

What Transparency Means for NGOs in Guatemala



President Alejandro Giammattei argued the reforms were “an act of transparency.” ([Canva](#))

On May 12, 2021, the Constitutional Court (CC) of Guatemala, the last word on judicial matters, paved the way for a controversial law reforming how nongovernmental organizations (NGOs) operate in the country.

In a 60-page [verdict](#), newly elected magistrates [overturned](#) a 2020 [ruling](#) by the previous court that had suspended the reform.

What was the reform about and why did it stop?

In February 2020, Guatemala’s Congress [approved](#) a reform to existing legislation regulating nonprofits after a series of scandals involving local and foreign NGOs, including abortion-rights advocate [Planned Parenthood](#). The [initiative](#) targeted 13 articles of existing legislation to ensure transparency and oversight over NGOs operating in Guatemala.

President Alejandro Giammattei [argued](#) the reforms were “an act of transparency.” In response to criticism that the Guatemalan government was trying to silence human-rights activists, Giammattei said “those who have not used their resources properly are those against the reforms.”

The fact is NGOs have received public funds and have had accountability problems. In 2013, the country's government accountability office found irregularities in [30 NGOs](#). In 2019, the Guatemalan government allocated around \$91 million to [64 nonprofits](#). Moreover, 28 NGOs with proven links to Guatemalan politicians [tried](#) to funnel public funds to their own causes in 2020.

Although Giammattei had already [signed](#) the bill into law, civil-society organizations secured an injunction from the CC in March 2020, preventing the reform from going into effect.

The reform establishes that domestic and foreign NGOs must undergo a thorough registration and vetting process. It requires nonprofits to maintain accounting records and be subject to the supervision of the General Comptroller's Office. NGOs also must be accountable to donors and, if required by local authorities, hire external auditors.

Currently, NGOs [do not need](#) to specify where in Guatemala they intend to operate and on which issues. They can open accounts across financial institutions, including banks and credit unions, and do not need to report to Guatemalan authorities all foreign donations.

What are the major critiques of the reform?

Proponent Claims

- By requesting NGOs to specify their goals and place of operation, the law [prevents](#) using NGOs as a front for illicit activities or sponsoring antidemocratic agendas.
- The detailed registration process, along with new sanctions, discourages the practice of politicians setting up nonprofits to funnel public funds.
- The mandatory accounting standards bring needed transparency. The provision to report every foreign donation sheds light on who bankrolls nonprofits in Guatemala and why.
- By mandating the use of the government's procurement system for NGOs that receive public funds, the law seeks to [optimize](#) resources and avoid misappropriation.

Opponent Claims

- A narrow scope of action and territory could [hamper](#) NGO flexibility, jeopardize advocacy capabilities, and impede freedom of association.
- In addition to registering with the tax authority, the law requires local nonprofits to register with the president's planning secretary. Foreign NGOs need to register with the Foreign Affairs Ministry as well. This bureaucracy could discourage new nonprofits from getting off the ground.
- The requirement to keep accounting records, bank accounts, and external audits increases costs for small organizations and raises the compliance burden for small donations.
- The law gives the executive branch the authority to sanction and shut down nonprofits. This applies when they create public disorder, but the precise process remains to be confirmed by the regulatory law. Reforms to article 25 give the authority for NGO dissolution to the Attorney General Office, the Tax Superintendence, the Comptroller General, and the Interior Ministry.

Who opposes the law?

In response to the latest CC ruling, 212 civil-society organizations [asked](#) CC magistrates to review their decision. “Your role is to protect citizens’ constitutional rights and not to favor those who designated you as magistrates,” they wrote in a statement.

The most visible organizations demanding the “suspension of these reforms and all government attempts to infringe rights” are the Cooperatives Coordinator (Congcoop), the Committee of United Campesinos (CUC), and Guatemala’s Unity of Human Rights Supporters (Udefegua).

A 2012 [investigation](#) revealed that the CUC had threatened and coerced peasants in the countryside who did not want to participate in illegal CUC activities. Another nonprofit that allegedly defends indigenous communities against mining companies, dubbed Legal, Environmental, and Social Action Center (CALAS), is now [subject](#) to investigation due to resources mismanagement.

For the 82 members of the Congress that voted in favor of the reforms in February 2020, the new legislation would [provide](#) more transparency and monitoring capacity over NGOs. Giammattei [argued](#) the law responded to media reports unveiling irregularities and resource mismanagement in some nonprofits, particularly those operating with public financing.

“I am not against NGOs, and I could mention some examples of the worthy labor NGOs do,” Giammattei [asserted](#). However, he [added](#) “the Comptroller Office has said monitoring is difficult, since there is lack of knowledge of financing sources, projects non-compliance, and fraud signals.”

Who are the CC magistrates who voted in the recent ruling?

The CC is composed of five magistrates, each nominated by a different entity: the judiciary, Congress, the president, the state-run San Carlos University, and the bar association. All [voted](#) to lift the injunction impeding the reform.

Roberto Molina, Dina Ochoa, and Leyla Lemus are the newly appointed magistrates who took office in April after a controversial [election process](#). Their mandate extends through 2026.

José Francisco de Mata and María Cristina Fernández are magistrates from the former period [sitting in](#) for their successors while legal challenges to the [nominees](#), Gloria Porras and Néster Vásquez, are being resolved.

Roberto Molina Barreto, head of the CC, appointed by the judiciary

Lawyer, politician, and judge. From 2006 to 2016, Molina served as a CC magistrate. Then, during the 2019 presidential election, he became the running mate of Zury Ríos, daughter of the late Guatemalan military ruler Efraín Ríos Montt. He is the founder of Fundacívica, a nonprofit, and a business owner.

Dina Ochoa, nominated by Congress

An appellate judge and university professor, Ochoa was nominated by former president Jimmy Morales to serve on the CC in 2016. During her first mandate, she was critical of the United Nations anti-impunity commission CICIG and supported the Trump administration’s asylum agreement with Guatemala.

In 2020, Ochoa filed a complaint against her fellow-magistrate Gloria Porras for abuse of power.

Leyla Lemus, nominated by the president

A lawyer and career public official, she was Giammattei's secretary-general before he nominated her as a CC magistrate.

José Francisco de Mata, interim magistrate appointed by the state university

A lawyer and university professor, he became a CC magistrate in 2016. In 2018, Guatemala's procurator-general accused de Mata and two other CC magistrates of violating the Constitution, malfeasance, and abuse of power. A lawyer filed a similar accusation against him in late 2020.

María Cristina Fernández, interim magistrate appointed by the bar association

An attorney, public notary, and judge, she has served as an alternate CC magistrate from 2016 to 2020. In 2019, she was one of the magistrates who ruled to keep the immunity of presidential candidate Sandra Torres, whom prosecutors had accused of illicit campaign financing.

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