



Legal Advocacy in Guatemala: Recent Civil Society Successes Protecting Freedom of Associationⁱ

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For decades, civil society organizations (CSOs) in Guatemala have provided services to communities beyond the government's reach. Structural reforms to reduce the size of the State's bureaucracy in the 2000s significantly expanded the CSO sector as former government employees established not-for-profit organizations in order to compete for government contracts. However, many of these organizations had weak governance structures, which led several of the more established organizations to call for better regulation of the sector. It was hoped that a more robust legal framework could strengthen CSO governance and improve transparency and accountability within the sector.ⁱⁱ

However, in the early 2010s, civil society began confronting an increasingly repressive legal environment. It was believed that stiffer regulations were not intended to improve CSO governance, but to weaken CSOs that supported the United Nations' International Commission against Impunity in Guatemala (CICIG). The CICIG had prosecuted many former government and military officials and their allies throughout this period. Mass civic movements that began in 2015 against corruption further unnerved the government, which sought to check civil society's influence. During this time, CSOs also came under an increasing threat of [physical attacks](#) by the government and its supporters.

Bill No. 5257 was proposed in March 2017 by the governing party ostensibly to strengthening oversight over CSOs. But when its details emerged, it became apparent that the Bill could just as readily be used to control organizations promoting human rights, minority rights, good governance, and rule of law. The Bill was passed into law as Decree No. 4-2020 by Congress and was ratified by President Alejandro Giammattei in February 2020.

Prior to becoming president, Giammattei had been the Director of the Guatemalan penitentiary system, but was [prosecuted](#) by the CICIG for overseeing extrajudicial executions at Pavón Penal Farm in 2006. Ironically, he was himself incarcerated for 10 months for his role in this event. Giammattei supported the Bill and publicly highlighted elements of it that were popular with civil society. At the same time, he was careful not to draw attention to controversial elements of the Bill that would limit constitutional rights. It is suspected that he harbors negative feelings toward civil society due to its support for CICIG.ⁱⁱⁱ

The Decree has become a paradigmatic example of how earnest efforts to improve CSO governance can be highly vulnerable to government attempts to restrict association rights. Despite the administration's efforts to chip away at fundamental freedoms in Guatemala, the right of citizens to challenge the government through the courts has remained constant. This allowed civil society to compel the country's Constitutional Court to suspend the Decree until its legality can be confirmed marking a critical, albeit temporary, victory in the fight for freedom of association in Guatemala.

[Decree No. 4-2020](#)

The Decree seeks to reform the Law of Non-Governmental Organizations for Development and the Civil Code. As noted above, it includes a number of improvements in areas such as CSO registration requirements and oversight. However, it also included provisions many CSOs believe threaten fundamental freedoms.

As pointed out in a [statement](#) produced by the Washington Office on Latin American Affairs and cosigned by dozens of CSOs throughout the Americas, the Decree grants broad power to the government to shut down CSOs it considers to be a “threat” to public order; however, it fails to define what can be considered a threat. It imposes excessive controls over the registration, administration, operation, oversight, and financing of organizations. It assigns accountability for organizations to all people associated with them, rather than just the persons representing or leading an organization thereby discouraging participation in organizations in general and limiting the exercise of freedom of association. In addition, it imposes disproportionate penalties such as preventing individuals from joining an organization if they are deemed to have “use[d] donations or external financing to engage in activities that alter the public order.” Finally, it invites persecution of CSOs by the government in order to limit civil engagement, discouraging the public from holding the government accountable, particularly regarding corruption and impunity.

Challenge the Decree

Facing the threat of its imminent enforcement, CSOs coordinated a diverse set of political and legal actions to challenge the Decree. These included monitoring the legislature, engaging the public on social media, working with government officials and congresspersons, and mounting legal challenges through the courts and other administrative bodies.

Legislative Monitoring

Soon after it was proposed as Bill 5257, several members of Congress recognized that the technical quality of the Decree was of very poor quality and that it included several clauses that were at odds with the constitution.^{iv} As local and international opposition to the Decree strengthened, some members of Congress became concerned that passing it would be politically costly and could hurt their chances of reelections. Civil society gained information about the Decree and how it was being moved through Congress through some of these lawmakers, which helped them develop advocacy strategies to oppose the Decree. This included, for example, identifying procedural irregularities in the passage of the Decree that failed to meet legislative standards. A particularly egregious instance of this was the discovery that members of Congress had not been notified of when the Decree was to be voted on or what changes it had undergone since it had last been debated in Congress. These irregularities violated procedural rules, which civil society highlighted in the legal challenges they mounted in the courts.^v

Alliances

As civil society began to prepare for the Decree to be passed in January 2020, they quickly formed a series of informal and overlapping alliances. These included organizations representing a variety of important communities such as indigenous people, the LGBTIQ community, women, youth, and others. Influential individuals and political actors also engaged with these alliances, which developed in a variety of ways. Some organizations, such as Pacto Ciudadano, Alianza por las Reformas and indigenous peoples’ organizations, had existing alliances due to their involvement in the movements of 2015. Others formed or joined alliances organically as opportunities presented themselves.

CSO alliances allowed organizations to share information and [analysis](#) on the Decree and coordinate advocacy efforts. For example, soon after the Decree was passed, civil society convened a meeting in which they analyzed negative and positive aspects of the Decree and discussed actions they could take individually and collectively against the Decree. Transparency International chapters in Latin America issued an [open letter](#) to President Giammattei asking him to veto the Decree. The letter, which was signed by 71 organizations from Guatemala and other countries, pointed out how the Decree limited basic freedoms including of the freedoms of assembly, association, and peaceful demonstration.

Support from the Media

Guatemalan media outlets have paid particularly close attention to increasing restrictions on freedoms since 2017, when Congress began discussing legislation to limit human rights and anti-corruption efforts. When the Decree was introduced, print, TV, radio, and online media highlighted the threat it posed to civil society, human rights defenders, and democracy and called on political leaders to oppose it. Some outlets published op-eds and editorials that were critical of the Decree or hosted [talk shows](#) with civil society representatives to allow them to share their concerns with the Decree with the public. The media also monitored and reported extensively on Congressional processes surrounding the Decree throughout this period. Although civil society did not coordinate extensively with the media, civil society recognizes the role the media played in opposing the Decree and how stronger engagement with the media could be important for defending rights in the future.

International support

Civil society also coordinated loosely with international bodies in opposing the Decree. For example, the Open Government Partnership (OGP) expressed [concern](#) about the negative impact the Decree would have on freedom of association, assembly, and expression throughout the country. OGP pointed out how the Decree violated its principles, which Guatemala had agreed to uphold as an OGP member. Three United Nations Special Rapporteurs (UNSRs) on human rights released a [statement](#) pointing out how the Decree failed to live up to international norms protecting fundamental freedoms. Additionally, the Inter-American Commission on Human Rights condemned the Decree for being inconsistent with the freedoms of expression and association in a [report](#) on the human rights situation in Guatemala and on [social media](#).^{vi}

Other expressions of concern came from the U.S. government, including the U.S. Congress's Central America Caucus; the U.S. House of Representatives Subcommittee on the Western Hemisphere, Civilian Security, and Trade; and the U.S. House of Representatives Committee on Foreign Affairs. The later issued an [open letter](#) to President Giammattei comparing the Decree to similar laws in the authoritarian states of Russia and Venezuela and urging him to veto it. Pressure from the U.S. Ambassador to Guatemala to reject the Decree drew a public [response](#) from President Giammattei but failed to convince the President to veto it.

Legal advocacy

As alliances were established, civil society began considering legal actions it would take if the Decree was signed into law by the President. Two legal strategies that seemed potentially useful were writs of Amparo and petitions of unconstitutionality.

Writ of Amparo

Throughout Latin America, a [writ of Amparo](#) can be submitted to a court on behalf of someone whose rights are threatened or violated by an unlawful act. Importantly, writs of Amparo can be lodged before a violation has occurred; in this case, before the Decree took effect. In the words of Juan Castro, a Guatemalan lawyer who represents the Social and Popular Assembly which is an umbrella organization for Mayan and farmers communities: “[The writ of amparo] is an important tool for dialog, because it allows us to engage the Constitutional Court immediately, before we are able to engage the government and Congress.”

A petition of unconstitutionality, on the other hand, cannot be levied until a right has been violated; or in this case, until the Decree had come into force. In the Guatemalan context, petitions of unconstitutionality require highly technical and lengthy processes. Guatemalan civil society, therefore, favored the use of writs of Amparo in this case, as it is an easier legal procedure and because it could preempt implementation of the Decree.

Separate writs of Amparo can be submitted by different individuals and/or interests in response to a single rights violation. As such, they can highlight different concerns regarding a violation from different perspectives. Several writs of Amparo challenging a violation are then examined by a court as a package resulting in a single legal judgment. Due to its scope and severity, [eight writs of Amparo](#) were submitted challenging the Decree. While the writs of Amparo highlighted different issues, civil society closely coordinated to avoid contradicting each other in their writs of Amparo in order to support a single legal precedent that would be favorable to the sector. The legitimacy of their writs of Amparo was strengthened as Congressional Representatives spoke publicly against the Decree also and/or endorsed civil society's writs of [Amparo](#) or submitted their own.

An important element of the writ of Amparo process is public hearings, during which all parties involved in a legal proceeding present their positions to a court. During a public hearing on July 23, 2020, civil society challenged the Decree by citing legal and social arguments made in their writs of Amparo, which compared the Decree to previous laws regulating civil society demonstrating how the Decree represented a step in the wrong direction for civic freedoms in Guatemala. This process helped civil society demonstrate the negative impact the Decree would have on the various communities they serve, thereby increasing public opposition to the Decree.

Amicus Curiae

Amicus curiae, or “friend of the Court,” has been another important tool for civil society in seeking legal redress in Guatemala, particularly for human rights violations. As opposed to the writ of Amparo, which is a legal challenge, amicus curiae provides a third-party perspective to the courts on a case which includes analyses and arguments intended to support deliberations and inform judgments.

[Amici curiae](#) against Decree No. 4-2020 were submitted by both national and international organizations, including Family and Friends Against Crime and Kidnapping Organization (FADS by its initials in Spanish) and Central American Institute for the Study of Social Democracy (DEMOS) with the support of Vance Center; the Association of Journalists of Guatemala represented by Ramón Cadena and Miguel Ángel Albizures; and Transparency International Chapters in Latin America.

Both civil society and the international community supported legal arguments against the Decree in their amici curiae by referencing Guatemalan law and international norms such as the Universal Declaration of

Human Rights, the International Covenant on Civil and Political Rights, the American Convention on Human Rights, the Declaration on Human Rights Defenders, among others. For example, Clément Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association, submitted an [amicus curiae](#) which listed ways the Decree failed to live up to the international standards protected by his mandate.

Conclusion

As a result of actions taken by civil society, the Constitutional Court “[granted](#)” the writs of Amparo, thereby stopping the Decree from coming into force. To achieve this outcome, civil society developed alliances, took legal action, and appealed to the public. While a final ruling is pending, several lessons have been learned.

The right of citizens and persons to challenge their government in an impartial Constitutional Court is of critical importance. Throughout this process, Guatemalan civil society remained hopeful Decree 4-2020 would be overturned by the current court, because it was not beholden to the current administration. However, if the next set of magistrates appointed to the court in 2021 are less independently minded, it may pose a new threat to civil society and fundamental freedoms in Guatemala.^{vii}

It was essential for civil society to provide high quality legal analysis and arguments to the Constitutional Court in their writs of Amparo and amici curiae and during the public hearing. Although civil society developed productive partnerships with some in the government – legislators in particular – legal action could have been optimized through greater coordination with sympathetic public sector counterparts.

While success has been achieved for now, some in civil society believe that advocacy against the Decree was too reactive. In this case, civil society largely waited until the Decree had been passed into law before challenging it. In hindsight, advocacy against the Decree should have begun once the Ninth Legislature was elected in July 2019.

It is also believed that outreach to the media could be stronger in the future. For example, messages conveyed to the public through the media could have avoided being overly legalistic or technical in nature. Civil society could also help the media connect with grassroots organizations and better articulate how the government restricts freedoms in ways that resonates with people’s day-to-day concerns.

Lastly, in the case of Decree 4-2020, tension between the executive branch and the Constitutional Court became publicly apparent. Given the individual personalities involved in this case, civil society’s approach to engaging with these branches of government may have resulted in better long-term outcomes if civil society were able to help these branches of government avoid conflict with each other to the greatest extent possible.

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ⁱⁱ ICEFI (2015). Política Fiscal: expresión del poder de las élites centroamericanas. Guatemala, F&G Editores, in Spanish. Available online at <http://www.icefi.org/publicaciones/politica-fiscal-expresion-del-poder-de-las-elites-centroamericanas>.

ⁱⁱⁱ Additionally, Giammattei has attacked Guatemala’s Ombudsman, and made homophobic and racist comments in front of the press.

^{iv} In addition to restricting the constitutionally protected right to freedom of association, the Bill contradicted elements of the Budget Organic Law, Congress Decree No. 101-97 including reforms made by Congress Decree No. 13-2013; the State Procurement Law, Congress Decree No. 57-92 including reforms made by Congress Decree No. 9-2015; and the Organic Law of the General Comptroller Office, Congress Decree No. 31 -2002 including reforms made by Congress Decree No. 13-2013.

^v “Procedural rule” refers to Ley Orgánica del Organismo Legislativo, which establishes requisit processes for introducing and passing laws in Congress including the manner in which each member of must be notified of changes introduced in a bill and when it is scheduled for debate.

^{vi} They included Mr. Clément Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association; Mr. David Kaye, Special Rapporteur (UNSR) on the promotion and protection of the right to freedom of opinion and expression; Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders.

^{vii} Guatemala’s executive branch, legislative branch, judicial branch, Universidad de San Carlos de Guatemala (the only public university in the country); and Bar Association each appoint one member and one alternate member to the Constitutional Court.