



WORLD MOVEMENT *for* DEMOCRACY

Confronting the Challenges to Democracy in the 21st Century

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Defending Civil Society

Guatemala Country Report Summary

(* This summary was prepared by World Movement Secretariat staff.)

Guatemala does not constitute a federal state, but is instead divided into 22 Departments that institute laws governing the entire state. The legal system is governed by written laws and codes (Civil Code), predominantly influenced by the civil law tradition of continental Europe. The laws that apply to civil society are accessible to the public. In a country with 23 languages and nearly a 30% illiteracy rate, however, they are consequently inaccessible and difficult to understand for many people with lower economic income or limited education.

The Constitution provides civil society organizations (CSOs) with virtually all of the rights enjoyed by individuals, including: freedom of information, including State records; freedom of association, manifestation and assembly; freedom of thought; right to property; right to strike; right to education, et cetera. The Civil Code states that foundations will be approved, providing they do not conflict with the law. The Constitution requests that foreign associations must be formed and legally authorized in their country of origin. It further states that foundations, institutions, welfare establishments, and public interest associations are subject to the supervision of the Guatemalan state, which can intervene in the name of public interest or civil order. The only organizations audited by the General Controller of Accounts are the more than 300 non-governmental organizations (NGOs) that manage state funds. It is important to note that the current government (2009) is known for attaching caveats and controls to all new associations and to those updating their statutes.

The Civil Code contemplates the following types of CSOs: (i) foundations and other entities of public interest; (ii) non-profit associations that propose to promote, practice and protect their political, labor, economic, religious, social, cultural, and professional interest, among others; and (iii) trustees and committees for recreation work, social utility or benefit, which are also considered to be associations. In 2009, the Congressional Decree No. 02-2003 established the Non-Governmental Organizations for Development Law, which defines NGOs as non-profit organizations formed with a focus on culture, education, sports, social services, welfare, or social and economic development. The Law also specified that these organizations can be formally classified as civil associations, foundations, or NGOs.

In practice, the difference between only foundations and associations are distinguished. The main characteristic of a foundation is that it or its founders possess funds intended for a specific goal and indicate the forms of administration for both donations and the organizations in general. Associations, on the other hand, are centered on a goal, and not an initial contribution. NGOs are fundamentally associations that have added the acronym "NGO" to their name, and must comply with the General Controller of Accounts' special fiscal requirements and accounting methods.

Via the Governmental Agreement 649-2006 of June 16, 2009, the Unique System Registry of Legal Entities of the Ministry of Interior was established to register all civil associations, and their legal representatives, that comply with registration requirements. The law additionally recognizes the right of informal association; registration is not therefore mandatory for an organization, and there are many existing organizations that do not have legal status. Political and human rights activist organizations, especially those pursuing judicial processes against genocides or demanding compensation for victims of state violence, often intentionally do not register in order to protect their members.

If an organization wishes to register as a foundation, association, or NGO, it must: identify founding members, possess the minimum number of founders or members, and meet minimum capital or asset requirements, among others requirements. For an association or foundation to obtain legal status with the Ministry of Interior, they must present a number of documents and items including, but not limited to: the application, a duplicate of deed documentation, and two office-sized folders. Upon registration with the Ministry of Interior, an organization must also register with the Tax Administration Superintendent (TAS). To register for the TAS, an organization must provide an application, original and copy of the constitution, original and copy of appointed legal representative, original and copy of their identity card of legal representation, letter identifying accountant, solicitation for exemption from taxes, as well as other documents. After registering with the TAS, organizations must register with the Central Controller of Accounting where they must also present a number of items, including copies of their constitution. All copies for all institutions must be authenticated by a Public Notary.

Theoretically, the registration of an organization cannot be definitively denied. The legal consultancy office uses a checklist of more than 30 requirements, but once it encounters a problem with one, the application is automatically declined, rather processed with the remaining items on the check list. In case an organization is declined registration, it can first appeal to the authority that denied their registration request. After attempting all recourses with the relevant authority, an organization can proceed with Administrative Litigation.

There is no central national registry of organizations, but registrations are instead dispersed through the entire country. There are no special laws regarding the registration and the establishment of foreign organizations. The Civil Code permits companies and associations formed in a foreign country to have agencies or branches in Guatemala once authorized by the Ministry of Interior, as long as their activities do not conflict with Guatemalan law and a legal representative is identified.

The Ministry of Interior inspects and monitors non-profit associations and foundations by ensuring compliance of Guatemalan laws and statutory standards. NGOs that administer state funds are often inspected by the Central Controller of Accounting to ensure they are complying with all state requirements and maintaining proper accounting.

As for internal governance, the law states that associations can regulate their civil capacity by their own statutes. The law also states that organizations have the same rights as any legal entity, such as those obtaining to goods and services, entering into contracts, and executing mandates. Organizations are also free to criticize the government, and can participate in political or legislative activities, propose and support political candidates, or pressure the government to adopt certain policies. Furthermore, there is no government office that openly makes frequent inspections or requests documentation from organizations.

Organizations in Guatemala enjoy forthcoming laws but, there is a lack of fiscal incentives to form or donate to these groups. There is much to be done to convince the private sector in Guatemala to participate in social investment.

NGOs suffer from a lack of credibility, as they have in the past acquired a reputation for corruption. As a result, the general population has little confidence in civil society organizations. To address this, civil society organizations should themselves implement rules of transparency within their own administration, and should more often cooperate with international institutions, whose powers often exceed those of civil society and even of the state. This is an excellent moment for civil society to propose and advance national projects that embraces its diversity as the opportunities exist, and the laws permits it. These projects will undoubtedly be supported by society in general.