



DRAFT GENERAL COMMENT NO. 38 ON THE RIGHT TO FREEDOM OF ASSOCIATION OF UN HUMAN RIGHTS COMMITTEE



GOOD TO KNOW BEFOREHAND



WHAT IS THE UN HUMAN RIGHTS COMMITTEE?

The United Nations Human Rights Committee (Committee) is a group of people with special experience from different countries who help make sure governments respect human rights written in an agreement called “International Covenant on Civil and Political Rights”.

WHAT IS THE UN INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS?

The International Covenant on Civil and Political Rights (Covenant) is an international treaty (a written agreement between countries. Countries that join it (called State Parties) commit promise to protecting important human rights, including freedom of association (Article 22).

WHAT IS A GENERAL COMMENT?

A General Comment (GC) is guidance written by the Committee to explain what right means in practice and what governments must do to respect and protect it. The Committee is now writing about Article 22, the right to freedom of association and shared the text with everyone for comments. This is why we call this document draft General Comment.

WHAT IS IN THE DRAFT GENERAL COMMENT NO. 38 (GC.38)?

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|--|---|
| 1 Introduction
paragraphs 1 – 11 | 2 What is the right to freedom of association?
paragraphs 12 – 19 |
| 3 Trade unions
paragraphs 20 – 27 | 4 Obligations of the state
paragraphs 28 – 40 |
| 5 Restrictions on the right of freedom of association
paragraphs 41 – 51 | 6 Freedom of association in emergencies
paragraphs 52 – 56 |
| 7 Article 22 of the Covenant and other international laws
paragraphs 57 – 58 | 8 Safeguards and related rules
paragraphs 59 – 60 |

1 INTRODUCTION

The first section of the draft GC. 38 explains why freedom of association is a fundamental human right, how it supports democracy and other freedoms, and why people must be allowed to organize and work together without unfair government interference.



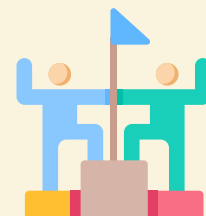
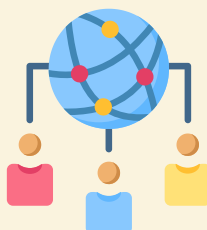
KEY IDEAS ABOUT THE RIGHT TO FREEDOM OF ASSOCIATION

The right to freedom of association allows **people to come together in groups** to:

- express themselves collectively,
- participate and shape their societies,
- exchange ideas, pursue shared social, cultural and political objectives.

This right is considered a fundamental right because it helps people live with dignity and have a voice in society. **This right is important:**

- For the exercise of other human rights, such as freedom of religion, freedom of expression, the right to protest, or the right to participate in society.
- For indigenous people and minorities to shape decisions that affect them.
- At the workplace, trade unions are a special type of association that protects people and may prevent slavery, forced labour or other inhuman conditions.
- Moreover, it is important to educate and to achieve other rights, including economic, social, cultural, and environmental rights.



WHAT TYPE OF ASSOCIATIONS ARE PROTECTED?



Organisations based on popular or accepted ideas AND based on unpopular or controversial ideas

This right protects associations with diverse ideas (could be unpopular ideas, critical of the Governments, controversial or ideas that most of the population may not like). This is fundamental for any democratic society. When associations that represent minorities or those most at risk are attacked, it is a sign that human rights and democracy are threatened.



Formal and informal organisations

The persons creating an association are free to choose if they want it to be formal (by informing the authorities and registering) or informal. The authorities should make it possible for the association to exist and function regardless of whether it is formal or informal.

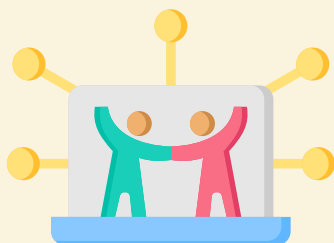


Offline and online organisations

Online activism has become an important tool for associations, but technology can also be used to restrict the right and create fear of exercising the right (chilling effect). Some examples are digital surveillance, Internet shutdowns or lack of access to digital tools.

WHO CAN EXERCISE THE RIGHT TO ASSOCIATION? **EVERYONE!**

Governments and authorities can limit the right to freedom of association but only under strict conditions set out in Article 22, but **they cannot authorize who has or doesn't have the right.**



While this right is **for everyone without discrimination**, the draft General Comment recognizes that certain persons, groups or communities - including **children and young people** - face more challenges and restrictions when they exercise their right to association. This means that States need to consider different barriers and how discrimination affect people and communities when they create the framework and practical conditions to exercise this right.

Associations are defined as organized, independent, non-profit entities that bring people together voluntarily to pursue common goals, interests or activities (respecting laws).

SCHOOL AND UNIVERSITY-BASED ASSOCIATIONS

CLUBS (LIKE A FOOTBALL CLUB OR A THEATRE CLUB)

NON-GOVERNMENTAL ORGANIZATIONS

TRADE UNIONS

RELIGIOUS ORGANIZATIONS

POLITICAL PARTIES

INTERNATIONAL AND CROSS-BORDER CIVIC ORGANIZATIONS

SOCIAL MOVEMENTS (LIKE FRIDAYS FOR FUTURE)

PROFESSIONAL ASSOCIATIONS

The freedom of association is based on the principles of independence, autonomy and self-governance and it is protected from the moment of the creation of an association until its end. It includes ...



the access to registration, in an easy way.



the right to seek, receive and expend funding and other resources, including from outside of their country. Non-profit organizations sometimes carry out economic activities as long as these are not the main purpose of the association.



the right to freely decide about the purposes and actions and freely choose their members as long as they respect the right to non-discrimination.



the right to keep and access its own archives.



the right to choose where to exercise their freedom, be it online, offline or in both, without unjustified restrictions and without discrimination.



the right to freely decide about ending the association.

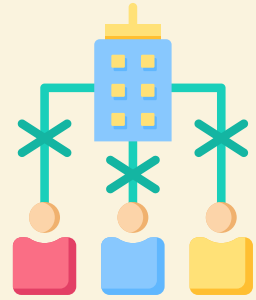
Remember! Some restrictions to this right are allowed, but only under carefully defined situations set in Article 22. This is explained later on!

3 TRADE UNIONS

The right to freedom of association includes the right to form and join trade unions.

Trade unions are worker associations to defend their interests at work and improve working conditions and protect workers' rights.

Persons have the right to create, join, participate in or leave a trade union, without fear of violence, punishment or negative consequences. Trade unions are protected as any other association.



States have more powers to limit this right for certain types of workers, such as members of the army or the police, but they cannot exclude anyone from this right.

Trade unions have the right to negotiate collectively with the employer and the right to strike (without unjustified restrictions) as a way to put pressure to defend their interests.

4 OBLIGATIONS OF THE STATE

The Covenant put obligations on States (all authorities, government officials) what to do, so everyone in the country (and citizens when they are abroad) can practice the right to freedom of association.

They must not violate the right to association (respect).

They must take actions to ensure everyone can enjoy the rights (fulfil).



They must protect the right (protect).

They must not discriminate and ensure everyone is protected and treated fairly by the law.

WHAT IS EXPECTED FROM STATES IN RELATION TO THE FREEDOM OF ASSOCIATION?



DO's

- Make it easy to register
- Create rules to help pay less or no taxes (as associations are not businesses)
- Make it easy for associations to access funding
- Make it easy for associations to access and keep archives
- Make it easy for associations to enjoy their own culture, practice their religion and use their own language
- Ensure associations enjoy freedom of movement, freedom of expression, the right to privacy and the right to protest
- Create rules to make social media companies respect human rights and to investigate the abuses by this companies
- Ensure that associations are not discriminated and that they are protected and treated fairly by the law (right to equality before the law)



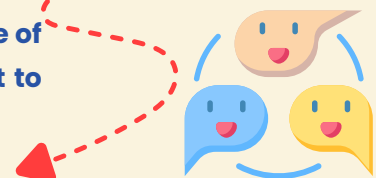
DON'Ts

- Refuse to register an association without justification
- Dissolve or ban an association
- Impose a travel ban on association members or making them request travel authorization, or ban them to enter their own country
- Take away the nationality of association members, or cancel their passports and identity documents
- Spy on the activities or members of the organization (surveillance)
- Carry out police searches of private homes
- Punish and harass anyone who set up or join an association (or let anyone else to do so)
- Misuse laws aimed to fight terrorism or prevent the funding of crime
- Impose restrictive and difficult rules on funding or tax
- Make associations activities or membership a crime
- Abuse the legal system so associations will not speak up or defend human rights
- Detain, torture or take away the life of members of an association

It is called a **chilling effect**, when state actions create a sense of fear among people, so they are afraid to practice their right to association. This should not happen...



When the rights of associations are violated, States must ensure that they can access justice without discrimination and that the harm that was done to them is fixed, or that they receive money to compensate (effective remedy and reparations). When these violations happen because the laws are wrong, States may have to change those laws to make sure it does not happen again.



5 RESTRICTIONS ON THE RIGHT OF FREEDOM OF ASSOCIATION

Restrictions on the right of freedom of association should be an **exception**. Article 22 sets when restrictions can be put in place. When such restrictions are imposed, associations should be able to complain in fair processes and access justice.



1 **st condition: The restrictions must be allowed by a law.**

Restrictions must be explained in rules or laws that are clear, precise and accessible to the persons that are impacted by them. For example, rules that do not allow registration to associations that have “political objectives” would not be okay, because anything could be considered as “political objectives”.

States cannot misuse criminal laws against associations or its members to punish them for their activities such as journalism or defence of human rights.

States cannot use laws that punish actions that are not clear or too broad, such as “extremist activity”, receiving funding from abroad, or being an “undesirable” organization.

2 **nd condition: Aim of the restrictions should be one of those listed in Article 22 of the Covenant, such as to protect national security or public safety, public order, public health or morals, and the rights of others.**

These are the only acceptable purposes and States must understand them in accordance with international guidelines and in a way that respects human rights. Only the most serious purposes (such as ensuring public safety) are a good reason to impose extreme measures, such as banning an association.

The purpose of protecting “public morals” can be understood in very different ways and it is important that States do not abuse this reason and demonstrate that they protect “fundamental values of the community”. They must also be careful to not discriminate using reasons that are not acceptable.

3 **rd condition: The restrictions must be necessary in a democratic society to achieve one of those purposes.**

Restrictions must be necessary and proportionate to achieve one of the acceptable goals mentioned above. This means that the restriction must be the smallest and least harmful possible. This condition also means that States must never do anything that destroys the rights in the Covenant.

Of course, people cannot claim the protection of the right to freedom of association if they use the association for goals that are violent or violate human rights. States must do their best to not ban an entire association just because some of its members are acting in ways that are not acceptable. In those cases, they should only take action in relation to the individual persons.

6

FREEDOM OF ASSOCIATION IN EMERGENCIES

In emergency situations, such as crisis, war, pandemics, some rights like the right to freedom of expression or association, may be disrupted. Actually, in these situations it is even more important to be able to access information or monitor human rights violations. Because of that the Committee has stressed that States also have human rights obligations in those situations.

➤ The right to freedom of association can be disrupted in emergency situations, but some of the rights that apply to their members cannot, such as the right to life or the right not to be tortured. Also, the activities of associations that provide emergency help are vital in these situations and will have to be protected.

➤ States must follow very strict rules and have strong justifications to stop their human rights obligations in emergency situations, and this can only happen in a very limited way (for example they can only happen for a limited time).

7

ARTICLE 22 OF THE COVENANT AND OTHER INTERNATIONAL LAWS

➤ There are other international laws that States must follow and that will be important to the right to freedom of association in certain cases. For example, the laws of the sea will be important for associations that rescue people at sea, or environmental law for associations working on climate justice.

➤ Under these international rules, humanitarian associations working to help people in situations of crisis, have special protections for the funds they need.

8

SAFEGUARDS AND RELATED RULES

➤ The Covenant includes an important rule that prevents States from using the Covenant as an excuse to go against rights better protected in its country. This is because of an important principle that says that the existing rule that is best for the person (the most favourable law) should always apply.

➤ Another important principle is the “prohibition of retrogression”, which means that States should not go back on human rights that they have already recognized.

BONUS

TIMELINE OF THE DEVELOPMENT OF THE GENERAL COMMENT NO. 38

IN 2025

The Human Rights Committee asked states, civil society and others to send information about the right to association so they can prepare the draft of the GC. 38.

APRIL 2026

The Human Rights Committee published the draft of the GC. 38 on their website and called everyone to send comments and proposals.

MAY 2026

Children take part in a preparatory meeting to talk about the draft GC. 38. This is an opportunity to find gaps in the text and come up with ideas how to better protect children's freedom of association.

JUNE 2026

Children take part in a consultation with the member of the Human Rights Committee who worked on the GC. 38. They share their comments and ideas with her, so she can update the text.

SEPTEMBER/OCTOBER 2026

The Human Rights Committee publishes the final General Comment No. 38 on the right to association on their website. From this moment, everyone can start sharing it and using it for their own advocacy.

NOVEMBER 2026

The children who took part in the consultation with the Committee member, gather again to look at the final text of the GC. 38 and see how their ideas and proposals were introduced. They also evaluate the process of child participation.

QUESTIONS FOR THE CONSULTATION:

- Why is this right important for children?
- Do you have your own group, association or organization?
- Can children set up and join associations in your country?
Have you faced barriers?
- How children can exercise this right?
- Do children face issues joining trade unions?
- What states should do or should not do so children can join and set up associations?
- Could be an age restriction justified? If so, why?