

URGENT

Law-Project on International Cooperation in Venezuela, violates the freedom of association and may jeopardize civil society independency

Venezuelan government has recently decided to exert its absolute control over the Legislative Power by supporting a law which threatens to repress, control and silence the country's independent civil society. In June 14, 2006 the National Assembly sanctioned in its first discussion the so-called “**Law of International Cooperation.**”¹ Although it is announced as a law which promotes international cooperation and the government commitment to the needed ones in Latin America, Caribbean, and the world and it does contain norms in that respect², but it also contains provisions which could, seriously, limit the activities of the independent Venezuelan NGO's. Organizations which widely depend on international cooperation to survive, such as the organizations that work on human rights, environmental issues, AIDS-HIV and other related health problems, the so-called “organizations for the social development” (that also work in issues of economic sustainable development) and independent unions.

Based on a press release issued by 62 Venezuelan NGO's of different kinds, this law “curtail the life, essence and independent trigger action of the country NGO's.”³ Some journalists have nicknamed the law as the “NGO's strait jacket”⁴ and consider it an intent to exercise “total control” by the Venezuelan Parliament⁵. A recognized defendant in the world of human rights describes the law as a document marked by “confusion, ambiguity and much discretionary power”, and filled with “a hank of concepts among which necessary and positive elements are confused with desires for control, incompatible with the international obligations assumed by the Venezuelan State”⁶

The legislators have made ears deaf of the remarks and changes and approved the document as a Law project in its first discussion. Following the approval of such law project, several deputies stated to the press their clear intentions to exert political control

¹ For more information about the law and its text see <http://www.derechos.org/ve/actualidad/leycoop/index.htm>

² Law project on International Cooperation, art. 1.

³ Press release from the 62 NGO's. about the Law-Project on International Cooperation “More and better democracy will be possible only facilitation: the expression, organization and social mobilization”. Caracas June 8th 2006. Also available in http://www.derechos.org/ve/actualidad/comunicados/comu_prensa_2006/anteleycoopera.htm (now on press release)

⁴ Mariana Martinez Rodriguez, “Strait Jacket for the NGO's”, Tal Cual, June 14, 2006, available in http://www.derechos.org/ve/actualidad/leycoop/prensa/talcual_14.06.06.htm.

⁵ Yngrid Yohanna Rojas, “Parliament decided to exercise total control over the NGO's”, “Ultimas Noticias”, June 14, 2006, available in http://www.derechos.org/ve/actualidad/leycoop/prensa/un_14.06.06.htm.

⁶ Ver Carlos Correa “Lawyer from Universidad Catholic Andres Bello Human Rights Center (UCAB), “Confused Discretionary. “El Universal, June 18, 2006, also available in http://www.derechos.org/ve/actualidad/leycoop/prensa/eu_cc_18.06.06.htm.

over NGO's.⁷ Instead of replying to the criticism expressed by civil society, the legislators disqualified them and publicly discredited the 62 NGO's, by calling them "opposition institutions", "lackeys", which show "facades as human rights defenders and what they do, is to get financing from other countries to put out of balance President Chavez's government"⁸.

In accordance with Venezuelan NGO's there are, already, more than five laws and numerous governmental agencies exercising fiscal control over the Venezuelan NGO's⁹ Under the existing legal framework the Venezuelan NGO's are required by law to:

- 1) To register their company by laws and decrees with the Civil Registry Office, under the Civil Code terms.
- 2) To declare, pay and maintain a tax account, under the municipal and national tributary laws and allow to be inspected by the National Integrated Service of Tax Administration ("SENIAT" in Spanish).
- 3) To observe numerous labor laws, pay social security and be subject of inspection by the National Institute for Social Security (IVSS).
- 5) To observe all the environmental rules and be subject of inspection by relevant national authorities.
- 6) To register all funds received from international cooperation with the exchange administration Committee (CADIVI, in Spanish).¹⁰

The Law-project proposes the imposition of the additional restrictions on NGO's operations in Venezuela:

***Re-Register:** The Law establishes an Integrated Registry System which will compile information and form a legal base of an ample number of groups, including "organized communities, public non state organizations, universities, businesses, business' organizations, unions and other social agents engaged in activities related with international cooperation"¹¹ Under its provisions, this system will be monitored by a new international cooperation agent, which will be created by government, and under the guidance of the Executive Power¹². Even worse, on article 18 of the Law project it is assigned to the Executive Power the Decree thereof, and this competence will leave the government to decide which type of organization may be part of the Registry, and what kind of "international cooperation" is valid. It also provides that, the inscription in the Registry will be "obligatory and it constitutes a necessary condition to be recognized by the Venezuelan state as entities capable of carrying out cooperation activities, and as a

⁷ See Sandra Ayala & Enrique Hernandez. "Approved Law-projects or Credit, Tourism Promotion, and International Cooperation," NA Press, June 13, 2006 available in <http://www.asambleanacional.gov.ve/ns2/noticia.asp?numn=9333>.

⁸ *Id.*

⁹ See Press Release, *supra* note 3.

¹⁰ *Id* 4-5

¹¹ See proposed law on International Cooperation, art. 15.

¹² ¹² *Id.* at art. 9.

way to accede to the fiscal incentives contemplated in the tributary subject laws”¹³. All these attributions will give the Venezuelan government the ability to use the Registry to put together a (related to its project) civil society, and at the same time threatening with illegality those organizations not adjusted to the requirements, unilaterally, designed by the Executive Power.

* **Controlled Funds by the Government:** The Law project orders the creation of a Fund for the cooperation and International Assistance, which will be, also, administered by a new executive entity for the international cooperation¹⁴. Through this Fund the government will get and administer resources coming, not only, from government taxes and capital gains, but also from “donations, legacies and other resources for the support and cooperation from other countries, international organizations, public and private institutions, nationals or foreign”¹⁵. The Executive Power will have the competence to decide, without control by other powers or society, what type of resources will be handled, how they will administered and how it will distributed¹⁶.

* **Arbitrary Request for Information:** The Law project orders the organizations regulated by it, to inform upon request: about their activities, the origin of the activities, the administration and use of the funds, as well as a detailed information in their source of financing¹⁷. This information, as any other requested, may be required in short notice and without any given reason.

Under these terms, the Venezuelan Law project constitutes a clear violation of the freedom of association as defined in the Bolivarian Republic of Venezuela Constitution art. 52., in the American Human Rights Convention (art. 16), and in the International Pact on Civil and Political Rights (art. 22). While the Constitution denies any restrictions in the freedom of association, by means of an act of inferior rank, such as decrees, by the Executive Power, the above mentioned International Conventions, signed and ratified by the Venezuelan State, and in force right now, deny any limitations or restrictions in a democratic society over this right. Also, to delegate on the Executive Power the Decree of this law would be considered as an act that delegates, essentially, the parameters used to measure the democratic foreplay: out of place. This project represents a serious violation of the freedom of political participation present in the Venezuelan Constitution (art. 62) and in the American Convention (art. 23).

To make matters even worse this law, may surface in the middle of a national context described by the Human Rights Inter American Commission (HRIC) as a

¹³ ¹³ *Id.*, art. 16.

¹⁴ ¹⁴ *Id.*, art. 10.

¹⁵ ¹⁵ *Id.*, art. 12.2.

¹⁶ ¹⁶ *Id.*, art. 13.

¹⁷ ¹⁷ *Id.*, art. 21.

“Hostile atmosphere for the political dissent and NGO's, due to news media public information given about wrong-doings in the public administration¹⁸. Based on HRIC, in 2005, a “worrying tendency” due to discrimination against those individuals exhibiting political opinions contrary to the government was established, in so much that the Commission alerted over the “risk of segregation” in the Venezuelan society¹⁹. A clear example of this was the use by public institutions, both public and private, of a list of individuals compiled by a governmental party deputy, which contained the names of all the persons who had signed, asking for a presidential recall referendum, in 2004. This list was used, as it was informed to the Commission, to discriminate on the population, in the job assignments, to fire people without a reason, and to deny labor and State public benefits”²⁰

Even more offending is the fact that Venezuelan human rights defenders, recently, were confronted with criminal charges, have been frightened by the police, have confronted death threats, and have been subjected to a general climate of intolerance and persecution by the authorities²¹. Such a climate may be appreciated in the public accusation, of government authorities, including high spheres, in that organizations and human rights defenders were conspiring against the Venezuelan State²². The State has recently made some efforts to impose severe limits over the international financing in the human rights activities, by means of controversial norms from the Penal Code to criminalize the NGO's international financing²³.

Given the high level of political polarization in the recent Venezuelan history, the alarming indexes of discrimination of this “Law of International Cooperation,” as it is written, might threaten the existence of an independent civil society in the country.

The Law is being discussed in Commission, but it will be discussed in plenary in a few weeks. Once it is proclaimed by the Executive, it will have ninety days to issue a decree, in which the majority of parameters of operation of the new organ of international cooperation will be defined. After this, NGO's will have six months to adjust to the new legal framework, and this means that by March 2007, the Venezuelan civil society will be a thing from the past.

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¹⁸ Annual Report 2005, HRIC, OAS/Ser.L/V/II.124, Chapter IV, “Venezuela” 259, *available in* <http://www.cidh.oas.org/annualrep/2005sp/cap.4d.htm>

¹⁹ *Id.*, ¶ 324.

²⁰ *Id.*, ¶¶ 326-27.

²¹ *Id.*, ¶ 337-43, 348-51.

²² *Id.*

²³ *Id.*, ¶¶ 344-47