

## Latin American and Caribbean Virtual Regional Dialogues to Collectively Fill in a Checklist on

# Freedoms of Association and Peaceful Assembly in Times of Coronavirus

On December 8, 2020, the International Center for Not-For-Profit Law (ICNL) organized Virtual Regional Dialogues for its civil society partners from Latin America and the Caribbean in order to present, discuss, and complete the [Checklist](#) prepared by the United Nations Special Rapporteur on the Freedoms of Peaceful Assembly and of Association, Clément Voule, in order to determine how these freedoms have been exercised in the context of the current public health emergency. Through online meetings in Spanish and English, representatives of civil society organizations (CSOs) from seven countries (Belize, Dominica, Grenada, Guatemala, Honduras, Mexico, and Nicaragua):

**WERE INTRODUCED TO THE SPECIAL RAPPORTEUR'S OBJECTIVES FOR THE CHECKLIST ON FREEDOMS OF PEACEFUL ASSEMBLY AND OF ASSOCIATION DURING PUBLIC HEALTH EMERGENCIES.** The Rapporteur's representative, Ona Flores, shared with partners the objectives pursued with the use of this tool: first, that it will contribute to human rights education and assist in monitoring States' fulfillment of their obligations; second, that this instrument will be used to foster greater dialogue between the Special Rapporteur and CSO representatives so as to inform identification of thematic and country-level priorities; and, finally, that the Checklist will be used to take initial steps in documenting civil society's concerns surrounding these issues. The Special Rapporteur will use civil society's inputs to prepare a report on peaceful protest during crisis situations, which is to be drawn up in upcoming months.

**LEARNED ABOUT HARRASSMENT NICARAGUAN CSOs SUFFERED AT THE HANDS OF LAW ENFORCEMENT WHEN THEY USED THE CHECKLIST.** A Nicaraguan partner explained how, at the last minute, law enforcement put pressure on service providers to deny use of their facilities to a group of organizations convened to learn about and work on the Checklist. Despite the absence of a provision expressly banning people from meeting, police told the facilities' owners they could not rent out their facilities due to

the pandemic. This is consistent with a pattern of harassment and intimidation aimed at hindering human rights defenders' work.

**USED THE CHECKLIST TO ANALYZE THEIR STATES' FULFILLMENT OF THEIR OBLIGATIONS UNDER INTERNATIONAL LAW**, focusing on the issues that regional CSOs considered to be of greatest concern.

**IDENTIFIED BEST PRACTICES IN THEIR COUNTRIES TO HELP PROTECT THE EXERCISE OF CSO RIGHTS**, even in the context of a grave public health crisis.

**SELECTED PRIORITY ISSUES ON WHICH STAKEHOLDERS COULD BENEFIT FROM POLICY OPTIONS** based on international legal standards and comparative practices that exist in the region as well as other regions of the world.

Are States fulfilling their obligations to ensure the exercise of the rights to peaceful assembly and association in the context of the COVID 19 pandemic?

## Subregional trends

Using the Checklist, representatives of the seven countries participating in the Virtual Dialogues discussed and shared experiences on authorities' practices in their respective countries to determine whether such practices conform to international standards. Their comments revealed some common trends, supporting the conclusion that most of the State responses discussed were not in keeping with these standards. For example, ambiguously worded legal measures were discussed, which fail to mention the specific threats of COVID-19 that the measures seek to address, or which have not been clearly communicated to the population. Nevertheless, the discussions also identified some good practices, which, if widely disseminated, could further their adoption in other countries in the region. Below is a synthesis of the partners' discussion comparing pandemic responses in their countries to the Checklist indicators.

**INDICATOR: ENSURING THAT THE NEW LEGAL MEASURES RESPECT HUMAN RIGHTS**  
Practically all partners stated that the legal measures adopted in their countries during the pandemic did not comply with international human rights norms and standards, including those on the rights to freedom of peaceful assembly and of association. Only the partners from **MEXICO** responded that the measures adopted in their country did comply with those standards, noting that restrictions were not legally binding measures, but rather, protocols and recommendations for the population. All partners

agreed that public authorities could have done a better job communicating the need for the legal measures adopted in their countries and the content of such measures.

**INDICATOR: ENSURING THAT THE PUBLIC HEALTH EMERGENCY IS NOT USED AS A PRETEXT FOR INFRINGING RIGHTS**

All partners stated they were unaware of whether authorities had notified international and regional organizations about the suspension of the rights to freedom of peaceful assembly and of association in accordance with international treaties. They also noted that judicial and legislative oversight to ensure accountability and transparency with regard to the measures imposed was not effective. Only the partners from **HONDURAS** and **BELIZE** highlighted that the emergency measures in their countries had a limited time frame. Interestingly, partners from **BELIZE** and **GRENADA** explained that when authorities deny a permit to hold a meeting, they provide the grounds for the denial in writing. The partners did not have information, however, as to whether such denials were appealed or the outcomes of any appeals.

Partners from **BELIZE, GRENADA, DOMINICA, HONDURAS, and MEXICO** commented that authorities endeavor not to use lethal weapons, and that they use masks when overseeing public gatherings. Almost all partners underscored that excessive force had been used to disperse public gatherings that violated restrictions. The only exception to this practice was shared by a partner from **GRENADA**, who affirmed that the police had refrained from using force or making arrests *en masse* to disperse an unauthorized public gathering.

With regard to exploiting COVID-19 measures to harass and persecute civil society, partners from **HONDURAS, GUATEMALA, and MEXICO** mentioned that legislation in their countries prohibits harassment and persecution of civil society, political opponents, and journalists, but that these laws are not enforced. Against this backdrop, the situation described by the partners from **NICARAGUA** stands out. In that country, two laws were recently approved that hamper CSOs' work, although these are precisely the organizations that have mobilized in the context of the pandemic to assist vulnerable groups and affected people. Another Nicaraguan partner also pointed out that even though there are no legal restrictions on in-person gatherings, law enforcement has stopped meetings convened by CSOs from taking place, purportedly due to the situation of the pandemic.

**INDICATOR: ENSURING INCLUSIVE PARTICIPATION BY CIVIL SOCIETY**

Partners indicated that no undue restrictions had been imposed that would impact legally establishing associations in their countries. Nevertheless, associations face other kinds of obstacles, such as refusal of oversight agencies to recognize their organizations' decisions if they are taken in virtual meetings, as is the case in **MEXICO**.

With the exception of **NICARAGUA** and **HONDURAS**, State authorities of the countries represented at the meeting have recognized the essential role of CSOs as partners in responding to the COVID-19 crisis. However, this does not necessarily translate into an enabling legal environment that facilitates CSOs' work. Indeed, CSOs lack, for example, a conducive environment for participating in designing public health policies, or for accessing emergency public funding, according to statements from partners from **GUATEMALA, HONDURAS, NICARAGUA** and **MEXICO**.

Partners from **NICARAGUA** presented a very troubling example of legal restrictions on resources received from foreign sources, which are provided for under that country's new Law on Registration of Foreign Agents. This Law was approved in a context of dire need for international cooperation assistance, given the grave economic and public health crises the country is facing. Additionally, it is concerning that no measures are known to have been adopted by the State in any of these countries to ensure the participation of women and women's organizations in decision-making on pandemic response.

**INDICATOR: FREEDOM OF EXPRESSION MUST BE ENSURED**

Although access to public information is guaranteed by law, the reliability and accessibility of information related to the pandemic was harshly criticized by all. The partners from **HONDURAS, NICARAGUA, GUATEMALA** and **MEXICO** commented that publicly disclosed information is usually confusing or unreliable, and there are scant institutional mechanisms to verify data provided by authorities. The partners from **GUATEMALA** noted that there was a pattern of repression against journalists and human rights defenders.

None of the partners were aware of measures to counter disinformation in any of the represented countries and the partners from **NICARAGUA** even mentioned that when independent media report on the pandemic and prevention measures, authorities characterize the information as fake. Partners also indicated that countries have adopted measures to quash freedom of expression, thereby limiting the free flow of information, through legal provisions such as Nicaragua's recently enacted Special Law on Cybercrime. This Law may dissuade CSOs from sharing information that is contrary to official policy, such as data on the number of people infected with COVID-19, as they could be accused of violating its provisions on sharing fake or misleading information, subjecting them to fines and even jail time.

## Identified best practices

INSTITUTIONAL MECHANISMS THAT FACILITATE CSO PARTICIPATION IN THE DESIGN OF POLICIES TO ADDRESS THE PANDEMIC. A partner from **BELIZE** underscored the active participation of CSO representatives in debates held in Parliament, during which they provide input into the design of public policies. Also of note is the CSO sector's involvement in the National Oversight Committee, created to monitor implementation of measures addressing the pandemic.

REFRAINING FROM THE USE OF FORCE IN THE CASE OF UNAUTHORIZED PUBLIC GATHERINGS. A partner from **GRENADA** noted that the police in her country refrained from using force and acted in a restrained and controlled fashion at a mass public gathering that was held in violation of the rules on assemblies.

## Priority issues on which stakeholders could benefit from policy options based on international legal standards and comparative practices

The partners identified the following priority issues:

- Responses from international cooperation and the donor community to strengthen CSOs so they may better cope with the pandemic and more effectively collaborate post-pandemic.
- Reforms of norms and practices that have led to more flexible legal requirements, to facilitate CSOs' work during the pandemic, such as, for example, permitting CSOs to hold virtual general assemblies.

## Next steps

ICNL will research best practices matching the priority issues raised at these meetings to identify reforms and lessons learned. In collaboration with ICNL teams and partners from other regions, ICNL will identify: (a) legal requirements revised by oversight authorities in order to facilitate CSO work during the pandemic; and (b) best practices from international cooperation and donor community responses to support CSOs during the public health crisis.

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