

World Movement for Democracy :: Defending Civil Society

International Principles Protecting Civil Society

To protect civil society organizations (CSOs) from the application of the legal barriers the following principles seek to articulate what governs and protects CSOs from repressive intrusions by government.

Principle 1: The Right to Entry (Freedom of Association)

(1) International law protects the right of individuals to form, join and participate in civil society organizations.

- (a) Broad scope of right. Freedom of association protects the right of individuals to form trade unions, associations, and other types of CSOs.
- (b) Broadly permissible purposes. International law recognizes the right of individuals, through CSOs, to pursue a broad range of objectives. Permissible purposes generally embrace all 'legal' or 'lawful' purposes and specifically include the promotion and protection of human rights and fundamental freedoms.
- (c) Broadly eligible founders. The architecture of international human rights is built on the premise that all persons, including non-citizens, enjoy certain rights, including the freedom of association.

(2) Individuals are not required to form a legal entity in order to enjoy the freedom of association.

(3) International law protects the right of individuals to form a CSO as a legal entity.

- (a) The system of recognition of legal entity status, whether a "declaration" or "registration/incorporation" system, must ensure that the process is truly accessible, with clear, speedy, apolitical, and inexpensive procedures in place.
- (b) In the case of a registration/incorporation system, the designated authority must be guided by objective standards and restricted from arbitrary decision making.

Principle 2: The Right to Operate Free from Unwarranted State Interference

(1) Once established, CSOs have the right to operate free from unwarranted state intrusion or interference in their affairs. International law creates a presumption against any regulation or restriction that would amount to interference in recognized rights.

- (a) Interference can only be justified where it is prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.
- (b) Laws and regulations governing CSOs should be implemented and enforced in a fair, apolitical, objective, transparent and consistent manner.
- (c) The involuntary termination or dissolution of a CSO must meet the standards of international law; the relevant government authority should be guided by objective standards and restricted from arbitrary decision making.

(2) CSOs are protected against unwarranted governmental intrusion in their internal governance and affairs. Freedom of association embraces the freedom of the founders and/or members to regulate the organization's internal governance.

(3) Civil society representatives, individually and through their organizations, are protected against unwarranted interference with their privacy.

Principle 3: The Right to Free Expression

(1) Civil society representatives, individually and through their organizations, enjoy the right to freedom of expression.

(2) Freedom of expression protects not only ideas regarded as inoffensive or a matter of indifference but also those that offend, shock or disturb, since pluralism and the free flow of ideas are essential in a democratic society. CSOs are therefore protected in their ability to speak critically about government law or policy, and to speak favorably about human rights and fundamental freedoms.

(3) Interference with freedom of expression can only be justified where it is provided by law and necessary for respect of the rights or reputations of others; or for the protection of national security or of public order (ordre public), or of public health or morals.

Principle 4: The Right to Communication and Cooperation

(1) Civil society representatives, individually and through their organizations, have the right to communicate and seek cooperation with other representatives of civil society, the business community, and international organizations and governments, both within and outside their home countries.

(2) The right to receive and impart information, regardless of frontiers, through any media embraces communication via the Internet and information and communication technologies (ICTs).

(3) Individuals and CSOs have the right to form and participate in networks and coalitions in order to enhance communication and cooperation, and to pursue legitimate aims.

Principle 5: The Right to Freedom of Peaceful Assembly

(1) Civil society representatives, individually and through their organizations, enjoy the right to freedom of peaceful assembly.

(2) The law should affirm a presumption in favor of holding assemblies. Those seeking to assemble should not be required to obtain permission to do so.

- (a) Where advance notification is required, notification rules should not be so onerous as to amount to a requirement of permission or to result in arbitrary denial.
- (b) The law should allow for spontaneous assembly, as an exception to the notification requirement, where the giving of notice is impracticable.

(3) The law should allow for simultaneous assemblies or counter-demonstrations, while recognizing the governmental responsibility to protect peaceful assemblies and participants in them.

(4) Interference with freedom of assembly can only be justified where it is in conformity with the law and necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Principle 6: The Right to Seek and Secure Resources

Within broad parameters, CSOs have the right to seek and secure funding from legal sources, including individuals, businesses, civil society, international organizations, and inter-governmental organizations, as well as local, national, and foreign governments.

Principle 7: State Duty to Protect

(1) The State has a duty to promote respect for human rights and fundamental freedoms, and the obligation to protect the rights of civil society. The State's duty is both negative (i.e., to refrain from interference with human rights and fundamental freedoms), and positive (i.e., to ensure respect for human rights and fundamental freedoms).

(2) The State duty includes an accompanying obligation to ensure that the legislative framework relating to fundamental freedoms and civil society is appropriately enabling, and that the necessary institutional mechanisms are in place to ensure the recognized rights of all individuals.