

Freedom of Association: basic principles



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FREEDOM OF ASSOCIATION (FOA): A RIGHT UNIVERSALLY RECOGNIZED

- **The principle of freedom of association is at the core of the ILO's values:**
 - enshrined in the ILO Constitution (1919), the ILO Declaration of Philadelphia (1944), and in the ILO Declaration on Fundamental Principles and Rights at Work (1998).
- **Proclaimed in the Universal Declaration of Human Rights (1948) - Explicit reference to ILO C. 87**
- **Source of interpretation for the European and the Inter-American Courts of Human Rights**
- **Source of inspiration for the OECD guidelines on multinationals**
- **Source expressly mentioned by many trade agreements and framework agreements**

KEY SOURCES of FOA:

- ILO Constitution
- Conventions and recommendations
- Committee of Experts' jurisprudence
- Committee on Freedom of Association's Digest of decisions

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ILO FOA INSTRUMENTS

Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)

This fundamental convention sets forth the right for workers and employers to establish and join organizations of their own choosing without previous authorization. Workers' and employers' organizations shall organize freely and not be liable to be dissolved or suspended by administrative authority, and they shall have the right to establish and join federations and confederations, which may in turn affiliate with international organizations of workers and employers. It goes hand in hand with the:

Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

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FOA AND RESPECT OF CIVIL LIBERTIES

- A system of democracy and the respect of fundamental human rights are essential to full and genuine FOA
- The interdependence of FOA and civil liberties was reiterated in the ILO 1970 Resolution Concerning Trade Union Rights and Their Relation to Civil Liberties

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FOA AND RESPECT OF CIVIL LIBERTIES

- Civil liberties essential to the normal exercise of trade union rights:
 - ↔ The right to life and personal safety
 - ↔ The right to freedom and security of person from arbitrary arrest and detention
 - ↔ Freedom of opinion and expression
 - ↔ Freedom of assembly
 - ↔ The right to a fair trial by an independent and impartial tribunal

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Freedom of association and protection of the right to organize convention, 1948 (no. 87)

- Aims at protecting the free exercise of the right to organize of workers' and employers' organizations *vis-à-vis* public authorities (independence)
- Protects in law and in practice the freedom to establish organizations, prerequisite to the other guarantees enunciated in ILO instruments
- 153 ratifications, including the 45 European countries both members of the ILO and the Council of Europe

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Freedom of association and protection of the right to organize convention, 1948 (no. 87)

The right to organize depends on three principles:

1. That *no distinction* is made among those entitled to the right of association
2. That there is *no need for previous authorization* to establish organizations
3. That there is *freedom of choice* with regard to *membership* of such organizations

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Right to establish and join organizations *without distinction whatsoever* (art. 2)

▪ All workers and employers are covered

(public servants, rural workers, home workers, EPZs workers, seafarers, young workers, teachers, managers, foreigners)

▪ **No distinction based on grounds of, *inter alia*, occupation, sex, colour, race, religion, age, residence, marital status, nationality, political opinion**

▪ **Possible exceptions** relates to the armed forces and the police (interpreted narrowly)

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Right of workers' and employers' organizations *to elect their representatives in full freedom* (art. 3)

Rights of workers' and employers' organizations:

- to draw up their constitutions and rules (only formal requirements, no prior approval or imposed model constitution)
- to elect representatives in full freedom (results not subject to approval by public authorities, eligibility requirements not excessively restrictive. No arbitrary interference by public authorities in the election process.
- to organize their administration (autonomy and financial independence, protection of assets and property)
- to organize their activities and formulate their programmes (hold meetings, access to the workplace and to communicate with the management, organize protest action, certain political activities)

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Right of workers' and employers' organizations to formulate their programmes (art. 3)

- **Right of organizations to formulate their programmes include:**
 - ↪ **Right to hold meetings**
 - ↪ **Right to have access to the working place by trade union leaders with due respect for the rights of property and management**
 - ↪ **Right to communicate with management**
 - ↪ **Right to obtain information**

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The right to strike

- **Not expressly mentioned in ILO Conventions on FOA**
- **The right to strike has been recognized by ILO supervisory bodies as:**
 - a fundamental right
 - an intrinsic corollary of the right to organize
 - an essential means available to workers and their organizations to protect their economic and social interests
- **Most visible form of collective action in the context of a labour dispute (any work stoppage, may be considered as a strike)**
- **Political strikes do not fall within the scope of FOA**

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Workers covered

- **Certain categories of workers can see their right to strike limited, even prohibited:**
 - ↪ **civil servants exercising authority in the name of the state**
 - ↪ **workers in essential services : services the interruption of which would endanger the life, the personal safety or health of the whole or part of the population (e.g., health**
 - ↪ **acute national crisis (limited period of time)**
- **Compensatory guarantees should be provided for workers deprived of their right to strike**
- **In cases of not essential services but of public utility, possible to establish a system of negotiated minimum service**

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Abuse of the right to strike

- **In sum strike is not an absolute right, and restrictions or even prohibition are possible**
- **Sanctions provided in national legislation in case of abuse are acceptable.**
- **However all penalties should be proportionate to the offence or fault committed.**
- **No imprisonment for organizing or participating in a peaceful strike**

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Protection against dissolution or suspension of organizations by administrative authority (art. 4)

- **Dissolution is the most extreme form of interference by public authorities**
- **If administrative dissolution exists, a right to appeal to independent courts with suspending effect should exist**

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Law of the Land and compatibility with C. 87 (art. 8)

- 1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.**
- 2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.**

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Trends and challenges

- **C87 is widely ratified but big countries are still not in...**
- **Freedom of association and civil liberties: some improvements but remaining challenges**
- **Specific categories of workers are still too often excluded from the scope of FOA**
 - in some countries certain categories of workers (for example public servants, domestic workers, seafarers, workers in export processing zones) are denied the right of association, workers' and employers' organizations are illegally suspended or interfered with, and in some extreme cases trade unionists are arrested or killed.
- **Anti-union discrimination is still widespread**

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Right to organize and collective bargaining convention, 1949 (no. 98)

- **Freedom of Association is essential for sound social dialogue and collective bargaining**

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IN GUISE OF CONCLUSION

- The right to organize and form employers' and workers' organizations is the prerequisite for sound collective bargaining and social dialogue.
- Nevertheless, challenges in applying these principles continue
- ILO standards, in conjunction with the work of the Committee on Freedom of Association (CFA) and other supervisory mechanisms, pave the way for resolving these difficulties and ensuring that this fundamental human right is respected the world over.
- Freedom of association is not just an issue for workers! Employers have also lodged complaints with the ILO's Committee on Freedom of Association regarding illegal interference with the activities of their organizations.

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THANK YOU FOR YOUR
ATTENTION!

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