

COMPARATIVE ANALYSIS

BETWEEN

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



Executive Summary

1. The ideological affinity between the two governments makes it natural that they dictate and apply similar regulations on issues they consider of great importance. In context, if there is anything in common between the governments of Nicaragua and Venezuela, it is the closing of civic space.
2. It is not by chance 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 joint will. Hence, in societies where the State claims to be the sole representative of the collective, it is undoubtedly perceived as threatening.
3. Analysts and human rights defenders argue that Nicaragua's Law on the Regulation of Foreign Agents emulates a 2012 law passed by the Russian parliament.
4. Russian law states that any "non-commercial" organization that receives international funds must: Be classified as a foreign agent, be registered as such before state agencies, describe itself alien in its documents and on its website, must submit detailed reports on debriefing the public administration, and become audited on an annual basis. In addition, the regulations recommend, and in some cases even require, State officers to refrain from communicating with organizations classified as foreign agents.
5. For an organization to be considered a foreign agent under Russian law, it must receive funds from abroad, be registered as a non-governmental organization (NGO), and be involved in political activities, but, according to the International Federation for Human Rights (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.
6. The law also provides for penalties for non-registration of the organization and non-compliance with other provisions of the law, ranging from fines of 300 thousand roubles and/or imprisonment for up to 2 years and/or 480 hours of compulsory labor. In case of recidivism, the organization may be dissolved. At the end of 2020, the regulation was amended to include de facto associations or activist groups without legal personality as foreign agents, thus expanding its repressive framework.
7. For its part, the 1987 Constitution of Nicaragua, in Article 49, recognizes the right of citizens to associate, provided that it is "for the purpose of achieving the realization of their aspirations according to their own interests and participating in the construction of a new society"; and "they shall have a social function."
8. As can be seen, this conception of freedom of association has severe limitations insofar as it imposes specific purposes on associations (construction of a new society and a social function), which are incompatible with international standards.

9. However, Article 46 of the Nicaraguan Constitution recognizes the human rights enshrined in international treaties such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights, both of which enshrine that the right to associate can only be limited "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."
10. In October 2020, the Nicaraguan Assembly passed the Nicaraguan Law for the Regulation of Foreign Agents, also called Law n° 1040, whose article 1 quotes: "its purpose is to establish the legal framework of regulation applicable to natural or legal persons of national or other nationality who, responding to interests and obtaining foreign funding, 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, attacking against independence, self-determination and national sovereignty, as well as the economic and political stability of the country. "
11. The purpose of the instrument is to restrict natural or legal persons from receiving money from abroad that would enable them to interfere in the country's internal affairs.
12. Presuming that international financing automatically generates an interfering activity is 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 persons 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.
13. The lack of a legal definition of "interference" gives the State a discretion [power] that can easily turn into arbitrariness.
14. Article 4 of the Act states that it may be applied to "any Nicaraguan natural person or a person of another nationality or legal person who within Nicaragua acts or works as an agent, representative, employee, servant or in any other activity under the order, requirement, instruction, direction, supervision or control of a foreign body or a natural or legal person whose activities are directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in part by a natural person, government, capital, company or legal entity, 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."
15. This provision makes it clear that the law emphasizes external funding, not the activities of the organizations 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. Still even in that case, it would be considered a foreign agent, even if it does not depend financially on such external income.

16. In article 5, the law exempts persons who receive their pension from another country, beneficiaries of family remittances, foreign companies and industries, international humanitarian organizations, and legal entities of a religious nature from being considered foreign agents.
17. The Act requires organizations receiving funding from abroad to register in the Register of Foreign Agents (Article 6), which they must do within 60 working days of publication of the Act (Article 16).
18. The regulation also requires groups to report any transfer of funds or assets from abroad and to indicate their use and origin (section 9). It also requires monthly reports to be made to the public administration on using of funds and their activities "as foreign agents" (Article 10).
19. Finally, the organizations are obliged to ensure that the funds they receive from abroad come through a financial institution registered in Nicaragua (Article 13) and are expressly prohibited "from intervening in internal and external political issues, activities or topics" (Article 14).
20. Among the sanctions foreseen in the Law, fines are mentioned. However, the amount is not quantified, and it is also indicated that the cancellation of the legal personality of the organization may be requested, as well as the "intervention" of funds and assets with prior judicial authorization (Article 15).
21. The instrument presents a markedly repressive intention in that it converts external financing, to which social organizations are entitled according to international standards, into an element of objective criminal liability, thus generating a presumption of guilt, which is reinforced by the fact that external financing becomes the only element to be considered, since, although possible damages are mentioned, in the application of the law this has been entirely left out of the examination that has been made of the activity of the organizations.
22. In addition, the burdens imposed by the standard in terms of registration, accountability, and constant control mean that small and medium-sized organizations have to create structures that are difficult to implement because of the costs they generate.
23. The fact that the destination of the funds ultimately depends on government approval implies an intervention in the management of the organizations. In short, a violation of their autonomy.
24. The fact that the law does not establish a procedure for imposing sanctions violates the right to due process and the right to defense of organizations that may be subject to sanctions without prior process and due guarantees. In addition, the "seizure" of their funds and assets is a simple confiscation that can occur even if the funding does not come from an illegitimate source and is not necessarily destined to the activities that the law questions (although these are not valid either), which in the end is an arbitrary action.
25. In May 2022, the Foreign Policy Commission of the Venezuelan National Assembly announced that it would discuss a draft Law on International Cooperation, which generated alarm in civil society. Since 2005, the authorities have threatened to regulate the international funding that civil society organizations have been received.

26. Unlike Nicaragua, the Venezuelan government has justified this regulation in the fight against money laundering from alleged criminal activities and the financing of terrorism.
27. In 2021 Ruling 001-2021 of the National Office against Organized Crime and Financing of Terrorism was published, later replaced by Ruling 002-2021, establishing obligations contrary to the right of association under the pretext of preventing money laundering through international cooperation.
28. Article 52 of the 1999 Constitution recognizes the right to association.
29. The bill under analysis being by the National Assembly states in Article 1 that it seeks to "establish the legal regime of international cooperation of the Venezuelan State, regarding 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 organizations, 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."
30. The bill does not impose any obligation on the State to be accountable, to provide information on the cooperation mechanisms in which it participates and much less does it establish sanctions for not complying with any of the assumptions of the bill, since all of this is reserved for private parties.
31. Like the Nicaraguan law, the Venezuelan text focuses on external financing, regardless of whether or not it is the organization's main source of income or a one-off activity.
32. The project does not make exceptions.
33. The text obliges civil and non-governmental organizations to register in the Integrated System of Registration of Non-Governmental Organizations, which is a requirement for recognition by the Venezuelan State as entities susceptible of carrying out cooperation activities with their counterparts in other countries (Article 19).
34. The text does not establish the requirements for registration and leaves this to a regulation (Article 21). However, it is clear that in the case of international organizations, [the government] will establish additional requirements for registration in addition to those for national organizations (Article 22).
35. Organizations are required to 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).
36. And finally, it states that organizations can be audited (Article 24).
37. As in Nicaragua, registration is not a registration but an authentic authorizing procedure, which implies a limitation on freedom of association as a condition for its exercise.

38. In addition, the bill besides enforcing organizations to provide all types of information to the public administration, regardless their activity is linked to international financing, also extends this power to request information to natural persons external to the organization without a solid reason or authority to do so.
39. Nor does the bill make any exception regarding the information to be provided to the State concerning the destination of the funds. Moreover, in certain cases, the identity of the final beneficiaries should not be requested, as in the case of those who receive medical care or health treatment or 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. In the second case, it is a matter of the need not to jeopardize the integrity of those persons in a context where the Office of the Prosecutor of the International Criminal Court (ICC) is investigating the alleged crimes mentioned above.
40. Article 26 of the draft states that "organizations that "directly or indirectly promote or participate with other associations, organizations, governments or international agencies 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."
41. The vague regulation does not establish in what cases or assumptions an organization should incur in reasons to be suspended, restricted or [when it would see its permit] definitively cancelled. Nor does it define the procedure to be followed and the time limits the affected organization would have to expose its [defense] arguments.
42. No less serious is the fact that article 26 establishes that sanctions may be imposed on those who directly or indirectly generate sanctions against the State since the scope and meaning of the term "indirect" are vast and gives rise to the discretion of the officer [while applying the law], causing objective criminal liability in contradiction to the most elementary principles of punitive law.
43. This vacuum of several essential elements for imposing sanctions is worrying insofar as it may give rise, as in the case of Nicaragua, to the application of the bill once it has been passed, using a sub-legal regulation indicating the necessary elements to make these sanctions operational, or at least more specific and clearer. This regulation of the law through a bylaw may grant powers, no longer discretionary, but openly arbitrary to the public administration based on the draft law commented on.

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