

Shrinking democratic space for civil society in Guatemala

Charlotte Volet et Laurence Ouellet-Boivin • Membres du conseil d'administration du
Projet Accompagnement Québec-Guatemala

In Guatemala, as in many other countries, the State is becoming increasingly hostile towards civil society organisations. This trend undermines the efforts of human rights organisations and, to a lesser extent, humanitarian actors. In the process, the rights of both local populations and migrants are under threat.

Guatemalan society today is still marked by the prolonged armed conflict (1960-1996) which led to the death and disappearance of more than 200,000 people and the displacement of between 500,000 and 1.5 million others.¹ As 83% of the victims of the conflict were of Mayan descent, the Commission for Historical Clarification recognised as acts of genocide certain policies of the government in power between 1981 and 1983.² Vestiges of the political system based around the military elite remain present in Guatemalan society despite the establishment of a process of transitional justice.³ Moreover, the country's politics and economy are still run by the military and economic elite while a majority of the population identify as indigenous and live below the poverty line.⁴ Recent years have been marked by a worsening humanitarian situation, in particular following several extreme weather events and the Covid-19 pandemic, as well as by rising authoritarianism.⁵

Consistent with this trend, the enactment of Decree 4-2020, which amends the law on non-governmental organisations (NGOs)⁶ by expanding government control over their financing and activities, is at the core of the deterioration of rule of law in Guatemala. In fact, by amending the civil code and this "law on NGOs", this decree has a significant impact on the work of civil society groups, granting the government discretionary powers to supervise and monitor NGOs.⁷ Two years after this decree came into force and the first criticisms of it began to emerge at international level, what is its current impact on NGO activities? This article will first present some findings on this reform and then examine the various implications according to the type of organisation concerned.

¹ Commission for Historical Clarification, *Guatemala memoria del Silencio*, United Nations Office for Project Services, Guatemala, 1999, p. 21 and p. 38, <https://www.undp.org/es/guatemala/publications/guatemala-memoria-del-silencio>

² *Ibid.*, p. 21 and p. 51.

³ Office of the United Nations High Commissioner for Human Rights, *Justice transitionnelle et droits économiques, sociaux et culturels*, 2014, https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-13-05_fr.pdf

⁴ Marie-Dominik Langlois, « Le mirage de la paix au Guatemala », *Le Devoir*, 4 janvier 2017, <https://www.ledevoir.com/opinion/idees/488338/le-mirage-de-la-paix-au-guatemala>

⁵ Amnesty International, *Last Chance for Justice – Dangerous setbacks for human rights and the fight against impunity in Guatemala*, 9 July 2019, <https://www.amnesty.org/en/documents/amr34/0611/2019/en>

⁶ Known as "the law on NGOs".

⁷ Organización de los Estados Americanos, «La CIDH y su RELE rechazan la entrada en vigor de reformas a la Ley de Organizaciones no Gubernamentales en Guatemala», 19 May 2021, <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/128.asp>

Reform of the law on NGOs

Since the advent of the conservative Government of Jimmy Morales (2016-2019), Guatemalan civil society has been aware of a deterioration of the rule of law. Indeed, the mandate of President Morales was characterised by his hostility towards international institutions, especially towards the International Commission Against Impunity in Guatemala, which he in fact suspended in 2019.⁸ Several regressive bills posing a threat to the rights of vulnerable people have since been brought in, such as the reform proposed by Decree 4-2020.⁹ Following in its predecessor's footsteps, the government of Alejandro Giammattei (2020-2024) approved the reform of the law on NGOs in February 2020. Decree 4-2020 then came into force in June 2021, notwithstanding strong criticism and an appeal lodged in vain by the country's Special Human Rights Prosecutor.¹⁰ This reform introduces a set of requirements for the creation, regulation, operation and supervision of national and international NGOs and grants the government discretionary monitoring and surveillance powers.¹¹ The Ministry of the Interior can also remove a local or international NGO from the national register on grounds of protecting public order.¹² The reform also gives a precise definition of an NGO, specifying in Article 4 the organisations to which the reform applies because of their nature and their fields of specialisation and intervention.¹³

This decree is seen by several NGOs as a direct attack on the democratic space. Indeed, while registration procedures were complex from the start, this reform has made them even more cumbersome.¹⁴ A year after the decree, of the 1,871 NGOs listed in the NGO register, only 204 were in a position to comply with the new restrictions and update their registration, according to the requirements of the decree.¹⁵ Over 15,000 organisations are still to be examined by the Register of Legal Entities (*Registro de Personas Jurídicas* in Spanish).¹⁶ These figures illustrate the lack of clarity, the unwieldiness and the poor dissemination of these new requirements.¹⁷ The international community¹⁸ and civil society¹⁹ also fear the arbitrary interpretation of the grounds of protecting public order and the abuse of power by the Guatemalan authorities, as this rhetoric has often been used to justify the repression of civil society and

⁸ Government of Canada, *Canada disappointed by decision to end International Commission against Impunity in Guatemala*, 10 January 2019, <https://www.canada.ca/en/global-affairs/news/2019/01/canada-disappointed-by-decision-to-end-international-commission-against-impunity-in-guatemala.html>

⁹ Unidad de Protección a Defensoras y Defensores de Derechos Humanos de Guatemala, *Guatemala, una deuda sin saldar. Recomendaciones para una agenda pública que garantice el derecho a defender derechos*, January 2021, p. 8, <https://udedefgua.org.gt/informes/a-un-ano-de-la-toma-de-posecion-del-ejecutivo-de-giammattei-se-mantiene-en-alza-la-violencia-contra-las-personas-defensoras-de-derechos-humanos>

¹⁰ Douglas Cuevas, «Ley de oenegés: piden que nueva normativa se declare inconstitucional», *Prensa Libre*, 22 June 2021, <https://www.prensalibre.com/guatemala/politica/sectores-sociales-impugnan-la-entrada-en-vigor-de-las-reformas-a-la-ley-de-ons>

¹¹ Organización de los Estados Americanos, «La CIDH y su RELE...», *art. cit.*

¹² Congress of the Republic of Guatemala, *Décret 4-2020*, art. 16, <https://legis.gt/wp-content/uploads/2021/08/Decreto-Numero-4-2020.pdf>; Luís Carrillo, «Presidente sanciona reformas a Ley de ONG», *Diario de Centro América*, 28 February 2020.

¹³ Congress of the Republic of Guatemala, *Decree 4-2020*, art. 4, <https://legis.gt/wp-content/uploads/2021/08/Decreto-Numero-4-2020.pdf>

¹⁴ Adeline Hite y Adriana Beltrán, «Preguntas y respuestas: La nueva ley de ONG de Guatemala», *Washington Office of Latin America*, 19 March 2020, <https://www.wola.org/es/analisis/nueva-ley-ong-guatemala>

¹⁵ Edgar René Ortiz, «Sobre la Ley de ONG», *La Hora*, 15 June 2022, https://lahora.gt/opinion/edgar_ortiz/2022/06/15/sobre-la-ley-de-ong

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Office of the United Nations High Commissioner for Human Rights, *Guatemala: Expertos de la ONU y la OEA dan la voz de alarma por la "asfixiante" ley sobre ONGs*, 1 July 2021, <https://www.oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/COMUNICADOS/2021/2021-07-01-LeyONGs.pdf>

¹⁹ Adeline Hite y Adriana Beltrán, «Preguntas y respuestas...», *art. cit.*

most notably of indigenous movements.²⁰ These new constraints, added to the already tense climate which is detrimental to the day-to-day work of NGOs, impose a further burden and constant pressure on NGO staff.

The diverse impacts of Decree 4-2020

Much more than a simple legislative process, this reform follows the long-running trend of a deteriorating democratic space. However, not all NGOs seem to be targeted by the decree's arbitrary application. Indeed, it is clear that organisations defending human rights seem to be targeted to a greater extent by the measures set out in the decree than those working in humanitarian aid or development.²¹ This pressure and violence also appear to affect local organisations in particular, even if they are generally also felt by international NGOs.

Even though these multiple pressures had already been denounced by defenders of human rights before the decree came into force, from now on they form part of an arbitrary use of the grounds of protecting public order for the purpose of criminalising and censoring civil society.²² According to the United Nations, the enactment of the decree would seriously hinder the invaluable efforts of the country's civil society organisations, not to mention the fact that these measures contravene international human rights regarding freedom of expression and association.²³

The arbitrary use of the decree, added to the smear and misinformation campaigns run by critics of human rights, represents therefore efforts to shrink the democratic space as well as to exacerbate the sense of insecurity experienced by human rights activists.²⁴ This insecurity can moreover be seen in the increasing use of physical violence against defenders of Guatemalan human rights²⁵ with cases of violence nearly doubled between 2017 and 2021.²⁶ The use of alarming language to depict defenders of human rights ("terrorists", "troublemakers", "villains", etc.) contributes to stigmatising them and damaging their credibility.²⁷ NGOs defending human rights struggle to continue their work under this heavy pressure, sometimes even being forced to cease their activities outright. Such a case is illustrated by the voluntary dissolution of the ACOGUATE²⁸ organisation in 2023, following a long campaign of criminalisation, smear tactics and intimidation directed against it.²⁹ Far from being an isolated case, this voluntary dissolution is evidence of the dangerous nature of this decree, in particular the use of the grounds of protecting public order, for the defence of human rights.

²⁰ Commission for Historical Clarification, *Guatemala memoria del Silencio...*, *op. cit.*, p. 50–51.

²¹ Although humanitarian aid is not specified in the decree (which is aimed more specifically at development NGOs), the sectors regulated by the law generally correspond to the fields of action of humanitarian and development aid NGOs.

²² Amnesty International, *Laws designed to silence*, 21 February 2019,

<https://www.amnesty.org/en/documents/act30/9647/2019/en>

²³ Office of the United Nations High Commissioner for Human Rights, *Guatemala: Expertos de la ONU...*, *op. cit.*

²⁴ Front line Defenders, "Harassment, threats, smear campaign and criminalisation against International Accompaniment Project ACOGUATE in Guatemala", 2 December 2021, <https://www.frontlinedefenders.org/en/statement-report/harassment-threats-smear-campaign-and-criminalisation-against-international>

²⁵ Amnesty International, *Last Chance for Justice...*, *op. cit.*

²⁶ Unidad de Protección a Defensoras y Defensores de Derechos Humanos de Guatemala, *Situación de personas, organizaciones y comunidades defensoras de derechos humanos en Guatemala, 2021*, June 2022,

<https://udefegua.org.gt/wp-content/uploads/2022/07/INFORME-UDEFEGUA-2021.pdf>

²⁷ Amnesty International, *Americas. "We are defending the land with our blood: defenders of the land, territory and environment in Honduras and Guatemala"*, 1 September 2016,

<https://www.amnesty.org/en/documents/amr01/4562/2016/en>

²⁸ International accompaniment project in Guatemala

²⁹ Collectif Guatemala, *Urgence ACOGUATE*, 12 octobre 2021, <https://collectifguatemala.org/Urgence-ACOGUATE>

Conversely, the work of humanitarian aid and development NGOs appears less constrained by the new restrictions. This observation seems especially true in the sectors prioritised by the government, as put forward in the National Development Plan of Guatemala.³⁰ The selective application of the constraints related to the reform allows the government to encourage the activities of those NGOs working in the State's priority areas.³¹ Likewise, NGOs offering services lightening the load of Guatemalan bodies are clearly accepted more readily by the country's authorities. The government of Guatemala requested help, for example, from Canada in the healthcare sector in response to the Covid-19 pandemic and Hurricanes Eta and Iota.³² This opening up to specific local and international aid can also be explained by the propensity of successive Guatemalan governments to underinvest in sectors often supported by civil society and international aid (health, agriculture, nutrition, etc.).³³ While malnutrition is a key focus in the country as far as humanitarian issues are concerned,³⁴ public investment in the agricultural sector seems inadequate.³⁵ Equally, the three activities receiving the most funding from United States international aid programmes are found in the food sector, so among the top priorities mentioned.³⁶ Thus, while the amendment of the law on NGOs allows the government to exert greater control over international funding received by NGOs through administrative processes,³⁷ the financing of sectors the government focuses on seems generally to be less targeted.

Outlook

Although the adoption of Decree 4-2020 represents a shrinking of the democratic space for civil society in Guatemala, the tangible impact on the work of NGOs varies according to their sector of activity and their origin. In addition to hindering the work of human rights NGOs, this reform reinforces the isolation and marginalisation of activists and establishes a precedent. The situation in Guatemala is however not an isolated one, as several similar draft bills are currently being debated or are already in force in other countries such as Venezuela, Nicaragua, El Salvador and, beyond Central America, in Egypt.³⁸ These attacks on the right of association have in fact already been studied in recent years.³⁹ It will be of paramount importance therefore for the international community to raise questions on this trend and ensure that dialogue is kept open on the protection of human rights and democratic space.

Translated from the French by Fay Guerry

³⁰ The priorities laid down in the Plan include among others social protection and the reduction of poverty, access to healthcare, food security, education, management of natural resources, etc.; Consejo Nacional de Desarrollo Urbano y Rural, *Plan Nacional de Desarrollo : K'atun, Nuestra Guatemala 2032*, July 2014, [https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/3F1CB53FBADB4F5405257D6C006E9/\\$FILE/1_pdfsam_PND_Katun2032.pdf](https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/3F1CB53FBADB4F5405257D6C006E9/$FILE/1_pdfsam_PND_Katun2032.pdf)

³¹ Adeline Hite y Adriana Beltrán, «Preguntas y respuestas...», *art. cit.*

³² Government of Canada, *Canada-Guatemala relations*, <https://www.international.gc.ca/country-pays/guatemala/relations.aspx?lang=eng>

³³ Office of the United Nations High Commissioner for Human Rights, *Guatemala: Expertos de la ONU...*, *op. cit.*

³⁴ Office for the Coordination of Humanitarian Affairs, *Humanitarian Needs Overview – Guatemala*, December 2022, <https://www.unocha.org/publications/report/guatemala/guatemala-humanitarian-needs-overview-2023-december-2022>

³⁵ Reid Hamel, *The Challenges of Country-Led Development: Insights from Guatemala*, Center for Strategic & International Studies, November 2016, <https://www.csis.org/analysis/challenges-country-led-development-insights-guatemala>

³⁶ Office of the United Nations High Commissioner for Human Rights, *Guatemala: Expertos de la ONU...*, *op. cit.*

³⁷ Adeline Hite y Adriana Beltrán, «Preguntas y respuestas...», *art. cit.*

³⁸ *Ibid.*

³⁹ Philippe Ryfman and Boris Martin (eds), "Associative Freedoms at Risk: the test of strength", *Humanitarian Alternatives*, n° 20, July 2022, <https://www.alternatives-humanitaires.org/en/parution/issue-20-july-2022>

Biographies

Laurence Ouellet-Boivin • Laurence Ouellet-Boivin has a Master’s degree in Management of International Development and Humanitarian Action from the University of Laval (Quebec) and works as a gender adviser within an international cooperation organisation in Benin. She is also involved in several research projects with the *Chaire Claire-Bonenfant – Femmes, Savoirs et Sociétés* at the University of Laval. Her research interests focus principally on issues of gender inequality within organisations and the protection of human rights. Laurence has been on the board of the Quebec-Guatemala Accompaniment Project (PAQG) since 2021.

Charlotte Volet • Charlotte Volet has a Master’s degree in Transitional Justice, Human Rights and the Rule of Law from the Geneva Academy and works for a non-governmental international cooperation organisation in Quebec. Charlotte is a board member of the Quebec-Guatemala Accompaniment Project with which she has been involved since her mandate providing support for Guatemalan human rights activists in 2018.

Reproduction prohibited without the agreement of the review Humanitarian Alternatives. To quote this article:
Laurence Ouellet-Boivin and Charlotte Volet, “Shrinking democratic space for civil society in Guatemala”, *Humanitarian Alternatives*, no. 24, November 2023, pp. 82–91.

<https://www.alternatives-humanitaires.org/en/2023/11/20/shrinking-democratic-space-for-civil-society-in-guatemala/>