Chapter 10

Article 15: The Right to Freedom of Association and Assembly

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1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

What Did Children Say?

‘What are the laws put forth by the government for those stopping us to peacefully associate ourselves in public and community places?’ (*Africa*)

‘Provide transportation to (events/meetings).’ (*Western Europe/Other*)

‘Schools should offer opportunities to develop activities as a group and should provide with information that students are able to organise and form groups based on topics of mutual interest ‘example basketball club.’’ (*Eastern Europe*)

‘Have other children represent us; child conferences.’ (*Africa*)

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Overview

Article 15 asserts that the right to freedom of association and peaceful assembly, first established in the Universal Declaration of Human Rights and subsequently included in the International Covenant on Civil and Political Rights and many other international and regional human rights treaties, applies equally to children.¹ Association and assembly are closely related and mutually reinforcing, but they constitute separate rights and need to be treated accordingly (Kiai & UN Human Rights Council, 2012, para. 4). Although there is a lack of jurisprudence differentiating association and assembly (Daly, 2016), it can be understood that the aim of association is to protect ongoing and continuing connections with others, whereas assembly tends to be more episodic (Lawyers Committee for Human Rights (U.S.) and Whittome, 1997, p. 61). Article 15 rights apply to children in the context of their engagement in political and social activities with others, including political demonstrations, and associations such youth groups, sports clubs, child-led groups, political parties, and working children's organisations and movements, as well as informal association and assembly through family, friendships, and social networks, on and offline. It also covers the right to access public spaces (UN Committee on the Rights of the Child, 2017, para. 36). Article 15 is one of the core civil and political rights in the Convention that, together with Article 12, combine to create the concept of participation. It is a qualified right: paragraph 2 outlines the restrictions on its exercise where deemed necessary for public safety and security.

The use of the term recognise, consistent with the wording in Article 21 of ICCPR, affirms that the right to association and peaceful assembly is a fundamental human right rather than a provision that the state can grant (Daly, 2016, p. 29). It is, accordingly, a strong formulation and implies positive obligations on States Parties to take reasonable steps to protect this right. Moreover, children's lack of autonomy and different legal status from adults requires additional measures by States Parties to facilitate and protect freedom of association and assembly (Daly, 2016, pp. 28–30). Where Article 15 differs from the ICCPR is in its failure to include an explicit articulation that freedom of association extends to the right to join a trade union, although none of the limitations outlined in paragraph 2 would justify a prohibition on children so doing.

General Principles

Article 2 Children should not be discriminated against on the basis of their age, for example, through blanket bans on membership or establishment of associations, or in the organisation of or participation in peaceful protests, applicable to persons under the age of 18 years old (Kiai & UN Human Rights Council, 2014, paras.

¹UDHR, Article 2, CCPR Articles 21 & 22.

23–24; UN Committee on the Rights of the Child, 2000, paras. 30–31). Groups of children can face direct or indirect discrimination in the exercise of Article 15 rights, including, school children, street children, children in detention, indigenous children, children with disabilities, LGBTQ children and girls. Article 2 necessitates action from States Parties to eliminate these discriminations.²

Article 3 Consideration of best interests in respect of Article 15 should be applied with a view to ensuring the full and effective enjoyment of all rights. Article 15 rights should not be compromised by a negative interpretation of best interests (UN Committee on the Rights of the Child, 2013a, para. 4). While Article 3 recognises a duty to consider the appropriate protection of children, best interests should be never used as an overarching principle to outweigh Article 15 rights, either for children as individuals or as a group (UN Committee on the Rights of the Child, 2013a, para. 19). Furthermore, States Parties could promote children’s best interests in the exercise of their Article 15 rights, by, for example providing police with appropriate training.

Article 6 Children cannot be expected to mature into full members of society if they lack the experience of participation in public life.³ Their development is enhanced by active engagement and participation in their communities. Any measures to deny them rights to association and assembly for their own safety must be fully justifiable. As with Article 3, the vulnerability of children should not be used as a general excuse to exclude them from accessing their freedom rights (Kiai & UN Human Rights Council, 2014, para. 10).

Article 12 Freedom of association and assembly provide important opportunities for children to exercise their right to express their views in accordance with Article 12, including through the development of their own associations and initiatives, and increasingly through the digital environment (UN Committee on the Rights of the Child, 2009, para. 128). When children can organise and participate in civic action, for example, it enhances their understanding of democratic processes and develops capacity for future engagement. It also strengthens their opportunity to lobby for economic, social and political change (Breen, 2019). However, Article 12 represents a right to express views, not an obligation to do so, and therefore care must be taken to avoid manipulated or coerced participation in such activities.

²See, for example, General Comment No. 21 on Children in Street Situations (UN Committee on the Rights of the Child, 2017), and Concluding Observations: Japan (UN Committee on the Rights of the Child, 2004, paras. 29–30).

³See, for example, Consideration of Reports of States Parties: Korea (UN Committee on the Rights of the Child, 1996, para. 50).

Articles Related or Linked to Article 15

Article 13 protects freedom of expression that is a key dimension of the freedom of association and assembly.

Article 14 protects the right to freedom of thought, conscience and religion that may be a reason for association or assembly.

Article 16 protects the right to arbitrary interference into children's membership of a particular association or to associate with certain others.

Article 29 elaborates the aims of education which include recognition that children must be prepared for life in a free society, including rights to freedom of association and assembly.

Article 31 protects the right to play, recreation, and participation in cultural life which cannot be achieved without freedom of association and assembly.

Article 32 protects children from harmful or exploitative work and, although not made explicit in Article 15, the right to freedom of association can be understood to extend to the right to form or join a trades union.

Article 37 protects children against arbitrary restriction of liberty or degrading treatment or punishment, including when exercising their right to freedom of assembly or association.

Relevant Instruments

The rights to freedom of association and assembly, or associated rights, are also included in the following international documents:

- UN Universal Declaration of Human Rights (1948), Article 20
- International Covenant on Civil and Political Rights (1966), Article 21
- UN Convention on the Elimination of All Forms of Discrimination against Women (1979), Article 7
- UN Convention on the Rights of Persons with Disabilities (2006), Article 29
- UN European Convention on Human Rights (1950), Article 11
- ILO Convention 87, Freedom of Association and Protection of the Right to Organise Convention (1948), Article 2
- ILO Convention 98, Right to Organise and Collective Bargaining Convention (1949) Article 2
- American Convention on Human Rights 'Pact of San Jose, Costa Rica' (B-32) (1978), Article 15
- African Charter on the Rights and Welfare of the Child (1990), Article 8

Attributes

Attribute One: Freedom of Association

It can be argued that freedom of association is fundamental to both the child's development and the realisation of other rights. It applies to the right to form or join organisations, clubs, and other forums, and covers associations which are formal and informal, one-off or continuing, face-to face or online, and for any purpose, including social, cultural, religious, educational, economic, and political (Daly, 2016, p. 36). The Committee has consistently argued that States Parties have obligations to facilitate and support the establishment by children of their own organisations (2009, paras. 128, 130, 2013b, para. 21, 2016, 2017, paras. 44–45), including opportunities for networking and collective advocacy (UN Committee on the Rights of the Child, 2014). States Parties have particular obligations to promote and protect this right, including in the digital environment, in view of the lack of traditional spaces where children can meet independently. Many social, civic, political, religious and cultural activities and organisations operate partially or exclusively in the digital environment (Kaye & UN Human Rights Council, 2018). Accordingly, States Parties should consider guaranteeing this right in law, ensuring that legislation aligns equally to digital settings. They should also actively remove the barriers that prevent children establishing their own organisations, for example, onerous registration requirements, or restrictions on opening bank accounts or receiving funding. In no circumstances should States Parties impose compulsory membership or control over the nature of children's participation (UN Committee on the Rights of the Child, 2013b, para. 21).

Although Article 15 does not expressly elaborate the right to join a trade union, the restrictions outlined in paragraph 2 do not justify any prohibition on children from either forming their own or joining existing unions (UN Commission on Human Rights, 1985). ILO Conventions 87 and 98 emphasise that these rights extend to all workers, without exception. Furthermore, Article 41, which stipulates that the standards of other international instruments should not be lowered by any provision in the Convention, lends further weight to the argument that Article 15 should be interpreted to include the right of working children to trade union rights to the same standard as that provided by the ICCPR (Daly, 2016, p. 35). The Committee has emphasised the imperative for children to have access to such organisations, and in particular, that children, including those under the legal age of work, must have access to mechanisms through which to negotiate for protection of their rights at work (UN Committee on the Rights of the Child, 2009, paras. 116–117).

Attribute Two: Freedom of Assembly

The right to freedom of assembly represents a means of public expression and is a foundation of a democratic society (Liberty, 2020). It extends to activities on and offline, both indoors and outdoors, in private or public settings, in one location or moving, with invited participants or open gatherings to political activities and meetings with peers (Nowak, 2005). It includes any peaceful protest marches, public and private meetings, or press conferences. It has particular significance for children as they commonly utilise public spaces because of a lack of dedicated child-friendly spaces where they can meet. Furthermore, children commonly lack political space to speak out or organise to influence the political or social structures around them.

Freedom of assembly has additional relevance during adolescence, when the need for opportunities to meet with peers in public spaces and independently of family takes on added significance as a major building block in children's social and emotional development (UN Committee on the Rights of the Child, 2016, para. 44). Children themselves have highlighted that the public visibility and networking opportunities in the digital environment can support forms of child-led activism and empower them as advocates for their rights (UN Committee on the Rights of the Child, 2018). The Committee has expressed concern over the decreasing tolerance of children in public spaces, particularly street children, who are widely denied the right to meet in public spaces without threat, harassment or removal. It has also highlighted their vulnerability to exploitative measures requiring or manipulating them into participation in protests or gatherings (UN Committee on the Rights of the Child, 2017, para. 39). Article 15 explicitly extends to the right to choose not to take part in an assembly.

States Parties should take action to facilitate and empower all children to exercise their Article 15 rights positively, including by promoting the creation of channels for child-led activism online, and to be able to challenge co-option and manipulation by adults (UN Committee on the Rights of the Child, 2014). Action should also be taken to establish the right to freedom of assembly in law and to remove barriers, such as age limits for participation in public demonstrations. In addition, in view of the vulnerabilities of children associated with their age, States Parties should guarantee children appropriate protection when exercising their right to peaceful assembly (Daly, 2016, pp. 28–30; UN Committee on the Rights of the Child, 2012, paras. 38–39).

Attribute Three: Restrictions Limited to Compliance with Democratic Interests

The restrictions on the exercise of Article 15 rights imposed in paragraph 2 are identical to those in equivalent international treaties. In other words, they can only be imposed in the interests of security, safety, public health or moral or the rights or

freedoms of others. During the drafting process, it was determined that a provision limiting Article 15 rights to children's evolving capacities should not be included in Article 15, but rather, be included in a separate article, thereby applying to all rights equally. In other words, civil and political rights should not be marked out as subject to particular parental scrutiny, and States Parties should not seek to impose additional limitations on children in the exercise of Article 15 rights (Daly, 2016).

Measures introduced by States Parties to employ the best interests principle to limit Article 15 rights, or to impose status offences, blanket bans, anti-social behaviour orders, or curfews have been strongly criticised as violations (Kiai & UN Human Rights Council, 2014, paras. 23–24; UN Committee on the Rights of the Child, 2007, para. 8, 2008, paras. 34–35). Furthermore, any restrictions imposed must be necessary for a legitimate purpose, not be overbroad, be the least intrusive instrument possible for achieving their protective function, be proportionate to the interest to be protected and entail individual rather than collective assessment (UN Committee on the Rights of the Child, 2017, para. 39; UN Human Rights Committee, 2011, paras. 33–34).

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