

Overall Score:

64 - Weak

Legal Framework Score:

77 - Moderate

Actual Implementation Score:

52 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶⁷Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

There is no specific law that gives the right to form civil society organizations (CSOs) focused on anti-corruption or good governance, however there is the Law for Freedom of Association (National Constitution Art. 34) And the Law for Civil Society Organizations (Law 2-2003).

References:

Ninna Niberg Sorensen (Programa de Dinamarca para Centroamérica)
Diego De León (Fundación Mirna Mack)
Mario Polanco (Grupo de Apoyo Mutuo)
Jacinto García (Unidad de Acción Sindical y Popular)
Gilberto Robledo (Asociación Guatemalteca de Investigadores de Presupuesto),
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Idivina Hernández (Seguridad Democrática)
Alvaro Pop (Organismo Indígena para el Desarrollo)

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

Any CSOs is free to accept funding from foreign or domestic sources, according to the law for NGOs (Art. 2).

References:

Ninna Niberg Sorensen (Programa de Dinamarca para Centroamérica)
Diego De León (Fundación Mirna Mack)
Mario Polanco (Grupo de Apoyo Mutuo)
Jacinto García (Unidad de Acción Sindical y Popular)
Gilberto Robledo (Asociación Guatemalteca de Investigadores de Presupuesto),
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Iduvina Hernández (Seguridad Democrática)
Alvaro Pop (Organismo Indígena para el Desarrollo)

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

There is no law that requires the CSOs to disclose their sources of funding, but there is a law for NGOs (Arts. 13, 14 and 16) that requires them to submit financial statements, and to register into the tax agency (SAT).

References:

Ninna Niberg Sorensen (Programa de Dinamarca para Centroamérica)
Diego De León (Fundación Mirna Mack)
Mario Polanco (Grupo de Apoyo Mutuo)
Jacinto García (Unidad de Acción Sindical y Popular)
Gilberto Robledo (Asociación Guatemalteca de Investigadores de Presupuesto),
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Iduvina Hernández (Seguridad Democrática)
Alvaro Pop (Organismo Indígena para el Desarrollo)

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

Any CSOs focused on promoting good governance or anti-corruption must go through legal steps to be able to function. The government holds no barriers, but there have been a few cases in which the offices of the CSOs suffered break-ins by unknown people.

References:

Ninna Niberg Sorensen (Programa de Dinamarca para Centroamérica)
Diego De León (Fundación Mirna Mack)
Mario Polanco (Grupo de Apoyo Mutuo)
Jacinto García (Unidad de Acción Sindical y Popular)
Gilberto Robledo (Asociación Guatemalteca de Investigadores de Presupuesto),
Renzo Rosal (Secretaria Ejecutiva de la Presidencia)
Iduvina Hernández (Seguridad Democrática)
Alvaro Pop (Organismo Indígena para el Desarrollo)

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

CSOs focused on promoting good governance or anti-corruption have had little or no participation whatsoever in any political or policymaking process.

References:

Ninna Niberg Sorensen (Programa de Dinamarca para Centroamérica)
Diego De León (Fundación Mirna Mack)
Mario Polanco (Grupo de Apoyo Mutuo)
Jacinto García (Unidad de Acción Sindical y Popular)
Gilberto Robledo (Asociación Guatemalteca de Investigadores de Presupuesto),
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Idivina Hernández (Seguridad Democrática)
Alvaro Pop (Organismo Indígena para el Desarrollo)

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

Ninna Niberg Sorensen (Programa de Dinamarca para Centroamérica)
Diego De León (Fundación Mirna Mack)
Mario Polanco (Grupo de Apoyo Mutuo)
Jacinto García (Unidad de Acción Sindical y Popular)
Gilberto Robledo (Asociación Guatemalteca de Investigadores de Presupuesto),
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Idivina Hernández (Seguridad Democrática)
Alvaro Pop (Organismo Indígena para el Desarrollo)

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Ninna Niberg Sorensen (Programa de Dinamarca para Centroamérica)
Diego De León (Fundación Mirna Mack)
Mario Polanco (Grupo de Apoyo Mutuo)
Jacinto García (Unidad de Acción Sindical y Popular)
Gilberto Robledo (Asociación Guatemalteca de Investigadores de Presupuesto),
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Iduvina Hernández (Seguridad Democrática)
Alvaro Pop (Organismo Indígena para el Desarrollo)

YES: A YES score is earned if there were no CSO activists imprisoned related to work covering corruption.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the p

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

Most cases of intimidation against activists came from organized crime, but their actions were not ultimately politically motivated.

References:

Ninna Niberg Sorensen (Programa de Dinamarca para Centroamérica)
Diego De León (Fundación Mirna Mack)
Mario Polanco (Grupo de Apoyo Mutuo)
Jacinto García (Unidad de Acción Sindical y Popular)
Gilberto Robledo (Asociación Guatemalteca de Investigadores de Presupuesto),
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Iduvina Hernández (Seguridad Democrática)
Alvaro Pop (Organismo Indígena para el Desarrollo)

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Ninna Niberg Sorensen (Programa de Dinamarca para Centroamérica)
Diego De León (Fundación Mirna Mack)
Mario Polanco (Grupo de Apoyo Mutuo)
Jacinto García (Unidad de Acción Sindical y Popular)
Gilberto Robledo (Asociación Guatemalteca de Investigadores de Presupuesto),
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Iduvina Hernández (Seguridad Democrática)
Alvaro Pop (Organismo Indígena para el Desarrollo)

YES: A YES score is earned if there were no documented cases of CSO activists being killed related to a corruption case in the specific study period.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

The National Constitution (Art. 34)
Labour Code (Arts. 10, 209 and 211)

References:

Ninna Niberg Sorensen (Programa de Dinamarca para Centroamérica)
Diego De León (Fundación Mirna Mack)
Mario Polanco (Grupo de Apoyo Mutuo)
Jacinto García (Unidad de Acción Sindical y Popular)
Gilberto Robledo (Asociación Guatemalteca de Investigadores de Presupuesto),
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Iduvina Hernández (Seguridad Democrática)
Alvaro Pop (Organismo Indígena para el Desarrollo)

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Workers can organize into or join trade unions, but the system has been affected by two factors. First, historically, there has been a business culture against trade unions, which makes it difficult for them to organize. Second, some of the trade union leaders have been accused of corruption and of failing to influence the political process in the country. Hence, the number of unions members has kept at low levels.

References:

Ninna Niberg Sorensen (Programa de Dinamarca para Centroamérica)
Diego De León (Fundación Mirna Mack)
Mario Polanco (Grupo de Apoyo Mutuo)
Jacinto García (Unidad de Acción Sindical y Popular)
Gilberto Robledo (Asociación Guatemalteca de Investigadores de Presupuesto),
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Idivina Hernández (Seguridad Democrática)
Alvaro Pop (Organismo Indígena para el Desarrollo)

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

This particular right is given by the National Constitution (Art. 35) and by the Law for Freedom of Press (Art. 9). Since the return to democracy, the media are playing a very important role in the country, and they have the freedom to report on anything they want.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sanchez (Noticiero Guatevisión).

YES: A YES score is earned if freedom of the press is guaranteed in law, including all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

Freedom of speech is guaranteed by the National Constitution (Art. 35, Freedom of Speech) and regulated by the Law of Freedom of Speech. Guatemala has now several newspapers, radio and cable channels, several local TV stations (which are actually monopolized, since three out of four belong to the same person), and many more channels where freedom of speech can be expressed.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form media entities?

88

6a. In practice, the government does not create barriers to form a media entity.

100 | 75 | 50 | 25 | 0

Comments:

There are almost no barriers against setting up a media entity. However, national TV is almost a monopoly -one group controls four out of the five channels. In the case of the radio, there have been allegations of lack of transparency in the auctions of the frequencies.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

100: Media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system.

75:

50: Formation of media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. Division of broadcast bandwidth is widely viewed to be used as a political tool.

6b. In law, where a media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

This is possible to do through the Telecommunications Law and the Law for the Administrative Contentious. The problem is that the process could end up being very long and expensive.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied media license. A YES score is also earned if no license is necessary.

NO: A NO score is earned if there is no appeal process for media licenses.

6c. In practice, where necessary, citizens can obtain a media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It does not take long to obtain a license, but different processes apply to licenses of different media. Radio and TV licenses are obtained through formal bidding processes, which could end up being very expensive; obtaining a licence for written publications depends on a simple authorization.

References:

Juan Luis Font (El Periódico)
Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)
Haroldo Sánchez (Noticiero Guatevisión)

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The license costs are reasonable for publications and radio, but much more expensive for TV, due to monopoly.

References:

Juan Luis Font (El Periódico)
Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)
Haroldo Sánchez (Noticiero Guatevisión)

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are the media able to report on corruption?

83

7a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

Since the return to democracy, freedom of press has become one of the most symbolic achievements, therefore it is quite possible to report accurate news even if this could damages the reputation of the public figure(s) involved.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

7b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Individuals try to sometimes influence the media owners or directors not to cover certain stories, including corruption-related stories, but they are very rarely successful. Media have become the prime source of public information on government corruption.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

7c. In practice, there is no prior government restraint on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

It is quite common to have big corruption-related stories, and there is nothing or very little that the government can do about it. Strong censorship was widely spread under the past military regimes, but the situation has improved a lot since the return to democracy.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. In countries where illiteracy is higher, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material.

8. Are the media credible sources of information?

38

8a. In law, media companies are required to disclose their ownership.

YES | NO

Comments:

There is no law that requires companies to disclose their ownership, however, in most cases, ownership is well-known. In other cases, when media are owned by a corporation, it becomes more difficult to find out their ownership.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

YES: A YES score is earned if media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

8b. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

The media have become much more professional over the last few years, but they still need to achieve higher and more homogeneous reporting standards.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

8c. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

The media hardly show any partiality, but the exposure of parties varies greatly according to their economic power.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

8d. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | **25** | 0

Comments:

The very few state-owned media outlets offer virtually no space for political propaganda, other than covering the government activities.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

9. Are journalists safe when investigating corruption?

100

9a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

Although cases of physical harm have not been reported, journalists complain of receiving indirect threats from unknown sources.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

Big anti-corruption stories are quite common in almost all media, but journalists are not always indifferent to indirect interference.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82
I-3. Public Access to Information

10. Do citizens have a legal right of access to information?

33

10a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The National Constitution gives the citizens this right (Arts.30 and 31), but no clear channel exists through which this right can be exercised. No habeas data law exists yet, and unless the institution has a website the access to information is very limited.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

YES: A YES score is earned if there is a formal right to access any government documents. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request. There should be a formal process for requesting this information.

NO: A NO score is earned if there is no such right.

10b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

Comments:

Art. 265 of the National Constitution offers a mechanism to appeal, but in practice it has almost never been used.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

YES: A YES score is earned if there is a formal process of appeal for rejected information requests.

NO: A NO score is earned if there is no such formal process.

10c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

Comments:

There is no particular institution where citizens can require this information, and there is no guarantee that the required information will be provided.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

11. Is the right of access to information effective?

45

11a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This depends on the type of information requested, and also on the policy of the institution and on the authorities.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

11b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost, if any, will be for photocopying or for printing from the internet, if the information is available online. However, in some cases, a visit to a specific office in the capital may be needed.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

11c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | **25** | 0

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

11d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

11e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | **25** | 0

Comments:

Sometimes the government gives reasons for denying the requested information, but it also happens that the information is simply denied without further explanation.

References:

Juan Luis Font (El Periódico)

Gustavo Bracamonte (Escuela de Ciencias de la Comunicación de la Universidad de San Carlos)

Haroldo Sánchez (Noticiero Guatevisión)

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁷²Voting & Citizen Participation

12. Is there a legal framework guaranteeing the right to vote?

100

12a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

The Electoral and Political Party Law (Art. 12, decree-law 1-85) guarantees equal adult suffrage to all citizens, with the exception of the mentally disabled, the armed forces, and the convicted.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if the right to vote is guaranteed to all citizens of that country. A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

12b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

The National Constitution (Arts. 157 and 184) requires that elections for the legislative and the executive be held every four years.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

13. Can all citizens exercise their right to vote?

92

13a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

Citizens living abroad have no way to vote, and people living in remote areas of the country may have difficulties getting to a polling station.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

13b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Since the return to democracy the respect for the voting system has become well-established. Hardly any political party has ever complained about elections fraud.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

13c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Since the return to democracy, the elections schedules have been observed according to the period and time established by the National Constitution.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

14. Are citizens able to participate equally in the political process?

80

14a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Citizens have the right to form political parties according to the Electoral and Political Parties Law (Art. 17, law 1-85). However, citizens have to meet many requirements, which makes the process difficult and expensive.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

14b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

It is a right given by de National Constitution (Art. 135), but since political campaigns are expensive, and political parties do not have sufficient sources of funding, in practice it is not so easy to run for any political office.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

14c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Legal and economic requirements that citizens have to meet to form a political party make the process slow and difficult.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

14d. In practice, all citizens can run for political office.

100 | 75 | **50** | 25 | 0

Comments:

For women and indigenous populations the possibility to be represented in the political process, mainly for presidential and parliamentary elections, is far smaller.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

14e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Since the return to democracy, the ruling party has had the majority in the legislature more often than not, which has made the work of the opposition difficult and sometimes inadequate.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The agency is the Supreme Electoral Tribunal (Tribunal Supremo Electoral).

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if there is an agency or set of agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no agency or set of agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police.

16. Is the election monitoring agency effective?

70

16a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The National Constitution and the Electoral and Political Party Law (Art. 121, law. 1-85) stipulate the existence of an independent agency.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies being contested in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no election monitoring agency.

16b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

In general there has been little criticism about the election of the magistrates of the Tribunal Supremo Electoral (the electoral agency). However strong criticism occurred once, during a four-year period.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

16c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The problem occurs during the elections, when agencies are under-staffed.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

16d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

There is always a report, but its release may take time.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

16e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The sanction power of the Tribunal Supremo Electoral is very limited.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

17. Are elections systems transparent and effective?

92

17a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

There are no proper IDs for citizens (the existing ones are outdated), no proper records of deaths and of people that no longer live in the country.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghostⁿ voting by non-existent voters is common.

17b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

It can be found in the Electoral and Political Parties Law (Chapter 9, arts. 246 to 250, law 1-85).

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

17c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Such cases have been very rare. Appeals occurred only a few times in the municipal elections.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

17d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

17e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

Even though the law does not specifically mention the international or domestic observers, there are no stipulations that forbid their presence. There have been quite a few observers on the ground since the return to democracy.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

17f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

The observers can move throughout the country and ask any questions they want without any problem.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

87
II-3. Political Financing

18. Are there regulations governing political financing?

83

18a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

The law has recently undergone changes, but due to lack of regulations it cannot yet be applied in the case of any political party.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

18b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

Comments:

This is a new law, which has yet to be enforced.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

Comments:

This is included in the new reforms to the Electoral and Political Parties Law, which has yet to be enforced.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

This law was ratified in 2004, but it lacks proper regulations and has yet to be enforced.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

18e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

The law is not only new, but also quite ambiguous: it mention the disclosure of state donations to political parties -which are required by the law-, but not the disclosure of private donations.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

18f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | **NO**

Comments:

The requirement is for the political parties but not for the candidates. In the case of state donations a stated audit office makes the auditing, while in the case of private donations they have to present countable documents of their own.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

19. Are the regulations governing political financing effective?

29

19a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | **50** | 25 | 0

Comments:

Because the new laws were reformed in 2004 and have yet to be enforced, it is too early to say how effective they will be.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

Before the 2004 reformation, no such regulations of the Electoral and Political Parties Law existed. The new laws have yet to be enforced.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations

to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

Before the 2004 reformation, no such regulations of the Electoral and Political Parties Law existed. The new laws have yet to be enforced.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

19d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

19e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The agency will have more power to act once the reformed laws will be enforced.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

19f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law has yet to be enforced.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

20. Can citizens access records related to political financing?

0

20a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This has never been done so far.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

20b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This will be possible once the reformed laws will be enforced.

References:

Alberto Aragón (Aragón y Asociados)
Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

20c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This will be free of cost once the reformed law will be enforced.

References:

Alberto Aragón (Aragón y Asociados)

Jorge Fuentes Aqueche (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Ariel Rivera (Facultad de Ciencias Políticas Universidad Rafael Landívar)
Eduardo Núñez (Analista Independiente)
Carlos Escobar Armas (Asociación de Investigaciones Económicas y Sociales)
Marco Antonio Barahona (Asociación de Investigaciones Económicas y Sociales)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ~~63~~ Executive Accountability

21. In law, can citizens sue the government for infringement of their civil rights?

100

21. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

National Constitution, Art. 155

Hugo Beteta (Secretaría de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)
Alvaro Pop (NALEB)

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

22. Can the chief executive be held accountable for his/her actions?

69

22a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | **50** | 25 | 0

Comments:

It is not a common practice, but sometimes the chief executive gives reasons for his/her decisions, if the public opinion gets too heated on the subject.

References:

Hugo Beteta (Secretaría de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

22b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

If consulted on the matter in question, the judiciary can resolve that the actions of the chief executive were unconstitutional, and that they have to be reversed (National Constitution, Art. 272).

References:

Hugo Beteta (Secretaría de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

22c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | **50** | 25 | 0

Comments:

See also the website of the Constitutional Court: www.cc.gob.gt. Most of its decisions relate to overturning legislative actions, though in some cases it has reviewed executive actions.

References:

Hugo Beteta (Secretaría de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rozal (Secretaría Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

22d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | **75** | 50 | 25 | 0

References:

Hugo Beteta (Secretaría de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

23. Is the executive leadership subject to criminal proceedings?

100

23a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

The head of state, the members of the legislature and judges have the right to preliminary judgments before any formal trial. The Congress will decide if according to evidence the person in question can be prosecuted.

Other laws which could make it possible for government officials to be prosecuted are the National Constitution (Arts. 154 and 155) and the Law of Probity and Civil Servants Responsibilities for Transgression of the Law (Arts. 4, 8, 9, 10).

References:

Hugo Beteta (Secretaría de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

23b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

National Constitution (Arts. 154 and 155) and the Law of Probity and Civil Servants Responsibilities for Transgression of the Law (Arts. 4, 8, 9, 10).

References:

Hugo Beteta (Secretaria de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

24. Are there regulations governing conflicts of interest by the executive branch?

50

24a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

Any member of the executive branch must submit two asset disclosure forms: one when they take office, and another one, which is not available to the public, when they leave office.

References:

Law of Probity and Civil Servants Responsibilities for Transgression of the Law (Arts. 4, 8, 9, 10)

Hugo Beteta (Secretaria de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

24b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

Any member of the executive branch must submit two asset disclosure forms: one when they take office, and another one, which is not available to the public, when they leave office.

References:

Law of Probity and Civil Servants Responsibilities for Transgression of the Law (Arts. 4, 8, 9, 10).

Hugo Beteta (Secretaria de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

24c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

At the beginning of the present administration, a new regulation was presented, concerning an ethical code for the entire executive branch. The Penal Code (Art. 443) also regulates this matter.

The implementation of these laws varies from institution to institution and depends on the person in charge; some governmental offices will do a better job in respecting laws than others.

References:

Hugo Beteta (Secretaria de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

24d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

Comments:

Only one state agency does the auditing.

References:

Hugo Beteta (Secretaria de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

24e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

References:

Hugo Beteta (Secretaria de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

24f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no regulations. The labor market is quite small, and job opportunities for people leaving government office is very limited.

References:

Hugo Beteta (Secretaría de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

24g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | **50** | 25 | 0

Comments:

Some steps have been taken, but there is still a long way before an acceptable level of efficiency can be reached.

References:

Hugo Beteta (Secretaría de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

24h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | **50** | 25 | 0

References:

Hugo Beteta (Secretaría de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

25. Can citizens access the asset disclosure records of the heads of state and government?

0

25a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

Comments:

Law of Probity and Civil Servants Responsibilities has an article concerning the confidentiality of the asset disclosure records of civil servants.

References:

Hugo Beteta (Secretaría de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

25b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The confidentiality of those records is protected by law. They can be obtained only through judicial investigations, which entails high costs.

References:

Hugo Beteta (Secretaria de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The confidentiality of those records is protected by law. They can be obtained only through judicial investigations, which entails high costs.

References:

Hugo Beteta (Secretaria de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. In practice, is the ruling party distinct from the state?

50

26. In practice, is the ruling party distinct from the state?

100 | 75 | **50** | 25 | 0

Comments:

Over the last 20 years, different parties formed the governments, but they were all accused of the following: using the civil servants to organize political rallies, using the government vehicles on campaign trips and using the government funds for party purposes.

References:

Hugo Beteta (Secretaría de Planificación)
Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la Presidencia)
Oscar Vásquez (Acción Ciudadana)

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

27. Can members of the legislature be held accountable for their actions?

100

27a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

The Judiciary Law (Arts. 123 and 124) says that if the law under discussion in the Congress would reform a constitutional law, a consultation to the Court of Constitutionality is compulsory.

The other time the Court of Constitutionality has to be consulted is when at least five congressmen ask its opinion on the constitutionality of any treaty, law or other business.

References:

Nineth Montenegro (Congreso de la República)

Renzo Rosal (Secretaría Ejecutiva de la presidencia)

Álvaro Pop (NALEB)

Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

27b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

Nineth Montenegro (Congreso de la República)

Renzo Rosal (Secretaría Ejecutiva de la presidencia)

Álvaro Pop (NALEB)

Oscar Vásquez (Acción Ciudadana)

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

27c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

The head of state, the members of the legislature and judges have the right to preliminary judgments before any formal trial. The Congress will decide if according to evidence the person in question can be prosecuted. Other laws which could make it possible for government officials to be prosecuted are the National Constitution (Arts. 154 and 155) and the Law of Probity and Civil Servants Responsibilities for Transgression of the Law (Arts. 4, 8, 9, 10). Until now, no attempt to prosecute a member of Congress has been successful. One member of Congress is currently accused of a serious crime.

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

28. Are there regulations governing conflicts of interest by members of the national legislature?

29

28a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

Any member of the executive branch must submit two asset disclosure forms: one when they take office, and another one, which is not available to the public, when they leave office.

References:

Law of Probity and Civil Servants Responsibilities for Transgression of the Law (Arts. 4, 8, 9, 10)

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

28b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

There are no such regulations. The labor market is quite small, and job opportunities for people leaving government office are very limited.

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la presidencia),
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

28c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

This is regulated by the Penal Code (Art. 429,440 and 441).

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

28d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

Comments:

The assets of the members of the national legislature would be audited by a governmental agency, not by an independent one.

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

28e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no regulations about it.

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

28f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Rumors about legislators receiving gifts and hospitality are always present.

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

28g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

29. Can citizens access the asset disclosure records of members of the national legislature?

0

29a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

29b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaría Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

29c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30. Can citizens access legislative processes and documents?

33

30a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

30b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Nineth Montenegro (Congreso de la República)
Renzo Rosal (Secretaria Ejecutiva de la presidencia)
Álvaro Pop (NALEB)
Oscar Vásquez (Acción Ciudadana)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

40 III-3. Judicial Accountability

31. Are judges appointed fairly?

100

31a. In practice, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

In the Law of Judicial Career a procedure, once established (Arts. 9, 10, 13, 14, 15, 16, 17, and 18), is fairly well obeyed.

References:

Karin Wagner (Asociación de Investigaciones y Estudios Económicos y Sociales)
Diego De León (Fundación Mirna Mack)
Carlos Escobar (Asociación de Investigaciones y Estudios Económicos y Sociales)
Iduvina Hernández (Seguridad Democrática)
Álvaro Castellanos (Universidad Rafael Landívar/Facultad de Derecho)

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight.

31b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

The Judicial Career Law (Arts. 9, 10, 13, 14, 15, 16, 17 and 18) and the National Constitution (Arts.215 and 217) describe the process of selecting judges.

References:

Karin Wagner (Asociación de Investigaciones y Estudios Económicos y Sociales)
Diego De León (Fundación Mirna Mack)
Carlos Escobar (Asociación de Investigaciones y Estudios Económicos y Sociales)
Iduvina Hernández (Seguridad Democrática)
Álvaro Castellanos (Universidad Rafael Landívar/Facultad de Derecho)

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

31c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES

NO

Comments:

Magisters for the Supreme Court are elected through a decision by a commission in the National Legislature (from a list of names suggested by different organizations and COSC); judges are elected through an internal procedure in the judiciary, which is conducted by the judiciary system according to its internal laws.

References:

Karin Wagner (Asociación de Investigaciones y Estudios Económicos y Sociales)
Diego De León (Fundación Mirna Mack)
Carlos Escobar (Asociación de Investigaciones y Estudios Económicos y Sociales)
Iduvina Hernández (Seguridad Democrática)
Álvaro Castellanos (Universidad Rafael Landívar/Facultad de Derecho)

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

32. Can members of the judiciary be held accountable for their actions?

58

32a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

No member of the national level judiciary is obliged to give any reasons for his/her decisions.

References:

Karin Wagner (Asociación de Investigaciones y Estudios Económicos y Sociales)
Diego De León (Fundación Mirna Mack)
Carlos Escobar (Asociación de Investigaciones y Estudios Económicos y Sociales)
Iduvina Hernández (Seguridad Democrática)
Álvaro Castellanos (Universidad Rafael Landívar/Facultad de Derecho)

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

32b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

Karin Wagner (Asociación de Investigaciones y Estudios Económicos y Sociales)
Diego De León (Fundación Mirna Mack)
Carlos Escobar (Asociación de Investigaciones y Estudios Económicos y Sociales)
Iduvina Hernández (Seguridad Democrática)
Álvaro Castellanos (Universidad Rafael Landívar/Facultad de Derecho)

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

32c. In law, there is an ombudsman (or equivalent agency or mechanism) for the national-level judicial system.

YES | NO

Comments:

The ombudsman is the same for the entire population, and there is no specific one for the judicial system.

References:

Karin Wagner (Asociación de Investigaciones y Estudios Económicos y Sociales)
Diego De León (Fundación Mirna Mack)
Carlos Escobar (Asociación de Investigaciones y Estudios Económicos y Sociales)
Iduvina Hernández (Seguridad Democrática)
Álvaro Castellanos (Universidad Rafael Landívar/Facultad de Derecho)

YES: A YES score is earned if there is a ombudsman or equivalent mechanism for the judicial system. A judicial ombudsman is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a judicial ombudsman.

32d. In law, the judicial ombudsman (or equivalent agency or mechanism) is protected from political interference.

YES | NO

Comments:

The country's ombudsman is protected from political interference (there is no special ombudsman for the judiciary).

References:

Karin Wagner (Asociación de Investigaciones y Estudios Económicos y Sociales)
Diego De León (Fundación Mirna Mack)
Carlos Escobar (Asociación de Investigaciones y Estudios Económicos y Sociales)
Iduvina Hernández (Seguridad Democrática)
Álvaro Castellanos (Universidad Rafael Landívar/Facultad de Derecho)

YES: A YES score is earned if there are formal rules establishing that the judicial ombudsman is operationally independent from political interference by the executive, legislative or judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial ombudsman. A NO score is given if the judicial ombudsman function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

32e. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The country's ombudsman will start or cooperate in investigations, which are sometimes prompted by media pressure.

References:

Karin Wagner (Asociación de Investigaciones y Estudios Económicos y Sociales)
Diego De León (Fundación Mirna Mack)
Carlos Escobar (Asociación de Investigaciones y Estudios Económicos y Sociales)
Iduvina Hernández (Seguridad Democrática)
Álvaro Castellanos (Universidad Rafael Landívar/Facultad de Derecho)

100: The ombudsman aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The ombudsman is fair in its application of this power.

75:

50: The ombudsman will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The ombudsman, though limited in effectiveness, is still fair in its application of power.

25:

0: The ombudsman rarely investigates on its own or cooperates in other agencies' investigations, or the ombudsman is partisan in its application of this power.

32f. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The country's ombudsman has only the power of magistrate of conscience; it cannot impose penalties.

References:

Karin Wagner (Asociación de Investigaciones y Estudios Económicos y Sociales)
Diego De León (Fundación Mirna Mack)
Carlos Escobar (Asociación de Investigaciones y Estudios Económicos y Sociales)
Iduvina Hernández (Seguridad Democrática)
Álvaro Castellanos (Universidad Rafael Landívar/Facultad de Derecho)

100: When rules violations are discovered, the ombudsman is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The ombudsman enforces rules, but is limited in its effectiveness. The ombudsman may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The ombudsman does not effectively penalize offenders. The ombudsman may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The ombudsman may be partisan in its application of power.

III-4. Budget Processes

33. Can the legislature provide input to the national budget?

75

33a. In law, the legislature can amend the budget.

YES | NO

References:

National Constitution, Arts. 170 and 171

Hugo Beteta (Secretaria de Planificación Económica)

Erick Coyoy (Ministerio de Finanzas Públicas)

David Cristiani (Asociación de Investigaciones Económicas y Sociales)

Pablo Rodas (El Periódico)

Nineth Montenegro (Congreso de la República).

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can approve, but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

33b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

The Law for Contracting and Expenditures established that if the expenditure in question exceeds US\$63,000 a legislative approval is needed. In practice the total cost is divided, in order to avoid legislative approval.

References:

Hugo Beteta (Secretaria de Planificación Económica)

Erick Coyoy (Ministerio de Finanzas Públicas)

David Cristiani (Asociación de Investigaciones Económicas y Sociales)

Pablo Rodas (El Periódico)

Nineth Montenegro (Congreso de la República).

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

33c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Congress has the necessary resources and staff to input changes, but lacks sufficient preparation (i.e. knowledge of economics, finances, budget process and political interest) in order to do a better job.

References:

Hugo Beteta (Secretaria de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Nineth Montenegro (Congreso de la República).

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

34. Can citizens access the national budgetary process?

58

34a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

Comments:

Some major budget modifications are sometimes negotiated in separate, closed sessions.

References:

Hugo Beteta (Secretaría de Planificación Económica)
 Erick Coyoy (Ministerio de Finanzas Públicas)
 David Cristiani (Asociación de Investigaciones Económicas y Sociales)
 Pablo Rodas (El Periódico)
 Nineth Montenegro (Congreso de la República).

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

34b. In practice, citizens provide input at budget hearings.

Comments:

Information provided by citizens is most of the times not relevant to budget decisions.

References:

Hugo Beteta (Secretaría de Planificación Económica)
 Erick Coyoy (Ministerio de Finanzas Públicas)
 David Cristiani (Asociación de Investigaciones Económicas y Sociales)
 Pablo Rodas (El Periódico)
 Nineth Montenegro (Congreso de la República).

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

34c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

The access to itemized list of budget allocations is given after the final approval of the budget.

References:

Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Nineth Montenegro (Congreso de la República).

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

35. In law, is there a separate legislative committee which provides oversight of public funds?

100

35. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

The Legislative Law (Art. 31), establishes two parliamentary commissions which provide oversight of public funds: the Finance Commission and the Probity Commission.

References:

Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists. A NO score is earned if there is a body executing this function but it is not under the direction of the legislature.

36. Is the legislative committee overseeing the expenditure of public funds effective?

44

36a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Every time the committee requests a report, the department heads will have to provide them.

References:

Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Nineth Montenegro (Congreso de la República).

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

36b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The ruling party has a disproportionate share of committee seats, therefore the opposition parties have only a marginal influence in the committee.

References:

Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Nineth Montenegro (Congreso de la República).

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

36c. In practice, this committee is protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

The committee is influenced by political forces or incentives in a negative way, and it sometimes makes excessive use of its powers.

References:

Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Nineth Montenegro (Congreso de la República).

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

36d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | **50** | 25 | 0

Comments:

The committee starts investigations, but will sometimes not complete them, due to separate political negotiations.

References:

Hugo Beteta (Secretaria de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Nineth Montenegro (Congreso de la República).

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ³⁴ Civil Service Regulations

37. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

37a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

The Law for Civil Service, 1968;
The Law for Probity and Responsibilities of Civil Servants;

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

37b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

National Constitution, Arts. 170 and 171;
Law for Probity and Responsibilities for Civil Servants;

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

37c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

There is a labour law.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

37d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

The Law for Probitry and Responsibilities of Civil Servants (Art.16) stipulates that during the first five years after serving a sentence for a crime the person will not have the right to apply for any job in the civil service.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

38. Is the law governing the administration and civil service effective?

58

38a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants are protected from political interference (Law for Probitry and Responsibilities of Civil Servants, Art. 18). In practice this is not respected.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

38b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

By law, there is a formal process of appointing and evaluating future civil servants, but in practice political considerations play most of the time an important roll in appointments and professional assessments. Individuals appointed have sometimes conflicts of interests, due mostly to connections.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

38c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)

Gerardo Veras (Oficina Nacional de Servicio Civil)

Maritza Ochoa (O & M Consultora)

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

38d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

This differs from institution to institution.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)

Gerardo Veras (Oficina Nacional de Servicio Civil)

Maritza Ochoa (O & M Consultora)

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

38e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

There is no overtime pay or any other bonuses that could represent more than 5 percent of the total pay.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)

Gerardo Veras (Oficina Nacional de Servicio Civil)

Maritza Ochoa (O & M Consultora)

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

38f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)

Gerardo Veras (Oficina Nacional de Servicio Civil)

Maritza Ochoa (O & M Consultora)

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

38g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

Most of the times the redress mechanism for the civil service is fairly effective.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)

Gerardo Veras (Oficina Nacional de Servicio Civil)

Maritza Ochoa (O & M Consultora)

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

38h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)

Gerardo Veras (Oficina Nacional de Servicio Civil)

Maritza Ochoa (O & M Consultora)

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

38i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

By law, civil servants convicted of corruption cannot apply for government jobs for five years after serving the sentence.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

39. Are there regulations addressing conflicts of interest for civil servants?

46

39a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Law for Probity and Responsibilities of Civil Servants;
Procurements and Contracting Law;
Executive Ethical Code;

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

39b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

Comments:

No such restrictions apply; however, the private sector often avoids hiring former civil servants.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

39c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Law for Probity and Responsibilities of Civil Servants;
National Constitution;
Executive Ethical Code;
Penal Code;

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

39d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

39f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected. Most of the times civil servants are unaware of the existing laws, restrictions and regulations.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

40. Can citizens access the asset disclosure records of senior civil servants?

8

40a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

Law for Probity and Responsibilities of Civil Servants has an article concerning the confidentiality of the asset disclosure records of the civil servants.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

40b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The confidentiality of those records is protected by law. They can be obtained only through judicial investigation, which entails high costs.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

40c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The confidentiality of those records is protected by law. They can be obtained only through judicial investigation, which entails high costs.

References:

Raúl Marroquín (Sindicato de Trabajadores del Instituto Nacional de Electrificación)
Gerardo Veras (Oficina Nacional de Servicio Civil)
Maritza Ochoa (O & M Consultora)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

41. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

25

41a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The law only protects the person who denounces active or passive corruption (Penal Code, Art. 439 and 442), but there is no specific protection for public sector whistle-blowers.

References:

Marvin Flores (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

Alvaro Pop (Organismo Indígena para la Planificación del Desarrollo)

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

41b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Comments:

Public sector whistle-blowers are extremely rare; they relate mostly to union activities.

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio)

Alvaro Pop (Organismo Indígena para la Planificación del Desarrollo)

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

41c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

Comments:

There are no such legal protections.

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio)

Alvaro Pop (Organismo Indígena para la Planificación del Desarrollo)

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

41d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

There are usually negative consequences.

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio)

Alvaro Pop (Organismo Indígena para la Planificación del Desarrollo)

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

42. Is there an effective internal mechanism (i.e. phone hotline, e-mail address, local office) where civil servants can report corruption?

0

42a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is no such mechanism.

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio)

Alvaro Pop (Organismo Indígena para la Planificación del Desarrollo)

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

42b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

There is no such mechanism.

References:

Marvin Flores (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

Alvaro Pop (Organismo Indígena para la Planificación del Desarrollo)

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

42c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no such mechanism.

References:

Marvin Flores (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

Nineth Montenegro (Congreso de la República)

Alvaro Pop (Organismo Indígena para la Planificación del Desarrollo)

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

42d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is no such mechanism.

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio)

Nineth Montenegro (Congreso de la República)

Alvaro Pop (Organismo Indígena para la Planificación del Desarrollo)

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

13
IV-3. Procurement

43. Is the public procurement process effective?

60

43a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

The existing laws (Law for Probity and Responsibilities of Civil Servants, National Constitution, Executive Ethical Code and Penal Code) are ambiguous. Clearer or better rules are needed.

References:

Marvin Flores (Acción Ciudadana)
Mayra Palencia (Camara de Comercio).

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private gain for public procurement officials.

NO: A NO score is earned if no such rules exist.

43b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

There are no requirements for any kind of training of public procurement officials.

References:

Marvin Flores (Acción Ciudadana)
Mayra Palencia (Camara de Comercio).

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, or voluntary.

43c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

The existing rules are not clear enough, and many times they are not enforced.

References:

Marvin Flores (Acciòn Ciudadana)
Mayra Palencia (Camara de Comercio).

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

43d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

The Law for Probity and Responsibilities of Civil Servants establishes a system whereby civil servants responsible for public procurement must disclose their personal wealth and assets before they can take up the position. When the person wishes to leave the public service, he or she must once again disclose his or her personal wealth and assets. However, there is no systematic verification of whether the information given is correct, or any independent monitoring of personal assets of civil servants.

References:

Marvin Flores (Acciòn Ciudadana)
Mayra Palencia (Camara de Comercio).

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

43e. In law, major procurements require competitive bidding.

YES | NO

Comments:

The Procurements and Contracting Law (Arts. 9, 17, 18, 19) requires and regulates competitive bidding when the service value is higher than US\$120,000.

References:

Marvin Flores (Acciòn Ciudadana)
Mayra Palencia (Camara de Comercio).

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

43f. In law, strict formal requirements limit the extent of sole sourcing.

YES | **NO**

Comments:

The prohibitions are not very specific.

References:

Marvin Flores (Acciòn Ciudadana)
Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

43g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | **NO**

Comments:

There is no way to do so.

References:

Marvin Flores (Acciòn Ciudadana)
Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

43h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

There is a way to take the matter to court.

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio).

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

43i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

There is a black list of companies that have committed irregularities, however sometimes companies may change names, which allows them to carry on doing business with the government.

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio).

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

43j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

A system is in place, but it has flaws that affect the effectiveness of the prohibitions. This is due to the fact that companies have the possibility of sometimes changing names, which allows them to carry on doing business with the government

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio).

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

44. Can citizens access the public procurement process?

79

44a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

The National Constitution (Art.30) gives access to information to all citizens in any administrative procedure.

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if procurement rules are, by law, open to the public.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

44b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

They are published on www.guatecompras.com

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio).

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

44c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Most public procurement regulations are available online, but for some people a trip to the capital might be needed.

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access public procurement regulations at a reasonable cost.

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

44e. In practice, major public procurements are widely advertised.

100 | 75 | 50 | 25 | 0

Comments:

According to the Procurements and Contracts Law, major public procurements have to be advertised twice in the state paper and twice in the paper with the largest circulation (Art. 23). This is typically followed in practice.

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio).

100: There is a formal process of advertising public procurements. This may include a government Web site, newspaper advertising, or other official announcements. All major procurements are advertised in this way.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

44f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The official process can take a little long, and sometimes some of the information is not available.

References:

Marvin Flores (Acciòn Ciudadana)

Mayra Palencia (Camara de Comercio)

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

45. Is the privatization process effective?

0

45a. In law, all businesses are eligible to compete for privatized state assets.

YES

NO

Comments:

There is no privatization law, and the last privatization process was conducted ten years ago.

References:

Ligia Garcia (Facultad de Ciencias Economicas, Universidad Rafael Landivar)

Mayra Palencia (Camara de Comercio)

Pablo Rodas (El Periòdico).

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

45b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | **NO**

Comments:

There is no privatization law, and the last privatization process was conducted ten years ago.

References:

Ligia Garcia (Facultad de Ciencias Economicas, Universidad Rafael Landivar)

Mayra Palencia (Camara de Comercio)

Pablo Rodas (El Periódico).

YES: A YES score is earned if there are formal regulations defining and regulating conflicts of interest for government officials involved in privatization.

NO: A NO score is earned if there are no such formal regulations.

45c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | **0**

Comments:

There is no privatization law, and the last privatization process was conducted ten years ago.

References:

Ligia Garcia (Facultad de Ciencias Economicas, Universidad Rafael Landivar)

Mayra Palencia (Camara de Comercio)

Pablo Rodas (El Periódico).

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

46. Can citizens access the terms and conditions of privatization bids?

0

46a. In law, citizens can access the terms and conditions of privatization bids.

YES | **NO**

Comments:

There is no privatization law, and the last privatization process was conducted ten years ago.

References:

Ligia Garcia (Facultad de Ciencias Economicas, Universidad Rafael Landivar)
Mayra Palencia (Camara de Comercio)
Pablo Rodas (El Periódico).

YES: A YES score is earned if there is a formal process of publishing the details of privatization bids that makes information available to all citizens.

NO: A NO score is earned if there is no formal publication process, or if any citizens are excluded by law from accessing this information.

46b. In law, the government is required to publicly announce the results of privatization decisions.

YES | **NO**

Comments:

There is no privatization law, and the last privatization process was conducted ten years ago.

References:

Ligia Garcia (Facultad de Ciencias Economicas, Universidad Rafael Landivar)
Mayra Palencia (Camara de Comercio)
Pablo Rodas (El Periódico).

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

46c. In practice, citizens can access the terms and conditions of privatization bids within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

There is no privatization law, and the last privatization process was conducted ten years ago.

References:

Ligia Garcia (Facultad de Ciencias Economicas, Universidad Rafael Landivar)
Mayra Palencia (Camara de Comercio)
Pablo Rodas (El Periòdico).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

46d. In practice, citizens can access the terms and conditions of privatization bids at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no privatization law, and the last privatization process was conducted ten years ago. Obtaining records used to represent a financial burden on citizens, journalists or CSOs.

References:

Ligia Garcia (Facultad de Ciencias Economicas, Universidad Rafael Landivar)
Mayra Palencia (Camara de Comercio)
Pablo Rodas (El Periòdico).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-1. National Ombudsman

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

The National Constitution (Arts.274 and 275) stipulates the existence of the National Ombudsman that covers the entire nation.

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

48. Is the national ombudsman effective?

75

48a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

Human Rights Commission and National Ombudsman Law (Art. 8) give total freedom of action to the National Ombudsman.

References:

Mario Polanco (Grupo de Apoyo Mutuo)

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

48b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Sometimes the ombudsman is not provided with the information needed to carry out its investigations.

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

48c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The National Constitution determined a five-year mandate for the head of the ombudsman agency.

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

48d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

48e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman is appointed based on professional qualifications, but some of the agency staff may have some party loyalties.

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

48f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency receives some funding from the state; the majority of funding comes from foreign donations.

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

48g. In practice, the agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The agency makes reports which become public after being presented to the legislature.

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

48h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The functions of the ombudsman are to investigate, denunciate and promote administrative or judiciable actions.

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

48i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The National Constitution gives the ombudsman only the power of magistrate of conscience.

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

48j. In practice, the government acts on the findings of the agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

It has some impact on governmental policies, but it could have a bigger effect on the government actions.

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

48k. In practice, the agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The time that the agency takes to act on complaints is sometimes influenced by the lack of cooperation with other agencies.

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

49. Can citizens access the reports of the ombudsman?

92

49a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

All reports are available.

References:

National Constitution, Arts. 29 and 30;

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

49b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The reports are available in the agency library.

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Most of the reports are available for free or for the cost of photocopying.

References:

Mario Polanco (Grupo de Apoyo Mutuo)
Diego De León (Fundación Mirna Mack)
Iduvina Hernández (Seguridad Democrática)

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

National Constitution (Art. 232) establishes the existence of the General Comptroller Agency for the entire public sector.

References:

Mayra Palencia (Cámara de Comercio)
Nineth Montenegro (Congreso de la República)
Iduvina Hernández (Seguridad Democrática)
Álvaro Pop (Asociación Indígena para el Desarrollo)
Alejandro Urizar (Acción Ciudadana)

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

51. Is the supreme audit institution effective?

51a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The National Constitution (Art. 232) and the agency's own internal regulation stipulate its independence, but in practice the agency is staffed with partisans.

References:

Mayra Palencia (Cámara de Comercio)
Nineth Montenegro (Congreso de la República)
Iduvina Hernández (Seguridad Democrática)
Álvaro Pop (Asociación Indígena para el Desarrollo)
Alejandro Urizar (Acción Ciudadana)

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

51b. In practice, the head of the agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The head of the agency has been removed before without relevant justification.

References:

Mayra Palencia (Cámara de Comercio)
Nineth Montenegro (Congreso de la República)
Iduvina Hernández (Seguridad Democrática)
Álvaro Pop (Asociación Indígena para el Desarrollo)
Alejandro Urizar (Acción Ciudadana)

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

51c. In practice, the agency has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The staff is limited and in some cases unprofessional.

References:

Mayra Palencia (Cámara de Comercio)
Nineth Montenegro (Congreso de la República)
Idivina Hernández (Seguridad Democrática)
Álvaro Pop (Asociación Indígena para el Desarrollo)
Alejandro Urizar (Acción Ciudadana)

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

51d. In practice, agency appointments support the independence of the agency.

100 | 75 | **50** | 25 | 0

Comments:

In practice, appointments are sometimes made for political favors.

References:

Mayra Palencia (Cámara de Comercio)
Nineth Montenegro (Congreso de la República)
Idivina Hernández (Seguridad Democrática)
Álvaro Pop (Asociación Indígena para el Desarrollo)
Alejandro Urizar (Acción Ciudadana)

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

51e. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency is regularly funded, but the funds are not sufficient for the agency to carry out its mandate.

References:

Mayra Palencia (Cámara de Comercio)
Nineth Montenegro (Congreso de la República)
Iduvina Hernández (Seguridad Democrática)
Álvaro Pop (Asociación Indígena para el Desarrollo)
Alejandro Urizar (Acción Ciudadana)

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

51f. In practice, the agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The reports are not public. They are only presented to the legislature and may avoid sensitive information.

References:

Mayra Palencia (Cámara de Comercio)
Nineth Montenegro (Congreso de la República)
Iduvina Hernández (Seguridad Democrática)
Álvaro Pop (Asociación Indígena para el Desarrollo)
Alejandro Urizar (Acción Ciudadana)

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

51g. In practice, the government acts on the findings of the agency.

100 | 75 | **50** | 25 | 0

Comments:

The government actions are not strong enough.

References:

Mayra Palencia (Cámara de Comercio)
Nineth Montenegro (Congreso de la República)
Iduvina Hernández (Seguridad Democrática)
Álvaro Pop (Asociación Indígena para el Desarrollo)
Alejandro Urizar (Acción Ciudadana)

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

51h. In practice, the supreme audit institution is able to initiate its own investigations.

100 | 75 | **50** | 25 | 0

Comments:

Political pressure plays an important roll.

References:

Mayra Palencia (Cámara de Comercio)
Nineth Montenegro (Congreso de la República)
Iduvina Hernández (Seguridad Democrática)
Álvaro Pop (Asociación Indígena para el Desarrollo)
Alejandro Urizar (Acción Ciudadana)

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

52. Can citizens access reports of the supreme audit institution?

67

52a. In law, citizens can access reports of the agency.

YES | NO

Comments:

The National Constitution (Arts. 29, 30) makes this possible, but in practice the process is not at all easy.

References:

Mayra Palencia (Cámara de Comercio)
Nineth Montenegro (Congreso de la República)
Iduvina Hernández (Seguridad Democrática)
Álvaro Pop (Asociación Indígena para el Desarrollo)
Alejandro Urizar (Acción Ciudadana)

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

52b. In practice, citizens can access audit reports within a reasonable time period.

Comments:

Some delays may be experienced, and in the case of a sensitive issue obtaining information could be altogether impossible.

References:

Mayra Palencia (Cámara de Comercio)
 Nineth Montenegro (Congreso de la República)
 Iduvina Hernández (Seguridad Democrática)
 Álvaro Pop (Asociación Indígena para el Desarrollo)
 Alejandro Urizar (Acción Ciudadana)

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52c. In practice, citizens can access the audit reports at a reasonable cost.

Comments:

The audit reports are available at the cost of photocopying. In some cases, additional costs involve the trip to the capital.

References:

Mayra Palencia (Cámara de Comercio)
 Nineth Montenegro (Congreso de la República)
 Iduvina Hernández (Seguridad Democrática)
 Álvaro Pop (Asociación Indígena para el Desarrollo)
 Alejandro Urizar (Acción Ciudadana)

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

76
V-3. Taxes and Customs

53. In law, is there a national tax collection agency?

100

53. In law, is there a national tax collection agency?

YES | NO

References:

Superintendencia de Administración Tributaria, Art. 3 del Decree-law 1-98;

Carolina Castellanos (American Chamber of Commerce)
Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pedro Prado (Asociación de Investigaciones Económicas y Sociales)
Abelardo Medina (Superintendencia de administración Tributaria)
Ligia García (Facultad de Ciencias Económicas de la Universidad Rafael Landívar)
Pablo Rodas (El Periódico)

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

54. Is the tax collection agency effective?

88

54a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency has professional and full-time staff. During the last governmental administration the agency suffered a significant drawback, from which it is still recovering.

References:

Carolina Castellanos (American Chamber of Commerce)
Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pedro Prado (Asociación de Investigaciones Económicas y Sociales)
Abelardo Medina (Superintendencia de administración Tributaria)
Ligia García (Facultad de Ciencias Económicas de la Universidad Rafael Landívar)
Pablo Rodas (El Periódico)

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

54b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

According to the law (Ley de Administración Tributaria), the agency can get 2 percent of the amount collected.

References:

Carolina Castellanos (American Chamber of Commerce)
Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pedro Prado (Asociación de Investigaciones Económicas y Sociales)
Abelardo Medina (Superintendencia de administración Tributaria)
Ligia García (Facultad de Ciencias Económicas de la Universidad Rafael Landívar)
Pablo Rodas (El Periódico)

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

55. In practice, are tax laws enforced uniformly and without discrimination?

75

55. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The fiscal laws only regulate the activity of the largest taxpayers but have strong weaknesses when it comes to regulating the informal economy.

References:

Carolina Castellanos (American Chamber of Commerce)
Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pedro Prado (Asociación de Investigaciones Económicas y Sociales)
Abelardo Medina (Superintendencia de administración Tributaria)
Ligia García (Facultad de Ciencias Económicas de la Universidad Rafael Landívar)
Pablo Rodas (El Periódico)

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

56. In law, is there a national customs and excise agency?

100

56. In law, is there a national customs and excise agency?

YES | NO

Comments:

It functions within the Tax Collection Agency (Intendencia de Aduanas, Acuerdo 05-99).

References:

Carolina Castellanos (American Chamber of Commerce)
Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pedro Prado (Asociación de Investigaciones Económicas y Sociales)
Abelardo Medina (Superintendencia de administración Tributaria)
Ligia García (Facultad de Ciencias Económicas de la Universidad Rafael Landívar)
Pablo Rodas (El Periódico)

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

57. Is the customs and excise agency effective?

75

57a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The degree of efficiency and integrity of the customs and excise divisions is highly questioned.

References:

Carolina Castellanos (American Chamber of Commerce)
Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pedro Prado (Asociación de Investigaciones Económicas y Sociales)
Abelardo Medina (Superintendencia de administración Tributaria)
Ligia García (Facultad de Ciencias Económicas de la Universidad Rafael Landívar)
Pablo Rodas (El Periódico)

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

57b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Carolina Castellanos (American Chamber of Commerce)
Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pedro Prado (Asociación de Investigaciones Económicas y Sociales)
Abelardo Medina (Superintendencia de administración Tributaria)
Ligia García (Facultad de Ciencias Económicas de la Universidad Rafael Landívar)
Pablo Rodas (El Periódico)

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

75

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

They developed a new system which is working well, but there is still room for improvements

References:

Carolina Castellanos (American Chamber of Commerce)
Hugo Beteta (Secretaría de Planificación Económica)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de Investigaciones Económicas y Sociales)
Pedro Prado (Asociación de Investigaciones Económicas y Sociales)
Abelardo Medina (Superintendencia de administración Tributaria)
Ligia García (Facultad de Ciencias Económicas de la Universidad Rafael Landívar)
Pablo Rodas (El Periódico)

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. Financial Sector Regulation

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

100

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

YES | NO

Comments:

The law for market values establishes a registration system, which depends on the Ministry of Economics.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

YES: A YES score is earned if there is an agency tasked with overseeing publicly listed companies in the public interest and ensuring that disclosure rules are met.

NO: A NO score is earned if this function is spread over several agencies or does not exist.

60. Is the financial regulatory agency effective?

50

60a. In law, the financial regulatory agency is protected from political interference.

YES | NO

Comments:

The agency does not have autonomy because it depends on the Ministry of Economics, and the head of the agency is designated by the President.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

60b. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency needs more qualified, full-time staff.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

60c. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Its funding is regular but limited.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

60d. In practice, when necessary, the financial regulatory agency independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The agency initiates investigations, but the process can be improved.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

100: When irregularities are discovered, the agency is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

60e. In practice, when necessary, the financial regulatory agency imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The agency has acted only a few times; problems can arise if the agency wants to impose penalties in sensitive cases.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

100: When rules violations are discovered, the agency is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan.

61. Can citizens access the financial records of publicly listed companies?

83

61a. In law, citizens can access the financial records of publicly listed companies.

YES | NO

Comments:

The National Constitution (Arts. 29 and 30) allows for this, and citizens can find the information online.

References:

Carolina Castellanos (American Chamber of Commerce)

Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

YES: A YES score is earned if the financial information of all publicly traded companies is required by law to be public.

NO: A NO score is earned if any category of publicly- owned or publicly-traded company is exempt from this rule, or no such rules exist.

61b. In practice, the financial records of publicly listed companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

They are updated online almost on weekly basis.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

100: Publicly traded companies always disclose financial data, which is generally accurate and up to date.

75:

50: Publicly traded companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value to investors.

61c. In practice, the financial records of publicly listed companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

All of them are audited, some by a third party and others by the government.

References:

Carolina Castellanos (American Chamber of Commerce)

Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

100: Financial records of all public companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of public companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: Publicly traded companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

61d. In practice, citizens can access the records of disciplinary decisions imposed by the government on publicly-listed companies.

100 | 75 | 50 | 25 | 0

Comments:

If they committed any irregularities, the companies are removed from the official listings, and details about their actions are published on the internet.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

100: These records are freely available to all citizens through a formal official process.

75:

50: These records are available to all citizens, with some exceptions.

25:

0: These records are generally not available through official processes.

61e. In practice, citizens can access the financial records of publicly listed companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The process takes up to two days, and it is done online.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

61f. In practice, citizens can access the financial records of publicly listed companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

62. Are business licenses available to all citizens?

81

62a. In law, anyone may apply for a business license.

YES | NO

Comments:

Every citizen has the right to do so.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

62b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

The Law for the Administrative and Contentious allows for this. However, the process could end up being very long and expensive.

References:

Carolina Castellanos (Cámara Americana)
Erick Coyoy (Ministerio de Finanzas)

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

62c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This depends on the type of license required, but the process has become more efficient with time.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Publicas)
David Cristiani (Asociacion de Investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Abelardo Medina (Superintendencia de Administración Tributaria).

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months.

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

62d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Sometimes a special lawyer may be needed.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

63. Do businesses receive equitable regulatory treatment from the government?

75

63a. In law, basic business regulatory requirements for meeting health, safety, and environmental standards are transparent and publicly available.

YES | NO

Comments:

Most of the requirements are published on the internet.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

YES: A YES score is earned if basic regulatory requirements for meeting health, safety, and environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

63b. In practice, business inspections by the government are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

There are some exceptions.

References:

Carolina Castellanos (American Chamber of Commerce)
Erick Coyoy (Ministerio de Finanzas Públicas)
David Cristiani (Asociación de investigaciones Económicas y Sociales)
Pablo Rodas (El Periódico)
Rolando San Román (Bolsa de Valores de Guatemala)

100: Business inspections by the government (i.e. health, safety, or environmental inspections) are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government (i.e. health, safety, or environmental inspections) are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections (i.e. health, safety, or environmental inspections) are routinely carried out by the government in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁷⁰Anti-Corruption Law

64. Is there legislation criminalizing corruption?

89

64a. In law, attempted corruption is illegal.

YES | **NO**

Comments:

The National Constitution stipulates that the attempt to commit a crime is illegal (Penal Code Art. 17), but there is no specific law to define corruption as a crime.

References:

Oscar Vásquez (Acción Ciudadana)
Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

64b. In law, extortion is illegal.

YES | NO

References:

Penal Code (Código Penal), Art. 251

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

64c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

Bribing is illegal according to the Penal Code (Código Penal), Art. 442.

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

64d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

Passive corruption is illegal according to the Penal Code (Código Penal), Arts. 439 and 440.

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

64e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

Bribing a foreign official is illegal according to the Penal Code (Codigo Penal), Art. 442.

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

64f. In law, using public resources for private gain is illegal.

YES | NO

References:

Penal Code (Codigo Penal), Art. 447;

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

64g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Penal Code (Codigo Penal), Art. 447;

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

64h. In law, money laundering is illegal.

YES | NO

Comments:

There is a law against money laundering.

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

64i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

It is illegal according to the Penal Code (Codigo Penal), Art. 17.

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The Presidential Commission for Transparency and the District Attorney's Office both address corruption and act on denunciation, but at the same time they are both accused of weakness and lack of commitment.

References:

Oscar Vásquez (Acción Ciudadana)
Mayra Palencia (Camara de Comercio)

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

66. Is the anti-corruption agency effective?

44

66a. In law, the agency (or agencies) is protected from political interference.

YES | NO

References:

Oscar Vásquez (Acción Ciudadana)
Mayra Palencia (Camara de Comercio)

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

66b. In practice, the agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

66c. In practice, the head of the agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The district attorney for corruption resigned in May of this year, and it took three months for the general district attorney to appoint the new one.

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

66d. In practice, appointments to the agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

66e. In practice, the agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

66f. In practice, the agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66g. In practice, the agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The general district attorney has to present its annual report to the Congress.

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

66h. In practice, the agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | **25** | 0

Comments:

The Districts Attorney's Office has 35 cases of corruption pending, among them the case of former President Alfonso Portillo, for the unaccountability of US\$17,14 millions.

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

66i. In practice, when necessary, the agency (or agencies) independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The District Attorney's for Corruption Office has cases pending against former president Alfonso Portillo, the defence minister and the former head of the Collection Tax Agency.

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

67. Can citizens access the anti-corruption agency?

38

67a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The District Attorney's for Corruption Office has had 35 cases pending during the past three years.

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

67b. In practice, citizens can complain to the agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

To a certain extent citizens are safe from recrimination, but most of complaints about corruption cases come from the media and not from individuals.

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

61 VI-3. Rule of Law

68. Is there an appeals mechanism for challenging criminal judgments?

75

68a. In law, there is a general right of appeal.

YES

NO

References:

The National Constitution, Art. 28;

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)

Iduvina Hernández (Seguridad Democrática)

Diego De León (Fundación Mirna Mack)

Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)

Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

68b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The appeal mechanism is used to sometimes delay the investigation, or for other purposes. The problem is that the mechanism of appealing has been abused lately.

References:

Oscar Vásquez (Acción Ciudadana)

Mayra Palencia (Camara de Comercio)

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

68c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The high cost of lawyers prevents middle-class citizen from challenging the system.

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)

Iduvina Hernández (Seguridad Democrática)

Diego De León (Fundación Mirna Mack)

Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)

Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

69. In practice, do judgments in the criminal system follow written law?

75

69. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Organized crime sometimes plays an important role in judgments in the criminal system.

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)

Iduvina Hernández (Seguridad Democrática)

Diego De León (Fundación Mirna Mack)

Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)

Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

70. In practice, are judicial decisions enforced by the state?

50

70. In practice, are judicial decisions enforced by the state?

Comments:

There are some exceptions when judicial decisions are enforced.

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)
 Idivina Hernández (Seguridad Democrática)
 Diego De León (Fundación Mirna Mack)
 Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)
 Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

71. Is the judiciary able to act independently?

88

71a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

National Constitution, Arts. 203 and 205;

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)
 Idivina Hernández (Seguridad Democrática)
 Diego De León (Fundación Mirna Mack)
 Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)
 Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

71b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Judges are occasionally influenced by the organized crime or by political incentives.

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)
Iduvina Hernández (Seguridad Democrática)
Diego De León (Fundación Mirna Mack)
Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)
Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

71c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

The law stipulates the existence of such a system.

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)
Iduvina Hernández (Seguridad Democrática)
Diego De León (Fundación Mirna Mack)
Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)
Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

71d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

National Constitution, Art. 205;
Judicial System Internal Law, Art. 54;

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)
Iduvina Hernández (Seguridad Democrática)
Diego De León (Fundación Mirna Mack)
Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)
Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

72. Are judges safe when adjudicating corruption cases?

100

72a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)
Iduvina Hernández (Seguridad Democrática)
Diego De León (Fundación Mirna Mack)
Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)
Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

72b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)
Iduvina Hernández (Seguridad Democrática)
Diego De León (Fundación Mirna Mack)
Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)
Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

73. Do citizens have equal access to the justice system?

33

73a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Racial or ethnic criteria occasionally affect judicial decisions.

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)
Iduvina Hernández (Seguridad Democrática)
Diego De León (Fundación Mirna Mack)
Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)
Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

73b. In practice, women have full access to the judicial system.

100 | 75 | 50 | **25** | 0

Comments:

Gender equality needs to improve in order to make the system better.

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)

Iduvina Hernández (Seguridad Democrática)

Diego De León (Fundación Mirna Mack)

Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)

Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence.

73c. In practice, the state provides legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | **50** | 25 | 0

Comments:

Legal aid does not always contemplate the translations for the non-Spanish speaking population.

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)

Iduvina Hernández (Seguridad Democrática)

Diego De León (Fundación Mirna Mack)

Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)

Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

100: State-provided legal aid is basic, but well trained and effective in representing the rights of indigent defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some indigent defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most indigent defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

73d. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | **25** | 0

Comments:

Legal suits are sometimes too expensive to bring.

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)

Iduvina Hernández (Seguridad Democrática)

Diego De León (Fundación Mirna Mack)

Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)

Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

73e. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | **25** | 0

Comments:

The costs are sometimes too high.

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)

Iduvina Hernández (Seguridad Democrática)
Diego De León (Fundación Mirna Mack)
Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)
Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

73f. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | **50** | 25 | 0

Comments:

Some citizens may be unable to reach a courtroom.

References:

Carlos Escobar Armas (Asociación de estudios e investigaciones economicas y sociales)
Iduvina Hernández (Seguridad Democrática)
Diego De León (Fundación Mirna Mack)
Alvaro Castellanos (Facultad de Ciencias Jurídicas y Sociales de la Universidad Rafael Landívar)
Karin Wagner (Asociación de Estudios e investigaciones Economicos y Sociales)

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

74. Is the law enforcement agency (i.e. the police) effective?

74a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

In the case of the police force, agents are appointed according to their professional qualifications (or at least according to their academic preparations); high level officers are occasionally appointed based on loyalties, family connections or other interests.

References:

Iduvina Hernández (Seguridad Democrática)

Diego De León (Fundación Mirna Mack)

Alvaro Castellanos (Facultad de Derecho Universidad Rafael Landívar)

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

74b. In practice, the agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | **50** | 25 | 0

Comments:

The budget is very limited and the salaries of the police officers are very low, which prevents them from doing a good job.

References:

Iduvina Hernández (Seguridad Democrática)

Diego De León (Fundación Mirna Mack)

Alvaro Castellanos (Facultad de Derecho Universidad Rafael Landívar)

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

74c. In practice, the agency is protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

The police does not have sufficient budget, information and human resources, which makes it harder for them to be independent from political or other kind of interference.

References:

Iduvina Hernández (Seguridad Democrática)

Diego De León (Fundación Mirna Mack)

Alvaro Castellanos (Facultad de Derecho Universidad Rafael Landívar)

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

75. Can law enforcement officials be held accountable for their actions?

79

75a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

The National Ombudsman's Office is the only place where citizens can complain about police action.

References:

Iduvina Hernández (Seguridad Democrática)
Diego De León (Fundación Mirna Mack)
Alvaro Castellanos (Facultad de Derecho Universidad Rafael Landívar)

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions.

NO: A NO score is earned if there is no such mechanism.

75b. In practice, the independent reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

The National Ombudsman responds rather quickly, but it does not have the power to act, as its mandate is only that of magistrate of conscience.

References:

Iduvina Hernández (Seguridad Democrática)
Diego De León (Fundación Mirna Mack)
Alvaro Castellanos (Facultad de Derecho Universidad Rafael Landívar)

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

75c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

There is no such special agency. The existing legislation overlooks the entire civil service.

References:

Iduvina Hernández (Seguridad Democrática)

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity is separate from the regular police department.

NO: A NO score is earned if no such agency/entity exists.

75d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | **25** | 0

Comments:

Since no special agency exists, the only way to start an investigation is through the same system that applies to the rest of the civil service.

References:

Iduvina Hernández (Seguridad Democrática)
Diego De León (Fundación Mirna Mack)
Alvaro Castellanos (Facultad de Derecho Universidad Rafael Landívar)

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

75e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

National Constitution;
Penal Code (Codigo Penal);

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

75f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

Officers are subject to criminal investigations, according to the National Constitution and the Penal Code, however some crimes may not be properly investigated.

References:

Iduvina Hernández (Seguridad Democrática)
Diego De León (Fundación Mirna Mack)

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
