

BRIEFER FOR UNDERSTANDING AND USING PROPOSED

INTER-AMERICAN PRINCIPLES ON THE LEGAL REGIME FOR THE CREATION, OP- ERATION, FINANCING AND DISSOLUTION OF NON-PROFIT CIVIL ENTITIES

Context

On April 9, 2021, the influential Inter-American Juridical Committee (IAJC) of the Organization of American States (OAS) approved a motion championed by Commissioner Ramiro Orias Arredondo to “Develop Inter-American Principles on the legal regime for the creation, operation, financing, and dissolution of non-profit civil entities.” IAJC standards on regulation of civil society organizations (CSOs) are much needed, as CSOs in all OAS member states face legal obstacles related to the key lifecycle moments and themes to be covered by the Principles.

Article 16 of the American Convention on Human Rights provides that “[e]veryone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes... The exercise of this right is 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.” Nevertheless, unjustified restrictions to this right based in law or government practice persist in the Americas and around the world. In response to this global concern, the United Nations and regional mechanisms, most notably in Europe and Africa, have developed standards to promote and protect the right to freedom of association. The Inter-American system, primarily through its decade-old *Second Report on the Situation of Human Rights in the Americas* has also addressed problematic laws and practices that limit free association right. However, unlike other regions, it has not issued guiding principles for the Americas.

In collaboration with Commissioner Orias and a team of legal experts led by Eduardo Szazi of Brazil, the International Center for Not-for-Profit Law (ICNL), compiled and analyzed the laws and practices regulating CSO lifecycles of 35 OAS member countries, comparing them to relevant international standards. We convened two online meetings of CSO representatives, academics, and practitioners in December 2021 with support from the Center for Advanced

Studies on the Third Sector of the Pontifical Catholic University of São Paulo, Brazil, The Catholic University of Bolivia (UCB), and ORT University of Mexico to validate our initial compilation and analysis. With this broad input, we produced a draft Regional Report and proposed Inter-American Principles on CSO laws, which were reviewed and improved by approximately 75 experts from Mexico and Central America, South America, and the Caribbean during sub-regional consultations held in April 2022. Members of the Association of Pro Bono Lawyers of the Americas also contributed analysis of the laws and practices regulating CSO lifecycles in their countries. Finally, ICNL and Commissioner Orias convened a select group of experts from Latin America and the Caribbean to an online meeting in July for an advanced discussion of each proposed principle. As a result of this highly participatory process, over 100 experts from throughout Latin America and the Caribbean contributed to the draft Inter-American Principles and their supporting documents.

Commissioner Orias has led the IAJC's deliberations of initial and advanced drafts of the Inter-American Principles during its 2022 plenaries. With ICNL's technical support, he incorporated adjustments requested by IAJC members into a draft Declaration that sets forth and justifies twelve principles of general application. An annex provides additional context, motivating rationales, and illustrative standards from the Inter-American System, United Nations human rights mechanisms, and other international and regional systems. The full IAJC will debate the proposed Inter-American Principles at its March 2023 plenary, and we are hopeful that the revised Principles will be considered at that time.

How to use this document

This user-friendly document presents each principle on one page, along with the problematic trends underlying the need for the principle and illustrative excerpts of global, Inter-American, and other regional or relevant legal standards underpinning each principle.

Stakeholders can use this document, together with the Regional Report, to:

- o Assess the laws and practices in their own countries;
- o Convene multi-sector dialogues to discuss the country's legal environment as compared to the Principles;
- o Advocate for enabling reforms; and
- o Advocate for adoption of the Principles within the IJC and the OAS General Assembly.

ICNL hopes that you find this briefer useful. Please contact Jocelyn Nieva (jnieva@icnl.org), Claudia Guadamuz (cguadamuz@icnl.org) or Federico Barillas (fbarillas@icnl.org) with any questions.

Principle I (Freedom of association)

Freedom of association includes the right to participate in the creation, operation, financing, and dissolution of non-profit civil entities within the framework of Article 16 of the American Convention on Human Rights (American Convention). All persons have the right to associate to engage in activities 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 Article 2 of the American Convention.

Rationale for the Principle

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 a conducive legal, political, and administrative framework that is adequate to guarantee the development of CSOs throughout their lifecycle, in accordance with the values of a democratic society.

Illustrative Inter-American Standard	<i>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 pressures or meddling that could alter or thwart their aim.¹</i>
Illustrative Global Standard	<i>The 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 public affairs.²</i>
Illustrative Regional Standard or Standard from Another Source	<i>The legal framework should be designed to ensure the enjoyment of the right to freedom of association and its implementation, and not to stifle the exercise of this right³. The protection afforded by [Freedom of Association] lasts for an association's entire life.⁴</i>

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

² Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 21 May 2012 (A/HRC/20/27), p. 1 (summary).

³ OSCE and Council of Europe's Commission for Democracy through Law (Venice Commission), *Guidelines on Freedom of Association*, Warsaw, 2015, ISBN 978-92-9234-906-6, par. 53.

⁴ See European Court of Human Rights, *United Communist Party of Turkey and Others v. Turkey*, No. 19392/92, par. 33.

Principle 2 (Autonomy of founders and members)

CSOs are created by the free and autonomous will of their founders, associates or members. Members should determine the internal governance of a CSO through its statutes, consistent with the principles of contractual freedom, self-regulation, and autonomy. Freedom of association presumes that each person may determine whether they wish to be part of an association without arbitrary interference or coercion.

Rationale for the Principle

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 .

Illustrative Inter-American Standard	<i>[T]he 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.¹ 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.²</i>
Illustrative Global Standard	<i>[O]nly "certain" restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception. [...]"I]n 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."³</i>
Illustrative Regional Standard or Standard from Another Source	<i>The 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 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.⁴</i>

¹ *Id.* Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. 31 December 2011, par. 163.

² Inter-American Court of Human Rights, *Case of Baena Ricardo et al. v. Panamá*». Merits, Reparations and Costs, 2 February 2001, par. 156.

³ *Id.*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 21 May 2012 (A/HRC/20/27), par.16 (citation omitted).

⁴ 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, par. 42.

Principle 3 (Principles of legality and necessity)

The lifecycle of CSOs must be regulated principally by laws or codes approved by the legislative body. Norms must be precise, comprehensive, and published in advance, avoiding to the extent possible dispersion across many laws and excessive regulation. 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 on the right recognized in the American Convention, norms must be compatible with the positive duty of the State to promote and guarantee the exercise of freedom of association.

Rationale for the Principle

Across 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 organizations and agencies. Often, these problematic requirements arise due to the use 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 on 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.

Illustrative Inter-American Standard	<i>With respect to the principle of legality, 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.¹</i>
Illustrative Global Standard	<i>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.”²</i>
Illustrative Regional Standard or Standard from Another Source	<i>National 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 the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society.³</i>

¹ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. 31 December 2011, par. 61(citations omitted).

² Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clement Nyaletsossi Voule; of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan; y of the Special Rapporteur on human rights defenders, Mary Lawlor; *Comments on legislation, rules and national policies to El Salvador*, Ref.: OL SLV 8/2021 (30 November 2021), p. 4 (citations omitted) (unofficial translation).

³ African Commission on Human and Peoples’ Rights, *Guidelines on Freedom of Association and Assembly in Africa*, 10 November 2017, par. 7.

Principle 4 (Simple and transparent registration procedures)

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. In the case of de facto associations, the members are legally responsible for the association’s action in relation to third parties.

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 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.

Illustrative Inter-American Standard	<i>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.¹ [It] should have a declaratory and not constitutive effect². National laws should prescribe the maximum time periods for the State authorities to act on registration applications.³</i>
Illustrative Global Standard	<i>The Special Rapporteur 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. ⁴</i>
Illustrative Regional Standard or Standard from Another Source	<i>Registration shall be governed by a notification rather than an authorization regime, such that legal status is presumed upon receipt of notification.¹⁰ 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.⁵</i>

¹ *Id.* Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. 31 December 2011, par. 541 (Recommendation 18.)

² *Id.*, par. 171.

³ *Id.*, par. 541 (Recommendation 18.)

⁴ *Id.*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 21 May 2012 (A/HRC/20/27), pars. 57 y 58.

⁵ *Id.*, Guidelines on Freedom of Association and Assembly in Africa, 10 November 2017, par. 13.

Principle 5 (Recognition and oversight by an independent and autonomous state agency)

State agencies responsible for recognizing and regulating the legal personality of CSOs must be independent and autonomous. Such agencies must work impartially, legitimately, and equitably, and they must reason 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.

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 those located in areas far from the oversight agency. Independent and autonomous agencies can be promoted through professionalization, with adequate human and technological resources and as well as training in freedom of association and best practices in CSO regulation.

Illustrative Inter-American Standard	<i>States 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.¹</i>
Illustrative Global Standard	<i>[W]here procedures governing the registration of civil society organizations exist, that these [shall be] 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.²</i>
Illustrative Regional Standard or Standard from Another Source	<i>Legislation 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.³</i>

¹ *Id.*, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. 31 December 2011, par. 172.

² *Protecting Human Rights Defenders*, Human Rights Council Resolution, A/HRC/RES/22/6, 12 April 2013, par. 8.

³ *Id.*, *Guidelines on Freedom of Association*, Warsaw, 2015, ISBN 978-92-9234-906-6, par. 156.

Principle 6 (Freedom of action)

CSOs may carry out activities consistent with broad objectives in matters of public interest and/or for the mutual benefit of their members without restrictions other than those permitted by the American Convention. 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.

Rationale for the Principle

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.

Illustrative Inter-American Standard	<i>[F]reedom of association includes the right "to set into motion their internal structure, activities and action programme, without any intervention by the public authorities that could limit or impair the exercise of the respective right."</i> ¹
Illustrative Global Standard	<i>[A]mong 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; to report on human rights violations and electoral fraud...</i> ²
Illustrative Regional Standard or Standard from Another Source	<i>Associations 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.</i> ³

¹ *Id.*, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. 31 December 2011, par. 175 (citation omitted).

² 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, par. 43.

³ *Id.*, Guidelines on Freedom of Association and Assembly in Africa, 10 November 2017, par. 25.

Principle 7 (Freedom to seek, obtain, and use financial resources)

CSOs have the right to seek, obtain, and use financing from public, private, national, and foreign sources to meet their objectives. Similarly, they may generate their own income and dedicate the earnings to their mission without restriction other than compliance with applicable tax law. States should promote financing for CSOs from diverse sources to ensure their sustainability and independence.

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, States should identify and mitigate the legal obstacles to support from diverse sources of funding that are reducing the financial sustainability and independence of CSOs.

Illustrative Inter-American Standard	<i>One of the State's duties stemming from freedom of association is to refrain from restricting the means of financing of human rights organizations. States should allow and facilitate human rights organizations' access to foreign funds in the context of international cooperation.¹</i>
Illustrative Global Standard	<i>The Special Rapporteur 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.²</i>
Illustrative Regional Standard or Standard from Another Source	<i>Income 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.³</i>

¹ *Id.*, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. 31 December 2011, par. 179.

² 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, par. 67.

³ *Id.*, Guidelines on Freedom of Association and Assembly in Africa, 10 November 2017, par. 40.

Principle 8 (Control of financial crimes)

State responsibility to regulate unlawful financial activities must comply with the American Convention, including the right to freedom of association. 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, implemented in accordance with article 16 of the American Convention, and avoid limiting legitimate CSO activities.

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. The negative impact is considered by FATF to be an unintended consequence of poor implementation of its standards. 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.

Illustrative Inter-American Standard	<i>In 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.¹</i>
Illustrative Global Standard	<i>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.² States 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.³</i>
Illustrative Regional Standard or Standard from Another Source	<i>Measures to protect 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.⁴</i>

¹ *Id.*, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. 31 December 2011, par. 167.

² Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, 24 April 2013, par. 9.

³ *Id.*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 21 May 2012 (A/HRC/20/27), par. 70.

⁴ Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (The FATF Recommendations), Recommendation 8, Interpretative Note, Sec. A.2, February 2012 (Updated March 2022).

Principle 9 (Access to equitable and non-discriminatory public funding)

CSOs have the right to access public funds, which should be awarded through transparent, fair, and non-discriminatory procedures. When private non-profit entities receive public funding, they 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.

Rationale for the Principle

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 CSO as public entities undermines their non-profit and non-governmental character and subjects 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.

Illustrative Inter-American Standard	<i>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.¹</i>
Illustrative Global Standard	<i>While 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.²</i>
Illustrative Regional Standard or Standard from Another Source	<i>States 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.³</i>

¹ *Id.*, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. 31 December 2011, par. 182 (text box)(citing to IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV “The Right to Access of Information”, para. 19).

² General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Clément Nyaletsossi Voulé, A/74/349, 11 September 2019, par. 53.

³ *Id.*, *Guidelines on Freedom of Association and Assembly in Africa*, 10 November 2017, par. 41 (including footnote).

Principle 10 (Special fiscal regime)

CSOs may obtain tax benefits corresponding to their non-profit characteristics without discrimination. 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. States should establish clear and transparent procedures and deadlines, as well as appeals mechanisms.

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.

Illustrative Inter-American Standard	<i>The IACHR has considered that one way to comply with this obligation is through tax exemptions to organizations dedicated to protecting human rights.¹</i>
Illustrative Global Standard	<i>States' 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.²</i>
Illustrative Regional Standard or Standard from Another Source	<i>States that provide public support to associations, including in the form of tax benefits, shall ensure that funds and benefits are distributed in an impartial, non-partisan 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.³</i>

¹ *Id.*, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. 31 December 2011, par. 187.

² *Id.*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/70/266, 4 August 2015, par. 79.

³ *Id.*, Guidelines on Freedom of Association and Assembly in Africa, 10 November 2017, par. 42.

Principle II (Proportionate sanctions and due process)

State-imposed sanctions on CSOs shall apply only in limited and previously established circumstances. Sanctions must correspond to a range of severity of offenses and be necessary and strictly proportional. Only an impartial and independent court with appropriate jurisdiction may impose sanctions, and they must be reasonable and explained based on proven grounds in a procedure with due process guarantees. When authorities impose sanctions that are subsequently ruled illegal, CSOs shall have the right to seek restitution for damages and guarantees of non-repetition.

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. To promote the application of proportionate sanctions and due process, States should follow FATF’s initiative to identify and mitigate inappropriate restrictions that limit the legitimate work of CSOs. States should follow the FATF recommendations to identify and mitigate inappropriate restrictions that limit the legitimate work of CSOs, establishing only proportionate and sanctions, with due process guarantees that are based on a prior risk assessment and not applied generally to the entire sector.

Illustrative Inter-American Standard	<p><i>States 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.¹</i></p> <p><i>A risk-based approach applying focused measures in dealing with identified threats of terrorist financing abuse to NPOs is essential given the diversity within individual national sectors... Focused measures adopted by countries to protect NPOs from terrorist financing abuse should not disrupt or discourage legitimate charitable activities.²</i></p>
Illustrative Global Standard	<p><i>Where the rights to freedom of peaceful assembly and of association are unduly restricted, the victim(s) should have the rights to obtain redress and to fair and adequate compensation. Once again, due attention must be paid to victims belonging to the groups most at risk in this process.³</i></p>
Illustrative Regional Standard or Standard from Another Source	<p><i>States 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.⁴</i></p>

¹ *Id.*, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. 31 December 2011, par. 76.

² *Id.*, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (The FATF Recommendations)*, Recommendation 8, Interpretative Note, Secs. B(4)(a) & (d), February 2012 (Updated March 2022). See also FATF, *High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards*, 27 October 2021 (“The revised Recommendation 8 aims to protect NPOs from potential TF abuse while also ensuring that focused risk-based measures do not unduly disrupt or discourage legitimate charitable activities.”).

³ *Id.*, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, 21 May 2012 (A/HRC/20/27), pars. 81.

⁴ *Id.*, *Guidelines on Freedom of Association and Assembly in Africa*, 10 November 2017, pars. 55 y 56.

Principle 12 (Dissolution)

The dissolution of CSOs and the liquidation and destination of their assets must be done in accordance with their statutes and the will of their members. During liquidation, a CSO's statutes and internal policies determine the distribution of assets, which may be transferred to other CSOs with a similar mission. Members shall not distribute assets amongst themselves. State-imposed dissolution, as a sanction, must be an exception reserved for the gravest of cases, such as those affecting a legitimate interest recognized by the American Convention that less severe measures would not protect.

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 appropriate to the legitimate state interest in question and respect the intentions expressed in an organization's statutes for disposition of its assets upon dissolution.

Illustrative Inter-American Standard

The States should...ensure an impartial remedy for situations in which organizations' registration is suspended or the organization dissolved.¹

Illustrative Global Standard

Involuntary 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.⁵⁴ Moreover, associations should have the right to appeal decisions regarding suspension or dissolution before an independent and impartial court.²

Illustrative Regional Standard or Standard from Another Source

The 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 of an association, which may take the form of dissolution or prohibition, may only occur following a decision by an independent and impartial court.³

Suspension or 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 for example 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.⁴

¹ *Id.*, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. 31 December 2011, par. p. 243 (Recommendation 20).

² *Id.*, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, A/70/266, 4 August 2015, par. 38.

³ *Id.*, *Guidelines on Freedom of Association*, Warsaw, 2015, ISBN 978-92-9234-906-6, pars. 242-244.

⁴ *Id.*, *Guidelines on Freedom of Association and Assembly in Africa*, 10 November 2017, par. 58 (including footnote).