STATEMENT EXPRESSING CONCERN ABOUT THE NEW LEGISLATION TO REGULATE NON-PROFIT ORGANIZATIONS IN PARAGUAY

The New York City Bar Association[1] ("City Bar") expresses its concern over the passage of a law that would jeopardize the fundamental rights of organizations and individuals in Paraguay, including those working to promote and defend human rights. The Paraguayan Congress is discussing a bill that ostensibly promotes transparency and accountability of non-profit organizations but that would, in fact, limit their ability to function. The law, if passed, would hinder non-profits in numerous ways, including discouraging international cooperation or alliances and potentially violating the rights to freedom of expression, association, and privacy, amongst others, that have been enumerated under international human rights treaties and standards.

While the City Bar recognizes the value, as a general matter, of promoting transparency and accountability of organizations that receive or manage public funds, such regulations must be thoroughly examined to ensure they meet legitimate objectives and align with international standards for freedom of association and expression. We respectfully submit that the bill, as currently drafted, goes well beyond such legitimate public policy protections.

The City Bar opposes any action that restricts civic space, freedom of association, and expression in Paraguay and urges the Paraguayan Senate to further analyze and modify the bill to protect and promote the continued participation of civil society organizations in Paraguay.

I. BACKGROUND

On December 20, 2023, a Bill, "Establishing Control, Transparency, and Accountability of Non-Profit Organizations Act," was presented in the Congress of the Republic. On July 9,

[1] The New York City Bar Association (City Bar), founded in 1870, is an organization of 23,000 members in New York City and elsewhere throughout the United States and in more than 50 countries around the globe. Its members include judges, prosecutors, defense counsel, government lawyers, and public interest/non-governmental organization practitioners, as well as legal academics and attorneys representing nearly every major law firm and corporation in the United States. The City Bar has a long and distinguished history of promoting the rule of law and human rights, including the rights of legal professionals to fulfill their professional obligations. The Cyrus R. Vance Center for International Justice assisted with this Statement, with support from the City Bar's Task Force on the Independence of Lawyers and Judges and the Inter-American Affairs Committee.

About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

2024, the Paraguayan Senate held an extraordinary session in which it approved the bill.[2] The bill aims to establish a regime of "control, transparency and accountability" for non-profit organizations that receive or manage public or private, national or international funds without distinction. The House of Representatives approved the bill on October 1, 2024 with notable modifications, yet maintains the foundation of the regulatory scheme proposed in the initial version. The bill has been approved by the Senate and has been presented to President Santiago Peña, who could veto or sign it into law.

II. PROPOSED LEGISLATION

The reported purpose of the Bill is to provide controls, transparency, and accountability for Non-Profit Organizations that receive or manage public or private funds, of national or international origin, and whose ultimate benefit is related in some manner to the State, municipalities, or other public entities.[3]

Numerous Paraguayan and international organizations and human rights experts,[4] have denounced various aspects of the bill that would lead to severe consequences for civil society.

The main points of concern with the bill are:

1. **The lack of specificity in the bill.** The bill provides in articles 2 and 3 a broad and vague definition of organizations that it will apply to, including organizations whose purpose is "public utility" or "social or cultural interest," with an objective to "influence" or in any way act upon the plans and activities of the State. While the bill now contains important details regarding the types of entities that will *not* be subject to its provisions, such as international and multilateral organizations and

[2] National Congress of Paraguay, Extraordinary Session of the Senate Chamber, July 8, 2024, https://silpy.congreso.gov.py/web/descarga/sesion-123766?preview (All websites last accessed on Oct. 10, 2024).

[3] National Congress of Paraguay, Senate Chamber, Legislative Process for Bill No. S-3400683 (last updated on Sep. 23, 2024), https://silpy.congreso.gov.py/web/expediente/130058.

[4] Coordinadora Valenciana ONGD, *La nueva ley aprobada por el gobierno de Paraguay pone en peligro al asociacionismo y a las ONG del país* (Sep. 10, 2024), https://www.cvongd.org/es/noticias/noticias-de-la-cooperacion/la-nueva-ley-aprobada-por-el-gobierno-de-paraguay-pone-en-peligro-al-asociacionismo-y-a-las-ong-del-pais/. Amnesty International, *Paraguay: Senado aprueba proyecto de ley que pone en riesgo la defensa de los derechos humanos* (July 9, 2024), https://www.amnesty.org/es/latest/news/2024/07/paraguay-senado-aprueba-proyecto-ley-pone-riesgo-defensa-derechos-humanos/. Coordinadora de Derechos Humanos del Paraguay, *Organizaciones sin Fines de Lucro se Unen para Defender sus Derechos ante Proyecto de Ley que Amenaza a la Democracia y Labor Social* (July 6, 2024), https://www.codehupy.org.py/organizaciones-sin-fines-de-lucro-se-unen-para-defender-sus-derechos-ante-proyecto-de-ley-que-amenaza-a-la-democracia-y-labor-social/. *See also* a joint letter in condemnation of the law by U.N. Special Rapporteurs on the Rights to Freedom of Peaceful Assembly and of Association; on the Promotion and Protection of the Right to Freedom of Opinion and Expression; and on the Situation of Human Rights Defenders, July 19, 2024, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=29221 [hereinafter Joint Letter of U.N. Special Rapporteurs].

churches,[5] the definition it provides for a non-profit organization nevertheless contains enough ambiguity that could lead to discretionary application of the law. The bill also does not adequately define what constitutes an infraction. For example, article 8 of the bill requires "detailed record" keeping of funds without clarifying what specific information is required to be recorded. Additionally, article 14 provides for sanctions to those – entities or organizations– who influence a non-profit found in violation of the law without defining what it means to influence. These types of vague requirements and terminology give officials broad discretion in applying the law and imposing arbitrary sanctions.

2. **Vague and burdensome administrative requirements**. The bill requires non-profit organizations to report to the Ministry of Economy and Finance on the use and allocation of their funds in detail, regardless of the source (public or private, national or foreign), and on the people they employ, contract or collaborate with. While governments do have a legitimate interest in regulating nonprofits, excessive controls over organizations, including burdensome administrative requirements, often aim to stifle civil society. The requirements in this bill have the potential to overburden grassroots organizations and virtually eliminate the existence of informal organizations or coalitions, who would be less likely to meet the requirements specified under the bill due to their inherently flexible structure.

III. POTENTIAL VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW

A. Freedom of Association

The right to freedom of association as guaranteed by Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and Article 16 of the American Convention of Human Rights (ACHR) guarantees the right to form and join formal and informal groups, including non-profit organizations. Under these international treaties, States must abstain from unduly obstructing this right and take measures to establish and maintain a safe and enabling environment for associations to function and to respect their privacy and that of their members. The right to freedom of association has also been found to include the right to access funding and resources.[6]

[5] Article 3 of the bill states "International organizations, specialized international agencies, multilateral entities or organizations, political parties and movements, churches, and religious denominations are expressly excluded from the scope of this law. Also expressly excluded from the scope of this law, unless they receive, manage, and/or invest public, national, or international funds, are strictly non-professional sports organizations, labor unions and workers' associations, peasant and student organizations, neighborhood committees, and environmental sanitation boards."

[6] International human rights law and standards amply recognize access to resources as part of the right to freedom of association, *see* UN Doc A/HRC/23/39, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (https://www.icnl.org/wp-content/uploads/A.HRC_.23.39_funding_EN.pdf) and *Viktor Korneenko et al. v. Belarus*, Communication No. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004 (2006) (http://hrlibrary.umn.edu/undocs/1274-2004.html).

The ICCPR and ACHR provide a limited scope by which States may restrict the freedom of association. Article 22.2 of the ICCPR states that "no restrictions may be placed on the exercise of [the freedom of association] other than those which are prescribed by law, and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." Similarly, the ACHR exclusively allows for the same restrictions on the freedom of association as the ICCPR.[7] The Paraguayan Constitution only prohibits secret and paramilitary associations.

The Human Rights Committee[8] has consistently affirmed in its jurisprudence and guidance that "a restriction on the right to freedom of association can be justified only if it cumulatively meets" the conditions set out in ICCPR article 22.2 and is proportionate in nature.[9] Therefore, restrictions must (1) be provided for by law, (2) address a clear purpose set out in article 22.2, and (3) be "necessary in a democratic society."[10] Similarly, the U.N. Special Rapporteur on the situation of human rights defenders has emphasized that "States should always be guided by the principle that the restrictions must not impair the essence of the right."[11] In this sense, the ability of organizations to operate for lawful aims must prevail over non-essential restrictions.

1. Provided for by law

The first prong of the test, "provided for by law," is a procedural and a content requirement. Any restriction on the freedom of association must be outlined in a "duly promulgated law, regulation, decree, order, or decision of an adjudicative body."[12] Additionally,

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[7] American Convention, art. 16.2 ("The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.").

[8] The Human Rights Committee was established under Article 28 of the ICCPR. *See* https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

[9] Human Rights Committee, *Romanovsky* v. *Belarus*, Communication No. 2011/2010, ¶ 7.2, U.N. Doc. CCPR/C/115/D/2011/2010 (7 Dec. 2015). *See also* Joint Letter of U.N. Special Rapporteurs, *supra*, at p. 5 ("States should ensure that any restrictions on the right of civil society organizations to access funding and resources comply with the international human rights requirements of legality, legitimate aim, necessity and proportionality in a democratic society, as set out in Article 22(2) of the ICCPR.").

[10] European Commission for Democracy through Law (Venice Commission) & OSCDE Office for Democratic Institutions and Human Rights (ODIHR), Joint Opinion on draft law No. 6674 on introducing changes to some legislative acts to ensure public transparency of information on finance activity of public associations and of the use of international technical assistance, and on Draft Law No. 6675 on introducing changes to the tax code of Ukraine to ensure public transparency of the financing of public associations and of the use of international technical assistance, ¶ 34, VC Opinion No. 912/2018, OSCE/ODIHR Opinion No. NGO-UKR/321/2018 (16 Mar. 2018).

[11] Maina Kai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), Rep. on the right to freedom of association, ¶ 16, U.N. Doc. A/HRC/20/27 (21 May 2012).

[12] Margaret Sekaggya (Special Rapporteur on the situation of human rights defenders), Rep. on the right to freedom of association, the content of the right and its implementation in practice, ¶ 27, U.N. Doc. A/64/226 (4 Aug. 2009).

the content of the restriction must be clearly enunciated to be considered "prescribed."[13] As the Special Rapporteurs on freedom of expression, freedom of association, and on the rights of human rights defenders noted in their communication to the Paraguayan State, it is necessary for any proposed law to be "accessible and sufficiently precise to enable members of society to decide how to regulate their conduct (predictability),"[14] in order to prevent unfettered discretion to the State in enforcing the law.

The proposed legislation raises questions as to whether the restrictions on the freedom of association are sufficiently clear, including, as mentioned previously, a lack of detailed criteria of the organizations that will be subject to its provisions, lack of specificity as to what particular information or types of documentation will satisfy the law's requirements, and the procedure through which an organization could repair or appeal a sanction after a supposed infraction, among others.

2. In the interest of a clear purpose set out in ICCPR article 22.2

With regard to the second prong, a restriction must fall under one of the permitted purposes under ICCPR article 22.2, including, as mentioned above, an interest in national security or public order, protection of public health or morals, or the protection of the rights and freedoms of others. In article 6 of the bill, the Paraguayan State claims that its purpose is to promote and support non-profits by ensuring that the source of their funds is lawful. Despite this purported State interest, the justification for this restriction does not rise to the level required under article 22.2, as it does not serve any of the enumerated interests.

3. Necessary in a democratic society

The UN Human Rights Committee has explained that the notion of a "democratic society" in the last prong of the cumulative test means a society where associations may "peacefully promote ideas not necessarily favorably received by the government or the majority of the population."[15] In short, restrictions must respect freedom of expression and not be used to suppress dissent. Further, for a restriction to be "*necessary* in a democratic society" (emphasis added), the restriction must be proportionate to its objective. Drawing on precedent of the Inter-American Court of Human Rights and European Court of Human Rights in an analysis of national legislation regulating the activities of human rights defenders and organizations, the U.N. Special Rapporteur on human rights defenders stated that "the principle of necessity requires [showing] … that the law in question is the best available means of achieving that result [and] . . . that the impact of the law is as targeted as possible, thereby impairing the

[13] David Kaye (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression), Rep. on his mission to Tajikistan, ¶ 82, U.N. Doc. A/HRC/35/22/Add.2 (13 Oct. 2017); Margaret Sekaggya (Special Rapporteur on the situation of human rights defenders), Rep. on the use of legislation to regulate the activities of human rights defenders, ¶ 86, U.N. Doc. A/67/292 (10 Aug. 2012).

[14] Joint Letter of U.N. Special Rapporteurs, *supra*, at p. 5.

[15] Human Rights Committee, *Mikhailovskaya* v. *Belarus*, Communication No. 1993/2010, ¶ 7.3, U.N. Doc. CCPR/C/111/D/1993/2010 (26 Aug. 2014).

exercise of the affecting rights as little as possible."[16] The Inter-American Court of Human Rights has repeatedly held that the freedoms of association and expression are essential to maintaining democracy and should be given the "maximum protection possible."[17]

For the reasons previously discussed, the controls and requirements that the law Establishing Control, Transparency, and Accountability of Non-Profit Organizations imposes on Non-Governmental Organizations("NGOs") lack clarity and precision, are not the least intrusive means for doing so, and threaten to weaken democratic society by reducing pluralism.

B. Internal affairs of organizations

Independence and non-interference in the internal affairs of organizations are essential elements for the full realization of the freedom of association. The Human Rights Council recognized this principle in a resolution, stating that "reporting requirements placed on individuals, groups and organs of society [should] not inhibit functional autonomy."[18] The U.N. Special Rapporteur on the freedom of association has observed that governments often use "extensive scrutiny over the internal affairs of associations, as a way of intimidation and harassment."[19] This observation was echoed by the U.N. Special Rapporteur on human rights defenders, who stated that "States should not interfere with the internal management and activities of NGOs."[20] Excessive State monitoring and internal interference suppress critical voices and weaken democratic debate. In their letter to the State of Paraguay regarding the bill, the Special Rapporteurs on freedom of expression, freedom of association, and on the rights of human rights defenders, highlighted that the article of the bill concerning "transparency," in particular, would create a disproportionate burden on existing organizations, "especially if these requirements are already included in other legal, tax and administrative procedures," and would effectively discourage the creation of new organizations.[21]

The U.N. Special Rapporteur on freedom of association and other special rapporteurs have repeatedly expressed that organizations must be allowed to conduct their activities freely,

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[16] Margaret Sekaggya (Special Rapporteur on the situation of human rights defenders), Rep. on the use of legislation to regulate the activities of human rights defenders, ¶¶ 70-71, U.N. Doc. A/67/292 (10 Aug. 2012).

[17] Corte Interamericana de Derechos Humanos. *López Lone y Otros* v. *Honduras,* Sentencia, ¶ 160, 5 Oct. 2015 (Excepción Preliminar, Fondo, Reparaciones y Costas). *See also* Corte Interamericana de Derechos Humanos, *La Colegiación Obligatoria de Periodistas (Arts. 13 y 29 Convención Americana sobre Derechos Humanos)*, Opinión Consultiva, ¶ 4, O.A.S. Ser.A/OC-5/85 (13 Nov. 1985).

[18] Human Rights Council Res. 22/6, Protecting human rights defenders, ¶ 9, U.N. A/HRC/RES/22/6 (12 Apr. 2013).

[19] Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), ¶ 38, U.N. Doc. A/HRC/23/39 (24 Apr. 2013).

[20] Margaret Sekaggya (Special Rapporteur on the situation of human rights defenders), Rep. on the right to freedom of association, the content of the right and its implementation in practice, ¶ 121, U.N. Doc. A/64/226 (4 Aug. 2009).

[21] Joint Letter of U.N. Special Rapporteurs, *supra*, at p. 2.

including the determination of their internal governance and activities, [22] and that organizations should be free from undue interference.[23] In response to concerns over similar NGO bills in other countries, the U.N. Special Rapporteurs have noted that under the ICCPR states have a positive obligation to establish and maintain an enabling environment[24] for the full realization of the freedom of association.

Government control over foreign funding creates a chilling effect on the activities of NGOs. Access to financing is an essential element in the realization of the freedom of association. The issue of access to funding, particularly foreign funding, has been discussed in detail by human rights bodies. The international community, represented by the U.N. General Assembly, has recognized the right of association to encompass the right "to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means."[25] Similarly, the U.N. Special Rapporteur on freedom of association stated that "[a]ny association, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities."[26]

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[22] Mandats du Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression; de la Rapporteuse spéciale sur le droit de réunion pacifique et la liberté d'association; et du Rapporteur spécial sur la situation des défenseurs des droits de l'homme, Communication à la Republique Democratique du Congo, p. 3, U.N. Doc. OL COD 2/2017 (15 Nov. 2017) ("*Nous sommes d'avis que les membres d'une association devraient être libres de déterminer les statuts, la structure et les activités de celle-ci et de prendre leurs décisions à l'abri de toute ingérence de l'État.*").

[23] Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the situation of human rights defenders, Communication to the Republic of Indonesia, pp. 3-4. IDN 11/2012 (31 Aug. 2012).

[24] Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders, Communication to the State of Egypt, p. 6, OL EGY 14/2016 (22 Nov. 2016).

[25] G.A. Res. 53/144, U.N. Declaration on Human Rights Defenders, art. 13 (8 Mar. 1999) ("Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means."). *See also* Margaret Sekaggya (Special Rapporteur on the situation of human rights defenders), Rep. on the right to freedom of association, the content of the right and its implementation in practice, ¶ 91, U.N. Doc. A/64/226 (4 Aug. 2009) ("Access to funding, the ability of human rights organizations to solicit, receive and use funding, is an inherent element of the right to freedom of association. In order for human rights organizations to be able to carry out their activities, it is indispensable that they are able to discharge their functions without any impediments, including funding restrictions.").

[26] Maina Kiai (Special Rapporteur on the rights to freedom of peaceful assembly and of association), Rep. on the right to freedom of association, ¶ 68, U.N. Doc. A/HRC/20/27 (21 May 2012).

IV. NEW YORK CITY BAR ASSOCIATION CALLS ON THE PARAGUAYAN CONGRESS TO PROTECT THE CIVIC SPACE

The City Bar urges the Paraguayan Congress to recognize the importance of an open civic space consistent with international law and Paraguay's international commitments. Paraguay's proposed legislation has sparked significant debate and concern among various sectors of Paraguayan society. The matter deserves ample discussion, hearing all relevant voices.

The current bill carries risks that could undermine the freedom of association and expression of local and international civil society organizations.

The City Bar strongly urges the Paraguayan government to consider all concerns civic organizations have raised with respect to this proposed legislation.

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