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COMPARATIVE ANALYSIS

BETWEEN

the Nicaraguan Law for the Regulation of Foreign Agents and the draft Law on International Cooperation of Venezuela

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NTRODUCTION

In many cases, the ideological affinity between two governments makes it natural that they dictate and apply similar regulations on issues considered of significant importance. In that sense, if there is something in common between the governments of Nicaragua and Venezuela, it is the closing of civic space, with its nuances in each case, of course.

Thus, it is not without reason that in both political regimes, the repressive apparatus has been aimed at the right of association, a fundamental element of an organized civil society, and a fundamental substratum for exercising other rights, as well as for the defense of human rights. Freedom of association implies the union of common interests expressed in a common will; therefore, in societies where the State claims to be the sole representative of the collective, that is undoubtedly perceived as threatening.

Thus, the disarticulation of civil society, even in manifestations of it that may be considered innocuous from a political point of view, is necessary for an authoritarian State since it is a plural expression of a mode of social organization outside the power and, therefore, outside its control.

In this regard, we have considered it necessary to analyze the Nicaraguan Law on the Regulation of Foreign Agents,[1] which has been identified as the fundamental element of the repression of the right of association in that country and also to compare it with the draft Law on International Cooperation, which has been denounced as a threat to this same right in Venezuela, in order to determine both its common and differentiating elements.

This comparison is necessary to learn from what has occurred in another country with a government that ideologically identifies with the Venezuelan government. Moreover, it is essential because there are already precedents of imitation of the Nicaraguan government by the Venezuelan government, specifically by curtailing the right of association for political purposes, when it intervened in 2020 through the Supreme Court of Justice (TSJ) the boards of opposition parties to appoint leaders of their confidence in them,[2] as did the Supreme Court of Justice of Nicaragua in 2016.[3]

Given these precedents, it is essential to study the model adopted by the Central American country in terms of the annihilation of organized civil society through the aforementioned law to envision its possible influence and presence in the Venezuelan State's draft law in its eagerness to close civic space increasingly.

1 Law nº. 1040, passed on October 15, 2020.
2 Vid. https://accesoalajusticia.org/informe-anual-2020-la-consolidacion-de-un-regimen-autoritario-en-venezuela-sin-parlamento-ni-derecho-al-voto/.
3 Vid. https://www.bbc.com/mundo/noticias-america-latina-36929366.

NICARAGUA

1. LAW ON THE REGULATION OF FOREIGN AGENTS

1.1. Background

According to analysts and human rights defenders, this law is an emulation of the one passed in 2012 by the Russian parliament,[4] in which, according to the International Federation for Human Rights (IFHR), it states that any "non-commercial" organization that receives international funds must be classified as a foreign agent, having to register as such with a state body, be described as such in its documentation and on its website, submit detailed reports of its accounts to the public administration and be audited annually.[5] In addition, Russian regulations recommend, and in some cases even require, that state officials do not communicate with organizations that qualify as foreign agents.[6]

For an organization to be considered a foreign agent, it must receive funds from outside the country, be registered as a non-governmental organization (NGO), and be involved in political activities, but, according to IFHR, the definition of these activities is broad and vague, so any area of work of a non-commercial organization that receives foreign funds could be considered political activity.[7]

The law also provides penalties for non-registration of the organization and non-compliance with other provisions of the law, ranging from fines of 300 thousand roubles[8] and/or imprisonment for up to 2 years and/or 480 hours of compulsory labor. Furthermore, the organization may be dissolved in case of repeat offence.

In the late 2020s, this law was amended to include even de facto associations or activist groups without legal personality as foreign agents,[9] thus expanding its repressive framework.

1.2. Constitution of Nicaragua

According to the 1987 constitutional text,[10] the right of association is recognized in the following terms:

> In Nicaragua, urban and rural workers, women, young people, agricultural producers, artisans, professionals, technicians, intellectuals, artists, religious people, the Communities of the Atlantic Coast, and the inhabitants in general, have the right to form organizations, without any discrimination, in order to achieve the realization of their aspirations according to their interests and to **participate in the construction of a new society**.

4 Vid: https://www.vozdeamerica.com/a/centroamerica_analistas-la-ley-sobre-agentes-extranjeros-en-nicaragua-es-malvada/6068257.html.
5 Vid: https://www.fidh.org/IMG/pdf/tableau_russie_web_paysage_v2-2.pdf-
6 Idem.
7 Idem.
8 9,528.65 dollars at the November 2012 exchange rate. Vid: http://conversormonedas.co/300000-rub-usd
9 Vid: https://www.fidh.org/es/region/europa-y-asia-central/rusia-912/rusia-la-nueva-legislacion-sobre-los-agentes-extranjeros-socavara-aun.
10 Published in La Gaceta n. 05 of January 9, 1987. Vid: http://legislacion.asamblea.gob.ni/normaweb.nsf/bbe90a5bb646d50906257265005d21f8/8339762d0f427a1c062573080055fa46?OpenDocument.

> These organizations will be formed according to the participatory and elective will of the citizens, **will have a social function**, and may or may not have a partisan character according to their nature and purposes. (Emphasis added).

As can be seen, this conception of freedom of association has severe limitations insofar as it imposes certain purposes on associations (construction of a new society and a social function), which are incompatible with international standards.

However, this could be solved by the provisions of article 46 of the Constitution, which states the following:

> In the national territory, every person enjoys the protection of the State and **the recognition of the rights inherent to the human person**, the unrestricted respect, promotion and protection of human rights, and the **whole exercise of the rights outlined in the Universal Declaration of Human Rights; in the American Declaration of the Rights and Duties of Man; in the International Covenant on Economic, Social and Cultural Rights and in the International Covenant on Civil and Political Rights of the United Nations and in the American Convention on Human Rights of the Organization of American States**.[11] (Emphasis added).

Concerning limitations on freedom of association, Article 22.2 of the International Covenant on Civil and Political Rights (ICCPR) provides that only the following may be established

> restrictions prescribed by law that are necessary in a democratic society in the interests of national security, public safety, or public order or to protect public health or morals or the rights and freedoms of others.

The foregoing is confirmed by Article 16.2 of the American Convention on Human Rights, which states that

> The exercise of such a right may be subject only to such restrictions as are prescribed by law and are necessary in a democratic society in the interests of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

Some of the assumptions described above, such as public order and national security, clearly allow for measures that limit associations. Still, at the same time, such restrictions have to derive from the principles of a democratic society and therefore be provided for so that there is more democracy and not the other way around.

In particular, we should note that the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, stated that "All associations, whether registered or not, should enjoy the right to seek and obtain funding from domestic, foreign and international entities, including individuals, corporations, civil society organizations, governments, and international organizations."[12]

11 Nicaragua ratified the Convention on September 25, 1979. Vid: https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htM
12 Vid. http://www.civilisac.org/civilis/wp-content/uploads/primer-informe-temc3a1tico-relator-1.pdf.

Consequently, from a perspective of interpretation of the right of association, in the Nicaraguan case, although Article 49 of the Constitution generates a reservation, the reference to the ICCPR and the American Convention in an interpretation in favor of the human person takes precedence given its broader recognition of that right for the inhabitants of that country.

1.3. Purpose of the Nicaraguan Foreign Agents Regulation Law

This law, No. 1040, adopted on October 15, 2020, and published in *La Gaceta* No. 192 on October 19, 2020, has as its object:

> **Art. 1:** (...) to establish the legal framework of regulation applicable to national or foreign natural or legal persons who, **responding to foreign interests and obtaining foreign financing**, use those resources **to carry out activities that result in interference by foreign governments, organizations or natural persons in the internal and external affairs of Nicaragua**, threatening against independence, self-determination, and national sovereignty, as well as the economic and political stability of the country. (Emphasis added).

Thus, the purpose of this normative instrument is to restrict natural or legal persons from receiving money from abroad that would enable them to interfere in the internal affairs of the country, whether on behalf of other countries or organizations or whether they are natural persons working on behalf of other countries or with foreign funds.

Even though the word "interference" is repeated in several provisions of the law, even in its preamble, its concept is never developed, nor in Article 3, entitled "Definitions," where, in fact, it is not defined, leaving no choice but to turn to the Dictionary of the Royal Spanish Academy (DRAE), which indicates that the verb “injerir” (in Spanish original) means "to meddle, to introduce oneself into a dependency or business," meaning that implies an effective action on a matter. In this regard, some doubt arises as to whether the simple appreciation of a situation or the issuing of an opinion makes an interference, since an observer does not interfere, but rather takes note and describes what he sees, which in many cases is the work of human rights organizations. Moreover, if such an opinion comes from nationals of the country concerned, it would, in fact, be a manifestation of the simple exercise of their freedom of expression or their right to civic participation, so there could be no limitation.

equivalent to presuming a person's guilt, contrary to the international presumption of innocence standard. In this way, financing becomes an instrument of strict criminal liability, which is contrary to the basic principles of criminal liability of individuals[13] since the act is considered per se a crime (international financing), regardless of the guilt or malice in the commission of the same by the perpetrator or the damage generated.[14]

12 Vid. http://www.civilisac.org/civilis/wp-content/uploads/primer-informe-temc3a1tico-relator-1.pdf.

13 See for example article 5 of the Spanish penal code: "There is no punishment without malice or imprudence". Vid: https://www.boe.es/buscar/act php?id=BOE-A-1995-25444.

14 For there to be criminal liability there must be guilt or malice on the part of the perpetrator of the crime, there cannot be liability for the mere existence of the criminal act; the prohibition of strict criminal liability is a legal guarantee to prevent people from being criminally punished without the existence of malice or guilt.

But beyond the literalness of the expression, what is certain is that the lack of a legal definition of interference gives the State a discretion that can easily turn into arbitrariness since the limits of what would or would not be interference are not established.

In addition, the final part of article 1 requires that such interference must be "against the independence, self-determination and national sovereignty, as well as the economic and political stability of the country," which means that the action of the so-called foreign agents should not only be interference but must also generate some of the aforementioned consequences. Although these are rather vague expressions, the truth is that there should be some concrete element linking the interference and the alleged damage it entails.

We emphasize the latter because the assumption described above, that is, that there is an affectation or damage in the aforementioned cases, is not repeated in the law, but rather, the law is limited to considering the financing of the organizations exclusively in itself without containing parameters to determine whether or not there is interference or its effects, which gives rise to enormous arbitrariness by leaving to the discretion of the public administration whether or not the same is verified, as well as the determination of the damage, and how this is measured or established.

Indeed, it is an old legal axiom that damages must be proven and not just alleged, and the lack of parameters in the law allows the State to allege but does not require it to prove what it says, especially in terms of what is or is not interference and the alleged damage caused. It must only demonstrate that there is external financing.

Obviously, neither should alleged interference under the terms of the law be criminalized or considered to cause harm. Still, the point is to show how the law is highly punitive and requires the minimum from the State to sanction an organization or person receiving foreign funds.

It is even more serious if one considers that the collection of information from testimonies of victims of human rights violations, if it is an externally financed activity, can be regarded as generating damage to the Nicaraguan State when the latter should instead support it, as it is obliged to protect and respect human rights.

Thus, in a strictly legal sense, the State should welcome and encourage this kind of work to facilitate the defense and respect of human rights and not punish it, as the law under study allows it to do.

1.4. Obligated parties

Pursuant to Article 4 of the Foreign Agents Regulation Act, it is a subject bound by it:

> any natural person Nicaraguan or of another nationality or legal person who within Nicaragua performs or works as an agent, representative, employee, servant, or in any other activity **under the order, requirement, instruction, direction, supervision, control of a foreign body or of a natural or legal person, whose actions are directly**

> **or indirectly supervised, directed, controlled, financed or subsidized in whole or in part by foreign natural persons, governments, capital, companies or funds directly or through third natural or legal persons**. (Own emphasis).

This provision again shows that the law emphasizes external funding, not the activities or the harm they may generate. Moreover, this text does not distinguish the amount of such foreign funding, so it is perfectly possible for an organization to have activities that allow it to generate its income and receive external funds only for specific situations or projects, but even in that case, according to the law, such an organization is a foreign agent, regardless even if it does not depend financially on such external income, so it can be sanctioned by the State.

Then, in article 5, the law makes a series of exceptions for cases of natural or legal persons who, even when receiving international funds, should not be considered foreign agents. These excepted persons include persons receiving their pension from another country, beneficiaries of family remittances, foreign companies and industries, international humanitarian organizations, and legal persons of a religious nature, among others.

1.5. Demands on regulated entities

First, the Foreign Agents Regulation Act requires organizations receiving funding from abroad to register in the Register of Foreign Agents (Article 6), which must be done within 60 working days of publication of the Act (Article 16). Secondly, they must report any transfer of funds or assets from abroad and indicate their use and origin (Article 9). Plus, monthly reports to the public administration on the use of funds and activities "as foreign agents" are also required (section 10).

It should be noted that these obligations require organizations to set up accounting structures that generate costs, in many cases challenging to meet, especially for small and medium-sized organizations, which in any civil society represent the majority of NGOs.

In the case of donations, they are required to be used only for pre-declared purposes and per their statutory purposes. The activities must be registered in advance on a website of the competent authority. It implies that the public administration determines the existence or not of this link with the statutory purposes. It is also stipulated that the declared destination of these funds may not be changed without prior authorization from the competent authority (Article 11).

Finally, it provides that the funds to be used must be received by a financial institution registered in Nicaragua (Article 13) and expressly states that organizations must refrain "from intervening in internal and external political issues, activities or topics" (Article 14).

1.6. Sanctions

Among the sanctions foreseen in the Law on Regulation of Foreign Agents, fines are mentioned, although their amount is not quantified. It is also indicated that the cancellation of the legal personality of the organization may be requested, the impediment to carrying out activities, and the "intervention" of funds and assets with prior judicial authorization (Article 15).

Concerning the cancellation of legal personality, it should be noted that, following international standards, this does not mean the end of an association since this right, as we have indicated, is fully exercised with the simple agreement of the associates and, therefore, the State must recognize the so-called de facto associations, as it does with the de jure ones. Still, we understand that what is being pursued are the consequences derived from the annulment of legal personality, that is, the impossibility of having assets in its name, bank accounts, properties, goods, etc.

To this effect, Article 8.7 of the law empowers the public administration to dictate "regulation, supervision and sanction" norms, which in concrete terms has resulted, for example, in fines being established in a sub-legal norm,[15] in violation of the principle of legal reserve in matters of penalties, enshrined in Article 34.10 of the Constitution.[16]

Regarding the impediment of carrying out activities, in principle, it should only concern to activities financed from abroad with the requirements of Article 1 already transcribed above. Still, in the redaction used in the drafting of the rule, the wording can adequately fit any type of activities, whether or not they are the result of foreign financing.

Finally, just as serious as the above is the so-called intervention of funds, for the same reasons: no distinction is made between the activity that may result from own income and that which comes from external financing. In addition, it can be understood that such intervention is a poorly disguised confiscation, which makes no legal sense insofar as the criminal nature of the activity carried out or the illegitimate origin of the funds would have to be proven in order for such a measure to proceed eventually.

The law does not indicate the need for a procedure before the imposition of sanctions or time limits for exercising of the right to defense.

1.7. Balance of the law

Both the background of the Law for the Regulation of Foreign Agents and its content itself show a markedly repressive intention in that it converts the external financing to which social organizations are entitled following international standards[17] into an element of objective criminal responsibility and,

15 Through the Rules for the Regulation, Supervision and Punishment of Foreign Agents, published in La Gaceta No. 20 of 29 January 2021. Art. 26. Vid: http://legislacion.asamblea.gob.ni/normaweb.nsf/($All)/E62401422DAC1CC206258670006135E6?OpenDocument.

16 See Article 34:

> (10) Not to be prosecuted or convicted for an act or omission which, at the time it was committed, was not previously expressly and unequivocally classified by law as a punishable offence, or punished by a penalty not provided for by law.

17 The Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, noted in his first report on the rights to freedom of peaceful assembly and association that "All associations, whether registered or not, should enjoy the right to seek and obtain funding from domestic, foreign and international entities, including individuals, businesses, civil society organizations, governments and international organizations." p. 18. Available at: http://www.civilisac.org/civilis/wp-content/uploads/primer-informe-temc3a1tico-relator-1.pdf. OSCE (2015). Guidelines on Freedom of Association. § 38 et seq. Vid. https://www.osce.org/files/f/documents/3/b/132371.pdf.

therefore, generates a presumption of guilt, which is backed by the fact that external financing becomes the only element to be considered. This is reinforced by the fact that external financing becomes the only element to be considered because, despite the fact that possible damages are mentioned, in the application of the law has entirely left out of the examination of the activity of the organizations.

It is aggravated when the norm does not distinguish between those organizations that depend entirely on foreign funding and those that receive it for specific projects, which should generate a differentiated treatment not recognized in the law.

In addition, the burdens imposed by law regarding registration, accountability, and ongoing monitoring mean that small and medium-sized organizations have to create intricate structures to implement because of the costs involved.

Likewise, subordinating the continuation of the organizations' activities implies that this registration is not such but rather a process of authorization, contrary to the international standard that favors notification processes, given that the right of association is perfected with the simple consent of the associates without State intervention,[18] and subordinating the exercise of a human right to State action implies its violation since it impedes its legitimate exercise.

In this respect, the fact that the destination of funds ultimately depends on government approval implies an intervention in the management of the organizations and, by the same token, a violation of their autonomy.

On the other hand, although the Constitution poorly recognizes the right of association by expressly assuming the parameters of international human rights treaties, it is attached to them. Therefore, sanctions cannot be imposed, for example, by sub-legal trails, as occurs with the fines mentioned but not listed in the law. Odd enough the sanctions are listed and specified in instruments of a lower rank than the law.

Finally, concerning to sanctions, the failure to establish a procedure in the law violates the right to due process and the right to defense of organizations that may be subject to sanctions without a prior process and with due guarantees. In addition, the "seizure" of their funds and assets is, in our view, a simple confiscation that can occur even if the funding does not come from an illegitimate origin or is not necessarily destined for the activities that the law questions (although these are not valid either), which in the end is clearly arbitrary action.

Thus, we conclude that this law does not conform to the parameters set forth both in the ICCPR and in the American Convention on limitations to freedom of association insofar as they violate several fundamental guarantees of the individual and are therefore incompatible with a democratic society, which is the first of the conditions required by these instruments, which also takes precedence over the other conditions outlined in the treaties mentioned above.

17 El Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación, Maina Kiai, señaló en su primer informe sobre los derechos a la libertad de reunión pacífica y de asociación que "Todas las asociaciones, estén o no registradas, deben disfrutar del derecho a recabar y obtener financiación de entidades nacionales, extranjeras e internacionales, incluidos particulares, empresas, organizaciones de la sociedad civil, gobiernos y organizaciones internacionales". p. 18, disponible en: http://www.civilisac.org/civilis/wp-content/uploads/primer-informe-temc3a1tico-relator-1.pdf

18 OSCE (2015). *Guidelines on Freedom of Association*. § 38 y ss. Vid. https://www.osce.org/files/f/documents/3/b/132371.pdf.

2. DRAFT LAW ON INTERNATIONAL COOPERATION

2.1. Background

In May 2022, the Foreign Policy Commission of the National Assembly (NA) announced that the NA would discuss a draft Law on International Cooperation (DLIC).[19] After the announcement, the Commission spread a text through social networks that generated alarm in civil society to the point of giving rise to a statement signed by 500 organizations and 250 individuals.[20]

This was preceded by the approval, in 2010, of the Law in Defense of National Sovereignty and Self-Determination,[21] which established fines for political parties and non-governmental organizations that defend civil and political rights and receive international funding.[22]

However, all of the above took place under a different argument than in Nicaragua. However, the purposes are similar in the context that the Venezuelan government uses the fight against the legitimization of capital from alleged criminal activities, as well as against the financing of terrorism, as a repressive tool against civil society organizations, as we will see below.

Proof of this is the approval of Ruling 001-2021 of the National Office against Organized Crime and Financing of Terrorism,[23] which was later replaced by 002-2021,[24] in which obligations contrary to the right of association are enforced under the excuse of preventing money laundering through international cooperation.[25]

Although the regulatory basis is different, the object of the regulation is the same, i.e., international financing. Therefore, from a teleological point of view, the Nicaraguan and Venezuelan regulations are similar.

In this sense, the intention in the Venezuelan case to restrict international cooperation is not new. In 2005 a bill was proposed identical to the current one except for some articles which sought to regulate the funding NGOs could receive. The bill was approved in the first discussion without continuing the process. It was then incorporated into the legislative agenda in 2010[26] and 2015[27] without significant consequences. Finally, the bill was submitted again in 2021, with some additions to the 2005 bill, but being essentially the same, since only two new articles were included and an explanatory memorandum was added.

19 Vid. https://www.asambleanacional.gob.ve/noticias/preparan-ley-de-cooperacion-internacional-para-primera-discusion-en-plenaria.
20 Vid. https://accesoalajusticia.org/500-organizaciones-sociedad-civil-250-personas-rechazan-proyecto-ley-antisolidaridad-cierra-cooperacion-internacional/.
21 Published in Official Gazette nº. 6,013 ext. of December 23, 2010.
22 In case of non-compliance, the law establishes a fine "equivalent to double the amount received". In the case of persons, the same type of sanction is repeated (art. 7) and in case of recidivism, the sanction of disqualification to participate in electoral processes is included if it occurs in the case of political parties (art. 10) or political disqualification for any of the subjects of the law.
23 Vid. https://accesoalajusticia.org/nueva-providencia-precalifica-como-terroristas-a-las-ong/, and https://accesoalajusticia.org/organizaciones-sociedad-civil-declaran-rechazo-rotundo-y-exigen-derogacion-nueva-providencia-de-registro-por-terrorismo/.
24 Vid: https://accesoalajusticia.org/modificacion-normativa-registro-unificado-de-sujetos-obligados-ante-la-oficinal-nacional-contra-la-delincuencia-organizada/ and https://accesoalajusticia.org/reiteramos-nuestra-exigencia-de-revocar-la-providencia-administrativa-002-2021-y-cualquier-otra-medida-dirigida-a-criminalizar-y-cerrar-el-espacio-civico-en-venezuela/.
25 Vid: https://accesoalajusticia.org/nueva-providencia-precalifica-como-terroristas-a-las-ong/; https://accesoalajusticia.org/siguen-bajo-amenaza-las-ong-en-venezuela-con-la-providencia-002-2021/.
26 Vid. https://transparenciave.org/mensajes-de-las-organizaciones-de-la-sociedad-civil-ante-el-proyecto-de-ley-de-cooperacion-internacional/.
27 Vid. https://www.amnesty.org/es/latest/news/2015/11/venezuela-proyecto-de-ley-de-cooperacion-internacional-pone-en-peligro-la-labor-de-las-defensoras-y-los-defensores-de-derechos-humanos/.

2.2. Venezuelan Constitution

Article 52 of the 1999 Constitution tersely recognizes freedom of association in the following terms: "Everyone has the right to associate for lawful purposes, in accordance with the law. The State shall be obliged to facilitate the exercise of this right."

This recognition must be complemented by the fact that the country has ratified the ICCPR. Although the government denounced the American Convention on Human Rights,[28] such denunciation does not disincorporate the rights contained therein, for the same reason that it is not possible to renounce human rights; once the rights of a treaty are recognized and incorporated into domestic law, they are enforceable and applicable in that system, regardless of the denunciation of the treaty by a country.

Thus, the international standards of these treaties, as in Nicaragua, form part of the domestic legislation and complement it, especially in this case, in the face of such a minimalist recognition of this right.

2.3. Purpose of the draft Law on International Cooperation

Following Article 1 of the DLIC, its purpose is to

> to establish the **legal regime of international cooperation of the Venezuelan State**, as regards the promotion and execution of cooperation actions and programs between the Government of the Bolivarian Republic of Venezuela and the governments of other countries, international agencies, non-governmental organizations, **and in general all those institutions, organizations, foundations or non-profit associations, public or private, that establish and carry out international cooperation activities**. (Emphasis added).

As in the case of the Nicaraguan law, the Venezuelan draft indicates some objectives that are not duly developed, in this case, regarding the regulation of the cooperation received or granted by the Venezuelan State, which is rather deregulated in comparison with the governing law that establishes obligations that are not mentioned in the draft. Thus, for example, the governing law on this field still[29] establishes obligations for the State when it gives loans in the framework of international cooperation and imposes measures that must be taken to collect them back,[30] but, on the contrary, nothing is said in the DLIC in this regard, so we find deregulation in this field.

Indeed, despite its original wording, the draft does not indicate any obligation on the part of the State to be accountable, to provide information on the cooperation mechanisms in which it participates, much less establish sanctions for the State for not complying with any of the assumptions of the draft law, since the latter is reserved only for private parties.

28 Venezuela ratified the American Convention on August 9, 1977, and the denunciation was on September 10, 2012. Vid: https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm

29 For a more detailed analysis of the current cooperation law dating from 1958 see: https://accesoalajusticia.org/analisis-juridico-proyecto-ley-cooperacion-internacional/.

30 Article 5.

Thus, the central theme of the bill is the financing of private associations, without making reference to the intentionality with which such cooperation is being granted, which is also what Nicaraguan law establishes.

2.4. Obligated parties

The first of the subjects of the law is the Venezuelan State, to which the DLIC assigns, among others, priorities (Article 8), preferential areas of cooperation (Article 7), what its public policies should be (Article 9) and even a fund for cooperation (Articles 12 and following). Then, Article 17 establishes the following:

> For the purposes of this Law, **non-governmental organizations are considered to be** those organizations under private law of an associative or foundational nature, constituted in accordance with the provisions established in the laws governing the public registry of documents that **are recipients of resources from international cooperation** and which, in addition to other activities, **have among their aims or as an express object**, according to their statutes, **action in the field of international cooperation or which carry out activities related to the principles and objectives of international cooperation**.
>
> Non-governmental organizations must have the full legal capacity to act, have a structure that sufficiently guarantees the fulfillment of their objectives, and be non-profit. (Emphasis added).

Beyond the general observation that de facto associations are proper groups that are part of civil society and can be subjects of cooperation, the fact is that once again, the focus of regulation, as in the Nicaraguan case, is external financing, regardless of whether or not it is the organization's primary source of income or a specific activity; this is important insofar as the demand for accountability, as we shall see, is on all of the organization's financial activity and not only on what is received from international cooperation.

It is noteworthy that, unlike the Nicaraguan law, the DLIC does not establish any exception with respect to regulated entities. Furthermore, the requirements are the same for an organization that receives a tiny donation as for those that handle large amounts of money. This is both an excess and a weakness of the draft law insofar as with this indiscriminate scope. There are so many regulated entities that it is materially impossible to control all organizations (for example, consider religious organizations of all denominations that receive aid from outside for charitable programs), which makes the number of regulated entities enormous, especially considering the efforts that are being made in various areas in a country with a humanitarian emergency such as Venezuela. It is clear that rather than regulating each and every one of the donations or contributions that individuals and entities from abroad make to various organizations, the material capacity of the public administration will inevitably have to be focused, even though the law makes no distinctions.

2.5. Demands on regulated entities

The number of concrete and operational obligations contrasts with those established for the State and none are linked to accountability.

The obligations of private organizations are as follows:

- Register in the Integrated Registration System for Non-Governmental Organizations. Registration is a requirement for recognition by the Venezuelan State as entities susceptible to carrying out cooperation activities with their counterparts in other countries (Article 19).
- A bylaw shall establish the requirements for registration (Article 21), although it is clarified that in the case of international organizations, additional requirements for registration shall be established in addition to those for national organizations (Article 22).
- Organizations must provide "information and data on their constitution, statutes, activities they carry out, origin, administration and destination of their resources, with detailed specification of their sources of financing" not only to the public administration but also "to any citizen who requests it" (Article 23).
- Organizations may be audited (Article 24).

Like in Nicaragua, registration is not a mere registration but a genuine authorizing procedure that implies a limitation on freedom of association as a condition for its exercise.

In addition, the principle of the legal reservation to regulate freedom of association established in the Constitution, the ICCPR and the American Convention is violated, by allowing the requirements for registration, that is, the limit on the exercise of a right, to be established through a bylaw, in a normative delegation incompatible with human rights.

Despite the seriousness of what has been said, it seems much worse to us that organizations are not only subject to provide all kinds of information to the public administration, whether or not the activity is linked to international funding, but also that this power to request information is also extended to natural persons external to the organization and without a clear reason or authority to do so. It can lead to situations that are as bizarre as they are surreal, with the possibility, for example, that every day a citizen might ask a given organization about the destination of its resources or any other information that he or she considers relevant. Indeed, to an unsuspecting reader this scenario may seem exaggerated. Still, we are convinced that it is a perfectly possible scenario in a context of threats, harassment, and criminalization of civil society, such as the one that Venezuelan humanitarian and human rights organizations or those working in Venezuela are currently suffering.[31]

In any case, it makes no sense whatsoever to give a private individual the possibility of having sensitive information about an organization in the context of the DLIC, a situation that the bill does not recognize for the State in the same area, which shows not only gross discrimination, but also makes it clear that the real intention of the bill is to go against civil society organizations.

31 In this regard, see the report *Situación de las personas defensoras de derechos humanos en Venezuela* (Situation of human rights defenders in Venezuela) by the Center for Defenders and Justice: https://centrodefensores.org.ve/?p=466.

Nor does the DLIC make any exception regarding the information to be provided to the State, since when it comes to the destination of the funds, the identity of the final beneficiaries cannot be requested in certain cases, such as in the case of those who receive medical care or health treatment, or to the complainants of both human rights violations and victims of crimes against humanity, in the first case it is a matter of the right to privacy of their medical records and in the second of the need not to jeopardize the integrity of these persons in a context in which the Office of the Prosecutor of the International Criminal Court (ICC) is investigating the aforementioned crimes. Therefore, if such information should not be given to the public administration, much less to a private individual, as the project intends, which can be used by the State to intimidate these private organizations.

Finally, the fact that there is an audit, without establishing any parameters for it, also undermines the autonomy of the organizations to the extent that there is no indication, for example, of how long it can last, what information should be collected or, in general terms, what its limits are. Thus, a very invasive audit involving, for example, the efforts of the entire management staff of a given organization can affect its work. In the case of humanitarian organizations this can have serious consequences for the final beneficiaries of their aid or assistance.

2.6. Sanctions

One of the parts of the DLIC, which is precisely one of the additions to the one proposed in 2005, presents serious flaws in the legislative technique relating to penalties because it lacks a minimum structure to establish them.

Thus, Article 26 of the draft states that "organizations shall be subject to evaluation with a view to their **prohibition, suspension, restriction or definitive elimination**" if they

> **directly or indirectly promote or participate with other associations, organizations, governments, or international bodies, in the application of unilateral coercive measures against the Republic, especially when such actions threaten or affect the integral development of the nation.** (Emphasis added).

The first of the problems this article raises is quite elementary: in what cases should each of the sanctions mentioned be applied? And what may happen, for example, for a suspension to be applied and not removal? There is a lack of typicity in the sanctions because the underlying condition for using the penalties is generic. That implies that they are organizations that directly or indirectly promote international sanctions against the State or its officials, provided that they threaten or affect national development.

This lack of typicity, or, in other words, of typical individualized conduct that would make it possible to establish when one sanction or another should be applied, leads to a gross violation of the essential principles of punitive law and, of course, of human rights such as due process. In effect, the law does not indicate the applicable procedure or the periods for filing the different appeals that could be filed against it.

On the other hand, the sanctions themselves are quite confusing, as there is no indication, for example, of the difference between prohibition or removal, given that their consequences may be similar, or between suspension or restriction, for the same reasons.

It should be noted that the restriction may also imply an intervention in the organization's management, which would be instructed by the state authorities what it may or may not perform, in clear violation of its autonomy and, therefore, of its exercise of the right of association.

No less serious than the foregoing is the expression referring to the direct or indirect imposition of sanctions against the Stat because the meaning of "indirect" is vast and raises the discretion power of the officer applying the law, thus generating objective criminal liability, contrary to the most elementary principles of punitive law.

The vacuum of so many elements necessary to impose a sanction is worrying insofar as it may give rise, as in the case of Nicaragua, to the application of the bill once it has been approved through a sub-legal regulation establishing the elements necessary to make these sanctions operational, or at least more specific and more straightforward. In fact, this regulatory regulation of the law may grant powers no longer discretionary but openly arbitrary to the public administration based on the draft law commented on.

CONCLUSIONS

1. Despite the constitutional shortcomings of Nicaragua and Venezuela concerning the recognition of freedom of association, the direct application of international human rights treaties makes it possible to establish binding standards with respect to this human right.
2. Although the formal justification of the two regulations is different, on the one hand, to avoid external interference (Nicaragua), and on the other, to regulate international cooperation without indicating any intentionality of this regulation (Venezuela), both end up focusing on sanctioning and limiting the external financing of associations.
3. In the two countries analyzed, it is up to civil society organizations to demonstrate the use of their funds. However, this demonstration is fallacious, as both regulations establish a presumption of guilt for the mere fact of receiving external funding, violating the right to innocence presumption and creating strict criminal liability.
4. In none of the cases studied is a preliminary risk analysis carried out to enable cases susceptible to money laundering or financing of terrorism to be sectorized, but rather a general premise is applied to all organizations, regardless of their degree of dependence on international funding and the nature of their activities.
5. In both cases studied, there is a violation of the principle of legal reserve in the development of human rights since both regulations refer to sub-legal norms for the regulation of fundamental aspects, such as, for example, those relating to sanctions.
6. The two cases under study coincide in converting the registration of organizations into an authorizing process for the exercise of the right of association, contrary to international standards and, above all, to the essence of the right of association, which is perfected with the sole consent of its associates without prior state intervention.
7. Neither in the case of Nicaragua nor in that of Venezuela is a straightforward procedure established for determining the appropriateness of sanctions; thus, both regulations violate the right to due process and the right to defense.
8. The ambiguity and regulatory gaps in the procedures, in the competent bodies to decide and in the establishment of sanctions violates legal certainty, the right to due process and the principle of legality of sanctions, all of which puts organizations at risk.
9. The Nicaraguan law is much more restrictive than the draft Law on International Cooperation (DLIC) insofar as the control is considerably stricter, as are the duties of the organizations to inform the State, to the point that if this information is not provided, there is the possibility of de jure intervention by the organizations. However, the DLIC allows information to be requested by private parties without any justification or limitation.

10. Although the sanctioning denominations are different, in both cases, the highest possible penalty for the organizations is contemplated, i.e., their termination.
11. The DLIC, unlike the Nicaraguan law, does not establish anything about the destination of the funds of a prohibited organization. The veiled confiscation of the funds is manifestly arbitrary.
12. In the case of Nicaragua, the sanction prohibiting the activity of the organizations is generated both for failure to comply with the duty to inform and for alleged interference in internal affairs. At the same time, in Venezuela, it is for the first assumption and as a consequence of the possible imposition of other sanctions, mainly due to the organization's activity.
13. In general, although there are differentiating nuances, what is certain is that in both Nicaragua and Venezuela, the legitimate right to external financing of organizations is used as an excuse for their repression and persecution and even their elimination.

APPENDIX 1

COMPARATIVE TABLE BETWEEN NICARAGUA'S LAW FOR THE REGULATION OF FOREIGN AGENTS AND VENEZUELA'S DRAFT LAW ON INTERNATIONAL COOPERATION

INSTRUMENT NAME	OBJECT	OBLIGATED PARTIES	DEMANDS ON REGULATED ENTITIES	SANCTIONS
FOREIGN AGENTS REGULATION ACT (Act No. 1040, passed on October 15, 2020) Published in *The Gazette* No. 192 of October 19, 2020	**Art. 1:** "to establish the legal framework of regulation applicable to national or foreign natural or legal persons who, responding to foreign interests and obtaining foreign financing, use those resources to carry out activities that result in interference by foreign governments, organizations or natural persons in the internal and external affairs of Nicaragua, threatening the independence, self-determination and national sovereignty, as well as the economic and political stability of the country."	**Art. 4:** "any natural person Nicaraguan or of another nationality or legal person who within Nicaragua performs or works as an agent, representative, employee, servant or in any other activity under the order, requirement, instruction, direction, supervision, control of a foreign body or of a natural or legal person, whose activities are directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in part by foreign natural persons, governments, capital, companies or funds directly or through third natural or legal persons".	• Registration in the Register of Foreign Agents (art. 6). • Report any transfer of funds or assets from abroad and indicate their use and origin (art. 9). • Report monthly on the use of funds and on their activities "as foreign agents" (art. 10). • Donations may only be used for pre-declared purposes and in accordance with their statutory purposes. Activities must be registered in advance on a website of the competent authority • (art. 11). • The purpose of the funds cannot be changed without authorization from the authority. • Funds must be received in a financial institution registered in Nicaragua (art. 13). • They must refrain "from intervening in internal and external political issues, activities or matters" (art. 14). • Entry in the register must be made within 60 working days of the publication of the law (art. 16).	• Fines (no amount indicated), request for cancellation of legal personality, prevention from conducting business and "seizure" of funds and assets after judicial authorization (art. 15) • Activities involving intervention in domestic and foreign policy issues are subject to legal sanctions that are not indicated (art. 14). • Art. 8.7 allows the administration to issue "regulatory, supervisory and sanctioning" regulations.

INSTRUMENT NAME	OBJECT	OBLIGATED PARTIES	DEMANDS ON REGULATED ENTITIES	SANCTIONS
DRAFT LAW ON INTERNATIONAL COOPERATION	**Art. 1:** "to establish the legal regime of international cooperation of the Venezuelan State, regarding the promotion and execution of actions and programs of cooperation between the Government of the Bolivarian Republic of Venezuela and the governments of other countries, international agencies, non-governmental organizations and in general all those institutions, organizations, foundations or non-profit associations, public or private, that establish and carry out international cooperation activities."	**Art. 17:** "For the purposes of this Law, non-governmental organizations are considered to be those organizations under private law, of an associative or foundational nature, constituted in accordance with the provisions established in the laws governing the public registry of documents that are recipients of resources from international cooperation and that, in addition to other activities, have among their purposes or as an express object, according to their statutes, action in the field of international cooperation or that carry out activities related to the principles and objectives of international cooperation. Non-governmental organizations shall have full legal capacity and capacity to act, shall have a structure that sufficiently guarantees the fulfilment of their objectives and shall be non-profit-making."	• Registration in the Integrated Registration System for Non-Governmental Organizations (art. 19) • The requirements for registration shall be laid down in a regulation (art. 21). • Additional requirements for registration of international NGOs will be established (art. 22). • Organizations must provide "information and data on their constitution, statutes, activities they carry out, origin, administration and destination of their resources, with detailed specification of their sources of financing" not only to the administration but also "to any citizen who requests it" (art. 23). • Organizations may be audited (art. 24).	**Art. 26:** "All non-governmental organizations, foundations or non-profit associations, public or private, that carry out international cooperation activities in the territory of the Bolivarian Republic of Venezuela that directly or indirectly promote or participate with other associations, organizations, governments or international bodies, in the application of unilateral coercive measures against the Republic, especially when such measures threaten or affect the integral development of the nation, shall be subject to evaluation for the purposes of prohibition, suspension, restriction or definitive elimination."