

Guatemala: Restrictions on high-risk exercise of journalism

Executive summary

The Guatemalan government persists in toughening its regressive stance on Human Rights and in its tense relationship with the press, a situation that has worsened in the context of the COVID-19 pandemic. The restrictions on the practice of journalism that both the Executive and the Legislative have put in place make work difficult, further encouraging opacity and contributing to weakening citizens' monitoring activity, as they are prevented from accessing relevant information on problems experienced by them. The lack of a protection plan for professional journalists makes them highly vulnerable.

Introduction

The period under analysis comprises the last year of President Jimmy Morales's government of and the first months of current President Alejandro Giammattei Falla's administration, inaugurated on January 14, 2020. The balance of Morales's term (2016-2020) is negative regarding most social indicators in the country, as well as the weakening of institutions' approach on Human Rights.

The deterioration of the democratic system began in 2014, but became more acute from 2016 onwards, as can be drawn from the 25 draft bills introduced to the Legislature with clearly regressive Human Rights elements (UDEFEQUA, 2018). Another compelling proof of this setback was the way in which the Executive, in disregard of due process, denounced the treaty between Guatemala and the United Nations, in force since 2006, which provided for the operation of the International Commission against Impunity (Comisión Internacional contra la Impunidad en Guatemala, CICIG), ceasing its activities as of September 2019.

President Morales's relationship with journalists and the media was characterized by his intolerance towards the monitoring of the press and by constant siege through smear and defamation campaigns against journalists and newsmen, Human Rights defenders, and members of civil society. The electoral season worsened the situation because freedom of expression was further compromised.

In addition to the climate of constant siege by the Executive against the press, the Supreme Electoral Court (Tribunal Supremo Electoral) attempted to set a series of restrictive rules for media coverage of campaigns for public office, as well as the ban on cell phone use by voting poll staff. Both measures were subsequently reported and overturned.

In addition, attacks on the press increased. According to the Association of Journalists of Guatemala (Asociación de Periodistas de Guatemala, 2019) records, there were 39 instances of violations of freedom of expression during the electoral process. As for violence against its members, there is a clear thread of continuity between one term of government and the other since, although in the early days of Giammattei's government pressure and campaigns against the press decreased, the situation became complicated again, once executive orders regarding special health measures to address the COVID-19 pandemic were issued. In the first four months of the year 2020, the Journalists' Observatory of the Association of Journalists of Guatemala ([Asociación de Periodistas de Guatemala] APG, 2020) documented 28 cases of aggressions. In the first four months of the year 2020, the Journalists' Observatory of the Association of Journalists of Guatemala ([Asociación de Periodistas de Guatemala] APG, 2020) documented 28 cases of aggressions.

Another thread of continuity is the trend towards the erosion of institutions and the increase in violations of constitutional rights and guarantees, which has persisted after the current government officials took office.

Report

Guatemala ranks 15th out of 22 countries, with 46 out of 100 points in the Freedom of Expression Index, and is rated as a country with partial restrictions on this right. Of the four realms assessed, three of them place the country as one with low restrictions (regarding informed citizens free to express themselves, exercise of journalism, as well as control over the media). However, the Index drops abruptly in the realm of violence against journalists because the situation is dire in this regard.

The Executive restricts freedom of expression

Early on in his term, President Alejandro Giammattei had an altercation with journalist Marvin del Cid. Such was the first incident marking the relationship that he intends to build with the press. On January 20, 2019, he questioned the journalist's work for "conducting a series of investigations based on I don't know what and we ourselves consider that you are stepping out of line...I wish I knew who is telling you to inquire on us that way" (Artículo 19, 2020). The journalist had conducted research that brought to light non-transparent acts of Giammattei's election campaign.

At the inception of the pandemic, on March 14, 2020, the president publicly stated that, if the orders issued were not complied with, censorship on contents released by the media would be applied. The reason for this – he stated – would be that "the Law on Public Order (Ley de Orden Público) says that, during any of the states of emergency, news organizations are in the duty to edit publications that could cause confusion or panic, or worsen the situation, as well as biased remarks regarding current circumstances (...) censorship could be imposed on such entities. We don't

want to reach that point; I appeal to the media and the citizens to hear what the government is saying" (Denuncia Pública, 12 de abril de 2020).

The following days, on two occasions, the president made disparaging remarks on the journalists' endeavor. In one instance, while leaving the Congress of the Republic (Congreso de la República) [Legislative], he sprayed the journalists stationed there with a liquid as he said, "This is journalist repellent" (Natareno, 2020). Next, alluding to a lockdown ordered in one of the municipalities of the country, he stated, "I would like to put the media in quarantine but I cannot" (Trejo, 2020).

This relationship of affront, undermining, and persecution against journalists, especially those who probe cases in connection with the Executive and its inner circle, was rated at 8.93, that is to say, a high influence from negative institutional actions. The same happened with respect to the restrictions on journalists' work between March and April 2020 from these two succeeding presidents of the nation and those in charge of institutional communications at several government agencies who, under the guise of the pandemic, have delayed releasing information. This constitutes a clear restriction on the right of citizens to be informed and, regarding the press, a hurdle to the fulfillment of its duty. The weighting of the impact of the Executive in these realms achieved 8.32, for rating this string of discouraging institutional actions affecting information flow, and 7.75 as a negative or detrimental influence on freedom of expression.

At the municipal level, according to the APG (2020) the situation is not any better, since there are instances of censorship, restrictions, or delays in the release of information to the press on orders from mayors and municipal offices.

Legislative environment, with the dead weight of "the covenant of the corrupt"

As for the Congress of the Republic, a unicameral legislative body, the 160 congresspersons of this new legislature took office on January 14, 2020, for the 2020-2024 term. This branch of government was very much questioned during the previous term (2016-2020) for aligning its interests with what in the country has dubbed "the covenant of the corrupt", that is, a ring of politicians, officials, and businessmen that surfaced in September 2017. From high places, they wield their influence to retain impunity and privileges.

The rating on this issue was unfavorable, achieving a strong influence in detriment of free expression (7.67) and in the assessment on situations regarding persecution (8.10). The reasons for this rating are, on the one hand, a series of restrictions on access to information imposed since 2019 and still effective in 2020 as part of the special safety measures in the wake of the pandemic, and, on the other, being part of a structure that prosecutes journalists for doing their job.

It should also be clarified that, despite the lack of overt actions from the Legislative to use the media structure in order to further its political views or its public

image to the detriment of plurality, its failure to pass legislation encouraging a more diverse media landscape, in a country with a high concentration of them in a few hands, should be understood as a lack of political will to democratize the media ecosystem.

The same situation occurs regarding the Internet service, since the country lacks a regulatory framework to govern its operation, infrastructure, and innovation capabilities. Service vendors are subjected to few controls and are able to operate in a market economy framework with little or no regulation. The need to reform the General Telecommunications Act (Ley General de Telecomunicaciones) or to promote discussions on a digital agenda has been proposed, but to date none of this has come to fruition.

The Judiciary: Slowness and lack of understanding of crimes against freedom of expression

The outlook of the Judiciary in this country is extremely complex. Among the reasons for this, the process for appointing justices to the Supreme Court of Justice (Corte Suprema de Justicia) and judges to Courts of Appeals y (Cortes de Apelaciones), which the Congress of the Republic should have conducted in 2019, is swamped in a host of procedural irregularities, as denounced by the Office of the Special Prosecutor against Impunity (Fiscalía Especial contra la Impunidad), as well as in power struggles among judicial bodies. Due to this situation, the Constitutional Court (Corte de Constitucionalidad) suspended the appointment process and, to date, it remains unconcluded.

In this context, the judicial environment was the one that achieved lowest impact in all the realms: Informed citizens (4, 69, that is, moderate influence in situations discouraging free speech); measures to promote the exercise of journalism (1.90), primarily because the Constitutional Court supported the Human Rights Ombudsman (Procurador de Derechos Humanos) when he confronted Congress for attempting at preventing journalists from accessing their sources; it was also perceived to exert a moderate influence on violence and impunity (4.66). Notwithstanding, in the sub-realm impunity, the score showed a strong negative influence (6.67), since proceedings for journalists seeking justice are extremely slow, and because, despite efforts by international organizations and the civil society to raise awareness of the importance of harsher penalties for crimes committed against freedom of expression, this has not been accomplished in the country.

The most prominent landmark case in this regard is that of community journalist Oswaldo Ical Jom, who was kidnapped and tortured in 2014 and is still waiting for justice to be served after six years. On August 29 that year, while covering a case, he was kidnapped and dragged away by locals who locked him up in a school, threatened him, beat him, and took away his work equipment. The individuals who assaulted him were local officials at the time. They were brought to trial and, after

two years and eight months, these assailants, the brothers Antonio and Diego Itzep López, were found guilty for unlawful imprisonment and threats, thereby being sentenced to a four years' term commutable to the sum¹ of Q7,300 each (less than US\$1,000), or Q5 a day (US\$0.65) . After payment thereof, they were released. Resulting from that verdict, the Attorney General's Office (Fiscalía / Ministerio Público, MP) was bound to continue the probe, which it has actually done. The case is ready to be filed again with a relevant court. However, in order for the process to move forward, Attorney General María Consuelo Porras has to sign a document allowing her to declare extended jurisdiction and take the case to a Major Felony Court (Tribunal de Mayor Riesgo). The document has been in the Attorney General's office for two years, and not proceeded upon.

Realm A: Informed citizens?

Guatemalan citizens, who played a prominent role during the crisis of legitimacy of the political system unleashed in 2015, have seen their monitoring and whistleblowing role diminished due to the onslaught of harassment and prosecution actions on the part of members of "the covenant of the corrupt" against rights defenders. However, the rating for citizens' access to information was 14.6 out of 23 points.

While it is true that the experts surveyed gave a positive assessment to this realm, it is important to stress that, in the country, there is a high concentration of media ownership since most outlets belong to one or two leading business conglomerates. In this regard, citizens get news from several outlets; but the media agenda reflects the same political / philosophical views, that is, certain information is restricted or placed within the conceptual constraints of the political, economic, and journalistic elites.

This situation, added to government pressure to control what is published, on the argument of the need to suppress contents in order to avoid spreading panic, significantly restricts the information received by the society. Furthermore, there are attempts at prosecuting or censoring dissident thought, such as what happened on April 1 in a television station where the president of the republic said, during an interview, that seven people "inciting sedition" on social media had been identified and would be reported to the MP, proceedings that were never conducted.

Another important aspect to bear in mind is the way in which access to public information has been restricted during the pandemic. First, no press conferences are held anymore. Instead, presidential addresses are released in pre-recorded formats, thereby preventing journalists from looking more deeply for required information. Secondly, the whistle has been blown several times on delays in the release of public information by government agencies. This led the Human Rights Ombudsman to issue a statement, on April 10, 2020, urging institutions to comply with the deadlines

¹ Translator's Note (TN): Q = Quetzal, the currency of Guatemala (ISO: GTQ).

set forth in the Law on Access to Public Information (Ley de Acceso a la Información Pública) (Vásquez, 2020). Finally, the information released to the media is insufficient. Since April 11, 2020, the president announced, in one of his pre-recorded addresses, that only the sex and age of people testing positive for coronavirus would thereafter be disclosed, thus omitting the release of other relevant data.

Therefore, although it is true that there is no explicit regulation banning free information flow, there are filters in place regarding content, approach, and access to public information.

Realm B: Restrictions on the practice of journalism

The rating in this realm was 6.2 out of 10 points possible. Albeit not discouraging, it is noteworthy that attempts have been made to restrict journalists' ability to access information, especially on those who report news unpleasant to the president or his ministers.

Upon the inception of the health crisis, there has been constant restriction on access to information for journalists and the media, except for reporters and newsmen in government chat groups. Most frequently, it has been communications staff at the Ministry of Public Health and Social Action (Ministerio de Salud Pública y Acción Social) the ones involved in these practices or in belated release of information. Government officials have managed to gather data in all things the health crisis, yet in a slow, opaque, and non-transparent manner.

Likewise, the above Ministry issued a statement announcing that two journalists from media outlet *Vox Populi* would be criminally charged with defamation and psychological violence for publishing news on the irregular appointment of its communications officer, Ana Lucía Gudiel Zacarías. In other words, they would be filed a complaint for doing their job.

Threats, insults, and persecution against journalists have been the response from the president to those who publish information calling into question the measures taken by the Executive.

On April 2, 2020, the Legislative denied journalists entry into the press box, claiming to act in compliance with safety measures in the wake of the pandemic. However, this spurred suspicion among journalists and activists that the ban was ordered precisely when the approval of a loan worth millions earmarked for fighting COVID-19 – but that would also divert funds to the private sector – was slated for discussion.

The Human Rights Ombudsman brought an action against the Legislative because he considered that the right to freedom of information had been breached. Consequently, the Constitutional Court, the highest court in the land, found for the

Ombudsman in a temporary injunction whereby Congress was ordered to guarantee access of the press to information sources.

Realm C: Continuum of violence and impunity against journalists

This is the realm rated the lowest out of the four, 8.4 points out of 42. The low score is understandable because, in total, during 2019, the Protection Unit for Human Rights Defenders of Guatemala (Unidad de Protección a Defensores y Defensoras de Derechos Humanos de Guatemala, UDEFEGUA) reported 104 aggressions against journalists and newsmen, significantly more than the 26 on record in 2018. During the first four months of 2020, the APG (2020) totaled 28 cases of some kind of crime against them (ten instances of obstruction of sources, six of physical or material aggression, three of threats, three of intimidation, two murders, one instance of harassment, another of verbal assault, one of cyberattack, and one more of slander). From 2015 to date, the Attorney General's Office has totaled 392 cases of crimes against journalists.

One of the landmark cases, due to its recurrence, occurred on February 29 to Oscar Quintana, a correspondent for a print media company residing in the Department of Santa Rosa who was subjected to physical violence and threats by 4th Councilman of Taxisco Selvin Hernández López. The reporter had previously received threats from municipal officials. This was the second time he was subjected to this type of violence since he had previously experienced a similar situation in 2018. For this reason, he has been assigned personal security detail.

Another case worthy of special attention is the raid on and theft of material and work supplies against community journalist Carlos Ernesto Choc Chub on April 18, 2020. His is a landmark case because, in 2017, he was prosecuted along with others for his work in defense of natural resources in the area where he lives. Currently, the sentence against him for environmental research and Human Rights journalism activities has been commuted.

In addition, the murder of presenter Irma Chinchilla occurred on February 6, 2020 in the municipality of Salamá, Baja Verapaz, in the North of the country. In December 2019, she denounced that she had been the victim of a smear campaign on social media, apparently for personal reasons. Later, journalist Bryan Leonel Guerra Chegüen was the target of an attack that took his life, on February 27, 2020, in Chiquimula. The newsman had received death threats, which were reported to the local police and the Office of the Attorney General. However, he received no support or protection.

The category that measures protection was the poorest performing of the three that make up this realm (0.80 out of 10 points), since all these situations experienced by journalists occur in a context of total lack of protection by the Guatemalan State. This contradicts the commitment made by Guatemala as of 2012, in the framework of the Universal Periodic Review in Geneva, to creating a journalist protection

program. To date, this has not come to fruition. After three presidential terms without progress, on 5 March 2020, Alejandro Giammattei called the leading press associations to follow up on this process. However, nothing that had been discussed has come to pass by the end of the review period of this report. In other words, almost eight years later, Guatemala is still in failure to fulfill its commitment to protect journalism.

It is also important to note the high degree of impunity in cases of crimes against journalists, hence the rating of 4.4 out of 17 points achieved in this category. Trials linger for years, during which time reporters must continue to exercise their profession under conditions of high vulnerability. Just to cite two cases, journalists Carlos Ventura and Byron Bravo, from Quetzaltenango, have waited five years since they were assaulted by people opposing a seizure of smuggled products. Their case has not advanced within the justice system. Similarly, Oswaldo Ical Jom, from Quiché, who was illegally detained, in addition to being tortured and threatened, for several hours on October 12, 2014, has waited six years for the justice system to acknowledge the crimes and prosecute the perpetrators.

Realm D: Freedom of the press and little control over the media

This category achieved the highest rating, since there is little proof of direct (12 out of 16 points) and indirect controls (4.8 out of 9 points) over the media. Instead, what was noticed was the lack of institutional or regulatory frameworks suitable both for the operation of community radio stations and for preventing the persistence of a media monopoly in the country.

The lack of legal recognition of community radio stations leaves loopholes undermining their operation. In 2012, Guatemala's Constitutional Court urged to establish institutions to this end; but no progress has been made.

In turn, more recently in 2017, the Office of the Special Rapporteur for Freedom of Expression (OSRFE) reaffirmed, in its report on this country, the need to discuss once again the criteria for allocating permission for radio frequencies in Guatemala, as well as reconfiguring the spectrum and the allocation of frequencies, and thereby breaking the existing media monopoly. There has been no progress in this regard either.

Specific proposals to encourage the establishment of public media are scarce, since there are no such media in the country.

Finally, a problem that is affecting the media in a particular way is the financial crisis that they are facing due to the spreading use of the Internet. This has caused massive layoffs among several media outlets in the capital city and has become a more complex situation during the COVID-19 pandemic. In this sense, the country's government has not made any proposals yet.

Conclusions

Although it is true that the attacks against journalists and media have not been as overt as during the government of Jimmy Morales, the relationship of President Giammattei with them remains tense and almost non-collaborative. Regarding this issue and that of erosion on democracy, there is a thread of continuity between both governments.

The Constitutional Court and the Human Rights Ombudsman have stood up for the rights of access to public information and freedom of expression in the country. However, an authoritarian approach putting these rights in jeopardy on the part of the Executive continues to intensify. Detrimental practices of public officials regarding restrictions on access to information are only one of these authoritarian features.

Political will and a more proactive attitude are necessary on the part of the government towards compliance with these rights and debate around the media ecosystem, as well as around pluralizing and diversifying its agenda.

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