as something states do to each other via agreement. We have seen how repressive governments have signed extradition and 'crime cooperation' agreements and laundered the whole exchange through the language of mutual legal assistance and security. As an example, Thailand and Vietnam signed a comprehensive crime-cooperation agreement in 2025.[8] In exchange for Thai assistance against exiled Vietnamese activists, Thai authorities gain leverage over Thai dissidents sheltering in Vietnam. We therefore urge the Committee to address transnational repression as a freedom of association violation in its own right, and to state expressly that a state violates freedom of association when it surrenders facilitates reprisals against members of associations

who have sought refuge in its territory. Bilateral extradition, 'security' and 'crime-cooperation' agreements must and cannot not be used to circumvent the non-refoulement obligation or to deliver defenders and dissidents to the very states they fled from.

7. On **paragraphs 12 and 17**, on the words 'non-profit' and the celebration of 'foundations, professional associations.' We welcome **paragraph 13**, which rightly extends protection to 'informal, unregistered de facto associations' and affirms that they need no authorisation or recognition to fall under article 22. But paragraph 13's principle sits in tension with the definition that precedes it. Paragraph 12 still leads with 'non-profit entities' and offers a list weighted toward the registered, funded, professionalised body. The Committee should make sure the definition carries the same conviction as paragraph 13, rather than leaving the informal as an afterthought to a formalised model.

This matters because the frontier of organising has moved, and the scope section does not follow it there. Today, workers may use a Facebook group to expose wage theft and plan to log off together. They do not have a registration certificate nor a fixed membership, and yet they do the essential work of association. A definition that centres the funded non-profit risks leaving exactly these formations unprotected at the moment they are most exposed. We therefore urge the Committee to name the online and digitally-constituted association expressly within the scope section (ideally in paragraph 12's own illustrative list) so that paragraph 13's protection plainly reaches the group chats and online forums and no state can argue that an association which exists only on a platform is no association at all.

Workers' rights and the failure of corporate due diligence

8. On **paragraph 20**, we urge the Committee, at bare minimum, to acknowledge the asymmetry of power between employers and workers and to make clear that the protections of article 22 exist above all to safeguard the right of working people to organise. The right must never be read in mirror image and invoked to shield the already-organised power of employers against the workers who are trying to match it. **The workers' union is not the same as the employer's HR. HR is not a worker's friend.**

9. On **paragraph 37**, the words 'require business enterprises to perform human rights due diligence assessments.' The Committee must stop leaning on corporate human rights due diligence as if it were a remedy. Self-administered 'assessment' with no binding force would amount to little more than a permission slip. And we have years of evidence that prove this. Due diligence is a process without teeth, no matter what any of the people who earn from it claim it to be. It asks corporations to identify and assess their human rights impacts. Yet, it does not require the corporation to stop producing them or to face any consequence for continuing. Due diligence is a mechanism that identifies the threat of workers associating and helps neutralise it, all inside a legal framework that now carries a United Nations imprimatur whilst imposing no binding obligation whatsoever to act otherwise. We therefore urge the Committee to abandon the language of voluntary due diligence and assessment and to require binding, enforceable duties on business enterprises backed by legal liability including reparation for the workers and communities harmed. The Committee should make clear that an enterprise's completion of a due

diligence assessment is no defence and that states may not discharge their own protective obligation by outsourcing it to the corporation's self-review or worse, hire consultants to do the job.

10. On **paragraph 45**, on the words ‘national security or public safety, public order.’ These terms are the most heavily abused words in the entire restriction regime and have been used relentlessly as an alibi of every government that has ever wanted to dress repression as protection. A paragraph that gestures at ‘strict interpretation’ without naming a single impermissible use leaves the words very dangerous. We have seen this in Thailand on 7 August 2024 when the Constitutional Court dissolved the Move Forward Party and banned its leaders from politics for a decade, on the grounds that they are dangerous to the security of the state. Similarly in Cambodia, National Defense Minister Tea Banh ordered a lawsuit against online journalist Yuon Chhiv for his news report on a land dispute case related to the Botum Sakor National Park. Chhiv was accused of publishing disinformation on the status of the disputed land and making 'an exaggeration intended to disturb social security.'[9] We recommend the Committee state expressly that advocacy of social transformation and labour protests are never, in themselves, threats to ‘national security’ or ‘public order’.

11. On **paragraph 48**, on the words 'public morals' and laws against 'propaganda on non-traditional sexual relations.' We strongly welcome paragraph 48, and in particular its statement that public morals are not equivalent to social sensibilities and that banning associations or criminalising their activities for ‘propaganda’ on non-traditional sexual relations is a discriminatory restriction. This selective application is the danger paragraph 48 should name expressly. In the Philippines, the non-binary drag artist Pura Luka Vega was declared persona non grata, arrested and charged with ‘offending religious feelings’ and disseminating ‘immoral doctrines and obscene publications’ under the Revised Penal Code, read together with the Cybercrime Prevention Act, over a satirical online performance.[10] We therefore recommend that the Committee strengthen paragraph 48 by stating expressly that ‘public morals,’ ‘obscenity,’ ‘decency’ and ‘religious feeling’ may not be invoked, whether on their face or in their selective application, to restrict the freedom of association of LGBTIQ+ persons, women or any group on the basis of who they are or whom they represent.

12. On **paragraph 53**, on the words 'even more important to preserve core democratic space.' We strongly support this clause. We urge that the Committee add that emergencies such as war, 'security,' and pandemic are the classic pretext for the permanent ratcheting-down of labour and associational rights, and that emergency restrictions must never be normalised into the ordinary law once the crisis passes.

13. On **Paragraphs 54 to 56**, on humanitarian and rescue associations. The Committee should name the practice that the draft refuses to state. There is an ongoing criminalisation of solidarity in which those who rescue migrants at sea or feed the hungry are prosecuted. The Committee should express the statement that criminalising humanitarian and solidarity action violates Article 22 read with the right to life, whatever the border-security framing.

Conclusion

We have engaged with this draft carefully and in good faith, and much of it deserves support. But the draft also has concrete weaknesses, and we have set them out plainly. It tends to assume a neutral state that simply needs better guidance, when in much of our experience the state is itself the main obstacle to free association. Further, it treats every kind of association as broadly equivalent, glossing over the deep imbalance of power between employers and workers.

Freedom of association is the freedom to organise within the relationship between those who own and those who labour. We must not mistake the leash for liberty. We ask the Committee to make this General Comment a sharper instrument than the draft now offers. We want a General Comment that names the asymmetry of power for what it is and protects the unfunded and the digital and the informal as fully as the registered. The Committee must replace the polite fiction of voluntary 'due diligence' with binding duties with teeth. The General Comment will be a waste if we just end up whitewashing the conditions that actually decide whether the right to association survives. We ask the Committee not to take the easy paths and name where the threats really come from. A General Comment that does these things will be worth something to the people who have to rely on it.

Proposed Changes

Paragraphs	Current text	Proposed changes	Rationale
General framing / Introduction	Presents civic space as a level playing field where all groups organise under similar conditions.	State plainly that freedom of association matters precisely because society is divided by class and power, and that the right exists above all to protect those with the least power to protect themselves.	A document silent on power imbalance risks legitimising the status quo it should be checking. Naming class and power gives States and businesses less room to claim compliance while changing nothing.
Para 3	Attributes gains like peace, social justice, sustainable development to a generic, unnamed historical process.	Name the labour movement expressly as the historical author of these gains, including the eight-hour day and the legality of unions, won through strikes the law of the time criminalised.	Honours how the right was actually secured through struggle, rather than presenting its fruits as a gift from benevolent states, which is historically inaccurate.

Para 9	Lists 'particularly affected' groups (women, Indigenous Peoples, LGBTQI+ persons, migrants, etc) as a catalogue of separately vulnerable identities.	State expressly that these vulnerabilities are produced and reproduced by material and economic structures, not merely by attitudes, and that securing the right requires confronting the concrete interests that profit from keeping these groups unorganised.	Drawn from a decade representing Phichit and Phetchabun villagers against the Chatree Gold Mine, where over 40 SLAPP suits were used to frighten and silence defenders.
Para 11	Names digital surveillance, shutdowns, and monitoring as harms with a chilling effect, without naming the industry producing the tools.	Name the surveillance industry expressly, and clarify that States' obligations under articles 2 and 22 extend to the production, sale and export of surveillance tools, including a duty to regulate or prohibit transfer, refuse to be a market for it, and provide remedy to those affected.	Surveillance is a commodity sold for profit. Therefore, the obligation must reach the supply chain, not just its use.
Scope section / 'organised' (relates to Paras 12–13)	Definition of association implies formal structure, elected leadership, constitution, registration.	Widen the definition so informal, leaderless, digitally-constituted networks qualify without needing registration or formal structure.	A Facebook group of farmworkers sharing information on wage theft performs every function of a union without any formal structure. The Milk Tea Alliance is deliberately leaderless and unregistered, yet does the essential work of association at scale. A definition tied to formal organisation leaves the most exposed the least protected.

Para 12	Qualifies protected associations as pursuing 'licit' goals.	Remove or heavily qualify 'licit goals' from the definition, since it concedes in advance the State's power to decide which associations count.	Every union that ever mattered was, at birth, branded unlawful. The UN Cybercrime Treaty's broad 'cybercrime' language is already being used to hand governments discretion to recast cross-border solidarity networks and dissent as criminal.
Extraterritorial obligations (adjacent to Paras 29, 32, 36)	Frames transnational repression as harm a State suffers passively from third countries.	State expressly that a State violates article 22 when it surrenders, surveils, or facilitates reprisals against association members who sought refuge in its territory, and that extradition/'crime-cooperation' agreements must not circumvent non-refoulement.	Thailand and Vietnam's 2025 crime-cooperation agreement shows transnational repression is now something States actively do to each other by agreement, not merely suffer, a distinct violation the draft doesn't capture.
Paras 12 & 17	Definition leads with 'non-profit entities' and lists formalised, registered bodies (foundations, professional associations); informal associations appear only later, in Para 13.	Bring Para 12's illustrative list into line with Para 13's protections, name online and digitally-constituted associations (WhatsApp/Telegram/Reddit worker groups) expressly within the scope definition itself.	The frontier of organising has moved to platforms with no registration, fixed membership, or bank account. A definition centred on the funded non-profit risks leaving these formations unprotected precisely when they're most exposed.
Para 20	Frames article 22 protections neutrally as between employers and workers.	Acknowledge the power asymmetry between employers and workers explicitly, and clarify the right exists above all to protect workers organising, not to shield already-organised employer power.	The right must never be read in the mirror image to arm employers against the workers trying to match their power. A workers' union is not equivalent to an employer's HR function.

Para 37	Relies on business enterprises performing (self-administered) human rights due diligence assessments.	Replace voluntary due diligence language with binding, enforceable duties backed by legal liability, effective remedy and reparation. State that completing due diligence is no defence, and states and corporations cannot outsource their protective obligation to corporate self-review.	Due diligence identifies harm without requiring enterprises to stop causing it, compensate victims, or face consequences, a process without teeth that in practice helps neutralise the threat of workers organising.
Para 45	Restricts 'national security, public safety, public order' grounds with a general call for 'strict interpretation,' without naming impermissible uses.	State expressly that strikes, labour protests, and advocacy of social transformation are never in themselves threats to national security or public order, that economic disruption from a strike is a legitimate effect.	Advocacy of social transformation and labour protests are never, in themselves, threats to ‘national security’ or ‘public order’.
Para 48	Rejects 'public morals' restrictions targeting 'non-traditional sexual relations,' but doesn't name selective application as the mechanism of harm.	State expressly that 'public morals,' ‘obscenity,' 'decency,' and 'religious feeling' may not be invoked, on their face or in selective application, to restrict freedom of association of LGBTIQ+ persons, women, or any group based on identity or representation.	Philippine drag artist Pura Luka Vega was arrested and charged with 'offending religious feelings' and disseminating 'immoral doctrines' under the Revised Penal Code and Cybercrime Prevention Act over a satirical performance, illustrating how selectively these grounds are applied.

Para 53	Draft mentions that it is 'even more important to preserve core democratic space' during emergencies, and cites the Committee's COVID-19 statement on access to civic space as a safeguard against abuse of emergency powers.	Add that emergencies (war, 'security', pandemic) are the classic pretext for permanently ratcheting down labour and associational rights, and that emergency restrictions must never be normalised into ordinary law.	Prevents temporary emergency measures from becoming permanent fixtures once the triggering crisis has passed.
Paras 54-56	Addresses humanitarian and rescue associations without naming the criminalisation trend directly.	State expressly that criminalising humanitarian and solidarity action, including maritime rescue and feeding the hungry, violates article 22 read with the right to life, regardless of border-security framing.	Names a documented, ongoing practice that the current draft leaves unaddressed despite falling squarely within its subject matter.

Endnotes

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