

INTERNATIONAL COUNCIL ON ARCHIVES

SECTION ON ARCHIVES AND HUMAN RIGHTS

Draft General Comment No. 38 (Article 22 ICCPR – Freedom of Association)

Comments submitted by the International Council of Archives
(Section on Archives and Human Rights)

1. Preamble

The International Council on Archives [ICA], an international association created in 1948 to promote the development of archives, with advisory status to UNESCO in the field of archives and documentary heritage, commends the call for input on the Draft General Comment no 38 (Article 22 ICCPR – Freedom of Association) <https://www.ohchr.org/en/calls-for-input/2025/call-input-draft-general-comment-no-38-article-22-freedom-association>

Supporting this initiative, the International Council on Archives, informed by the work of its Section on Archives and Human Rights [SAHR], is pleased to share experiences and recommendations that relate to archives in this context

2. Introduction

Article 22 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of association, including the right to form and join organizations to pursue common interests.

This right is fundamental for democratic societies and is closely linked to other rights such as freedom of expression (Article 19) and freedom of peaceful assembly (Article 21) .

However, freedom of association is not only about the ability to gather and organize; it also encompasses the capacity of associations to document, preserve and access their own records. Archives are the institutional memory of associations. They safeguard evidence of their existence, decisions and contributions to society. Without archives, associations - especially those representing marginalized or dissenting voices - risk erasure from history, undermining both their identity and accountability. Besides official – institutional archives, Community Archives play a critical role in ensuring inclusive, participatory and sustainable preservation of cultural archival heritage. They empower communities to take ownership of their historical narratives, fostering diversity and representation within archival collections.

3. *Legal and Normative Framework*

- ICCPR Article 22: Protects the right to freedom of association, subject only to restrictions that are lawful, necessary and proportionate in a democratic society.
- Universal Declaration on Archives (adopted by ICA in 2010 and by UNESCO in 2011): Recognizes archives as essential for democratic accountability, human rights and collective memory.
- Basic Principles on the Role of Archivists and Records Managers in Support of Human Rights (ICA, 2016): Emphasizes that archives are critical for securing rights, proving civil status and documenting abuses.¹
- UN Principles on the Right to Truth (2005): Establish that victims and society have an inalienable right to know the truth about gross human rights violations, which cannot be guaranteed without proper preservation of archives.²
- Rule-of-Law Tools for Post-Conflict States: Archives (OHCHR, 2015): Highlights archives as key instruments for transitional justice, accountability and reparations.³
- The UNESCO Recommendation Concerning the Preservation of, and Access to, Documentary Heritage Including in Digital Form is also of prime importance and relevance.⁴

4. *Why archives are integral to Freedom of Association*

1. Preservation of identity and continuity
Associations rely on archives to maintain historical continuity, safeguard their governance records and assert their legitimacy. This is particularly vital for civil society organizations, trade unions, and minority groups whose histories are often threatened by political repression or digital fragility.
2. Protection against erasure and impunity
Archives provide evidence of human rights violations and advocacy efforts. They are indispensable for truth-seeking, judicial processes and reparations. Without archives, the right to freedom of association becomes hollow, as the ability to demonstrate collective action and defend rights over time is lost.
3. Enabling participation and transparency
Access to archives strengthens democratic participation by allowing members and the public to scrutinize decisions and hold organizations accountable. This aligns with the ICCPR's emphasis on pluralism and civic space.

¹ https://www.ica.org/app/uploads/2023/12/ICA-HRWG-Basic-Principles_endorsed-by-PCOM_2016_Sept_English.pdf

² <https://iberarchivos.org/en/human-rights/>

³ https://www.ohchr.org/sites/default/files/Documents/Publications/HR_PUB_14_4_Archives_en.pdf

⁴ <https://www.unesco.org/en/legal-affairs/recommendation-concerning-preservation-and-access-documentary-heritage-including-digital-form>

5. Challenges and emerging risks

1. Digital fragility: Increasing reliance on digital platforms exposes associations to risks of data loss, cyberattacks and state surveillance.
2. Political polarization and authoritarianism: Governments may restrict access to archives or destroy records to silence dissent.
3. Resource constraints: Many associations lack the capacity to implement sustainable archival practices.

6. Recommendations for General Comment No. 38

1. Explicit recognition:
 - a. Affirm that the right to freedom of association includes the right to create, maintain and access archives documenting the association's activities.
 - b. Community-based approaches diversify archival ecosystems, reducing the risk of loss due to centralized vulnerabilities and enhancing adaptability in times of crisis.
2. State obligations:
 - a. Ensure legal frameworks that protect archival integrity and prevent unlawful destruction.
 - b. Support capacity-building for civil society organizations to manage archives, including digital preservation.
 - c. Guarantee access to archives for members and, where appropriate, the public, in line with privacy and security considerations.
3. Integration with human rights standards:
 - a. Link archival rights to the right to truth, transitional justice, and accountability mechanisms.
 - b. Encourage adoption of international standards such as the ICA Code of Ethics and the Universal Declaration on Archives.
4. Protection in times of crisis:
 - a. Develop emergency protocols for safeguarding archives during armed conflict, political upheaval or regime change.

7. Conclusion

Freedom of association is not fully realized unless associations can preserve and access their records. Archives are not merely technical tools; they are instruments of memory, accountability, and justice. Embedding archival rights within the interpretation of Article 22 will strengthen democratic resilience and protect the voices of collective action for future generations.