

GUATEMALA

HIGH RESTRICTION IN TRANSITION YEAR

Executive Summary

The change of government that took place in Guatemala on January 15, 2024 did not result in better conditions for journalism and the media in the short term. The country ranked in the highly restrictive range in the Chapultepec Index, with 33.98 points. Freedom of Expression is still not fully guaranteed, due to the instrumentalization of the justice system operated by the Public Prosecutor's Office (MP) which endorses impunity and continues to criminalize journalism. The severe decline of the guarantees of freedom of expression and the press has left profound consequences, such as the omission of some issues on the agenda, silencing, censorship and self-censorship on behalf of journalists, and the fear of speaking out openly among citizens. The new government faces severe challenges to guarantee freedom of expression and the press in Guatemala.

Introduction

In 2023, Guatemala went through an electoral process. The first round was held on June 25 and the second on August 20. During the whole period and until the inauguration of the new administration on January 15, 2024, the national situation was marked by an increase in acts of intimidation, detentions and repression against those who had a critical position on the prevailing corruption in the three branches of government. Within said period, there were also attempts by the unlawful political and economic networks entrenched in the government to invalidate the electoral results. Under such context, the European Union's Election Observation Mission (EOM), in its final report, described the 2023 general elections as “the most questioned and tense in 38 years of democratic governments” (p.14).

The exclusion of candidacies by the Supreme Electoral Tribunal, especially those that were preferred by the electorate, like the case of the Movement for the Liberation of the Peoples (Movimiento para la Liberación de los Pueblos, MPL) made up by Jordán Rodas and Thelma Cabrera, the only indigenous woman candidate running for office, and he, former Human Rights Ombudsman. Other events that stand out are: The legal actions taken against the electoral process, the extensive corruption in all public institutions, the restrictions to freedom of speech and the press, and the silencing of the citizenry on public issues deliberations, have further weakened the rule of law that was already in decline by years of the demolishing of the democratic institutionalism. In fact, the 2023 Democracy Index placed the country as a hybrid democracy (4.47 points), that is, with suffrage, but with high controls over the opposition, weak institutionalism, little or no independence of powers, and a continuous siege and censorship over the media (EIU, 2024).

Finally, after a long period of legal uncertainty, on January 15, 2024, Bernardo Arévalo and Karin Herrera managed to take office under a highly tense climate.

In respect to freedom of expression and the press, some severe restrictions were recorded. There was an increase in the persecution of journalists -especially after the second round of elections-, on the access to sources, obstruction of work, acts of intimidation, and different

forms of violence against journalists and the media. The most disheartening data on violence against journalists was the murder of four reporters: Edin Alonso and Hugo Gutiérrez murdered in Retalhuleu on August 11, 2023; César Augusto Leiva Pimentel, in the department of Jutiapa; and Gleymer Renan Villeda, in the department of Izabal, both occurred on December 21, 2023.

The annual report of the United Nations High Commissioner for Human Rights (UNHCHR) underscored that there was an increase of 73.68% in the number of cases of attacks on journalists and the media compared to 2022, and underlined that most of them happened during the coverage of the electoral process (2023, párr. 89).

For all of the above reasons, Guatemala stays, for the third consecutive year, in the category of countries with high restriction to freedom of expression. In 2023-2024 it ranked 17 out of 22 countries, with 33.98 out of 100 points, considerably lower than the global regional average (48.18). The country's results rose two places with respect to the previous period and, although this is encouraging, there are still many challenges to guarantee freedom of expression.

To explain this ranking, it is important to divide the analysis into two periods. On the one hand, the most critical period, between August 2023 and January 15, 2024, in which there was a sustained and systematic violence against journalists, the press, and critical citizens by the three branches of government. As it happened in the last three electoral periods (2011, 2015 and 2019) the trend of increased violence against journalists during electoral campaigns was no exception in 2023, with the exception that, in the current case, the players interested in silencing information were the economic and organized crime networks linked -according to public opinion- to the candidacies as a strategy to remain in power.

During the second period, from January 15 to August 1, 2024, the situation changed, but not radically. President Bernardo Arévalo has stated on different occasions that freedom of expression, access to information, and accountability, are pillars that support his government (SIP, January 26, 2024).

Another sign of attitude change towards the press is the reactivation of the Analysis Instance for the Protection of Human Rights Advocates (Instancia de Análisis para la Protección de Defensoras y Defensores de los Derechos Humanos), an instance that the Ministry of Interior proposed to guarantee the security of those who advocate for people's rights. One of the instance's priority subjects will be journalists. (Ministry of the Interior, May 3, 2024).

Although it is no longer from the Executive Branch that criminalization campaigns are orchestrated, harassment by the Public Prosecutor's Office -connived with the Judiciary- and local authorities, remains and continues to encumber the journalistic labor. Work conditions continue to be highly risky, especially for those who work at departmental or community levels.

Favorable changes in the Executive, yet insufficient,

Keeping continuity and locating breaches is important to more clearly understand the results of the index during this period. The Executive Branch was not the worst rated of the three branches of government because, as previously mentioned, there was an evident difference between the Giammattei and Arévalo administrations.

The former finished his administration with one of the highest number of aggressions on journalists registered in a government (more than 400 aggressions, according to the Association of Journalists of Guatemala).

According to the Program for the Protection of Journalists, Self-Care and Freedom of Expression (Programa de Protección a Periodistas, Autocuidado y Libertad de Expresión) of the News Agency *km169*, the Executive Branch was the fourth most denounced transgressor for violent actions against journalists perceived as “constant” during 2023. Among the most reported perpetrators from this branch of government are: The former president of the country, Alejandro Giammattei, the Presidential Commission for Peace and Human Rights (Comisión Presidencial por la Paz y los Derechos Humanos) (paradoxically, created to defend rights, not to violate them), the National Civil Police, some ministries and the Attorney General's Office (Ramón and Ovalle, September 29, 2023).

Meanwhile, one of the first actions of President Arévalo de León was to defend the right to freedom of expression as a pillar for democracy, as he stressed that his government would not allow abuses against the exercise of journalism. An evident development has been the end of aggressions and criminalization campaigns against the press and journalism. The intentions of the Executive went from wanting to suppress social auditing, public criticism and journalistic investigations that exposed corruption, nepotism and the payment of political favors; to one that prioritizes transparency as well as an open government. Likewise, society in Guatemala transitioned from the seclusion of civic space to a government that has emphasized on the importance of an informed citizenry that can influence public decision making.

Due to this transition from obstruction to the openness of civic space, the measurement went from 6.55 (strong influence) in the 2022-2023 period to 4.94 (moderate influence) in 2023-2024; likewise, due to the end of the criminalization and violence against journalists and the media, the index dropped from 6.20 (strong influence) in the previous period to 3.50 (moderate) in the current period.

In spite of the fact that the new government has only recently been installed, it should be noted that there still have been some actions by the Executive Branch that limit journalism.

On at least two occasions the free exercise of the press has been obstructed: One, in the Alta Verapaz department, and the other in the Quetzaltenango department. In the latter, on May 24 there was an incident that prevented journalists from covering the visit of the President of the Republic to that area. At least ten media (Genesis News, La Voz de Xela, TVO Guatemala, SS de Almolonga, Emisoras Unidas, Azteca Guate, Actualidad TV, La Prensa de Occidente, Región + and Nuestra Imagen TV) were subject to such restriction to the free exercise of their work when they were locked in by personnel of the Secretariat of Administrative Affairs and Security of the President's Office (Secretaría de Asuntos Administrativos y de Seguridad de la Presidencia de la República, SAAS). The reporters were prevented from approaching the president under the argument that the actions had been implemented for the protection of the president. SAAS subsequently presented apologies and the Association of Journalists of Guatemala expressed “its deep concern about the interference to the informative duties of the press ... and therefore demands for guarantees for the free exercise of journalism in the country” (Pérez Marroquín, May 25, 2024).

Also, on July 18, 2024, SAAS announced the creation of a protocol for journalists and social communicators to access press events (Vega, July 18, 2024). Among others, this action implied the need for reporters to obtain a credential to access the National Palace to do their work. This measure was strongly criticized by several sectors, among them, the Association of Journalists of Guatemala, for perceiving the measure as a “threat to freedom of the press” and “a violation of Article 35 of the Political Constitution of the Republic” (APG, July 30, 2024). SAAS cancelled the measure a few days later.

In both cases, although the measure was revoked, the facts are interpreted as warning signs that should be taken into account.

Legislative Branch

The Legislative Environment was rated with a minor influence (2.30). Of the three branches of government, it was the one with the least negative ratings in relation to its impact on situations unfavorable to freedom of expression and the press. It dropped more than two points with respect to the previous measurement. In the realm Informed Citizenship and Freedom of Expression, it showed the most unfavorable influence in this Environment with 3.28 (moderate), while in Control over Media and Journalism displayed the lowest influence with less than one point (0.83).

In 2023, the Congress of Guatemala continued with the regressive agenda, and in complicity with the Executive Branch and the Public Prosecutor's Office, made decisions unfavorable to citizens' rights. For instance, on several occasions, Public Prosecutor's Office granted pre-trial processes to allow the prosecution of public officials; it also endorsed the lifting of the immunity of magistrates of the Supreme Electoral Tribunal on November 30, 2023.

It also failed to guarantee the digital safety of journalists and human rights advocates. Despite the fact that many of them had reported been victims of aggressions and intimidations in social media coming from government officials or people hired by them for that purpose, and that violence -facilitated by the spread of technology- grew during the electoral process. Neither the Executive Branch acted to protect the victims, nor the Legislative Branch promoted the legal framework to counteract this risk. In this respect, in its final report, the EOM (2023) urged the legislative authorities to “approve a data protection law that sets the principles, definitions, rights and obligations of those responsible for the handling of personal data - including electoral authorities who handle data of electoral nature- and also to establish a monitoring authority to ensure its application with a view to firmly protect the rights of citizens to privacy, both online and offline” (p. 25).

The Legislative Branch is also in debt with community radio stations that -for years- have been awaiting the approval of the bill 4087 “Community Media Law” (Ley de Medios de Comunicación Comunitaria) that accounts for the allocation of airwaves by means of public and open bidding instead auctioning, as it is currently done according to the General Telecommunications Law (Ley General de Telecomunicaciones). Another pending issue that has shown no legal progress is the democratization of the media ecosystem.

Despite these delays, positive changes were also perceived. On January 14, 2024, the day the new president of Congress, Nery Ramos y Ramos, took office, he reiterated his commitment to respect freedom of the press and announced the beginning of an open-door policy for journalism which took the form of regular press conferences in the premises of the parliament. Moreover, this principle was once again reiterated on May 3, at the commemoration of World Press Freedom Day, (Congress of the Republic, May 3, 2024).

Judicial Branch and Public Prosecutor's Office

Although, it was argued that criminalization began during the 2022 - 2023 period with the Executive Branch as the intellectual author and the Public Prosecutor's Office (MP) acted as the executing arm of the “judicial terrorism” policies, for the 2023 and 2024 period this situation worsened. The actions of the MP Attorney General, Consuelo Porras, and the head of the Special Prosecutor's Office against Impunity (Fiscalía Especial Contra la Impunidad, FECl), Rafael Curruchiche, were intended to muzzle the press in Guatemala and to impede the citizen's right to freedom of expression and assembly.

Due to the above violation of rights, in the realm of Free and Informed Citizenship, the Judicial Branch was rated with a strong influence range (6.17), while the Violence and Impunity against Journalists and Media is bordering the fringes between strong and moderate influence (4.94).

After the second round of elections, the many attempts by the MP to invalidate the results of the electoral process went along with actions against the *Semilla* party and the organized civil society. Faced with the political crisis incited by this institution, on December 11, 2023, the Inter-American Commission on Human Rights adopted Resolution No. 03/2023 “Human Rights, the Instrumentalization of the Justice System and the Serious Risks to the Rule of Law in Guatemala” in which it warned about the instrumentalization of the justice system and criminal law, as well as the undue and arbitrary use of power by the MP.

One of these inappropriate uses of power was precisely against journalists who were prosecuted by means of the Law against organized crime -which was created to criminally prosecute other individuals – but was used against journalists while also assuming the media as “criminal organizations”. In line with this and with the authorization of Víctor Cruz, the Tenth Judge of First Criminal Instance on Narco-activities and Crimes against the Environment, the Guatemalan MP requested information from the social media X (formerly Twitter) about the digital media: *Prensa Comunitaria*, *Ruda*, *La Hora*, and also about journalist Leslie Sánchez of Guatevisión (Espinoza, November 21, 2023).

Another attempt to control and silence journalists and the citizenry: On August 24, MP officials filed a constitutional injunction at the Constitutional Court (CC) to prevent critics of MP's actions from being disclosed on social media and described them as “attacks by journalists and influencers on social media”. The CC did not grant the injunction.

As a result of these actions, and to avoid the discretionary use of the law, the Association of Journalists of Guatemala (Asociación de Periodistas de Guatemala, APG) requested the Supreme Court of Justice (CSJ) to recognize that the Constitution of the Republic has supremacy over ordinary laws, especially in matters of freedom of expression. However, the request got lost in the administrative intricacies and loops of the Judiciary (Veliz, November 20, 2023).

The persecutory actions by the Public Prosecutor's Office and the Judiciary against the press had not ceased at all until the very end of period surveyed by this report as stated by IACHR through its report of July 26, 2024 following its on-site visit to the country.

Realm Citizens Free to Express Themselves

In the Realm of Informed Citizenship and Freedom of Expression, Guatemala obtained 11.33 points out of a possible 30, attaining the high restriction level. This data responds to the damaging actions of MP personnel and judges and courts, as described above, especially the actions attempted to silence the press, as well as other forms of attacks on freedom of expression.

An example of this is the request for legal protection at the Constitutional Court on August 24, 2023 made by the Attorney General of Guatemala because she perceived it as harmful that citizens were calling for a demonstration against her actions on social media. The official stated that such messages instilled public unrest and attempted against the fulfillment of the MP's constitutional mandate under her management. She also requested the intervention of the public force to clear the demonstration. The injunction also included the identification of users on the social media X (Motta, August 25, 2023). The Constitutional Court rejected her request for amparo and stood for the right of citizens to demonstrate.

In views of this criminalizing tendency that undermines freedom of expression, and to prove that this situation is still in place in Guatemala despite the change of government in January 2024, on July 26, 2024, the IACHR expressed in its report following the on-site visit to the country, that from the research carried out, five patterns of instrumentalization of the justice system can be identified, and which are evidenced by "the filing of a high number of complaints against the same person with the intention of making their legal defense more difficult; the filing and processing of anonymous and/or unfounded complaints, with the purpose of maintaining a climate of pressure, harassment and intimidation; the use of open, ambiguous or clearly inadmissible criminal offenses for the facts denounced; the abusive use of pretrial detention, including the charging of serious crimes that do not benefit from alternative measures and the violations of due process and the right to defense through the use of dilatory practices in criminal proceedings" (IACHR, 2024, pp 7 -8).

Similarly is the case whereby the MP gave continuity to the persecution of journalists Julia Corado, Gerson Ortiz, Alexander Valdez, Rony Ríos, Cristian Veliz and Denis Aguilar; as well as columnists Edgar Gutiérrez and Gonzalo Marroquín, who had been linked to offenses in the case against José Rubén Zamora and whose criminal case had been closed by the Third Court of Appeals. However, in April 2014, the Special Prosecutor's Office against Impunity appealed that decision to give continuity to the case against them, even though all those implicated are in exile (Maldonado, May 2, 2024).

It is also worth mentioning, along the same line, the misrepresentation of the exercise of journalism that was tried in a case where journalist María José Longo was called to testify, within the framework of the trial against former prosecutor Virginia Laparra. Longo's news story was used for the purpose of incriminating the former prosecutor, accused of revealing confidential information, and simultaneously, to discourage other journalists from reporting on judicial proceedings.

These actions not only harm the exercise of journalism as they undermine its credibility and seek to prevent citizens from being informed on news affairs, but they also instill fear in the citizenry of openly raising their voices on fears of being prosecuted by judicial authorities. These actions constitute direct attacks on the democratic system.

Due to the aforementioned reasons and others described herein, the Inter-American Commission on Human Rights once again included Guatemala, for the third consecutive year, in the Chapter IV.B Report for its systematic non-compliance, the lack of political will to fight impunity, and for the abusive use of power that undermines the rule of law in the country.

Realm Violence and Impunity against Journalists and the Media

Guatemala obtained only 2.82 points out of a theoretical maximum of 40 in the realm of Violence and Impunity, thus showing a moderate influence by the three branches of government. Despite of the hostile working conditions experienced, many cases are not taken to the Prosecutor's Office for Crimes against Journalists due to the distrust media workers have in this instance.

The data presented by civil society observatories differ as these are not compiled using the same instruments and criteria. However, all of them agree on the increase of violence during the electoral period; violence that in many cases continued beyond the second day of the elections.

The Program for the Protection of Journalists and Freedom of Expression of the News Agency *Km. 169*, recorded, in 2023, 219 aggressions; while between January and June 2024, the recorded number was 71. For its part, the Observatory of Journalists (*Observatorio de Periodistas*) in Guatemala registered, between January 1 and November 29, 2023, 171 attacks or restrictions to the press, most of them committed by public servants.

Meanwhile, the *Red Rompe el Miedo Guatemala* (RRMG) network implemented an observation exercise on violence against journalists and media staff during the second round of elections and recorded 18 incidents (involving 28 journalists and reporters) that ranged from denial or limitation of access to information sources, obstruction of access to information and intimidation; intimidation with the use of firearms, restriction of coverage, attempted robbery, and the abusive treatment by SAAS when providing protection to Bernardo Arévalo. A few days later, in the context of a call for a national strike by farmers and indigenous organizations, the network RRMG documented 9 incidents against the press between October 2 and 18, 2023 affecting journalists from independent media, as well as the media Noti7, Guatevisión, and No ficción.

Guatemala fell from 127th to 138th place (out of 180) in the world classification of the international organization Reporters Without Borders (RSF) of 2024. That sets the country within the countries with a “difficult situation” area for the practice of journalism.

Apart from the cases of violence and the lack of a reliable registries by the Public Prosecutor's Office, another concern is the impunity with which the institution handles the cases, since most of them are overruled.

Meanwhile, the debate on the need to promote the program for the protection of journalists remains stagnate.

Realm Control over the Media and Journalism

With 19.83 points out of 30, the realm Control over the Media and Journalism was the best recorded. However, the siege experienced by the media outlet *Vox Populi* and its journalists, Marvin del Cid and Sonny Figueroa, is not to be overlooked. In October 2023, from exile, the journalists denounced that they had been classified as a “threat to government security” in Guatemala. This information became public through the information leak from the Ministry of Defense resulting of an attack by hackers known as “Cyclops” to which another Guatemalan journalist, Luis Assardo, had access to. The same leak also revealed that José

Rubén Zamora, director and owner of the extinct newspaper *El Periódico* and Oscar Clemente Marroquín, president of *Diario La Hora*, had also fallen into the “threat to government security” category (Sagastume, October 23, 2023).

Conclusions

In 2023, there was an amplification of the decline of human rights and the guarantees for the exercise of freedom of expression and the press in Guatemala. A major regression was observed due to the discretionary and harmful use of power by the three branches of government.

General elections were held under this context and resulted in the election of a candidate who was not the one expected to win by the criminal networks entrenched in the government. This prompted the Public Prosecutor's Office to take actions to invalidate the electoral process itself. This context served for the disproportionate increase of the violence against journalists. In addition to the aggressions that usually augment during election periods, violence continued until the end of this survey's deadline as the main perpetrators were still occupying government positions (MP, Judiciary, local mayors linked to organized crime enjoy impunity as safeguarded by the system of justice) -(MP, Poder Judicial, alcaldes locales vinculados con el crimen organizado y con impunidad garantizada por el sistema de justicia).

The inauguration of the new government team formed by Bernardo Arévalo de León and Karin Herrera, has not yet resulted in palpable improvements over freedom of expression due, above all, to the instrumentalization of the justice system.

Freedom of expression, the guarantee of an informed citizenry, the development of independent journalism, and safer conditions for media workers will not be possible in the country as long as such instrumentalization continues.

The new government must improve its procedures and protocols when dealing with the press lest take harmful decisions in specific crisis situations.

It is commendable that the new government, through the Ministry of the Interior (Ministerio de Gobernación, MINGOB), reactivated the Analysis Instance for the Protection of Human Rights Advocates, with a dedicated board to discuss the situation of journalists.

It is a priority for the current government to promote the drafting of the Plan for the Protection of Journalists and the Policy for the Protection of Human Rights Advocates.

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