

Regional Virtual Round Tables for Latin America and the Caribbean on

Freedoms of Association and Peaceful Assembly in Times of Coronavirus

On April 1, 2020, ICNL hosted Regional Virtual Round Tables for civil society partners in Latin America and the Caribbean to address constraints on key civic freedoms in the rapidly evolving context of the coronavirus pandemic. Through on-line meetings in Spanish and English, civil society organization (CSO) representatives from 22 countries:

CONSIDERED INTERPRETATIONS OF THE FUNDAMENTAL FREEDOMS OF ASSOCIATION AND PEACEFUL ASSEMBLY IN THE CONTEXT OF HEALTH EMERGENCIES, specifically interpretations of the freedoms of association, peaceful assembly, and other rights in the context of public health emergencies that were recently published by the [Office of the United Nations \(UN\) High Commissioner on Human Rights](#) as well as [UN Human Rights Treaty Bodies](#).

EXCHANGED INFORMATION ON EMERGENCY MEASURES IN FORCE, THEIR IMPACT ON CIVIL SOCIETY, AND SECTOR RESPONSES, using a framework to evaluate government measures from a recent publication by ICNL and our affiliate, the European Center for Not-for-Profit Law (ECNL), [Keeping Civic Space Healthy: Saving Lives and Human Rights](#).

MAINTAINED VIRTUAL CONNECTIONS BETWEEN PARTNERS DEDICATED TO DEFENDING CIVIC FREEDOMS, demonstrating that physical distance does not have to divide the sector at a time when community is so important.

Trends in Legal Responses to the Coronavirus Crisis

The 22 countries represented by participants in the Round Tables are all affected by the Covid 19 pandemic, though some have been ravaged by the disease while others have registered few cases. They range in size from small Caribbean islands to the largest South American nations. In some of the participating countries, civil society frequently collaborates with government officials, while in others, the administrations are perceived as generally hostile to CSOs that question government policies. Notwithstanding this diversity, several common trends in problematic state responses

to the pandemic emerged, along with a few good models of alternative approaches. Each of the observations reflected below was shared by Round Table participants.

EXCESSIVE DISCRETION FOR SECURITY OFFICIALS ENFORCING CURFEWS.

The most frequent concern, for example, from **HAITI**, where several persons caught violating curfew had been beaten, was about excessive use of force by police. In **BELIZE**, where a nationwide curfew was about to begin, there is a history of police abuses of discretion during prior states of emergency with no apparent accountability as grounds for concern. Those preoccupations are heightened in **PERU**, where preexisting law exempts police officers from prosecution for using excessive force.

Approaches to enforcement varied, and there were a few outliers. The state government of **YUCATAN, MEXICO**, announced that police could arrest anyone in public exhibiting symptoms of coronavirus, potentially subjecting persons with allergies or common colds to detention. Meanwhile, **NICARAGUAN** police are reportedly harassing people who wear face masks and gloves in public, forcing them to remove the protection because it clashes with the government's position that there is no health crisis and such measures are unnecessary.

EXTREME LIMITATIONS ON FREEDOM OF PEACEFUL ASSEMBLY AND MOVEMENT WITHOUT THE POSSIBILITY OF JUDICIAL REVIEW.

BOLIVIA'S emergency measures permit persons to leave their homes only individually and for no more than three hours a week. Courts are currently shut due to the pandemic for all but emergency relief and cannot hear constitutional complaints. These measures are imposed in a context where the former president recently resigned under pressure, the interim president postponed elections, and there had been months of popular protests immediately preceding the health emergency. In **ST. LUCIA**, the courts are reportedly closed until June, and CSOs fear that persons arrested for violating curfew could be held in jail for months until the courts reopen, increasing their exposure to the virus. In **MEXICO**, the

WHAT STATES MUST DO

1. Expressly identify the precise nature of the threat.
2. Narrowly tailor restrictions and ensure all limitations on rights and freedoms are necessary and proportionate.
3. Publicly announce a state of emergency and any measures restricting rights and freedoms.
4. Adopt short term measures with a possibility for a review.
5. Always respect principles of legality and the rule of law.
6. Formally derogate from human rights treaty obligations.

Adapted from *Keeping Civic Space Healthy: Saving Lives and Human Rights.*

government is reportedly collaborating with communications companies to monitor cell phone users' movements without a court order.

CONCERNS OF EXECUTIVE OVERREACH IN EMERGENCY RULEMAKING WITHOUT ENGAGING PARLIAMENT.

The **BOLIVIAN** government has bypassed constitutional provisions that grant the legislature the authority to manage states of exception. Instead, the government has relied on a 60-year old Health Code to implement severe emergency measures outside of congressional control. **COLOMBIANS** are debating the permissibility of convening the legislature in virtual sessions during the pandemic. Some CSOs are concerned that if legislators are unable to reach a quorum and take official action due to social distancing requirements, that could leave the executive branch to enact emergency measures unchecked by legislative oversight. In **DOMINICA**, the government announced a 24-hour curfew one evening that became effective the following morning. Civil society is reportedly unaware of what law the government relied on to order that sudden limitation on movement and assembly. Similarly, **JAMAICAN** participants contend that new criminal offenses are being created by Executive decree and not by Parliament.

In contrast, the government of **ST. LUCIA** was credited with good practices in bringing emergency measures to Parliament for debate. The **BRAZILIAN** Congress has reportedly passed many emergency laws and the Supreme Court has promptly ruled on some of those measures.

LACK OF CLARITY ON PROHIBITIONS AND SANCTIONS FOR VIOLATIONS.

ARGENTINES, among others, are contending with a “flood of new pronouncements” and “fast and furious” decrees that lead to confusion about the details of emergency measures and the consequences of violations. Similarly, in **JAMAICA**, the Prime Minister announces new restrictions in public addresses, but there is a knowledge gap of several days before the details are available in writing. In **HAITI**, the public is warned that persons violating curfew will face sanctions, but without any details. As a result, it is impossible for CSOs to assess whether the sanctions are proportionate.

In contrast, the government of **BARBADOS** was described as fairly transparent about legal measures adopted to mitigate the spread of coronavirus, beginning with press conferences and announcements about a month before the pandemic reached the island and very clear instructions on covered hours and expiration once the curfew was announced.

INCONSISTENT MEASURES ACROSS FEDERAL, STATE, AND LOCAL GOVERNMENTS.

The fact that governments at all levels are imposing measures that are not harmonized was cited as leading to confusion in **ARGENTINA**, **MEXICO**, and **BRAZIL** – all countries with federal systems. In the latter country, the federal government has posted all Covid

19-inspired laws on one web page, but there is no easy access to measures in force at the state and local levels.

EXCLUSION OF CIVIL SOCIETY FROM POLICY DEBATES.

In **PERU**, the government reportedly did not consult civil society in developing any of the emergency measures adopted due to the coronavirus. Meanwhile, in what was described as an “all-hands-on-deck” moment, the government of **DOMINICA** had reportedly only engaged with one CSO – the Red Cross.

In contrast, the governments of **BAHAMAS** and **BELIZE** were credited with incorporating civil society representatives in Covid 19 policymaking committees.

VULNERABLE COMMUNITIES ARE PARTICULARLY IMPACTED BY DISCRETIONARY MEASURES.

Unionized health care workers in **PERU** were reportedly arrested for violating the ban against public gatherings when they convened a press conference to denounce dangerous working conditions due to the pandemic. In **JAMAICA**, several days pass between televised speeches by the Prime Minister announcing a long list of exemptions to the mandatory curfew and publication of the emergency measures. This knowledge gap leaves some disabled persons and residents of rural areas without television or access to the internet subject to severe sanctions without effective notice. Jamaican CSOs working with incarcerated persons are concerned that detainees held without charge under a concurrent State of Emergency for Crime would continue to be detained indefinitely under the Covid 19 State of Emergency. These incarcerated persons would be deprived of due process rights and become much more vulnerable to infection in overcrowded prisons. Homeless persons, particularly Venezuelan migrants who have lost work and cannot pay their rent, are especially vulnerable to arrest for violating stay-at-home orders in **COLOMBIA**. Finally, the **BRAZILIAN** LGBT community fears crackdowns on gatherings of any size and is postponing pride marches typically scheduled in June.

PARTICIPANTS DID NOT RAISE CONCERNS ABOUT BARRIERS TO ACCESSING FUNDING.

In **ECUADOR** CSOs continue to receive disbursements from international funders as usual. No participant indicated that access to funding had been disrupted.

CSOs ARE COLLABORATING ON EFFORTS TO INFLUENCE POLICY DECISIONS AND DEFEND CIVIC FREEDOMS.

The **MEXICAN** government is reportedly reviving civic councils that had been convened during the H1N1 crisis to facilitate collaboration between the public and business sectors. CSOs had previously been excluded from those councils, and they are now advocating for a seat at the table. CSOs in **HAITI** and **BARBADOS** are seeking to organize multisector dialogues to develop policy solutions for current needs and to prepare for

after the crisis has subsided. In **ARGENTINA**, an alliance of the country's leading CSO networks issued a collective statement with recommendations to strengthen the sector's capacity to respond to the pandemic. Among the alliance's requested policies were flexibility on CSO tax obligations, public funding and emergency subsidies for CSOs implementing social programs, and special support to CSOs working in public health. Finally, a coalition of **HONDURAN** CSOs has responded to evolving emergency measures by publishing a series of quick briefers on human rights in the context of the pandemic; issuing early warnings when individuals are threatened due to xenophobia or perceived contagious status; establishing on-line channels for receiving complaints of human rights violations; and creating new virtual meeting spaces to address problems related to Covid 19 such as the economic crisis and violence against women.

Conclusions and Next Steps

At the request of the participants in the two virtual Regional Round Tables, ICNL will host future consultations to follow up on the status of new emergency measures and CSO responses. We will consider whether new trends have emerged and discuss lessons learned by Round Table participants that may prove helpful to sector representatives in other countries. For more information, please contact Jocelyn Nieva at jnieva@icnl.org or Claudia Guadamuz at cguadamuz@icnl.org.