104th REGULAR SESSION
March 11 to 15, 2025
Panama City, Panama

OEA/Ser.Q
CJI/RES. 282 (CII-O/23) rev.3
15 March 2024
Original: Spanish

CJI/RES. 282 (CII-O/23) rev.3

DECLARATION OF INTER-AMERICAN PRINCIPLES ON THE CREATION, OPERATION, FINANCING, AND DISSOLUTION OF NONPROFIT CIVIL ENTITIES

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING:

That according to Article 16 of the American Convention on Human Rights, everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others;

That the General Assembly of the Organization of American States (OAS) in June 2021 adopted a resolution on *Promotion and Protection of Human Rights* in which it calls on member states to: "respect and fully protect the rights of all individuals to assemble peacefully and associate freely, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association, including on the internet, are in accordance with domestic legislation and the international human rights obligations applicable to them";

That the Ninth Summit of the Americas – held from June 8 to 10, 2022 – adopted the *Inter-American Action Plan on Democratic Governance* (CA-IX/doc.5/22), whereby the Heads of State of the Hemisphere commit "to safeguarding the full exercise of civil rights, including freedom of association, freedom of peaceful assembly, and freedom of expression as fundamental principles of representative and participatory democracies, in keeping with the international human rights treaties" to which they are parties, and

TAKING INTO ACCOUNT:

That at its 98th regular session (April 5-9, 2021), the Inter-American Juridical Committee (CJI) of the Organization of American States (OAS) approved to include in its agenda the following topic: *Inter-American principles on the legal regime for the creation, operation, financing and dissolution of civil nonprofit entities* (document CJI/doc.629/21), for the purpose of systematizing inter-American standards and best practices for the legal regime for the creation, operation, financing, and dissolution of nonprofit civil entities in the members states of the Organization of American States.

That for the 100th regular session of the CJI, held in Lima (May 2-6, 2022), the Rapporteur for the topic delivered the report: *Legal Regime for the Creation, Operation, Financing, and Dissolution of Nonprofit Civil Entities in the Member Countries of the Organization of American States* (CJI/doc.661/22), which included an in-depth study and comparison of domestic laws and practices related to the life cycle – i.e., the creation, operation, financing, and dissolution – of civil society organizations in the 35 countries of the region, identifying international standards in this area, at both the regional and global levels.

That said study revealed that, in the practice and implementation of the domestic legislative frameworks regulating freedom of association, particularly with regard to the creation, operation,

financing, and dissolution of non-profit civil entities, civil society organizations in the Americas tend to run into restrictions and legal obstacles throughout their life cycle.

That, specific international standards on this field have been adopted at the universal and regional levels, namely those developed by the *UN Special Rapporteur on the Freedoms of Peaceful Assembly and of Association*, and at the regional level, the *Joint Guidelines on Freedom of Association of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) and the Venice Commission*, as well as the *Principles on the rights to freedom of peaceful assembly and association,* approved by the *African Commission on Human and Peoples' Rights*.

That, as part of its work in harmonizing, codifying, and developing private international law the Inter-American Juridical Committee promoted adoption of the *1984 Convention on Personality and Capacity of Juridical Persons in Private International Law*, which establishes that the existence, capacity to hold rights and obligations, operation, dissolution, and merger of a private juridical person are governed by the laws of the place where it was incorporated and that, however, no progress has been made in developing inter-American guidelines to orient the content and approach that the laws regulating nonprofit civil legal entities should have, thus leaving the inter-American system somewhat lagging behind these global advances and needing a process for systematizing, modernizing, and consolidating the standards developed in the Americas.

That the Inter-American Juridical Committee, at its 102nd regular session, held on March 6 to 10, 2023, adopted document CJI/RES. 282 (CII-O/23) corr.2, with the principles applicable in this regard, and that document, after being submitted to the OAS Committee on Juridical and Political Affairs, required the explanation and differentiation of the specific legal regime applicable to political organizations as regards electoral funding.

RESOLVES:

1. To approve the "*Declaration of Inter-American Principles on the Legal Regime for the Creation, Operation, Financing, and Dissolution of Nonprofit Civil Entities, with annotations*," which is appended to this resolution.

2. To refer this resolution along with the updated Declaration of Principles contained in the accompanying document to the Permanent Council of the Organization of American States and to the General Assembly for due attention and consideration.

3. To request the Department of International Law, in its capacity as Technical Secretariat to the Inter-American Juridical Committee, to disseminate this Declaration of Principles as widely as possible among various stakeholders.

This resolution was adopted unanimously at the regular session held on March 9, 2023, by the following members: Drs. Martha Luna Véliz, Eric P. Rudge, George Rodrigo Bandeira Galindo, José Luis Moreno Guerra, Alejandro Alday González, Julio José Rojas Báez, José Antonio Moreno Rodríguez, Luis García-Corrochano Moyano, Cecilia Fresnedo de Aguirre, and Ramiro Gastón Orias Arredondo.

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Annex I

Declaration of Inter-American Principles on the Legal Framework for the Creation, Operation, Financing, and Dissolution of Nonprofit Civil Entities

Principle 1

Exercise of freedom of association

The exercise of freedom of association includes the right to participate in the creation, operation, financing, and dissolution of nonprofit civil entities.

Principle 2

Autonomy of will

Nonprofit civil entities are born and governed by the will of their founders, associates, or members, exercised freely and autonomously.

Principle 3

Principle of legality

The life cycle of nonprofit civil entities should be governed mainly by laws adopted according to the constitutional procedure required by the State's domestic law, in all that which is necessary and reasonable for a democratic society.

Principle 4

Registration and recognition by an independent and autonomous authority

Member states should guarantee independent and autonomous public registration services or recognition of the legal personality of civil entities and ensure that those bodies provide their services with professionalism, impartiality, and transparency, pursuant to these principles.

Principle 5

Simple and transparent registration procedures

Establishment and registration procedures should be simple, prompt, clear, non-discriminatory, and non-discretionary. The law should establish precisely the requirements and documents to be submitted for obtaining and maintaining recognition of legal personality, as well as the procedures, deadlines, and costs of that process.

Principle 6

Freedom of operation

Nonprofit civil entities may carry out their functions with a broad purpose in areas of public interest and/or for the mutual benefit of their members, with only those constraints that are permitted by international human rights instruments and without unlawful or arbitrary interference.

Principle 7

Freedom to seek, obtain, and use funds

Nonprofit civil entities are free to seek, request, obtain, and use financing for the achievement of their social aims from public and private sources, both domestic and foreign. *in accordance with the generally applicable laws on tax, exchange and banking matters. Political parties are subject to a special regime regarding transparency and electoral financing.*

Principle 8

Appropriate control of illicit financing

State responsibility to regulate illicit financial activities will be in accordance with the obligations established by international human rights instruments. Restrictions applied to civil nonprofit entities should be proportionate to the risk identified, evidence-based, and implemented without limiting the legitimate work of the sector.

Principle 9

Access to public financing under equal conditions and without discrimination

Civil nonprofit entities may have access to public funds through transparent, equitable and non-discriminatory systems, being subject to the general rules of accountability and responsibility of their legal representatives.

Principle 10

Special tax regime

Nonprofit civil entities should have access to tax benefits in accordance with their nonprofit nature without discrimination.

Principle 11

Proportional penalties and due process

Sanctions imposed by States on nonprofit civil entities should only be applied in limited circumstances established by law in advance in a gradual, necessary and strictly proportional manner; and be applied on reasonable, reasoned and proven grounds within a judicial process, with all the guarantees of due process.

Principle 12

Voluntary and forced dissolution

The dissolution of nonprofit civil entities, their liquidation and the disposal of their assets should follow the provisions contained in their bylaws, as expressed by the will of their members. Members should not distribute the entity's assets among themselves. Compulsory dissolution, as a legal penalty, should be appropriate only in exceptional circumstances and in the most serious cases that entail the infringement of a legitimate interest recognized by international human rights instruments and where less restrictive measures would not be sufficient to protect such an interest.

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Annex II

Annotations to the Declaration of Inter-American principles on the legal framework for the creation, operation, financing, and dissolution of nonprofit civil entities

Introduction

The right to freedom of association is largely guaranteed in most of the constitutions of the countries of the Americas region. Nevertheless, in terms of regulating the life cycle of civil society organizations (CSOs) in their legislative evolution, domestic laws have introduced varying models of civil nonprofit entities, through regulations that are usually vague and ambiguous.

Similarly, methods of implementation tend to be diverse as well, depending especially on political contexts, the strength of democratic institutions, and the full force of the rule of law. Accordingly, there are cases in which political context and administrative practices have proven to be restrictive to the operation of CSOs, contrary to international human rights standards and despite a legal framework conducive to creating them, including some based on a notification system. The studies also revealed a wide variety of regulations that affect different aspects of the CSO life cycle, that is: income tax laws, anti-money laundering and anti-terrorist financing laws, charities laws, promotion laws, foreign agent registration laws, etc. Any analysis of the legal environment for CSOs in a given country must take into account this cluster of rules, and not just the law governing their creation and dissolution.

Most domestic laws – particularly in codification in Latin American countries – traditionally defined the formal and substantive requirements for the creation of such private entities, as well as other aspects of their operation and dissolution under their ordinary civil laws, by establishing a neutral legal framework. The same holds true for Caribbean countries, Canada, and the United States, among others that inherited the common law system. But the region has been undergoing a process of transforming those regulatory frameworks beginning almost two decades ago, shifting from civil law to administrative law – with the Executive bodies in some countries imposing undue restrictions, excessive controls, and vague and arbitrary requirements, while also invoking ambiguous and arbitrary powers – all of which have had a particular impact on the legal regime governing the different life-cycle phases of nonprofit civil organizations in particular, and CSOs in general.

Against such a backdrop, steps must be taken to systematize and develop inter-American principles and standards in this area, to facilitate the harmonization of domestic laws across the region. To that end, under the direction of the Inter-American Juridical Committee (CJI) Rapporteur for this topic and with support and technical assistance from the International Center for Not-for-Profit Law (ICNL), extensive work has been undertaken to compile, survey, analyze, and compare – in the light of international standards – the domestic laws established in 35 countries of the region, with specific information on the life cycle of civil society organizations: (a) formation and registration of organizations; (b) operation; (c) access to funding; and (d) dissolution.

In an effort to validate the information received, and to contrast rules with practices, on December 1 and 2, 2021, two virtual consultation events were held with academics and leaders of civil society organizations, to develop Inter-American Principles on the Legal Regime for the Creation, Operation, Financing, and Dissolution of Nonprofit Civil Entities, under the academic auspices of the Center for Advanced Studies of the Third Sector of the Pontifical Catholic University of São Paulo, Brazil, the Bolivian Catholic University (UCB) of La Paz, Bolivia, and the ORT University of Mexico. Furthermore, this document was reviewed in early April 2022, during three sub-regional consultations that drew experts and specialists from Mexico and Central America, South America, and Caribbean countries. This text was again revised, commented on, and discussed at a July 14, 2022 regional meeting of experts, with ICNL support and technical assistance.

These annotations expand upon and support development of the proposed inter-American principles on the legal regime for the creation, operation, financing and dissolution of civil nonprofit entities, based on the international standards established with respect to the right to freedom of association. The text proposes twelve general principles, each with supporting notes that explain in greater detail its basis, scope, and justification, illustrating some of the terms as to how specific situations may be addressed. For each principle, there is also a statement of the international standard on which it is based, whether it was issued by an international body or authority for the protection of human rights at the inter-American or universal level, or from another source. Thus, these proposed principles are based on current rules in keeping with domestic law, national practice, and the international human rights obligations to which the States Parties are subject.

Lastly, it is useful for note to be made of the contribution that this study has made to the important efforts being made by other Organization of American States bodies in terms of the participation of organized civil society, as well as in strengthening civic spaces, a vital component of any democratic society.

Principle 1 (Exercise of freedom of association)

The exercise of freedom of association includes the right to participate in the creation, operation, financing, and dissolution of nonprofit civil entities.

Rationale for the Principle Everyone has the right to associate freely for legitimate public interest or mutual benefit purposes on a non-profit basis. The exercise of freedom of association consists of the power to create civil society organizations (CSOs) and to set up their internal structure, activities, and action program, independently, without intervention by authorities that unduly limits or hinders the exercise of this right. States must guarantee an enabling and safe environment for exercising this right, in conformity with existing international human rights instruments.

The great majority of Organization of American States (OAS) member countries recognize freedom of association as a constitutional right consistent with Article 16 of the American Convention. Nevertheless, a comprehensive review of the norms of the countries in this region reflects a wide range of laws and implementation practices that limit the enjoyment of the freedom at key moments in the lifecycle of associations. Freedom of association can be promoted through legal reforms that conform to these Principles, along with Article 2 of the American Convention, which requires States to adopt, in accordance with their constitutional procedures, domestic law provisions, legislative or otherwise, as may be necessary to give effect to those rights and freedoms. Consequently, States have the duty to adopt an enabling and appropriate legal, political, and administrative framework to ensure the development of CSOs throughout their lifecycle, in accordance with the values of a democratic society.

Applicable international standards: "The Inter-American Court has established that the right to associate protected by Article 16 of the American Convention protects two dimensions. The first dimension encompasses the right and freedom to associate freely with other persons, without the intervention of the public authorities limiting or encumbering the exercise of this right, which represents, therefore, a right of each individual. The second recognizes and protects the right and the freedom to seek the common attainment of a lawful purpose, without pressure or meddling that could alter or thwart their aim."[1]

At the international level "[t]he right to freedom of association ranges from the creation to the termination of an association, and includes the rights to form and to join an association, to operate freely and to be protected from undue interference, to access funding and resources and to take part in the conduct of

[1] Inter-American Commission on Human Rights, *Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. March 7, 2006, par. 71 (quotes omitted).*

public affairs."[2] At the regional level, in Europe, the Venice Commission[3] has held that "domestic laws should be drafted with a view to facilitating the creation of associations and enabling them to pursue their objectives."[4] The European Court of Human Rights has similarly ruled that "[p]rotection afforded to freedom of association lasted for an association's entire life."[5]

Principle 2 (Autonomy of will)

Nonprofit civil entities are born and governed by the will of their founders, associates, or members, exercised freely and autonomously.

Rationale for the Principle:

CSOs are created by the free and autonomous will of their founders, associates or members. Members should determine the structure, internal governance, and activities of associations through their statutes, consistent with the principles of contractual freedom, self-regulation, and self-determination of their mandates. Freedom of association presumes that each person may determine whether she or he wishes to be part of an association without arbitrary interference or coercion.

Ambiguous rules that limit the permissibility of CSO decisions based on State interests not recognized in the American Convention allow interference by public officials in organizations' internal governance. When the discretionary criteria of regulatory bodies replace the will of an association's members, they restrict the associations' autonomy as well as limit the usefulness and legitimacy of the statutes for both members and officials. The autonomy of founders and members can be guaranteed through unambiguous norms with closed lists of minimal grounds for limiting the decisions of members regarding their objectives, activities, and internal structure.

Applicable international standards: In the Americas, "the right to associate freely without interference requires that States ensure that those legal requirements not impede, delay, or limit the creation or functioning of these organizations."[6] "On the other hand, under such freedom it is possible to assume that each person may determine, without any pressure, whether or not she or he wishes to form part of the association. This matter, therefore, is about the basic right to constitute a group for the pursuit of a lawful goal, without pressure or interference that may alter or denature its objective."[7]

At the global level, "only 'certain' restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception. ...'in adopting laws providing for restrictions … States should always be guided by the principle that the restrictions must not impair the essence of the right ... the relation between right and restriction, between norm and exception, must not be reversed.'"[8] As the Venice Commission views it in that region, "freedom of association encompasses the right to found an association, to join an existing association and to have the association perform its function without any unlawful interference by the state or by other individuals. Freedom of association entails

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[2] Human Rights Council, *Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai*, A/HRC/20/27, 24 April 2013, p. 1 (summary).

[3] Comprising the Organisation for Security and Co-operation in Europe and the European Commission for Democracy through Law.

[4] Organisation for Security and Co-operation in Europe and the European Commission for Democracy through Law (Venice Commission), *Joint Guidelines on Freedom of Association,* Warsaw, 2015, ISBN 978-92-9234-906-6, par. 53.

[5] See European Court of Human Rights, *United Communist Party et al v.* Turkey, No. 19392/92, par. 33.

[6] *Ibid*., *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. December 31, 2011, par. 163.

[7] Inter-American Court of Human Rights, *Baena Ricardo et al v. Panama. Judgment on Merits, Reparations and Costs. February 2, 2001, par. 156.*

[8] *Id., Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, 21 May 2012, para.* 16 (quote omitted).

both the positive right to enter and form an association and the negative right not to be compelled to join an association that has been established pursuant to civil law."[9]

Principle 3 (Principle of legality)

The life cycle of nonprofit civil entities should be governed mainly by laws adopted according to the constitutional procedure required by the State's domestic law, in all that which is necessary and reasonable for a democratic society.

Rationale for the Principle: Norms must be precise, comprehensive, and published in advance, avoiding to the extent possible dispersion across and overregulation. Moreover, legislation must be reasonable, proportionate, and necessary in a democratic society, in the interest of national security, public security or order, or to protect public health or morals or the rights and freedoms of others. Aside from permissible limitations recognized by international human rights instruments, norms must be compatible with the positive duty of the State to promote and guarantee the exercise of freedom of association.

In several countries in the region, CSOs and public officials of good faith seek to comply with and implement the law correctly but face severe barriers due to requirements that are so ambiguous, contradictory, or extensive that they require human and financial resources beyond the reach of many public organizations and agencies. Often, these problematic requirements arise due to the use of executive decrees and administrative orders issued in a rushed and *ad hoc* manner to regulate CSOs rather than passing laws that have been adequately debated in the legislature. The result is disproportionate dedication of scarce resources to compliance and enforcement, leaving CSOs less equipped to fulfill their public benefit missions and public officials unable to respond to cases most worthy of their attention. Compliance with the principles of legality and necessity can be promoted through legislation that is drafted unambiguously with the participation of the CSO sector and appropriately debated and approved by the legislature.

Applicable international standards: At the inter-American level, "the general conditions and circumstances under which a restriction to the exercise of a particular human right is authorized must be clearly established by law in a formal and substantial sense, that is, by a law passed by the legislature in accordance with the Constitution."[10]

At the international level, any limitation of "these rights… must be expressly provided and narrowly worded in precise and clear language by a formally and materially approved law. In that regard, it is not enough that the restrictions be formally approved by the competent organ of the state, but that the law must be adopted in accordance with the process required by the domestic law of the State, it must be 'accessible to the public' and 'be formulated with enough precision so that a person may act accordingly.'"[11] At the regional level, the African Commission on Human and Peoples' Rights (The African Commission) has established that, "[n]ational legislation on freedom of association, where necessary, shall be drafted with the aim of facilitating and encouraging the establishment of associations and promoting their ability to pursue their objectives. Such legislation shall be drafted and amended on

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[9] Venice Commission, *Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan* (14-15 October 2011) CDL-AD (2011)035, para. 42.

[10] Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II*. December 31, 2011, par. 61.

[11] Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan; and the Special Rapporteur on the situation of human rights defenders, Mary Lawlor; *Comments on national legislation, regulations and policies to El Salvador, Ref*: OL SLV 8/2021 (30 November 2021), item 2(a), p. 4.

the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society."[12]

Principle 4 (Registration and recognition by an independent and autonomous authority)

Member states should guarantee independent and autonomous public registration services or recognition of the legal personality of civil entities and ensure that those bodies provide their services with professionalism, impartiality, and transparency, pursuant to these principles.

Rationale for the Principle In some countries in the region, the laws for CSO registration and regulation are perceived to be implemented selectively, particularly in the case of organizations unaligned with the government or those representing marginalized groups. As a practical matter, registration and oversight procedures tend to be more expensive, intrusive, and time-consuming for such organizations as well as for those located in areas far from the oversight agency. Independent and autonomous agencies can be promoted through professionalization, with adequate human and technological resources, as well as training in freedom of association and best practices in CSO regulation. *State agencies or public services that register, recognize, or oversee the legal personality of CSOs must be independent and autonomous. Such agencies must work impartially, transparently, and equitably, and they must motivate and publish their decisions. Selection of agency personnel must be merit-based and in accordance with stable civil service rules. When possible, consistent with constitutional and administrative regimes of each State, an integrated, simple, coherent system with decentralized services within easier reach of citizens is recommended. If CSOs are required to register with or report to other State bodies, such requirements should not undermine a registered CSO's legal personality.*

Applicable international standards: Under the inter-American system, "[s]tates that have bodies responsible for handling the registration of associations should ensure that neither these bodies nor the authorities in charge of regulating the laws governing registration have broad discretion or provisions containing vague or ambiguous language that might create a risk that the law could be interpreted to restrict the exercise of the right of association."[13]

At the international level, "where procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law."[14] Regionally, in Europe, "[l]egislation should make the process of notification or registration as simple as possible and, in any case, not more cumbersome than the process created for other entities, such as businesses."[15]

Principle 5 (Simple and transparent registration procedures)

Establishment and registration procedures should be simple, prompt, clear, non-discriminatory, and non-discretionary. The law should establish precisely the requirements and documents to be submitted for obtaining and maintaining recognition of legal personality, as well as the procedures, deadlines, and costs of that process.

Rationale for the Principle: Many countries in the region have prior authorization systems with complex information requirements and redundant registries that obstruct the creation and operation of CSOs. Simple and transparent registration procedures are attainable through adoption of notification

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[12] African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa,* November 10, 2017.

[13] *Id.*, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. December 31, 2011, par. 172.

[14] Human Rights Council, *Protecting Human Rights Defenders* (Resolution) A/HRC/RES/22/6), 12 April 2013, para. 8.

[15] *Id., Guidelines on Freedom of Association, Warsaw, 2015, ISBN 978-92-9234-906-6, para.* 156.

systems. Alternatively, prior authorization systems can be simplified and decentralized, with clearly defined requirements and procedures along with explicit criteria for limited review of applications. Procedures for the creation of CSOs must be simple, timely, clear, non-discriminatory, and non-discretionary. Registration systems based on notification favor the exercise of freedom of association more than those based on prior authorization. The law must state all requirements and documents needed to obtain and maintain recognition of legal personality, and must establish clear procedures, deadlines, and costs. Any registration costs must be reasonable and proportionate to those applicable to for-profit private entities. The State may reject a request for registration only on reasonable, specific, and limited grounds. Any rejection must be open to challenge and judicial review with sufficient due process guarantees. When States adopt a new law, registered CSOs should not be subject to adaptation or re-registration procedures. The law should also guarantee establishment of de facto associations, which can have legal rights and obligations and their members are legally responsible for the association's action in relation to third parties.

Applicable international standards: In the Americas, "[t]he States must ensure that the registration of organizations 'is a rapid process, requiring only the documents necessary to obtain the information necessary for registration purposes.'"[16] "The registration... should have a declaratory and not constitutive effect.'"[17] "National laws should prescribe the maximum time periods for the State authorities to act on registration applications."[18]

"The [UN] Special Rapporteur [for Freedom of Expression] considers as best practice procedures which are simple, non-onerous or even free of charge and expeditious. A "notification procedure," rather than a "prior authorization procedure" that requests the approval of the authorities to establish an association as a legal entity, complies better with international human rights law and should be implemented by States. Under this notification procedure, associations are automatically granted legal personality as soon as the authorities are notified by the founders that an organization was created. It is rather a submission through which the administration records the establishment of the said association."[19] For the regional level, the African Commission has stipulated that "[r]egistration shall be governed by a notification rather than an authorization regime, such that legal status is presumed upon receipt of notification. Registration procedures shall be simple, clear, non-discriminatory and non-burdensome, without discretionary components. Should the law authorize the registration authorities to reject applications, it must do so on the basis of a limited number of clear legal grounds, in compliance with regional and international human rights law."[20]

Principle 6 (Freedom of operation)

Nonprofit civil entities may carry out their functions with a broad purpose in areas of public interest and/or for the mutual benefit of their members, with only those constraints that are permitted by international human rights instruments and without unlawful or arbitrary interference.

Rationale for the Principle: The freedom of action includes the right to participate in forming and tracking public policies, and to express opinions and ideas in public spheres through any means, including in digital space. States shall guarantee the right to privacy of CSO information, especially for sensitive institutional information that needs special protection and added safeguards. States may request CSO institutional information for statistical purposes but may not compromise their independence.

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[16] *Id.*, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. December 31, 2011, par. 541 (Recommendation 18.)

[17] *Id.*, par. 171.

[18] *Id.,* par. 541 (Recommendation 18.)

[19] *Id., Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, 21 May 2012, paras.* 57 and 58;

[20] *Id.*, *Guidelines on Freedom of Association and Assembly in Africa,* 10 November 2017, para. 13.

Ambiguous or restrictive legislation in several countries gives authorities wide discretion to limit the legitimate activities of CSOs, for instance, by characterizing them as “political activities” reserved for political parties. Other problematic legislation grants authorities excessive powers to scrutinize and disclose private information belonging to organizations and their members. To guarantee freedom of action, States must establish criteria that avoid inappropriate meddling, which compromises the critical and independent role that CSOs must play in a democratic society.

Applicable international standards:

The inter-American system has established that freedom of association includes the right “to set into motion their internal structure, activities and action program, without any intervention by the public authorities that could limit or impair the exercise of the respective right.”[21]

At the international level, “among other liberties, associations have the freedom to advocate for electoral and broader policy reforms; to discuss issues of public concern and contribute to public debate; to monitor and observe election processes....”[22] At the regional level, according to the African Commission, “[a]ssociations shall be able to engage in the political, social and cultural life of their societies, and to be involved in all matters pertaining to public policy and public affairs, including, *inter alia*, human rights, democratic governance, and economic affairs, at the national, regional and international levels.”[23]

*Principle 7 **(Freedom to seek, obtain, and use funds)***

Nonprofit civil entities are free to seek, request, obtain, and use financing for the achievement of their social aims from public and private sources, both domestic and foreign in accordance with the generally applicable laws on tax, exchange and banking matters. Political parties are subject to a special regime regarding transparency and electoral financing.

Rationale for the Principle: Increasingly, CSOs face laws blocking access to funding from legitimate sources that are grounded in arguments, such as the need to protect national sovereignty. Additionally, misguided practices treat CSOs as if they were for-profit entities, solely because they engage in economic activities, even when they invest income earned towards their missions. *To promote access to funding, legal obstacles that hinder access to resources from diverse sources must be identified and mitigated. Similarly, they may generate their own income and dedicate the earnings to their mission without restriction other than compliance with each country's applicable tax law. States should promote financing for CSOs from diverse sources to ensure their sustainability and independence.* In relation to the particular situation of political parties, which are also associations, it is reasonable to establish a specific regulation because these organizations are subject to a special regime regarding transparency, oversight and electoral financing.

Applicable international standards: The Inter-American Commission on Human Rights (IACHR)] reiterates that, as part of freedom of association, “[s]tates should allow and facilitate human rights organizations' access to foreign funds in the context of international cooperation.” Based on this logic, organizations that are created to coordinate or monitor the receipt and management of funds at the state level should be geared towards promoting rather than restricting the funding opportunities for human rights non-governmental organizations.[24]

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[21] *Id*., *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. December 31, 2011, para. 175 (citation omitted).

[22] United Nations General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/68/299, 7 August 2013, para.* 43.

[23] *Id*., *Guidelines on Freedom of Association and Assembly in Africa,* 10 November 2017, para. 25.

[24] *Id*., *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. December 31, 2011, par. 179.

At the international level, "[t]he [UN] Special Rapporteur [for Freedom of Association] has repeatedly underlined that the ability to seek, secure and use resources — from domestic, foreign and international sources — is essential to the existence and effective operations of any association, no matter how small."[25] On a regional level, the African Commission has determined, meanwhile, that "[i]ncome generated shall not be distributed as profits to the members of not-for-profit associations. Associations shall however be able to use their income to fund staff and reimburse expenses pertaining to the activities of the association and for purposes of sustainability."[26]

As for political parties, the UN Special Rapporteur on Freedom of Association considers that " "Foreign donations may be regulated, limited or prohibited to avoid undue influence of foreign interests in domestic political affairs." [27]. The Venice Commission holds that in the case of political parties "because of their role as critical actors in the election of the government, their freedom to receive and use funding, including foreign funding, may be subject to stricter regulations to avoid and combat undue or corrupt influence on the political life in the State, including from outside the State;[28] consequently, the prohibition of contributions from foreign States to political parties may be justified if they undermine the fairness or integrity of political competition, lead to distortions of the electoral process or pose a threat to national territorial integrity.[29] In Parti Nationaliste basque - Organisation Régionale d'Iparralde v. France, the European Court of Human Rights said that it had no difficulty in accepting that a prohibition on the funding of political parties by foreign States is necessary for the preservation of national sovereignty, concluding that the fact that political parties are not allowed to receive funds from foreign parties is not in itself incompatible with Article 11 of the European Convention on Human Rights.[30]

Principle 8 (Appropriate control of illicit financing)

State responsibility to regulate illicit financial activities will be in accordance with the obligations established by international human rights instruments. Restrictions applied to civil nonprofit entities should be proportionate to the risk identified, evidence-based, and implemented without limiting the legitimate work of the sector.

Rationale for the Principle: States frequently cite Financial Action Task Force (FATF) global standards for countering the financing of terrorism and money laundering to justify enhanced legal requirements on all or most non-profit organizations. This type of disproportionate requirement, lacking a foundation in evidence of risk of a violation of a state interest, is inconsistent with both freedom of association and FATF standards, and carries unintended negative consequences. To promote appropriate control of financial crimes, States should correctly implement FATF standards through laws proportionate to actual evidence of risk that CSOs will be misused for financial crimes, including evidence of risk mitigation provided by the sector. Constraints on CSOs to counter terrorism financing must be based on actual evidence of risk and focused on those organizations identified as being high-risk due to their characteristics or activities. Restrictions on CSOs must be proportionate to the risk identified,

[25] United Nations General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/70/266, 4 August 2015, para.* 67.
[26] *Id*., *Guidelines on Freedom of Association and Assembly in Africa,* 10 November 2017, para. 40.
[27] *Id.,* United Nations General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, May 21, 2012, par.* 71.
[28] European Commission for Democracy through Law (Venice Commission), Report on funding of associations, March 2019, par. 41. DL-AD(2019)002-e
[29] Ibid, par. 90.
[30] ECHR, June 2, 2007, Parti Nationaliste Basque – Organisation Regionale D'Iparralde v. France, Application No. 71251/01.

implemented in accordance with Article 16 of the American Convention, and avoid limiting legitimate CSO activities.

Applicable international standards: In the Americas, "[i]n the case of organizations dedicated to the defense of human rights, in invoking national security it is not legitimate to use security or anti-terrorism legislation to suppress activities aimed at the promotion and protection of human rights."[31]

The UN Special Rapporteur for Freedom of Association has observed that "undue restrictions on resources available to associations impact the enjoyment of the right to freedom of association and also undermine civil, cultural, economic, political and social rights as a whole."[32] Likewise, he has further stated that "[s]tates have a responsibility to address money-laundering and terrorism, but this should never be used as a justification to undermine the credibility of the concerned association, nor to unduly impede its legitimate work."[33] It is the view of the Financial Action Task Force (FATF) that "[m]easures to protect non-profit organizations (NPOs) from potential terrorist financing abuse should be targeted and in line with the risk-based approach. It is also important for such measures to be implemented in a manner which respects countries' obligations under the Charter of the United Nations and international human rights law."[34]

Principle 9 (Access to public financing under equal conditions and without discrimination)

Civil nonprofit entities may have access to public funds through transparent, equitable and non-discriminatory systems, being subject to the general rules of accountability and responsibility of their legal representatives.

Rationale for the Principle: CSOs have the right to solicit and receive public funds, which should be awarded through transparent, fair and non-discriminatory procedures. When private non-profit entities receive public funding, they also assume responsibility for the transparent and accountable use of those funds awarded. General rules of government accountability and control should govern the use of public funds by CSOs; requirements should not be more burdensome than those applied to for-profit entities. Receipt of public funding does not transform a CSO into a public entity subject to access to public information laws. Laws that permit CSOs to solicit, receive, and use public funds without transparent and fair criteria reduce access to resources and may damage the reputation of the entire sector. Laws governing the use of public funds that treat recipient CSOs as public entities undermine their non-profit and non-governmental character and subject them to excessive meddling. To promote access to public funding, States should establish systems with fair criteria and transparent procedures that lend credibility and legitimacy to CSOs that use public funding.

Applicable international standards: "The IACHR reiterates that the right of access to information obligates civil society organizations to turn over information exclusively on the handling of public funds, the provision of services for which they are responsible, and the performance of public functions that may be entrusted to them."[35]

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[31] *Id.*, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. December 31, 2011, para. 167.

[32] Human Rights Council, *Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai*, A/HRC/23/39, 24 April 2013, para. 9.

[33] *Id.*, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai,* A/HRC/20/27, 21 May 2012, para. 70.

[34] Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, Interpretative Note to Recommendation 8*, para. A.2, February 2012 (updated in October 2021 and March 2022).

[35] *Id., Second Report on the Situation of Human the Rights Defenders in the Americas, para.* 182 (text in box at end). *See also, IACHR, Office of the Special Rapporteur for Freedom of Expression, The right of access to information in the inter-American legal framework,* 30 December 2009, para. 19.

At the global level, "[w]hile States are encouraged to facilitate public funding to civil society organizations working in development and poverty eradication, State funding schemes should preserve civil society independence, by being transparent, fair and accessible to all organizations, including informal groups."[36] At the regional level, the African Commission has established that "[s]tates should provide tax benefits, and public support where possible, to not-for-profit associations. Public support includes not only direct financial support, but rather all forms of support, including material support, in-kind benefits, exemptions, and other forms of non-direct support."[37]

Principle 10 (Special tax regime)

Nonprofit civil entities should have access to tax benefits in accordance with their nonprofit nature without discrimination.

Rationale for the Principle States worldwide tend to fulfill their duty to promote freedom of association by granting preferential tax treatment to CSOs and donors. Tax exemptions and deductions for public benefit CSOs and their donors are good practices for the efficient use of the public treasury. In some countries in the region, however, disproportionate requirements and selective implementation impede access to these benefits. To implement an enabling special fiscal regime, States should enact simplified requirements with tangible benefits, justified by the CSO sector's valuable public benefit contributions. Fiscal regimes should provide an enabling framework for non-profit entities that promotes freedom of association through tax incentives for donations and other sources of income. To this end, it is recommended to establish clear and transparent procedures and deadlines, as well as appeals mechanisms.

Applicable international standards: "[T]he IACHR has considered that one way to comply with this obligation is through tax exemptions to organizations dedicated to protecting human rights."[38]

At the global level, "[s]tates' positive obligation to establish and maintain an enabling environment for associations extends to fostering the ability to solicit, receive and utilize resources. Some States do this by extending tax privileges to associations registered as non-profit entities."[39] At the regional level, the African Commission has ruled that "[s]tates that provide public support to associations, including in the form of tax benefits, shall ensure that funds and benefits are distributed in an impartial, nonpartisan and transparent manner, on the basis of clear and objective criteria, and that the granting of funds or benefits is not used as a means to undermine the independence of civil society sphere."[40]

Principle 11 (Proportional penalties and due process)

Sanctions imposed by States on nonprofit civil entities should only be applied in limited circumstances established by law in advance in a gradual, necessary and strictly proportional manner; and be applied on reasonable, reasoned and proven grounds within a judicial process, with all the guarantees of due process.

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[36] United Nations General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, A/74/349, 11 November 2019, para.* 53.
[37] *Id*., *Guidelines on Freedom of Association and Assembly in Africa,* 10 November 2017, para. 41 (includes the footnote text) (Spanish translation unofficial).
[38] *Id*., *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. December 31, 2011, para. 187.
[39] *Id.*, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/70/266, 4 August 2015, para.* 79.
[40] *Id*., *Guidelines on Freedom of Association and Assembly in Africa,* 10 November 2017, para. 42 (Spanish translation unofficial).

Rationale for the Principle: The FATF, among other bodies, has noted a trend of misapplying money laundering and financing of terrorism laws to impose disproportionate sanctions on CSOs without due process guarantees. In many States, this tendency is limiting the capacity of CSOs to achieve their public benefit missions, with grave consequences. States should follow the FATF recommendations to identify and mitigate inappropriate restrictions that limit the legitimate work of CSOs, establishing only proportionate sanctions, with due process guarantees, that are based on a prior risk assessment and not applied generally to the entire sector. When authorities impose sanctions that are subsequently ruled illegal, CSOs should be able to exercise the right to reparation for the harm suffered, including seek restitution for damages and guarantees of non-repetition.

Applicable international standards: Within the inter-American system, it has been established that "[s]tates have the obligation to take all necessary measures to avoid having State investigations lead to unjust or groundless trials for individuals who legitimately claim the respect and protection of human rights."[41]

At the global level, as the FATF is of the view that "[a] risk-based approach applying focused measures in dealing with identified threats of terrorist financing abuse to protect not-for-profit organizations is essential given the diversity within individual national sectors.... Focused measures adopted by countries to protect not-for-profit organizations from terrorist financing abuse should not disrupt or discourage legitimate charitable activities."[42] For its region, the African Commission has established that "[s]tates shall not impose criminal sanctions in the context of laws governing not-for-profit associations. All criminal sanctions shall be specified within the penal code and not elsewhere. Sanctions shall be applied only in narrow and lawfully prescribed circumstances, shall be strictly proportionate to the gravity of the misconduct in question, and shall only be applied by an impartial, independent and regularly constituted court, following a full trial and appeal process."[43]

Principle 12 (Voluntary and forced dissolution)

The dissolution of nonprofit civil entities, their liquidation and the disposal of their assets should follow the provisions contained in their bylaws, as expressed by the will of their members. Members should not distribute the entity's assets among themselves. Compulsory dissolution, as a legal penalty, should be appropriate only in exceptional circumstances and in the most serious cases that entail the infringement of a legitimate interest recognized by international human rights instruments and where less restrictive measures would not be sufficient to protect such an interest.

Rationale for the Principle: Dissolutions of CSOs have increased markedly in some countries in the region. The growing number of confiscations of assets from dissolved organizations is also a worrisome trend. These tendencies represent an alarming threat to exercising freedom of association in the region; in some cases, CSOs denounce that confiscations are imposed as political punishment, inconsistent with the right to property under the American Convention. To promote compliance with the American Convention regarding dissolution of CSOs, States should enact regimes with sanctions that are

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[41] *Ibid*., *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. December 31, 2011, par. 76.

[42] *Id*., *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, Interpretative Note to Recommendation 8*, Secs. B(4)(a) and (d), February 2012 (updated in October 2021 and March 2022). *See also*: FATF, *High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards*, October 27, 2021 ["The revised Recommendation 8 aims to protect nonprofit organizations from potential terrorism financing abuse while also ensuring that focused risk-based measures do not unduly disrupt or discourage legitimate charitable activities." (Spanish translation unofficial)].

[43] *Id*., *Guidelines on Freedom of Association and Assembly in Africa,* 10 November 2017, paras. 55 and 56 (unofficial translation).

appropriate to the legitimate state interest in question and respect the intentions expressed in an organization's statutes.

Applicable international standards: Under the inter-American system, [t]he States should... ensure an impartial remedy for situations in which organizations' registration is suspended or the organization dissolved."[44]

At the global level, "[i]nvoluntary dissolution and suspension are perhaps the most serious sanctions that the authorities can impose on an organization. They should be used only when other, less restrictive measures would be insufficient and should be guided by the principles of proportionality and necessity. Moreover, associations should have the right to appeal decisions regarding suspension or dissolution before an independent and impartial court."[45] At the regional level, the Venice Commission has determined that "[t]he existence of an association may be terminated by decision of its members or by way of a court decision. Voluntary termination of an association may occur when the association has met its goals and objectives, or, for example, when it wishes to merge with another association or no longer wishes to operate. Involuntary termination... may take the form of dissolution...may only occur following a decision by an independent and impartial court."[46] The African Commission, meanwhile, has held that "dissolution of an association by the state may only be applied where there has been a serious violation of national law, in compliance with regional and international human rights law and as a matter of last resort. The requisite level of gravity is only reached in cases involving the pursuit of illegitimate purposes, such as where the association in question aims at large-scale, coordinated intimidation of members of the general population, for instance on the basis of a racially-motivated position."[47]

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[44] *Id*., *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. December 31, 2011, p. 243, rec. 20.
[45] *Id*., *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/70/266, 4 August 2015, para.* 38.
[46] *Id*., *Guidelines on Freedom of Association, Warsaw*, 2015, ISBN 978-92-9234-906-6, paras. 242-244.
[47] *Id*., *Guidelines on Freedom of Association and Assembly in Africa,* 10 November 2017, para. 58 (includes the text of the footnote) (unofficial translation).