

Overall Score:

**65 - Weak**

Legal Framework Score:

**90 - Strong**

Actual Implementation Score:

**43 - Very Weak**

Category 1. Non-Governmental Organizations, Public Information and Media

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### 1.1. <sup>68</sup>Anti-Corruption Non-Governmental Organizations

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

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

**Comments:**

Guatemala's Constitution recognized the right of free association. The Law of Non-Governmental Organizations (NGOs) establishes that NGOs can be formed, with interests such as cultural, educational, sporting, social service, welfare, charity, economic and social development.

**References:**

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985) Title II, Chapter I, Paragraph (1) Article 34.  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley de organizaciones no gubernamentales para el desarrollo, Decreto número 02-2004, 3 de Febrero de 2003. (Law of non-governmental organizations to development, Decree No. 02-2003, Feb. 3, 2003). Chapter 1. Articles 1 and 2.

<http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2003/Leyes%20en%202003.pdf>

**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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

**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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

**Comments:**

NGOs can have their own capital resources coming from national or international funds.

**References:**

Ley de organizaciones no gubernamentales para el desarrollo, Decreto número 02-2004, 3 de Febrero de 2003. (Law of non-governmental organizations to development, Decree No. 02-2003, Feb. 3, 2003). Chapter 1. Article 2.

<http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2003/Leyes%20en%202003.pdf>

**Yes:** A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

**Comments:**

NGOs, if they manage state funds, are obligated to disclose their sources if an applicant asks.

**References:**

Ley de acceso a la información pública, Decreto número 57-2008, 23 de Septiembre de 2008. (Law on access to public information, Decree No. 57-2008, Sept. 23, 2008). Title I, Chapter I, Article 6, (29).

<http://www.sit.gob.gt/uploads/docs/laws/LeydeAccesoInformacion-Guatemala.pdf>

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

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

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

83

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

**Comments:**

Some bureaucratic problems may occur, but they not serious. In Guatemala, the formation of one NGO does not pose a big problem. The problems may occur when the NGO, after its organization, begins to investigate and discovers corruption acts, which represents the beginning of threats or intimidations.

**References:**

\*Interview with Ricardo Recinos, Oct. 26, 2010, Guatemala

\*Interview with Claudia Guzmán, Oct. 26, 2010, Guatemala

\*Both are lawyers and public notaries.

**100:** NGOs 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:** NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

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

**Comments:**

There are several NGOs working hard to account for transparent public administration. Some have well-defined profiles and act in an honest manner, according to their own goals and missions. Others, however, have not been so successful in their actions because they have no impact on policy making and lack bargaining powers.

**References:**

Citizen action (Acción ciudadana). "Who are we".

Accessed on Nov. 9, 2010.

[http://accionciudadana.org.gt/index.php?option=com\\_content&task=view&id=18&Itemid=35](http://accionciudadana.org.gt/index.php?option=com_content&task=view&id=18&Itemid=35)

Mutual support group (Grupo de apoyo mutuo). "Mission".

Accessed on Nov. 9, 2010.

<http://www.gam.org.gt/>

Social and environmental legal action center (Centro de acción legal – ambiental y social de Guatemala -CALAS-). "Mission".

Accessed on Nov. 9, 2010.

<http://www.calas.org.gt/>

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

**75:**

**50:** Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

**Yes** | No

**Comments:**

No NGO has been shut down.

**References:**

Citizen action (Acción ciudadana). "Who are we".

Accessed on Nov. 9, 2010.

[http://accionciudadana.org.gt/index.php?option=com\\_content&task=view&id=18&Itemid=35](http://accionciudadana.org.gt/index.php?option=com_content&task=view&id=18&Itemid=35)

Mutual support group (Grupo de apoyo mutuo). "Mission".  
Accessed on Nov. 9, 2010.  
<http://www.gam.org.gt/>

Social and environmental legal action center (Centro de acción legal – ambiental y social de Guatemala -CALAS-). "Mission".  
Accessed on Nov. 9, 2010.  
<http://www.calas.org.gt/>

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

**No:** A NO score is earned if any NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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.

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### 3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

33

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

**Comments:**

Nowadays there are no activists sanctioned with prison terms.

**References:**

\*Interview with Ricardo Recinos, Oct. 26, 2010, Guatemala  
\*Interview with Claudia Guzmán, Oct. 26, 2010, Guatemala

\*They both are lawyers and public notaries.

**Yes:** A YES score is earned if there were no NGO activists imprisoned because of their work covering corruption. YES is a positive score.

**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 person 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. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

**Comments:**

There are too many attacks against activists. Here's an excerpt from the article:

"The paper reports that last year saw an increase in reports of attacks and threats against members of human rights organizations.

According to the UN, the Guatemalan activists had 349 and 343 reports of threats and assaults.

The complaints were made to the Office of Human Rights and Protection Unit Defenders of Human Rights, which also reported 16 cases of murder against the activists of these groups." (Orozco, Diario La Hora)

**References:**

Ortiz, Gerson  
 "A country that makes vulnerable the fight for human rights".  
 Diario La Hora, Nationals, Sept. 17, 2010. Accessed on Nov. 9, 2010.  
<http://www.lahora.com.gt/notas.php?key=73411&fch=2010-09-17>

Orozco, Andrea.  
 "Activists at imminent risk".  
 Diario La Hora, Nationals, April 30, 2010. Accessed on Nov. 9, 2010.  
<http://www.lahora.com.gt/notas.php?key=66183&fch=2010-04-30>

**Yes:** A YES score is earned if there were no documented cases of NGO 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. YES is a positive score.

**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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

**Comments:**

There are 16 cases under investigations.

"The complaints were made to the Office of Human Rights and Protection Unit Defenders of Human Rights, which also reported 16 cases of murder against the activists of these groups." (Orozco, Diario La Hora).

**References:**

"A country that makes vulnerable the fight for human rights".  
 Diario La Hora, Nationals, Sept. 17, 2010. Accessed on Nov. 9, 2010.  
<http://www.lahora.com.gt/notas.php?key=73411&fch=2010-09-17>

Orozco, Andrea.  
 "Activists at imminent risk".  
 Diario La Hora, Nationals, April 30, 2010. Accessed on Nov. 9, 2010.  
<http://www.lahora.com.gt/notas.php?key=66183&fch=2010-04-30>

**Yes:** A YES score is earned if there were no documented cases of NGO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

**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.

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#### 4. Can citizens organize into trade unions?

50

04a. In law, citizens have a right to organize into trade unions.

Yes | No

**Comments:**

The Constitution of the Republic of Guatemala establishes the right to free workers' unions. This right can be exercised without discrimination.

**References:**

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31,

1985). Title II, Chapter II, Section 8, Article 103, (q).  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Código de Trabajo, Decreto número 1441, 29 de Abril de 1961. (Labor Code, Decree No. 1441, April 29, 1961). Title VI, Chapter One, Article 206, Paragraph (1).  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-de-trabajo>

Ley de Sindicalización y Regulación de Huelga Para Trabajadores del Estado, Decreto Número 71-86, 11 de Diciembre de 1986. (Law of unionization and regulation of the strike of the State workers, Decree No. 71-86, Dec. 11, 1986). Article 1.  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/ley-de-sindicalizacion-y-regulacion-de-huelga-para-trabajadores-del-estado>

**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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

**Comments:**

There have been 16 deaths of trade unionists.

"International Trade Union Confederation (ITUC) launched its annual report on trade union rights which reveals that Colombia was the first country in the world where more trade unionists were killed, with 48, followed by Guatemala with 16 deaths due to escalating violence."

**References:**

Privado, María

"An invitation to continue the resistance".

The Rural Reporter Weekly Bulletin of the Agrarian Platform, Opinion, Year 9. No. 3. Week 2 through Feb. 8, 2010. Accessed on Nov. 9, 2010.

[http://www.plataformaagraria.org/guatemala/index.php?option=com\\_content&view=article&id=165:informador-rural-no-3&catid=51:2010&Itemid=67](http://www.plataformaagraria.org/guatemala/index.php?option=com_content&view=article&id=165:informador-rural-no-3&catid=51:2010&Itemid=67)

National Front Fight.

"Terror as a weapon against the people". Feb. 7, 2010. Accessed on Nov. 9, 2010.

<http://estamosdefrente.blogspot.com/2010/02/el-terror-como-arma-contr-el-pueblo.html>

Cerigua

"Guatemala, second most unionists murdered".

Noticias de Guatemala, June 11, 2010. Accessed on Nov. 9, 2010.

<http://noticias.com.gt/nacionales/20100611-guatemala-segundo-con-mas-sindicalistas-asesinados.html>

Herrera, Oscar

"Total of 42 violent deaths of trade unionists in 2 years".

El Periódico Guatemala, Feb.8, 2010. Accessed on Nov.9, 2010.

<http://www.elperiodico.com.gt/es/20100208/pais/136613>

**100:** Trade unions are common and are an important part of 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.

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## 5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

### Comments:

The Constitution of the Republic of Guatemala recognizes the freedom of thought by any media.

### References:

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title II, Chapter I, Article 35, Paragraph (1) .

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley de emisión del pensamiento, Decreto número 9, 27 de abril de 1966. (Law of emission of thought, Decree No. 9, April 27, 1966). Chapter I, Article 1 and 2.

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/ley-de-emision-del-pensamiento>

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

**No:** A NO score is earned if any specific publication relating to government affairs 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.

05b. In law, freedom of speech is guaranteed.

Yes | No

### Comments:

The Constitution of the Republic of Guatemala recognizes the freedom of thought by any media.

### References:

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title II, Chapter I, Article 35, Paragraph (1) .

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley de emisión del pensamiento, Decreto número 9, 27 de abril de 1966. (Law of emission of thought, Decree No. 9, April 27, 1966). Chapter I, Article 1 and 2.

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/ley-de-emision-del-pensamiento>

**Yes:** A YES score is earned if freedom of individual speech is guaranteed in law, including to 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.

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## 6. Are citizens able to form print media entities?

100

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no barriers or obstacles to form a print media.

**References:**

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

Congreso de la República de Guatemala, Ley del Instituto de Previsión Social del Periodista (Law on the Social Welfare Institute for Journalists), 2008. Accessed on Nov.10, 2010.

[http://www.congreso.gob.gt/gt/mostrar\\_ley.asp?id=1381](http://www.congreso.gob.gt/gt/mostrar_ley.asp?id=1381)

**100:** Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

**75:**

**50:** Formation of print 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.

**25:**

**0:** Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

**Comments:**

For the print media a license is not required by any state agency.

Owners can be organized by companies or corporations, as anyone who wants to organize a business, that is no longer tenable in matters of free speech.

The affected person may submit requests to the authority, and if he/she receives no response they can still lodge an appeal.

**References:**

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

Ley de emisión del pensamiento (Law of emission thought), Decree No. 9, April 27, 1966. Accessed on Nov.10, 2010.

<http://www.gj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2006/pdfs/normativa/D>

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title II, Chapter I, Article 28, Paragraph (1).

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley General de Telecomunicaciones, Decreto No. 94-96, 17 de octubre de 1996. (General Telecommunications Law, Decree No. 94-96, October 17, 1996). Title VIII, Chapter I, Articles 85, 88 and 89.

<http://www.sit.gob.gt/uploads/docs/laws/Ley-General-de-Telecomunicaciones-actualizada.pdf>

Ley de lo Contencioso Administrativo. Decreto número 119-96, 21 de noviembre de 1996. (Administrative Litigation Law, Decree No. 119-96, November 21, 1996). Title I, Chapter I, Article 1, Paragraph (1).

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/ley-de-lo-contencioso-administrativo>

**Yes:** A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

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

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

In Guatemala, no license is required for a print media entity.

**References:**

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

Congreso de la República de Guatemala, Ley del Instituto de Previsión Social del Periodista (Law on the Social Welfare Institute for Journalists), 2008. Accessed November 10, 2010.

[http://www.congreso.gob.gt/gt/mostrar\\_ley.asp?id=1381](http://www.congreso.gob.gt/gt/mostrar_ley.asp?id=1381)

**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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

In Guatemala, no license is required for a print media entity.

**References:**

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

Congreso de la República de Guatemala, Ley del Instituto de Previsión Social del Periodista (Law on Social Welfare Institute Journalist), 2008. Accessed November 10, 2010.

[http://www.congreso.gob.gt/gt/mostrar\\_ley.asp?id=1381](http://www.congreso.gob.gt/gt/mostrar_ley.asp?id=1381)

**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.

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## 7. Are citizens able to form broadcast (radio and TV) media entities?

38

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

**Comments:**

"The law does not deny to any social sector access to the exploitation of frequencies, but if the procedure laid down is the public auction, there will be entrepreneurs with economic power who have access to them." (Sandoval, 2006).  
This comment is about radio, but does not apply to national TV stations, which are under monopoly. On cable some TV stations were allowed to form.

**References:**

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

Juan Sandoval,

"The enjoyment of radio frequency" (Degree, University of San Carlos, 2006). Accessed on Nov. 10, 2010.  
[http://biblioteca.usac.edu.gt/tesis/04/04\\_5952.pdf](http://biblioteca.usac.edu.gt/tesis/04/04_5952.pdf)

**100:** Broadcast 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. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

**75:**

**50:** Formation of broadcast 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:** Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

**Comments:**

The affected person may submit requests to the authority, and if he/she receives no response they can still lodge an appeal.

**References:**

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title II, Chapter I, Article 28, Paragraph (1).  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley General de Telecomunicaciones, Decreto No. 94-96, 17 de octubre de 1996. (General Telecommunications Law, Decree No. 94-96, October 17, 1996). Title VIII, Chapter I, Articles 85, 88 and 89.  
<http://www.sit.gob.gt/uploads/docs/laws/Ley-General-de-Telecomunicaciones-actualizada.pdf>

Ley de lo Contencioso Administrativo, Decreto número 119-96, 21 de noviembre de 1996. (Administrative Litigation Law, Decree No. 119-96, November 21, 1996). Title I, Chapter I, Article 1, Paragraph (1).  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/ley-de-lo-contencioso-administrativo>

**Yes:** A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

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

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

**Comments:**

Licensing takes close to or more than six months when it comes to radio.  
When it refers to national TV there is no deadline, because national TV is monopolized.

**References:**

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

Juan Sandoval,

"The enjoyment of radio frequency" (Degree, University of San Carlos, 2006). Accessed on Nov. 10, 2010.  
[http://biblioteca.usac.edu.gt/tesis/04/04\\_5952.pdf](http://biblioteca.usac.edu.gt/tesis/04/04_5952.pdf)

**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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

**Comments:**

There are no fixed fees when forming radio and TV stations, as public auctions are organized and the highest bidder wins.

**References:**

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

Juan Sandoval,

"The enjoyment of radio frequency" (Degree, University of San Carlos, 2006). Accessed on Nov. 10, 2010.  
[http://biblioteca.usac.edu.gt/tesis/04/04\\_5952.pdf](http://biblioteca.usac.edu.gt/tesis/04/04_5952.pdf)

**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.

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## 8. Can citizens freely use the Internet?

88

08a. In practice, the government does not prevent citizens from accessing content published on-line.

**Comments:**

There are no restrictions or prohibitions, as internet is completely free.

**References:**

Juan Sandoval,  
 "The enjoyment of radio frequency" (Degree, University of San Carlos, 2006). Accessed on Nov. 10, 2010.  
[http://biblioteca.usac.edu.gt/tesis/04/04\\_5952.pdf](http://biblioteca.usac.edu.gt/tesis/04/04_5952.pdf)

Interview with Marx Chávez, architect and internet user, Nov. 9, 2010, Guatemala

**100:** The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

**75:**

**50:** Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

**25:**

**0:** Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

**Comments:**

In the last year one lawyer was murdered, and panic gripped Guatemala. One person wrote some comments on this case on Twitter, and he was persecuted by government and private banks.

**References:**

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

Interview with Marx Chávez, architect and internet user, Nov. 9, 2010, Guatemala

Libertopolis.

"@jeanfer relates his story". July 17, 2009. Accessed on Nov.10, 2010.  
<http://www.libertopolis.com/todo-a-pulmon/jeanfer-cuenta-su-historia/#more-2896>

**100:** The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

**75:**

**50:** In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

**25:**

**0:** The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

**Comments:**

The Act of Emission of Thought recognizes that no one may be persecuted or disturbed for his/her opinions, but be liable to a jury trial if they attack morals, if treason is involved, if they incite to sedition or if they proclaim defamation issues. The criminal law also recognizes that the accused of libel will be exempt from criminal liability if he/she proves the veracity of the complaint.

**References:**

Ley de emisión del pensamiento, Decreto número 9, 27 de abril de 1966. (Law of emission of thought, Decree No. 9, April 27, 1966). Chapter III, Article 27 and 28.

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/ley-de-emision-del-pensamiento>

Código Penal, Decreto número 17-73, 5 de julio de 1973. (Penal Code, Decree No. 17-73, July 5, 1973). Part II, Title II, Chapter I, Articles 159 and 160.

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-penal>

**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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

The editors select what they will publish without political pressure. Sometimes there are violent reprisals against the press.

**References:**

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

Cerigua/Ifex.

"Fire at journalist's house in Alta Verapaz".

Ifex, August 31, 2010. Accessed on Nov. 10, 2010.

[http://www.ifex.org/guatemala/2010/08/31/maaz\\_bol\\_shooting/es/](http://www.ifex.org/guatemala/2010/08/31/maaz_bol_shooting/es/)

Noticias de Guatemala.com.

"House fire on journalists in Santa Rosa".

Guatemala News.com, May 5, 2010. Accessed on Nov. 10, 2010.

<http://noticias.com.gt/internacionales/20100505-disparan-contra-casa-de-periodistas-en-santa-rosa.html>

**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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

The government can't preview the news and journalists' notes, but it has a Strategic Analysis Secretariat, which "serves to give the president all the information, advice and recommend the implementation of necessary actions so as to anticipate, prevent and resolve situations of risk or threat of a different nature to the democratic state and its inhabitants, and its purely civilian in nature and may have access to information, public sources to which collected the Ministers of Interior and National Defense. It has the power to make or participate in research for individuals, or act in any way to limit or restrict the exercise of political rights and freedom of thought" (Kaltschmitt, Prensa Libre).

**References:**

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

Kaltschmitt, Alfred

"Prohibited dissent".

Prensa Libre, Politics, Nov. 9, 2010. Accessed on Nov.10, 2010.

[http://www.prensalibre.com/opinion/Prohibido-disentir\\_0\\_293370693.html](http://www.prensalibre.com/opinion/Prohibido-disentir_0_293370693.html)

**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. This score is appropriate if in countries where illiteracy is high, 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. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

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## 10. Are the media credible sources of information?

45

10a. In law, print media companies are required to publicly disclose their ownership.

Yes | No

**Comments:**

There's no law that obligates to disclose all owners of the media company.

In addition, owners are always organized into anonymous societies (corporations).

The Constitution of the Republic of Guatemala recognizes the right to do everything that the law does not forbid.

**References:**

Código Penal, Decreto número 17-73, 5 de julio de 1973. (Penal Code, Decree No. 17-73, July 5, 1973). Title II, Chapter I, Article 5.

[http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20\\_7329559842](http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20_7329559842)

Código de comercio de Guatemala, 2-70, 28 de enero de 1970. (Commercial Code of Guatemala, Decree No. 2-70, January 28, 1970). Book I, Title I, Chapter VI, Section I, Article 86 and 87.

<http://www.infomipyme.com/Docs/GT/Offline/Registro/codigodecomercio/Comerciantes.html>

**Yes:** A YES score is earned if print media companies are required by law to publicly 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 types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

Yes | No

**Comments:**

The General telecommunications law stipulates the existence of a register with all the names of individual or societal enterprises. In addition, owners always are organized into anonymous societies (corporations), with portables shares. The Constitution of the Republic of Guatemala recognizes the right to do everything that the law does not forbid.

**References:**

Ley general de telecomunicaciones, Decreto número 94-96, 17 de octubre de 1996. (General Telecommunications Law, Decree No. 94-96, October 17, 1996). Accessed, November 10, 2010.  
<http://www.sit.gob.gt/uploads/docs/laws/Ley-General-de-Telecomunicaciones-actualizada.pdf>

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title II, Chapter I, Article 5.  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Código de comercio de Guatemala, Decreto número 2-70, 28 de enero de 1970. (Commercial Code of Guatemala, Decree No. 2-70, Jan. 28, 1970). Book I, Title I, Chapter VI, Section I, Article 86 and 87.  
<http://www.infomipyme.com/Docs/GT/Offline/Registro/codigodecomercio/Comerciantes.html>

**Yes:** A YES score is earned if broadcast media companies are required by law to publicly 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 types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

**Comments:**

Fernandez is a recognized journalist and she wrote the following: "The most serious is that bribes or "fafas" occur at all levels of the hierarchy, including the top. In other words, money itself is not the only motivation, but so is the power, which is severe. That is the reality and after much criticism of others, to bring to the military, politicians, lawyers, doctors and even the engineers for tolerating corrupt, not pretend deafness when it refers to our own plot ."

**References:**

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

Fernández, Dina.

"Corruption into the press".

DinaFernandez.com, June 20, 2010. Accessed on Nov.10, 2010.

<http://dinafernandez.com/2010/06/20/en-la-prensa-tambien-hay-corrupcion/>

**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.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

**Comments:**

Media must provide an ethical and accurate coverage of the candidates and their proposals.

Francisco Garcia of the Central American Institute of Political Studies (INCEP – Instituto Centroamericano de Estudios Políticos) indicated that “the economic constraints made it as such that political groups have not been allowed to have a strong influence in the electoral process.”

He added that this is a phenomenon that undermines democracy, as it incurs discrimination because they promote a few, without giving opportunity for people to choose within a range of possibilities.

**References:**

Francisco Garcia interviewed by Cindy Quintanilla  
“Disregard for small parties”.  
Diario La Hora, Nationals, Guatemala, Guatemala, June 23, 2007. Accessed on Nov.10, 2010.  
<http://www.lahora.com.gt/notas.php?key=17056>

Alamilla, Ileana, “Electoral coverage”  
To my family and to Guate, Aug. 2, 2010. Accessed on Nov.10, 2010.  
<http://www.pormifamiliayporguate.org/debate/gobernanza/1121-la-cobertura-electoral>

**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.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

**Comments:**

In Guatemala it is forbidden to use public property for election campaigns; this prohibition also relates to media.

However, the ruling party through the media announces the solidarity work of this government, giving the impression of an election campaign.

The following text is from Editorial’s Siglo XXI:

“But beyond that, I cannot to demonstrate to the public the way in which the Government of the Republic is putting the state apparatus at its service. And this “state apparatus” includes the tax expenses of all Guatemalans to make television advertising openly in favor of the image of the president’s wife.

The fact that the picture appears on posters promoting candidates for deputies or mayors, in the midst of public events in confirming the merger of political parties, is already cause for concern.”(Editorial, Siglo XXI)

**References:**

Editorial  
“Sandra and our meager treasury”.  
Siglo XXI.com Guatemala, Opinion, May 8, 2010. Accessed on Nov.10, 2010.  
<http://www.sigloxxi.com/opinion.php?id=10351>

Orozco, Andrea  
"Colom: "Advertising is to complement the media".  
Diario La Hora, Nationals, March 31, 2007. Accessed on Nov.10, 2010.  
<http://www.lahora.com.gt/notas.php?key=64820&fch=2010-03-31>

**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. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

**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.

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## 11. Are journalists safe when investigating corruption?

33

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

Yes | No

### Comments:

During the last no journalists have been jailed. However, last year the vice- president sued a journalist for reasons that many journalists considered wrong, so he is taking the case to court.

### References:

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

Madrigal, Hugo  
"The right to say"  
Diario La Hora, Opinion, July 24, 2010. Accessed on Nov. 10, 2010.  
<http://www.lahora.com.gt/notas.php?key=70647&fch=2010-08-10>

Cerigua/lfex  
"Residents holding four journalists during blockade".  
lfex, July 30, 2010. Accessed on Nov.10, 2010.  
[http://www.ifex.org/guatemala/2010/07/30/el\\_rosario\\_protest/es/](http://www.ifex.org/guatemala/2010/07/30/el_rosario_protest/es/)

Noticias de Guatemala.com.  
"Vice president sues journalist". Guatemala's news.com, Nationals,  
Sept. 1, 2009. Accessed on Nov.10, 2010.  
<http://noticias.com.gt/nacionales/20090901-vicepresidente-espada-demanda-a-columnista-marta-yolanda-diaz-duran-por-difamacion-y-calumnia.html>

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

**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. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

Yes | No

**Comments:**

In the south, police officers assaulted three journalists covering a raid.

On Aug. 3, 2010, agents of the Secretary of Counter narcotics Analysis and Information (Secretaría de análisis e información antinarcótica -SAIA-) assaulted three local journalists in Suchitepéquez Mazatenango, 167 kilometers from the capital city, while covering the raid of a luxurious mansion in that town.

The officers involved in the raid were driving in two vehicles and were at least 18, when reporters were attacked with gas canisters that were in black boxes, apparently containing pepper spray.

**References:**

Cerigua/Ifex

"Police assaulted three journalists".

Ifex, Aug. 9, 2010. Accessed on Nov.10, 2010.

[http://www.ifex.org/guatemala/2010/08/09/gas\\_pimienta/es/](http://www.ifex.org/guatemala/2010/08/09/gas_pimienta/es/)

Noticias de Guatemala.com.

"Assault journalists".

Guatemala's news.com, Nationals, April 12, 2010. Accessed on Nov.10, 2010.

[http://www.prensalibre.com/noticias/Agreden-periodistas\\_0\\_242375781.html](http://www.prensalibre.com/noticias/Agreden-periodistas_0_242375781.html)

Cerigua/Ifex

"Residents holding four journalists during blockade"

Ifex, July 30, 2010. Accessed on Nov.10, 2010.

[http://www.ifex.org/guatemala/2010/07/30/el\\_rosario\\_protest/es/](http://www.ifex.org/guatemala/2010/07/30/el_rosario_protest/es/)

**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. A YES score is positive.

**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.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

Yes | No

**Comments:**

In this journal the note says: "Rolando Sántiz was attacked in zone 1 by men who were driving a motorcycle. The vehicle he was riding was found, so I do not think this was a mistake." (Sas, El Periódico Guatemala).

Men on a motorcycle killed with several shots Rolando Sántiz, Telecentro Thirteen news reporter, in a sector of zone 1. The authorities have assumed that it was a direct attack. Several journalists approached the scene of the crime to demand accountability of those responsible.

The bullets on this occasion targeted two journalists, as they had done minutes before a transport pilot in the area 18. Just returned from that place where he had come Sántiz to report on the incident. Supposedly he was going, in a company car for which he worked, to the headquarters of the Volunteer Fire Zone 3.

Sántiz was conducted on the 4th. Avenue and 20 Street in Zone 1, when two men on a motorcycle approached him. Were positioned on the left side of the vehicle, next to the pilot. It was at that moment when the man who was in the back pulled out a gun and shot the communicator, who was driving the car. According to witnesses, they heard more than seven shots. At least four struck the fatal victim's humanity while three reached the co-pilot, cameraman Juan Antonio de León Villatoro. Sántiz truck lost control, jumped the curb and smashed some stalls set up on the street.

Minutes after the attack came Volunteer Firefighters who tried to help the victims but found that "the bullets hit vital organs of the pilot," said the lifeguard Mario Cruz.

De Leon was transferred to the emergence of San Juan de Dios hospital. According to medical center officials said he was shot three times: two in the back and one in the neck. (Sas, El Periódico)

According to Toledo, the investigation into the murder of the journalist, have not yet provided information on the facts and responsible for the crime.

**References:**

Sas, Angel

"Murdered on his return from covering pilot's death note".

Interview with Verónica Toledo, Editor of Free Press (Prensa Libre), Nov. 9, 2010, Guatemala

**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. A YES score is positive.

**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.

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70  
1.3. Public Requests for Government Information

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12. Do citizens have a legal right to request information?

100

12a. In law, citizens have a right to request government information and basic government records.

Yes | No

**Comments:**

The law provides "Guarantee to all persons interested, without any discrimination, the right to request and access to information held by public authorities and persons subject to this act."

**References:**

Ley de acceso a la información pública, Decreto número 57-2008, 23 de Septiembre de 2008. (Law on access to public information, Decree No. 57-2008, Sept. 23, 2008). Title I, Chapter I, Article 1, (a).

**Yes:** A YES score is earned if there is a formal right to request government documents, including constitutional guarantees. 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.

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

12b. In law, citizens have a right of appeal if a request for a basic government record is denied.

Yes | No

**Comments:**

The law provides that the applicant who was denied any information may by him/herself or through his/her legal representative lodge the appeal before the highest authority.

**References:**

Ley de acceso a la información pública, Decreto número 57-2008, 23 de Septiembre de 2008. (Law on access to public information, Decree No. 57-2008, Sept. 23, 2008). Title IV, Chapter II, Article 54.

**Yes:** A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

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

12c. In law, there is an established institutional mechanism through which citizens can request government records.

Yes | No

**Comments:**

Public information units are responsible for receiving the requests for information and for overseeing the entire procedure within public institutions.

**References:**

Ley de acceso a la información pública, Decreto número 57-2008, 23 de Septiembre de 2008. (Law on access to public information, Decree No. 57-2008, Sept. 23, 2008). Title I, Chapter IV, Article 19.

**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.

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### 13. Is the right to information requests effective?

38

13a. In practice, citizens receive responses to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The information is delivered on time.

However, if the information is sensitive, such as in the case of presidential programs, information was presented late.

The ministry of education was removed by a resolution of Constitutional court.

**References:**

Interview with Antonio Estrada, Public official managing information in Ministry of Education, Nov.10, 2010, Guatemala

Interview with José López, former NGO director and current public official in the Environment Ministry, Nov.10, 2010, Guatemala

Paz, Leslie

"Deputy asks removal".

El Periódico Guatemala, Feb. 24, 2007. Accessed on Nov.10, 2010.

<http://www.elperiodico.com.gt/es/20100224/pais/139235/>

**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.

13b. In practice, citizens can use the information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Antonio Estrada, Public official managing information in Ministry of Education, Nov.10, 2010, Guatemala

Interview with José López, former NGO director and current public official in the Environment Ministry, Nov.10, 2010, 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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

The Information is of high quality, but when it refers to sensitive political issues information is vague and/or presented in a manner difficult to understand.

**References:**

Interview with Antonio Estrada, Public official managing information in Ministry of Education, Nov.10, 2010, Guatemala

Interview with José López, former NGO director and current public official in the Environment Ministry, Nov.10, 2010, Guatemala

Paz, Leslie.

"Deputy asks removal".

El Periódico Guatemala, Feb. 24, 2007. Accessed on Nov. 10, 2010.

<http://www.elperiodico.com.gt/es/20100224/pais/139235/>

**100:** Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

**75:**

**50:** Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

**25:**

**0:** The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

All the deadlines were respected in the case the Montenegro deputy against the Ministry of Education. However, the case was resolved in more than six months, and the deputy had to reach the Constitutional Court to have the minister removed.

**References:**

Interview with Antonio Estrada, Public official managing information in Ministry of Education, Nov.10, 2010, Guatemala

Interview with José López, former NGO director and current public official in the Environment Ministry, Nov.10, 2010, Guatemala

**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.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

The second instance on trials has high costs to middle class citizens.

**References:**

Interview with Claudia Guzmán, lawyer and public notary, Oct. 26, 2010, Guatemala

Interview with Antonio Estrada, Public official managing information in Ministry of Education, Nov.10, 2010, Guatemala

Interview with José López, former NGO director and current public official in the Environment Ministry, Nov.10, 2010, Guatemala

**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.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

**Comments:**

When information is very sensitive there is an administrative silence.

**References:**

Interview with Antonio Estrada, Public official managing information in Ministry of Education, Nov.10, 2010, Guatemala

Interview with José López, former NGO director and current public official in the Environment Ministry, Nov.10, 2010, Guatemala

Paz, Leslie

"Deputy asks removal".

El Periódico Guatemala, Feb. 24, 2007. Accessed on Nov.10, 2010.

<http://www.elperiodico.com.gt/es/20100224/pais/139235/>

**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.

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## Category 2. Elections

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### 2.1. <sup>65</sup>Voting and Party Formation

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

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes | No

**References:**

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title III, Chapter II, Article 147. "Guatemalans are citizens over 18 years of age."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, December 3, 1985). Book 1, Title 1, Chapter 1, Article 3, "c) To elect and be elected: d) To vote."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/ley-electoral-y-de-partidos-politicos>

**Yes:** A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). 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.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

Yes | No

**References:**

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title IV, Chapter III, Section I, Article 157. "Members of the congress directly elected by the people by universal suffrage and secret ballot by the system of electoral districts and national list for a period of four years and may be reappointed." Article 184, Paragraph (1). "The President and Vice President shall be elected by the people for a non-renewable term of four years by universal suffrage and secret ballot."  
[http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20\\_7329559842](http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20_7329559842)

**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.

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## 15. Can all citizens exercise their right to vote?

83

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

**Comments:**

Citizens' obstacles to exercise their vote are for example lack of transport, insufficient funds for traveling to elections centers and not enough voting centers.

"In Guatemala, citizens face many difficulties to participate in electoral processes. Although there is high civic awareness, not all Guatemalans have the same opportunities to participate, even to exercise the right to vote. The lack of participation in the electoral process becomes the main ingredient of abstention, which is linked to problems such as lack of transportation, lack of electoral system or inaccessibility of the polling stations, apart from the lack of credibility of the parties and political disenchantment with democracy. Despite all these difficulties, there are the regions with a majority indigenous population which have always played a decisive vote, including cases of Alta Verapaz and Huehuetenango." (B'aqtum).

**References:**

B'aqtum. "Citizen participation". B'aqtum, Naleb organism, 2008. Accessed on Nov. 4, 2010.

<http://baqtun.naleb.org.gt/index.php/participaci%C3%B3n-ciudadana/participaciudadana.html>

Research association and social studies (ASIES – Asociación de investigación y estudios sociales).

"Elections in 2007 saw a slight increase of the participation n policy of women in Guatemala." Monthly Analysis, No. 7, July 2007. Accessed on Feb. 28, 2010.

<http://www.asies.org.gt/analisis%20mensual/2007/analisis07-2007.pdf>

**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.

15b. In practice, ballots are secret or equivalently protected.

**Comments:**

Ballots are secret in all cases.

The GPS system and private security firms are now used to monitor trucks and vehicles which transport ballots.

"The vehicles are held by the public forces and private companies are constantly monitored by global positioning system (GPS, for its acronym in English).

**Content**

In addition to the ballots, each case comes with indelible ink, identification bracelets for polling stations, surgical gloves, calculators and "surprises", which contain crayons, push pins to hold the lists that identify the range and number of voters in each table "unused stamps 2007", the score-easy to handle ballots, bond paper for the record, carbon paper and instructions."

**References:**

Deguate.com. "Elections 2007".

Deguate.com, Sept. 3, 2007.

[http://www.deguate.com/artman/publish/printer\\_11458.shtml](http://www.deguate.com/artman/publish/printer_11458.shtml)

Rodríguez, René.

"Security forces on high alert to ensure no conflict elections."

Diario de Centroamérica, Sept. 3, 2007.

<http://dca.gob.gt:85/archivo/070903/nacpag3.htm>

Castillo, Eddy.

"Today are elections."

Nuestro diario, Accessed on Nov. 4, 2010.

<http://digital.nuestrodiario.com/Olive/Ode/NuestroDiario/LandingPage/LandingPage.aspx?href=R05ELzlwMDcvMDkvMDk.&pageno=Mg.&entity=QXlwMDIwMA.&view=ZW50aXR5>

**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.

15c. In practice, elections are held according to a regular schedule.

**Comments:**

The electoral process is conducted every four years. These constitutional deadlines have been respected by all Guatemalans.

"Today it can be argued that the election process itself does not generate fear or distress, and that is, increasingly, a civic celebration." (Sosa, El Periódico).

**References:**

Sosa, Lizardo.

"Sustainable economic performance".

El Periódico Guatemala, Economy, July 10, 2007.

<http://www.elperiodico.com.gt/es/20070710/opinion/41474/>

Orozco, Andrea.

"The law does not regulate the early campaigns".

Diario La Hora, Today's topics, June 15, 2010.

<http://www.lahora.com.gt/notas.php?key=68557&fch=2010-06-15>

**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.

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

80

16a. In law, all citizens have a right to form political parties.

Yes | No

### References:

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 2, Title 1, Chapter 1, Article 17."Freedom of organization. It is free to form political organizations whose operation conforms to the provisions of this law. It is also free for citizens, joint or separate from political organizations in accordance with their will."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/ley-electoral-y-de-partidos-politicos>

**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.

16b. In law, all citizens have a right to run for political office.

Yes | No

### References:

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 1, Title 1, Chapter 1, Article 3, e): "To apply for public office."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/ley-electoral-y-de-partidos-politicos>

**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.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

### Comments:

"I think that DNA is organized well and with enough discretion. I admire what they have done in so little time and with all the trouble from the authorities. The National Executive Committee has a high number of women, is strong and eager to participate in the electoral process," said Marco Antonio Barahona, analyst ASIES. (El Periódico Guatemala)

**References:**

Ajín, Doris.  
 "DNA new political party". El Periódico Guatemala, Country, July 8, 2010.  
<http://www.elperiodico.com.gt/es/20100708/pais/163025>

Louisa, Reynolds.  
 "New party is registered in the TSE".  
 El Periódico Guatemala, Country, July 9, 2010.  
<http://www.elperiodico.com.gt/es/20100709/pais/163112/>

**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.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

**Comments:**

Unfortunately, the illicit financing of political parties is not transparent to citizens. There is no clear accountability for political parties. In turn, they practice traffic of influence over public officials.

**References:**

G. Medrano and C. Conde.  
 "Legal regulation of political parties in Guatemala." P. 517.  
<http://pdpa.georgetown.edu/Parties/Guate/Leyes/regulacionjuridica.pdf>

Mérida, Mario.  
 "The cost of the favors of Tomza".  
 El Periódico Guatemala, Opinion, March 23, 2010.  
<http://www.elperiodico.com.gt/es/20100323/opinion/143262>

Berganza, Gustavo.  
 "The early campaign".  
 El Periódico Guatemala, Opinion, March 23, 2010.  
<http://www.elperiodico.com.gt/es/20101104/opinion/181023/>

**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. A system of party lists may discourage or prevent independent 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.

16e. In practice, an opposition party is represented in the legislature.

**References:**

Cojtí, Demetrio.

"Indigenous people in democracy and the Guatemalan state. Approximate diagnosis"  
Inter-ethnic studies institute. University of San Carlos de Guatemala. Magazine No. 20, P. 49-50. Accessed on Nov. 8, 2010.  
[http://www.idei.usac.edu.gt/publicaciones/identidades\\_etnicas.PDF](http://www.idei.usac.edu.gt/publicaciones/identidades_etnicas.PDF)

G. Medrano and C. Conde.

"Legal regulation of political parties in Guatemala." P. 517.  
Accessed on Nov. 8, 2010.

<http://pdba.georgetown.edu/Parties/Guate/Leyes/regulacionjuridica.pdf>

Casasola, Suseth.

"Political parties begin a dialogue"

Siglo XXI.com Guatemala, National, Jan. 21, 2010.

<http://www.sigloxxi.com/nacional.php?id=924>

Reyes, Kenia.

"Official match begins with the rearrangement in Congress".

El Periódico Guatemala, Country, Oct. 8, 2010.

<http://www.elperiodico.com.gt/es/20101006/pais/178148/>

Gutiérrez, Edgar.

"Map of the congress in 2008".

El Periódico Guatemala, Country, Feb. 17, 2008.

<http://www.elperiodico.com.gt/es/20080217/pais/48788>

**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.

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## 2.2. Election Integrity

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

100

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes

No

**References:**

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 3, Title 1, Chapter 1, Article 121. "The Electoral Supreme Court is the highest authority in electoral matters. It is independent and therefore not subject to any state agency. Its organization, functioning and powers are determined in this law."

<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

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

**No:** A NO score is earned if no domestic agency or set of domestic agencies/entities exists 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, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

## 18. Is the election monitoring agency effective?

65

18a. In law, the agency or set of agencies/entities is protected from political interference.

Yes | No

### Comments:

This article states the authority of the Electoral Supreme Court and its independence from any state agency.

### References:

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec.3, 1985). Book 3, Title 1, Chapter 1, Article 121. "The Electoral Supreme Court is the highest authority in electoral matters. It is independent and therefore not subject to any state agency. Its organization, functioning and powers are determined in this law."

<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

**Yes:** A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting 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 domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

### Comments:

There is a nominating committee to select candidates for judges of the Supreme Electoral Tribunal. Then, members themselves start negotiating the positions. So the process is highly political in the end, and civil society has many obstacles to observe and monitor the proceedings.

### References:

Cardona, Karen.

"Outlines the Judges of the TSE".

Diario La Hora, Closing, Feb. 29, 2008.

<http://www.lahora.com.gt/notas.php?key=26840&fch=2008-02-29>

Estrada Rodrigo.

"Bank to reach agreement on selection of judges in the TSE".

El Periódico Guatemala, Opinion, Feb. 27, 2008.

<http://www.elperiodico.com.gt/es/20080227/pais/49218/>

Estrada Rodrigo.

"Political parties to reach agreement on selection of judges in the TSE".

El Periódico Guatemala, Opinion, Feb. 27, 2008.

<http://www.elperiodico.com.gt/es/20080227/pais/49218/>

**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.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Judges have law degrees, and other core staff are also professionals. During elections staff with academic training are employed.

**References:**

Gabriel Vides, former civil servant,  
Interview by author, Nov. 4, 2004, Guatemala, Guatemala, script recording.

Electoral supreme court.  
"List of employees". Sept. 3, 2010. Accessed November 8, 2010.  
<http://www.tse.org.gt/unidadinformacion/pdf/3/numeral3a.pdf>

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.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

**Comments:**

In the first round and second round of national elections, the Supreme Electoral Tribunal immediately organizes press conferences to announce the results.

**References:**

Gabriel Vides, former civil servant,  
Interview by author, Nov. 4, 2004, Guatemala, Guatemala, script recording.

Miza, Ana.  
"Pérez Molina raised its share from the opposition".  
Diario La Hora, Nationals, Nov. 5, 2007.  
<http://www.lahora.com.gt/notas.php?key=18404&fch=2007-11-05>

Electoral supreme court.  
"Election 2007".  
<http://www.tse.org.gt/elecciones2007/partidospoliticos/index.php?data=2>

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.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

The type of sanctions the Supreme Electoral Tribunal imposes are ridiculous considering the serious violations of political parties. The sanctions seem rather a moral penalty.

**References:**

Cardona, Karen.

"TSE sanctioned political parties".

Prensa Libre, Nationals, Sept. 1, 2010

[http://www.prensalibre.com/noticias/TSE-sanciona-partidos-politicos\\_0\\_327567264.html](http://www.prensalibre.com/noticias/TSE-sanciona-partidos-politicos_0_327567264.html)

Louisa, Reynolds.

"UNE challenges the US\$100 TSE sanction".

El Periódico Guatemala, Country, May 22, 2010.

<http://www.elperiodico.com.gt/es/20100522/pais/152930>

Gabriel Vides, former civil servant,

Interview by author, Nov. 4, 2004, Guatemala, Guatemala, script recording.

**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.

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## 19. Are elections systems transparent and effective?

79

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

**Comments:**

There is a fear of corruption by the use of two forms of identification for the next election. In the last election only one identification document was used, allowing for a proper handling of the electoral roll, but it is an old document and with large gaps in security measures. This meant a change to the new identity card, but the implementation has been unsuccessful.

**References:**

Hurtarte, Francisco.

"Use of cédula and DPI".

Democratic incidence, March 25, 2010

<http://www.i-dem.org/?p=33015>

**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 "ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

Yes | No

**Comments:**

The law provides legal mechanisms for recourse and even appeals against the election process.

**References:**

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 4, Title 1, Chapter 9, Articles 246 to 250.  
<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

**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.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

**Comments:**

There are legal mechanisms to appeal the results of the elections. The time to resolve claims is shorter. However, there have been some appeals at the municipal level in rural Guatemala, but without sanctions. In other municipalities elections were repeated, but they were motivated by the villagers burning down the polling stations rather than legal recourse.

As established by the Electoral and Political Parties, TSE has the responsibility to investigate claims of invalid voting. The court will have three days to solve such requests.

**References:**

Gabriel Vides, former civil servant,  
Interview by author, Nov. 4, 2004, Guatemala, Guatemala, script recording.

Telon, Elmer.

"TSE will meet challenges".

Diario La Hora, Nationals, Sept. 13, 2007.

<http://www.lahora.com.gt/notas.php?key=17935&fch=2007-09-13>

**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.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

**Comments:**

Since 1985, elections have been secure and military forces and police have guaranteed the political process. This practice has been enforced also after 1996, when peace agreements were signed.

**References:**

"Elections 2007".  
Deguate.com, Sept. 3, 2007.  
[http://www.dequate.com/artman/publish/printer\\_11458.shtml](http://www.dequate.com/artman/publish/printer_11458.shtml)

Rodríguez, René.  
"Security forces on high alert to ensure no conflict elections."  
Diario de Centroamérica, Sept. 3, 2007.  
<http://dca.gob.gt:85/archivo/070903/nacpag3.htm>

Castillo, Eddy.  
"Today are elections."  
Nuestro diario, Accessed on Nov. 4, 2010.  
<http://digital.nuestrodiario.com/Olive/Ode/NuestroDiario/LandingPage/LandingPage.aspx?href=R05ELzlwMDcvMDkvMDk.&pageno=Mg.&entity=QXlwMDlwMA..&view=ZW50aXR5>

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 overly 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.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes | No

**Comments:**

The national election observers' agreement allows only Guatemalan citizen to observe elections. But there is also an agreement that rules international observers' presence during elections.

**References:**

Electoral supreme court.  
"National election observers". Agreement No. 256-2007, June 19, 2007.  
<http://www.tse.org.gt/unidadinformacion/detalle.php?ref=55>

**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.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

**Comments:**

"The Head of the Electoral Observation Mission of the Organization of American States (OAS) transmits on behalf of the Secretary General of the Organization, Dr. José Miguel Insulza, congratulations to the people of Guatemala for their exemplary behavior on election day on Sunday, November 4, and to Álvaro Colom Caballeros on his election victory, while wishing you success in your future work as President of all Guatemalans."

It also recognizes the political maturity with which the candidate Otto Pérez Molina recognized the preliminary results and their determination to strengthen democratic institutions in Guatemala and contribute to a constructive opposition.

Observation Mission of the OAS, who accompanied the electoral process since its announcement last May 2, makes a special recognition to the Supreme Electoral Tribunal (TSE) for his performance in the implementation of electoral reforms established in 2004, and especially the process of decentralization, which has allowed the participation of citizens in free and fair elections.

It also highlights the cooperation extended by the Executive and the Police, and recognizes the behavior of political actors for the efforts they made to ensure the free expression of popular will and respect for the law. The Mission recognizes the contribution of civil society through national monitoring initiatives." (OAS).

**References:**

Organization of American States (OAS).

"Electoral Observation Mission in Guatemala – 2007."

<http://www.oas.org/electoralmissions/MisionesElecttorales/Guatemala2007/tabid/175/Default.aspx>

Schilling, Benjamin.

"General elections Guatemala 2007".

Sept. 30, 2007

<http://benschilling.blogspot.com/2007/09/elecciones-generales-2007.html>

**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.

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2.3. Political Financing Transparency

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20. Are there regulations governing the financing of political parties?

100

20a. In law, there are limits on individual donations to political parties.

Yes | No

**References:**

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 2, Title 2, Chapter 2, Article 21 “f) No individual or entity may make contributions in excess of ten percent (10%) of the spending limit campaign.”

<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

**Yes:** A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | No

**References:**

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 2, Title 2, Chapter 2, Article 21 “f) No individual or entity may make contributions in excess of ten percent (10%) of the spending limit campaign.”

<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

**Yes:** A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

20c. In law, there are limits on total political party expenditures.

Yes | No

**References:**

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 2, Title 2, Chapter 2, Article 21 e) “The expenditure ceiling for the election campaign will be a reason for the equivalent in quetzales of a two dollars of the United States of America, for each registered citizen until December 31 of the year preceding the election.”

<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

**Yes:** A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

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

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | No

**References:**

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 2, Title 2, Chapter 2, Article 21

b) "Contributions to candidates for elected office should be channeled through the respective political organizations. Such contributions shall in no case be anonymous.

c) "Political organizations must keep accounting records of contributions received. The register shall be public.

d) "The assets of political organizations must be registered in full by financial records and can not be part of this bearer."

<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

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

**No:** A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

**References:**

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 2, Title 2, Chapter 2, Article 21, Paragraph (1) "Supreme Electoral Tribunal is for the control and supervision of public and private funds to political organizations to receive funding for ongoing activities and campaign. The regulations cover the enforcement mechanisms."

<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

Reglamento de control, fiscalización del financiamiento público y privado, de las actividades permanentes y de campaña electoral de las organizaciones políticas, Acuerdo número 19-2007, 23 de enero de 2007. Chapter II, Section I, Article 3.

"The Supreme Electoral Tribunal has the power to:

b) audit political organizations through the Electoral Auditor, staff appointed for this purpose, or through professional firms."

[http://www.tse.org.gt/descargas/Acuerdo\\_19-2007\\_Reglamento\\_de\\_Financiamiento.pdf](http://www.tse.org.gt/descargas/Acuerdo_19-2007_Reglamento_de_Financiamiento.pdf)

**Yes:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | No

**Comments:**

Guatemala's Constitution recognized the right of free association.

And the law of Non-governmental organizations (NGOs) establishes that NGOs can be formed with interests in culture, education, sport, social service, welfare, charity, promotion and economic and social development.

**References:**

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title II, Chapter I, Paragraph (1) Article 34.

[http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20\\_7329559842](http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20_7329559842)

**Yes:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

**No:** A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

## 21. Are there regulations governing the financing of individual political candidates?

60

21a. In law, there are limits on individual donations to political candidates.

Yes | No

### References:

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 2, Title 2, Chapter 2, Article 21 “b) Contributions to candidates for elected office should be channeled through the respective political organizations. Such contributions shall in no case be anonymous. f) No individual or entity may make contributions in excess of ten percent (10%) of the spending limit campaign.”  
<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

**Yes:** A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | No

### References:

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 2, Title 2, Chapter 2, Article 21 “b) Contributions to candidates for elected office should be channeled through the respective political organizations. Such contributions shall in no case be anonymous. f) No individual or entity may make contributions in excess of ten percent (10%) of the spending limit campaign.”  
<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

**Yes:** A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | No

**References:**

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 2, Title 2, Chapter 2, Article 21 "b) Contributions to candidates for elected office should be channeled through the respective political organizations. Such contributions shall in no case be anonymous. c) Political organizations must keep accounting records of contributions received. The register shall be public. f) No individual or entity may make contributions in excess of ten percent (10%) of the spending limit campaign."

<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

Reglamento de control, fiscalización del financiamiento público y privado, de las actividades permanentes y de campaña electoral de las organizaciones políticas, Acuerdo número 19-2007, 23 de enero de 2007. (Control regulation, control of public and private funding, of ongoing electoral campaign and political organizations, Agreement No. 19-2007, Jan. 23, 2007). Chapter II, Section II, Article 5. "Political organizations are required to keep accounting records of all financial transactions related to the origin, handling and application of resources, which must be backed with supporting documentation..."

[http://www.tse.org.gt/descargas/Acuerdo\\_19-2007\\_Reglamento\\_de\\_Financiamiento.pdf](http://www.tse.org.gt/descargas/Acuerdo_19-2007_Reglamento_de_Financiamiento.pdf)

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

**No:** A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | **No**

**Comments:**

The law and regulation do not provide that the Supreme Electoral Tribunal must control and monitor candidates' funds.

**References:**

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 2, Title 2, Chapter 2, Article 21, Paragraph (1) "Financing of political organizations and election campaigns. Supreme Electoral Tribunal is for the control and supervision of public and private funds to political organizations to receive funding for ongoing activities and campaign."

<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

Reglamento de control, fiscalización del financiamiento público y privado, de las actividades permanentes y de campaña electoral de las organizaciones políticas, Acuerdo número 19-2007, 23 de enero de 2007. (Control regulation, control of public and private funding, of ongoing electoral campaign and political organizations, Agreement No. 19-2007, Jan. 23, 2007).

[http://www.tse.org.gt/descargas/Acuerdo\\_19-2007\\_Reglamento\\_de\\_Financiamiento.pdf](http://www.tse.org.gt/descargas/Acuerdo_19-2007_Reglamento_de_Financiamiento.pdf)

**Yes:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | **No**

**Comments:**

The law and the regulation do not provide who must control and monitor candidates' campaigns.

**References:**

Ley electoral y de partidos políticos, Decreto número 1-85, 3 de Diciembre de 1985. (Election law and political parties, Decree 1-85, Dec. 3, 1985). Book 2, Title 2, Chapter 2, Article 21, Paragraph (1) "Financing of political organizations and election campaigns. Supreme Electoral Tribunal is for the control and supervision of public and private funds to political organizations to

receive funding for ongoing activities and campaign.”  
<http://www.congreso.gob.gt/Pdf/Normativa/LeyElectoral.PDF>

Reglamento de control, fiscalización del financiamiento público y privado, de las actividades permanentes y de campaña electoral de las organizaciones políticas, Acuerdo número 19-2007, 23 de enero de 2007. (Control regulation, control of public and private funding, of ongoing electoral campaign and political organizations, Agreement No. 19-2007, Jan. 23, 2007).  
[http://www.tse.org.gt/descargas/Acuerdo\\_19-2007\\_Reglamento\\_de\\_Financiamiento.pdf](http://www.tse.org.gt/descargas/Acuerdo_19-2007_Reglamento_de_Financiamiento.pdf)

**Yes:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

**No:** A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

## 22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

### Comments:

The election authority has made the first steps for transparent financing of political parties and candidates in particular.

Below find the transcript of the interview with one representative of a research center:

“The law stipulates that no individual or entity may make contributions in excess of 10% of the spending limit. However, in Guatemala there is no effective control over the movements and a person may use third parties to channel donations. Additionally, the fact that most of the actions of corporations are bearer shares, makes it impossible to determine who really is the owner of a particular company. Another way to circumvent this provision is the contributions made by television and radio stations, which are quantified below the market cost of the ads. On the occasion of the last election, in reporting campaign contributions to the GANA (Political party) was clear that a family had made significant contributions through various members of the same and corporations that are owned.” (Linares, interview Nov. 15, 2010).

### References:

Interview by author with Luis Felipe Linares, Adjunct secretary for Association of Research and Social Studies (ASIES-Asociación de investigación y estudios sociales), former minister of labor and expert on municipal affairs. Nov. 15, 2010, Guatemala, Guatemala, written recording  
“Political Financing Transparency and Anti-Corruption Law.”

Association of Research and Social Studies (ASIES – Asociación de investigación y estudios sociales).  
“Guatemala: Analytical report of the 2007 electoral process.”  
Socio-political research department, February 2008.  
<http://www.asies.org.gt/INFORME%20ELECTORAL%202007%20AL%2012032008.pdf>

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

**Comments:**

The election authority has made the first steps for transparent financing of political parties and candidates in particular.

Below find the transcript of the interview with one representative of a research center:

"The law stipulates that no individual or entity may make contributions in excess of 10% of the spending limit. However, in Guatemala there is no effective control over the movements and a person may use third parties to channel donations. Additionally, the fact that most of the actions of corporations are bearer shares, makes it impossible to determine who really is the owner of a particular company. Another way to circumvent this provision is the contributions made by television and radio stations, which are quantified below the market cost of the ads. On the occasion of the last election, in reporting campaign contributions to the GANA (Political party) was clear that a family had made significant contributions through various members of the same and corporations that are owned." (Linares, interview Nov. 15, 2010).

**References:**

Interview by author with Luis Felipe Linares, Adjunct secretary for Association of Research and Social Studies (ASIES-Asociación de investigación y estudios sociales), former minister of labor and expert on municipal affairs. Nov. 15, 2010, Guatemala, Guatemala, written recording "Political Financing Transparency and Anti-Corruption Law."

Association of Research and Social Studies (ASIES – Asociación de investigación y estudios sociales). "Guatemala: Analytical report of the 2007 electoral process." Socio-political research department, February 2008. <http://www.asies.org.gt/INFORME%20ELECTORAL%202007%20AL%2012032008.pdf>

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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:**

The election authority has made the first steps for transparent financing of political parties and candidates in particular.

Below find the transcript of the interview with one representative of a research center:

"There is no control on campaign spending for candidates for department deputies and mayors, as everyone drives his/her own campaign budget, with capital or obtained directly, without intervention or control of the party." (Linares, interview, Nov. 15, 2010).

**References:**

Interview by author with Luis Felipe Linares, Adjunct secretary for Association of Research and Social Studies (ASIES-Asociación de investigación y estudios sociales), former minister of labor and expert on municipal affairs. Nov. 15, 2010, Guatemala, Guatemala, written recording "Political Financing Transparency and Anti-Corruption Law."

Association of Research and Social Studies (ASIES – Asociación de investigación y estudios sociales). "Guatemala: Analytical report of the 2007 electoral process."

**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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

"I have not been made aware of any official investigation, despite having powers to do so." (Linares, interview Nov. 15, 2010)

**References:**

Interview by author with Luis Felipe Linares, Adjunct secretary for Association of Research and Social Studies (ASIES-Asociación de investigación y estudios sociales), former minister of labor and expert on municipal affairs.  
Nov. 15, 2010, Guatemala, Guatemala, written recording  
"Political Financing Transparency and Anti-Corruption Law."

Association of Research and Social Studies (ASIES – Asociación de investigación y estudios sociales).  
"Guatemala: Analytical report of the 2007 electoral process."  
Socio-political research department, February 2008.  
<http://www.asies.org.gt/INFORME%20ELECTORAL%202007%20AL%2012032008.pdf>

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

"In previous elections, as far as one could learn from the media, no political party was fined for exceeding the spending limit." (Linares, interview Nov. 15, 2010).

**References:**

Interview by author with Luis Felipe Linares, Adjunct secretary for Association of Research and Social Studies (ASIES-Asociación de investigación y estudios sociales), former minister of labor and expert on municipal affairs.  
Nov. 15, 2010, Guatemala, Guatemala, written recording  
"Political Financing Transparency and Anti-Corruption Law."

Association of Research and Social Studies (ASIES – Asociación de investigación y estudios sociales).  
"Guatemala: Analytical report of the 2007 electoral process."  
Socio-political research department, February 2008.  
<http://www.asies.org.gt/INFORME%20ELECTORAL%202007%20AL%2012032008.pdf>

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

**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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

"The Electoral Supreme Court never reported any audit. The parties merely submitted their reports and there was one result of the review of these reports." (Linares, interview Nov. 15, 2010).

**References:**

Interview by author with Luis Felipe Linares, Adjunct secretary for Association of Research and Social Studies (ASIES-Asociación de investigación y estudios sociales), former minister of labor and expert on municipal affairs.  
Nov. 15, 2010, Guatemala, Guatemala, written recording  
"Political Financing Transparency and Anti-Corruption Law."

Association of Research and Social Studies (ASIES – Asociación de investigación y estudios sociales).  
"Guatemala: Analytical report of the 2007 electoral process."  
Socio-political research department, February 2008.  
<http://www.asies.org.gt/INFORME%20ELECTORAL%202007%20AL%2012032008.pdf>

**100:** Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

**75:**

**50:** Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

**25:**

**0:** Party 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.

## 23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

**Comments:**

"The law stipulates that no individual or entity may make contributions in excess of 10% of the spending limit. However, in Guatemala there is no effective control over the movements and a person may use third parties to channel donations. Additionally, the fact that most of the actions of corporations are bearer shares, makes it impossible to determine who really is the owner of a particular company. Another way to circumvent this provision is the contributions made by television and radio stations, which are quantified below the market cost of the ads. On the occasion of the last election, in reporting campaign contributions to the GANA (Political party) was clear that a family had made significant contributions through various members of the same and corporations that are owned." (Linares, interview Nov. 15, 2010).

**References:**

Interview by author with Luis Felipe Linares, Adjunct secretary for Association of Research and Social Studies (ASIES-Asociación de investigación y estudios sociales), former minister of labor and expert on municipal affairs. Nov. 15, 2010, Guatemala, Guatemala, written recording "Political Financing Transparency and Anti-Corruption Law."

Association of Research and Social Studies (ASIES – Asociación de investigación y estudios sociales). "Guatemala: Analytical report of the 2007 electoral process." Socio-political research department, February 2008. <http://www.asies.org.gt/INFORME%20ELECTORAL%202007%20AL%2012032008.pdf>

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

**Comments:**

"The law stipulates that no individual or entity may make contributions in excess of 10% of the spending limit. However, in Guatemala there is no effective control over the movements and a person may use third parties to channel donations. Additionally, the fact that most of the actions of corporations are bearer shares, makes it impossible to determine who really is the owner of a particular company. Another way to circumvent this provision is the contributions made by television and radio stations, which are quantified below the market cost of the ads. On the occasion of the last election, in reporting campaign contributions to the GANA (Political party) was clear that a family had made significant contributions through various members of the same and corporations that are owned." (Linares, interview Nov. 15, 2010).

**References:**

Interview by author with Luis Felipe Linares, Adjunct secretary for Association of Research and Social Studies (ASIES-Asociación de investigación y estudios sociales), former minister of labor and expert on municipal affairs. Nov. 15, 2010, Guatemala, Guatemala, written recording "Political Financing Transparency and Anti-Corruption Law."

Association of Research and Social Studies (ASIES – Asociación de investigación y estudios sociales). "Guatemala: Analytical report of the 2007 electoral process." Socio-political research department, February 2008. <http://www.asies.org.gt/INFORME%20ELECTORAL%202007%20AL%2012032008.pdf>

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

"There is no control on campaign spending for candidates for department deputies and mayors, as everyone drives his/her own campaign budget, with capital or obtained directly, without intervention or control of the party." (Linares, interview Nov. 15, 2010).

**References:**

Interview by author with Luis Felipe Linares, Adjunct secretary for Association of Research and Social Studies (ASIES-Asociación de investigación y estudios sociales), former minister of labor and expert on municipal affairs. Nov. 15, 2010, Guatemala, Guatemala, written recording "Political Financing Transparency and Anti-Corruption Law."

Association of Research and Social Studies (ASIES – Asociación de investigación y estudios sociales). "Guatemala: Analytical report of the 2007 electoral process." Socio-political research department, February 2008. <http://www.asies.org.gt/INFORME%20ELECTORAL%202007%20AL%2012032008.pdf>

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

25:

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

"In previous elections, as far as one could learn from the media, no political party was fined for exceeding the spending limit." (Linares, interview Nov. 15, 2010).

**References:**

Interview by author with Luis Felipe Linares, Adjunct secretary for Association of Research and Social Studies (ASIES-Asociación de investigación y estudios sociales), former minister of labor and expert on municipal affairs. Nov. 15, 2010, Guatemala, Guatemala, written recording "Political Financing Transparency and Anti-Corruption Law."

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

**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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

"The Electoral Supreme Court never reported any audit. The parties merely submitted their reports and there was one result of the review of these reports." (Linares, interview Nov. 15, 2010).

**References:**

Interview by author with Luis Felipe Linares, Adjunct secretary for Association of Research and Social Studies (ASIES-Asociación de investigación y estudios sociales), former minister of labor and expert on municipal affairs.  
Nov. 15, 2010, Guatemala, Guatemala, written recording  
"Political Financing Transparency and Anti-Corruption Law."

**100:** The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

**75:**

**50:** The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

**25:**

**0:** The finances of individual candidates' campaigns 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.

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## 24. Can citizens access records related to the financing of political parties?

0

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

"After the period of time to make the declaration of goods required by the standard, no government official had documented in the minutes the goods at that time possessed." (El Periódico Guatemala).

The election authority has no power to press individual candidates and political parties to declare with some regularity their assets and the financial system and names of their financiers with respective political donations.

**References:**

Patrick.  
"Guatemala Human Rights Commission: Report", Nov. 3, 2007.  
[http://gsn.civiblog.org/blog/\\_archives/2007/11/3/3345375.html](http://gsn.civiblog.org/blog/_archives/2007/11/3/3345375.html)

Pérez, José.  
"Illicit enrichment". El Periódico Guatemala, Opinion, Jan. 30, 2007.  
<http://www.elperiodico.com.gt/es/20100130/opinion/135456>

Citizen Action.  
"Study on the national integrity system in Guatemala". July 2006.  
<http://www.accionciudadana.org.gt/Documentos/sni.pdf>

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

**75:**

**50:** Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

It can't be, because political parties and candidates only give information when they are in campaign, and that's not official. So no one can obtain this sort of information.

**References:**

Patrick.  
"Guatemala Human Rights Commission: Report", Nov. 3, 2007.  
[http://gsn.civiblog.org/blog/\\_archives/2007/11/3/3345375.html](http://gsn.civiblog.org/blog/_archives/2007/11/3/3345375.html)

Pérez, José.  
"Illicit enrichment". El Periódico Guatemala, Opinion, Jan. 30, 2007.  
<http://www.elperiodico.com.gt/es/20100130/opinion/135456>

Citizen Action.  
"Study on the national integrity system in Guatemala". July 2006.  
<http://www.accionciudadana.org.gt/Documentos/sni.pdf>

**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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

It can't be, because political parties and candidates only give information when they are in campaign, and that's not official. So no one can obtain this sort of information.

**References:**

Patrick.

"Guatemala Human Rights Commission: Report", Nov. 3, 2007.

[http://gsn.civiblog.org/blog/\\_archives/2007/11/3/3345375.html](http://gsn.civiblog.org/blog/_archives/2007/11/3/3345375.html)

Pérez, José.

"Illicit enrichment". El Periódico Guatemala, Opinion, Jan. 30, 2007.

<http://www.elperiodico.com.gt/es/20100130/opinion/135456>

Citizen Action.

"Study on the national integrity system in Guatemala". July 2006.

<http://www.accionciudadana.org.gt/Documentos/sni.pdf>

**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 NGOs. 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 NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

You cannot tell the quality of the information because first you need to have it, and that is not the case. The authority can not press political parties and candidates to provide information on a regular basis. They only provide this information when they are in campaign, and that's not official.

**References:**

Patrick.

"Guatemala Human Rights Commission: Report", Nov. 3, 2007.

[http://gsn.civiblog.org/blog/\\_archives/2007/11/3/3345375.html](http://gsn.civiblog.org/blog/_archives/2007/11/3/3345375.html)

Pérez, José.

"Illicit enrichment". El Periódico Guatemala, Opinion, Jan. 30, 2007.

<http://www.elperiodico.com.gt/es/20100130/opinion/135456>

Citizen Action.

"Study on the national integrity system in Guatemala". July 2006.

<http://www.accionciudadana.org.gt/Documentos/sni.pdf>

**100:** Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

**75:**

**50:** Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

**25:**

**0:** Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

## 25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

"After the period of time to make the declaration of goods required by the standard, no government official had documented in the minutes the goods at that time possessed." (El Periódico Guatemala).

You cannot tell the quality of the information because first you need to have it, and that is not the case. The authority can not press political parties and candidates to provide information on a regular basis. They only provide this information when they are in campaign, and that's not official.

### References:

Patrick.

"Guatemala Human Rights Commission: Report", Nov. 3, 2007.  
[http://gsn.civiblog.org/blog/\\_archives/2007/11/3/3345375.html](http://gsn.civiblog.org/blog/_archives/2007/11/3/3345375.html)

Pérez, José.

"Illicit enrichment". El Periódico Guatemala, Opinion, Jan. 30, 2007.  
<http://www.elperiodico.com.gt/es/20100130/opinion/135456>

Citizen Action.

"Study on the national integrity system in Guatemala". July 2006.  
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100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual 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: Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

It can't be, because political parties and candidates only give information when they are in campaign, and that's not official. So no one can obtain this sort of information.

### References:

Patrick.

"Guatemala Human Rights Commission: Report", Nov. 3, 2007.  
[http://gsn.civiblog.org/blog/\\_archives/2007/11/3/3345375.html](http://gsn.civiblog.org/blog/_archives/2007/11/3/3345375.html)

Pérez, José.

"Illicit enrichment". El Periódico Guatemala, Opinion, Jan. 30, 2007.  
<http://www.elperiodico.com.gt/es/20100130/opinion/135456>

Citizen Action.

"Study on the national integrity system in Guatemala". July 2006.  
<http://www.accionciudadana.org.gt/Documentos/sni.pdf>

**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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

It can't be, because political parties and candidates only give information when they are in campaign, and that's not official. So no one can obtain this sort of information.

**References:**

Patrick.

"Guatemala Human Rights Commission: Report", Nov. 3, 2007.

[http://gsn.civiblog.org/blog/\\_archives/2007/11/3/3345375.html](http://gsn.civiblog.org/blog/_archives/2007/11/3/3345375.html)

Pérez, José.

"Illicit enrichment". El Periódico Guatemala, Opinion, Jan. 30, 2007.

<http://www.elperiodico.com.gt/es/20100130/opinion/135456>

Citizen Action.

"Study on the national integrity system in Guatemala". July 2006.

<http://www.accionciudadana.org.gt/Documentos/sni.pdf>

**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 NGOs. 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 NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

It can't be, because political parties and candidates only give information when they are in campaign, and that's not official. So no one can obtain this sort of information.

**References:**

Patrick.

"Guatemala Human Rights Commission: Report", Nov. 3, 2007.

[http://gsn.civiblog.org/blog/\\_archives/2007/11/3/3345375.html](http://gsn.civiblog.org/blog/_archives/2007/11/3/3345375.html)

Pérez, José.

"Illicit enrichment". El Periódico Guatemala, Opinion, Jan. 30, 2007.

<http://www.elperiodico.com.gt/es/20100130/opinion/135456>

**100:** Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

**75:**

**50:** Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

**25:**

**0:** Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

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Category 3. Government Conflicts of Interest Safeguards &  
Checks and Balances

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56  
**3.1. Conflicts of Interest Safeguards & Checks and Balances:  
Executive Branch**

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

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes | No

**Comments:**

Article 1645 of Civil Code establishes that any person who causes damage or injury to another, either intentionally or by carelessness or negligence, is obliged to repair it.

**References:**

Código procesal penal, Decreto número 51-92, 28 de Septiembre de 1992. (Criminal Procedure Code, Decree No. 51-92, Sept. 28, 1992). Book VI, Title II, Article 521: "As a result of the review of the proceedings, the prisoner is acquitted or given a lesser sentence; he will be compensated for the time of imprisonment or disqualification incurred or suffered by it in excess."

<http://www.gj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2004/PDFs/Codigos/C>

Código Civil, Decreto-ley número 106, 13 de Septiembre de 1963. (Civil Code, Decree law No. 106, Sept. 13, 1963). Book V, Part 1, Title VII, Chapter 1, Articles 1645 to 1648.

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-civil>

**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.

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

50

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27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

**Comments:**

The chief of the executive branch doesn't give reasonable, specific justifications about his decisions.

**References:**

Prensa Libre.com.

"Colom defend my family progress program".

Prensa Libre, Politics, Sept. 29, 2010.

[http://www.prensalibre.com/noticias/politica/Colom\\_exalta\\_Mifapro\\_criticas\\_0\\_344365687.html](http://www.prensalibre.com/noticias/politica/Colom_exalta_Mifapro_criticas_0_344365687.html)

Valdizán, José.

"Already findings are not surprising in My Family Progress program, only about how high they are."

Valdizan.com, May 12, 2010.

<http://valdizan.com/2010/05/ya-no-sorprenden-los-hallazgos-en-mifapro-sino-a-cuanto-ascienden/>

**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.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

**Comments:**

The Judiciary delivers justice to all.

**References:**

Ley del organismo judicial, Decreto número 2-89, 19 de Enero de 1989. (Judiciary law, Decree No. 2-89, Jan. 10, 1989).

Article 51 Judiciary: The judiciary, in exercise of sovereignty delegated by the people, dispenses justice under the Constitution of the Republic and the values and norms of the country's legal system.

Article 52 Functions of the judiciary: To meet its objectives, the judiciary is not subject to subordination, of any body or authority, only to the Constitution of the Republic and the laws.

Article 57 Justice: The judicial function is exercised exclusively by the absolute Supreme Court and other courts established by law, which corresponds to the power to judge and to encourage implementation of court decisions.

**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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

**Comments:**

The judiciary does not act effectively. Members of Congress sometimes demand transparency. The case is Mi familia Progres (My family progress program), which isn't clear and transparent to opinion and criticism. The judiciary receives the demands, solitudes of Congress and other people, but the sentence is not fully accomplished.

**References:**

Prensa Libre.com.

"70 habeas corpus presented against control MiFaPro".

Prensa Libre, Politics, May 4, 2010.

[http://www.prensalibre.com/noticias/politica/Setenta-recursos-fiscalizacion-Mifapro\\_0\\_255574643.html](http://www.prensalibre.com/noticias/politica/Setenta-recursos-fiscalizacion-Mifapro_0_255574643.html)

Muños, Karen.

"Rep. De Frade present action against the Ministry of Education by MiFaPro". Prensa Libre, Politic, June 27, 2010.

[http://www.prensalibre.com/noticias/politica/Diputada-Frade-presenta-Mineduc-Mifapro\\_0\\_287971330.html](http://www.prensalibre.com/noticias/politica/Diputada-Frade-presenta-Mineduc-Mifapro_0_287971330.html)

Contreras, Mercedes.

"Minister exhausting legal battle over MiFaPro".

Siglo XXI.com Guatemala, National, Feb. 17, 2010.

<http://www.sigloxxi.com/nacional.php?id=2700>

**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. It does not need to rely upon the executive to initiate a constitutional or legal review.

**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.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

**Comments:**

Social Cohesion (Cohesión social) is the lead principle which gave birth to My family progress program (Mi familia progres). It was necessary for Congress to emit a law, without the government approval. The program My family progress is not transparent.

**References:**

Martínez, Francisco.

"Social Cohesion, the incostitucional body".

Prensa Libre, Nationals, April 25, 2010.

[http://www.prensalibre.com.gt/noticias/COHESION-SOCIAL-instancia-inconstitucional\\_0\\_250174982.html](http://www.prensalibre.com.gt/noticias/COHESION-SOCIAL-instancia-inconstitucional_0_250174982.html)

Font, Juan.

"Social cohesion is not the problema".

El Periódico Guatemala, Opinion, Sept. 3, 2009.

<http://www.elperiodico.com.gt/es/20100903/opinion/173359>

**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.

## 28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

### Comments:

CICIG has encouraged the criminal persecution against the highest officials in Guatemala.

### References:

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title II, Chapter I, Article 251. Public ministry: "The Public Ministry is an auxiliary of the public and the courts have independent functions, whose main aims are to ensure strict compliance with the laws of the country. Its organization and operation are governed by its organic law. The Head of Public Prosecutions shall be the Attorney General's Office and is responsible for the exercise of public prosecutions."  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley orgánica del Ministerio Público, Decreto número 40-94, 3 de Mayo de 1994. (Organic law of public ministry, Decree 40-94, May 3, 1994). Title I, Chapter 1, Article 1.  
[http://www.oas.org/juridico/mla/sp/gtm/sp\\_gtm-mla-leg-publico.pdf](http://www.oas.org/juridico/mla/sp/gtm/sp_gtm-mla-leg-publico.pdf)

Acuerdo entre la Organización de las Naciones Unidas y el Gobierno de Guatemala relativo al establecimiento de una Comisión Internacional contra la Impunidad en Guatemala (CICIG), Nueva York, 12 de diciembre de 2006.  
(Agreement between the United Nations and the Government of Guatemala on the establishment of an International Commission Against Impunity in Guatemala (CICIG), New York, Dec. 12, 2006).  
[http://cicig.org/uploads/documents/mandato/01\\_cicig\\_acuerdo.pdf](http://cicig.org/uploads/documents/mandato/01_cicig_acuerdo.pdf)

Dictamen de la Corte de Constitucionalidad sobre el Acuerdo de CICIG, Expediente 791-2007, 8 de mayo de 2007. (Opinion of the Constitutional Court on the Agreement CICIG, File 791-2007, May 8, 2007).  
[http://cicig.org/uploads/documents/mandato/02\\_cc\\_opinion\\_consultiva.pdf](http://cicig.org/uploads/documents/mandato/02_cc_opinion_consultiva.pdf)

**Yes:** A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

### Comments:

CICIG has encouraged the criminal persecution against the highest officials in Guatemala.

### References:

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title II, Chapter I, Article Article 251. Public ministry: "The Public Ministry is an auxiliary of the public and the courts have independent functions, whose main aims are to ensure strict compliance with the laws of the country. Its organization and operation are governed by its organic law. The Head of Public Prosecutions shall be the Attorney General's Office and is responsible for the exercise of public prosecutions."  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley orgánica del Ministerio Público, Decreto número 40-94, 3 de Mayo de 1994. (Organic law of public ministry, Decree 40-94, May 3, 1994). Title I, Chapter 1, Article 1.  
[http://www.oas.org/juridico/mla/sp/gtm/sp\\_gtm-mla-leg-publico.pdf](http://www.oas.org/juridico/mla/sp/gtm/sp_gtm-mla-leg-publico.pdf)

Acuerdo entre la Organización de las Naciones Unidas y el Gobierno de Guatemala relativo al establecimiento de una Comisión Internacional contra la Impunidad en Guatemala (CICIG), Nueva York, 12 de diciembre de 2006.  
(Agreement between the United Nations and the Government of Guatemala on the establishment of an International Commission Against Impunity in Guatemala (CICIG), New York, Dec. 12, 2006).  
[http://cicig.org/uploads/documents/mandato/01\\_cicig\\_acuerdo.pdf](http://cicig.org/uploads/documents/mandato/01_cicig_acuerdo.pdf)

Dictamen de la Corte de Constitucionalidad sobre el Acuerdo de CICIG, Expediente 791-2007, 8 de mayo de 2007.  
(Opinion of the Constitutional Court on the Agreement CICIG, File 791-2007, May 8, 2007).  
[http://cicig.org/uploads/documents/mandato/02\\_cc\\_opinion\\_consultiva.pdf](http://cicig.org/uploads/documents/mandato/02_cc_opinion_consultiva.pdf)

**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.

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

47

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

### References:

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002).

Chapter V, Article 20. Asset declaration: "The declaration of assets is the statement of assets, rights and obligations under oath which shall be filed with the Comptroller General; for public officials it is a prerequisite for the exercise of office or employment, and, on leaving it, a prerequisite to extend the settlement is concerned. The following persons are subject to the obligation to comply with the affidavit assets: a) The subject of responsibility referred to in paragraphs a), b), c) d) e) of Article 4 of this Act, except those whose monthly salary is less than eight thousand quetzals (Q8,000, US\$1,056), and do not handle or administer public funds."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

**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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

### References:

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002).

Chapter V, Article 20. Asset declaration: "The declaration of assets is the statement of assets, rights and obligations under oath which shall be filed with the Comptroller General; for public officials it is a prerequisite for the exercise of office or employment, and, on leaving it, a prerequisite to extend the settlement is concerned. The following persons are subject to the obligation to comply with the affidavit assets: a) The subject of responsibility referred to in paragraphs a), b), c) d) e) of Article 4 of this Act, except those whose monthly salary is less than eight thousand quetzals (Q8,000, US\$1,056), and do not handle or administer public funds."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

**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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | **No**

**Comments:**

There are no specific guidelines, only general articles.

**References:**

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002). Chapter IV, Article 18, c): "Soliciting or accepting directly or through intermediaries, bribes, gifts, payments, fees or any additional emoluments other than those normally seen by the performance of their duties is forbidden."  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/ley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

Código penal, Decreto número 17-73, 5 de Julio de 1973. (Penal Code, Decree No. 17-73, July 5, 1973). Part II, Title XIII, Chapter III, Articles 439 and 443. "Passive Bribery" and "Unlawful acceptance of gifts"  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-penal>

**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.

29d. 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

**References:**

Ley orgánica de la Contraloría General de Cuentas, Decreto número 31-2002, 14 de mayo de 2002. (Organic Law of the Comptroller General, Decree No. 31-2002, May 14, 2002). Chapter 1, Article 1. "The Comptroller General is a technical institution and it is decentralized. Under this law, it is independent functionally, technically and administratively..."  
Article 4. o) "Verify the accuracy of the information contained in the statements of probity submitted by public officials and employees..."  
[http://www.contraloria.gob.gt/i\\_docs/i\\_ley\\_cgq.pdfq](http://www.contraloria.gob.gt/i_docs/i_ley_cgq.pdfq)

**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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**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.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | **No**

**Comments:**

The only one requirement is to present the asset declaration within 30 days after leaving office. Article 22 of Integrity and Accountability Act of Public Officials and Employees.

**References:**

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002). Chapter V, Article 20. Asset declaration: "The declaration of assets is the statement of assets, rights and obligations under oath which shall be filed with the Comptroller General; for public officials it is a prerequisite for the exercise of office or employment, and, on leaving it, a prerequisite to extend the settlement is concerned..."

**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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

29f. 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:**

The Republic of Guatemala has ratified several international agreements against corruption, but Congress doesn't pass any laws to regulate corruption. And there is no law, agreement or act that deny that civil servants could work in the private sector after leaving their jobs. There is no transparency.

**References:**

Editorial. "Illicit enrichment".

El Periódico Guatemala, Opinion, March 3, 2010.

<http://www.elperiodico.com.gt/es/20100303/opinion/140232>

Editorial.

"Transparency of governance".

El Periódico Guatemala, Opinion, Feb. 5, 2010

<http://www.elperiodico.com.gt/es/20100205/opinion/136407/>

**100:** The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

The executive branch wants to influence to National Registry of Persons (Renap – Registro Nacional de las Personas).

**References:**

Fernández, Dina.

"More businesses in the Police".

El Periódico Guatemala, Opinion, April 7, 2010.  
<http://www.elperiodico.com.gt/es/20100407/opinion/144441>

Méndez, Claudia.  
"Special prosecutor investigating the connections between Castle Londy".  
El Periódico Guatemala, Country, July 28, 2010.  
<http://www.elperiodico.com.gt/es/20100728/pais/166648/>

Castillo Juan.  
"Request the Executive Agency to desist from intervening on Renap". El Periódico Guatemala, Country, November 2, 2010.  
<http://www.elperiodico.com.gt/es/pais/172528>

**100:** The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

Within the Directorate of probity, there is an Analysis and Verification Unit, which is responsible for analyzing the information in the affidavits of probity. After examination, the next step is to verify the information, and if any irregularities are found, cases are transferred to the Department of Audit, which audits all public servants. If irregularities are uncovered, public servants and public officials are responsible administratively, civilly or criminally.

"One of the main weaknesses of affidavits is to ignore the universe of public officials in general. First, not having this information jeopardizes the effective and accurate receiving or applying for the declarations to all affected by the legal framework, which reduces the coverage and effectiveness of the system, which encourages discriminatory treatment under the law (it only requires the presentation or punishment of those officials who are known). Second, the absence of such data impedes an effective registration and monitoring, measurable and comparable to other phases of the system of sworn statements, as its starting point is a vacuum or a course (it is not possible to know how many officials meet the obligation in relation to the total required.)" (Transparency coalition. P. 15)

**References:**

María Flores, Integrity Department officer, Comptroller General of Accounts, interview by author, Nov. 11, 2010, Guatemala, Guatemala, written recording). "Probity."

Transparency coalition.  
"Diagnosis of the financial disclosure system of Guatemala".  
October 2006. P. 11,15.  
<http://www.accionciudadana.org.gt/Documentos/diagnosticodeclaraciones.pdf>

Batres, Alexis.  
"Six auditors links caught by Fraijanes II Case".  
Diario La Hora, Nationals, Sept. 22, 2010.  
<http://www.lahora.com.gt/notas.php?key=73679&fch=2010-09-22>

**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. Audits may be performed by entities known to be partisan or biased in their practices.

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

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | No

**Comments:**

The information provided by the heads of state and government, including public employees, is given within the guarantee of confidentiality. It can be released only by judicial order.

**References:**

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002). Chapter V, Article 21. Confidentiality of the asset disclosure".  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

**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.

30b. 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:**

In these media reports, the comptroller general of accounts says that citizens can't access the asset disclosure records of senior civil servants, due to legal reasons.

**References:**

Research team.  
"Rep. Baldetti Q4.5 million (US\$595,000) home opens at Marina South".  
El Periódico Guatemala, Country, January 8, 2008.  
<http://www.elperiodico.com.gt/es/20080107/investigacion/47237>

Editorial.  
"Presidential Salary".  
El Periódico Guatemala, Opinion, Feb. 10, 2010. <http://www.elperiodico.com.gt/es/20100210/opinion/137069>

Albedrío.  
"Rep. Baldetti Q4.5 million home opens at Marina South".  
Albedrío electronic magazine, Jan. 8, 2008.  
<http://www.albedrio.org/htm/noticias/ep070108.htm>

**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.

30c. 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:**

In these media reports, the comptroller general of accounts says that citizens can't access the asset disclosure records of senior civil servants, due to legal reasons.

**References:**

Research team.

"Rep. Baldetti Q4.5 million (US\$595,000) home opens at Marina South".

El Periódico Guatemala, Country, January 8, 2008.

<http://www.elperiodico.com.gt/es/20080107/investigacion/47237>

Albedrío.

"Rep. Baldetti Q4.5 million home opens at Marina South".

Albedrío electronic magazine, Jan. 8, 2008.

<http://www.albedrio.org/htm/noticias/ep070108.htm>

**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 NGOs. 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 NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

The quality of asset disclosure records is unknown, because they are not available to citizens for evaluation.

**References:**

Research team.

"Rep. Baldetti Q4.5 million (US\$595,000) home opens at Marina South".

El Periódico Guatemala, Country, January 8, 2008.

<http://www.elperiodico.com.gt/es/20080107/investigacion/47237>

Albedrío.

"Rep. Baldetti Q4.5 million home opens at Marina South".

Albedrío electronic magazine, Jan. 8, 2008.

<http://www.albedrio.org/htm/noticias/ep070108.htm>

**100:** The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

**Comments:**

Government and political parties invade social networks as there are upcoming elections for president, members of the Congress and mayors. Most of the candidates are government officials and already began the electoral campaign.

**References:**

Gramajo, Jessica.  
"UNE threatening to start political camapaign".  
Incidencia Democrática, October 18, 2010.  
<http://www.i-dem.org/?p=48236>

Contrera, Geovanni.  
"Government and political parties invade social networks".  
Prensa Libre, Politics, Nov. 3, 2010.  
[http://www.prensalibre.com.gt/noticias/politica/Partidos-Gobierno-invaden-redes-sociales\\_0\\_364763624.html](http://www.prensalibre.com.gt/noticias/politica/Partidos-Gobierno-invaden-redes-sociales_0_364763624.html)

**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 the 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 bureaucracy 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.

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## 3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

75

32a. In law, the judiciary can review laws passed by the legislature.

Yes | No

**Comments:**

The Constitutional Court must issue its opinion, when it's been asked by other authorities.

**References:**

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title VI, Chapter III, Article 266. "In specific cases, in any process of any power or jurisdiction, in any instance and on appeal and before the sentencing, the parties may bring such action, emergency or incident, against the total or partial unconstitutionality of a law."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley de amparo, exhibición personal y de constitucionalidad, Decreto número 1-86, 8 de enero de 1986. (Amparo, Habeas Corpus and Constitutionality Law, Decree No. 1-86, January 8, 1986). Title 5, Chapter 5, Article 171, 173 and 174. "The Constitutional Court must issue its opinion..."

**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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

**Comments:**

The Courts and Constitutional Court have the capacity to deal with unconstitutional cases.

**References:**

Casasola, Suseth.

"Ask veto law against obstruction of justice".

Siglo XXI Guatemala, National, May 20, 2010.

<http://www.sigloxxi.com/nacional.php?id=11197>

Valladares, Acisclo.

"The unconstitutionality of laws".

El Periódico Guatemala, Opinion, Feb. 16, 2005.

<http://www.elperiodico.com.gt/es/20050216/opinion/12983>

**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.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | No

**Comments:**

The pre-trial for members of Congress is led by the Supreme Justice Court. But the magistrates of the Supreme Justice Court are nominated for their positions by members of Congress.

**References:**

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title II, Chapter I, Article 251. "Public ministry. The Public Ministry is an auxiliary of the public and the courts have independent functions, whose main aims are to ensure strict compliance with the laws of the country. Its organization and operation are governed by its organic law. The Head of Public Prosecutions is responsible for the exercise of public prosecutions."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley orgánica del Ministerio Público, Decreto número 40-94, 3 de Mayo de 1994. (Organic law of public ministry, Decree 40-94, May 3, 1994). Title I, Chapter 1, Article 1.

[http://www.oas.org/juridico/mla/sp/gtm/sp\\_gtm-mla-leg-publico.pdf](http://www.oas.org/juridico/mla/sp/gtm/sp_gtm-mla-leg-publico.pdf)

Acuerdo entre la Organización de las Naciones Unidas y el Gobierno de Guatemala relativo al establecimiento de una Comisión Internacional contra la Impunidad en Guatemala (CICIG), Nueva York, 12 de diciembre de 2006.

(Agreement between the United Nations and the Government of Guatemala on the establishment of an International Commission Against Impunity in Guatemala (CICIG), New York, Dec. 12, 2006).

[http://cicig.org/uploads/documents/mandato/01\\_cicig\\_acuerdo.pdf](http://cicig.org/uploads/documents/mandato/01_cicig_acuerdo.pdf)

Dictamen de la Corte de Constitucionalidad sobre el Acuerdo de CICIG, Expediente 791-2007, 8 de mayo de 2007.

(Opinion of the Constitutional Court on the Agreement CICIG, File 791-2007, May 8, 2007).

[http://cicig.org/uploads/documents/mandato/02\\_cc\\_opinion\\_consultiva.pdf](http://cicig.org/uploads/documents/mandato/02_cc_opinion_consultiva.pdf)

Ley en material de antejuicio, Decreto No. 85-2002, 4 de diciembre de 2002. (Law in material of pretrial, Decree No. 85-2002, Dec. 4, 2002).

Article 14. "Jurisdiction of the Supreme Court. The Court Supreme Court i responsible for hearing and resolving the pretrial against dignitaries and officials following: a) Members of the Congress"

<http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2003/Leyes%20en%202002.pdf>

**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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

39

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | No

#### References:

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002).

Chapter V, Article 20. "Asset declaration. The declaration of assets is the statement of assets, rights and obligations under oath and shall be filed with the Comptroller General; for public officials is a prerequisite for the exercise of office or employment, and, on leaving, as a prerequisite to extend the settlement concerned. The following persons are subject to the obligation to comply with the affidavit assets: a) The subject of responsibility referred to in paragraphs a), b), c) d) e) of Article 4 of this Act, except those whose monthly salary is less than eight thousand quetzals (Q8,000, US\$1,056), and do not handle or administer public funds."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

**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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | No

#### Comments:

The only one requirement is to present the asset declaration within 30 days after leaving the position. Article 22 of Integrity and Accountability Act of Public Officials and Employees.

**References:**

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002). Chapter V, Article 20. "Asset declaration. The declaration of assets is the statement of assets, rights and obligations under oath and shall be filed with the Comptroller General; for public officials is a prerequisite for the exercise of office or employment, and, on leaving, as a prerequisite to extend the settlement concerned. The following persons are subject to the obligation to comply with the affidavit assets: a) The subject of responsibility referred to in paragraphs a), b), c) d) e) of Article 4 of this Act, except those whose monthly salary is less than eight thousand quetzals (Q8,000, US\$1,056), and do not handle or administer public funds."  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

**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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

**Comments:**

There are no specific guidelines, only general articles.

**References:**

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002). Chapter IV, Article 18, c) "Soliciting or accepting directly or through intermediaries, bribes, gifts, payments, fees or any additional emoluments other than those normally seen by the performance of their duties is forbidden."  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

Código penal, Decreto número 17-73, 5 de Julio de 1973. Part II, Title XIII, Chapter III, Articles 439 and 443. "Passive Bribery" and "Unlawful acceptance of gifts"  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-penal>

**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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | No

**References:**

Ley orgánica de la Contraloría General de Cuentas, Decreto número 31-2002, 14 de mayo de 2002. (Organic Law of the Comptroller General, Decree No. 31-2002, May 14, 2002). Chapter 1, Article 1. "The Comptroller General is a technical institution and it is decentralized. Under this law, it is independent functionally, technically and administratively..."  
Article 4. o) "Verify the accuracy of the information contained in the statements of probity submitted by public officials and employees..."  
[http://www.contraloria.gob.gt/i\\_docs/i\\_ley\\_cgq.pdfq](http://www.contraloria.gob.gt/i_docs/i_ley_cgq.pdfq)

**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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

The Republic of Guatemala has ratified several international agreements against corruption, but Congress doesn't make any law to regulate corruption. And there is no law, agreement or act that deny that civil servants could work in private sector after leaving their jobs. There is no transparency.

**References:**

Editorial.

"Illicit enrichment".

El Periódico Guatemala, Opinion, March 3, 2010.

<http://www.elperiodico.com.gt/es/20100303/opinion/140232>

Editorial.

"Transparency of governance".

El Periódico Guatemala, Opinion, February 5, 2010.

<http://www.elperiodico.com.gt/es/20100205/opinion/136407/>

**100:** The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

It's so common for members of Congress to influence others entities, such as municipalities and executive branch entities.

**References:**

Paz, Leslie.

"Law against Illicit Enrichment bogged down in Congress".

El Periódico Guatemala, Cover, Feb.2, 2010.

<http://www.elperiodico.com.gt/es/20100203/investigacion/135971>

Editorial.

"Parliamentary Irresponsibility".

El Periódico Guatemala, Opinion, Aug. 27, 2010.

<http://www.lahora.com.gt/notas.php?key=72364&fch=2010-09-06>

**100:** The regulations governing gifts and hospitality to national legislators are regularly enforced. 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 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

Within the Directorate of probity, there is an Analysis and Verification Unit which is responsible for analyzing the information in the affidavits of probity. After examination, the next step is to verify the information; if any irregularities are found, cases are transferred to the Department of Audit, which audits all public servants. If irregularities are uncovered, public servants and public officials are responsible administratively, civilly or criminally.

“One of the main weaknesses of affidavits is to ignore the universe of public officials in general. First, not having this information jeopardizes the effective and accurate receiving or applying for the declaration to all affected by the legal framework, which reduces the coverage and effectiveness of the system, which encourages discriminatory treatment under the law (which requires the presentation or punishment of those officials who are known). Second, the absence of such data impedes an effective registration and monitoring, measurable and comparable to other phases of the system of sworn statements, as its starting point is a vacuum or a course (it is not possible to know how many officials meet the obligation in relation to the total required.)” (Transparency coalition. P. 15)

**References:**

María Flores, Integrity Department officer, Comptroller General of Accounts, interview by author, Nov. 11, 2010, Guatemala, Guatemala, written recording). “Probity.”

Transparency coalition.

“Diagnosis of the financial disclosure system of Guatemala”.

October 2006. P. 11,15.

<http://www.accionciudadana.org.gt/Documentos/diagnosticodeclaraciones.pdf>

Batres, Alexis.

“Six auditors caught due to links with Fraijanes II Case”.

Diario La Hora, Nationals, Sept. 22, 2010.

<http://www.lahora.com.gt/notas.php?key=73679&fch=2010-09-22>

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: 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.

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

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | No

**Comments:**

The information provided by the heads of state and government, including public employees, is given within the guarantee of confidentiality.

**References:**

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de

2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002). Chapter V, Article 21. Confidentiality of the asset disclosure”.

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

**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, non-governmental 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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

In these media reports, the comptroller general of accounts says that citizens can't access the asset disclosure records of senior civil servants, due to legal reasons.

**References:**

Pérez, José.

“Arzu illicit enrichment”. El Periódico Guatemala, Opinion, Jan.30, 2010.

<http://www.elperiodico.com.gt/es/20100130/opinion/135456>

Albedrío.

“Rep. Baldetti Q4.5 million (US\$595,000)home opens at Marina South”.

Albedrío electronic magazine, Jan. 8, 2008.

<http://www.albedrio.org/htm/noticias/ep070108.htm>

**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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

In these media reports, the comptroller general of accounts says that citizens can't access the asset disclosure records of senior civil servants, due to legal reasons.

**References:**

Research team.

“Rep. Baldetti Q4.5 million (US\$595,000) home opens at Marina South”.

El Periódico Guatemala, Country, January 8, 2008.

<http://www.elperiodico.com.gt/es/20080107/investigacion/47237>

Editorial.

“Presidential Salary”.

El Periódico Guatemala, Opinion, Feb. 10, 2010. <http://www.elperiodico.com.gt/es/20100210/opinion/137069>

Albedrío.

“Rep. Baldetti Q4.5 million home opens at Marina South”.

**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 NGOs. 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 NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

The quality of asset disclosure records is unknown, as citizens cannot access them.

**References:**

Research team.

"Rep. Baldetti Q4.5 million (US\$595,000) home opens at Marina South".  
El Periódico Guatemala, Country, January 8, 2008.

<http://www.elperiodico.com.gt/es/20080107/investigacion/47237>

Editorial.

"Presidential Salary".

El Periódico Guatemala, Opinion, Feb. 10, 2010. <http://www.elperiodico.com.gt/es/20100210/opinion/137069>

Albedrío.

"Rep. Baldetti Q4.5 million home opens at Marina South".

Albedrío electronic magazine, Jan. 8, 2008.

<http://www.albedrio.org/htm/noticias/ep070108.htm>

**100:** The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

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### 35. Can citizens access legislative processes and documents?

83

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

**Comments:**

Congress is obligated to provide access to its information.

**References:**

Ley de acceso a la información pública, Decreto número 57-2008, 23 de Septiembre de 2008. (Law on access to public information, Decree No. 57-2008, Sept. 23, 2008).  
Title I, Chapter I, Article 1, (a). Article 6. Entities: "Any individual or entity, public or private, national or international, of any institution or government entity, agency, body, entity, agency, institution, and anyone else who operates, manages or runs public funds, state property, or acts of public administration in general, which is required to provide public information request, is included on the following list, which is not limited to (...):  
2. Legislature and all units that comprise it  
<http://www.sit.gob.gt/uploads/docs/laws/LeydeAccesoInformacion-Guatemala.pdf>

**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 are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

It is necessary that information is updated. Nowadays, Congress broadcasts its activities through "Live video" on its own homepage.

**References:**

Congreso de la República.  
"Live video". Nov. 3, 2010.  
[http://www.congreso.gob.gt/gt/camaras\\_en\\_vivo.asp](http://www.congreso.gob.gt/gt/camaras_en_vivo.asp)

Congreso de la República.  
"Process monitoring". Nov. 3, 2010.  
<http://www.congreso.gob.gt/gt/monitoreo.asp>

**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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Documents are available for downloading online.

**References:**

Congreso de la República.  
"Law initiative". Nov. 3, 2010.  
<http://www.congreso.gob.gt/archivos/iniciativas/registro4284.pdf>

Congreso de la República.  
"Live video". Nov. 3, 2010.  
[http://www.congreso.gob.gt/gt/camaras\\_en\\_vivo.asp](http://www.congreso.gob.gt/gt/camaras_en_vivo.asp)

**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 NGOs. 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 NGOs trying to access this information.

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### 3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

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#### 36. Are judges appointed fairly?

92

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

**Comments:**

Entrance to the judiciary is as follows: a) In the case of judges, appointed by the Supreme Court. b) In the case of magistrates, appointed by election by the Congress from the lists provided by commissions.

**References:**

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title IV, Chapter IV, Section II article 215, and Section III, article 217.

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley de la carrera judicial, Decreto número. 41-99, 27 de octubre de 1999.

(Judicial career law, Decree No. 41-99, Oct. 27, 1999).

Title III, Chapter I, Article 14.

**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. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

**No:** A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

**Comments:**

Judges and magistrate were latest appointed. There were 20 candidates.

**References:**

International Commission against Impunity in Guatemala. "Report". November 2009, P. 42  
[http://cicig.org/uploads/documents/Informe\\_proceso\\_de\\_eleccion\\_de\\_magistrados\\_2009.pdf](http://cicig.org/uploads/documents/Informe_proceso_de_eleccion_de_magistrados_2009.pdf)

S. Casasola and M. Hernández.  
"CICIG streak to 20 for Court of Appeals".  
Siglo XXI Guatemala, National, Oct. 9, 2009.  
<http://128.121.66.148/noticias/31529>

**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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes | No

**Comments:**

The Postulation commission examines and selects the judges and magistrates. Afterward, the Career Judicial Council sends the judges selected to the Justice Supreme Court for nomination, and the magistrates selected to Congress for nomination.

**References:**

Judicial Career Council is the manager for judicial career.

Ley de la carrera judicial, Decreto número 41-99, 27 de octubre de 1999. (Judicial career law, Decree No. 41-99, Oct. 27, 1999). Title III, Chapter I, Article 4. "Organs. The bodies responsible for the legal profession are: the Judicial Career Council, the Judicial Disciplinary Board, the committees application and the Institutional Training Unit."

**Yes:** A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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

75

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

**Comments:**

The judge has to describe his/her reasoning about a decision.

**References:**

Ley del organismo judicial, Decreto número 2-89, 19 de Enero de 1989. (Judiciary law, Decree No. 2-89, Jan. 10, 1989). Article 147 (d). "Redaction"

**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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

**Comments:**

Magistrates and judges must explain their decisions of the sentences they give, otherwise the party affected may demand clarification or extension resources. And if the sentence is so grave, the party affected can appeal.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Judiciary branch"

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Judiciary branch"

**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.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

**References:**

Disciplinary Board Judicial

Ley de la carrera judicial, Decreto número 41-99, 27 de octubre de 1999. (Judiciary law, Decree No. 2-89, Jan. 10, 1989). Title III, Chapter I, Article 4. "Organs. The bodies responsible for the legal profession are: Judicial Career Council, the Judicial Disciplinary Board, the committees application and the Institutional Training Unit."

Article 8. "Corresponds to the Disciplinary Board Judicial knowledge and exercise of the disciplinary actions and remedies provided in this Act and its regulations. Exceptions to the available cases of dismissal, which are reserved by the respective appointing authority. However, the formation of relevant records and appropriate recommendations are functions of the Boards."

**Yes:** A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

**No:** A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | No

**Comments:**

Article 8 of the judicial career law describes in its exception the cases of dismissal, which are reserved by the superior authority. Therefore the Disciplinary Judicial Board is not free at all from political interference.

**References:**

Ley de la carrera judicial, Decreto número 41-99, 27 de octubre de 1999. (Judicial career law, Decree No. 41-99, Oct. 27, 1999). Title III, Chapter I, Article 8. "Corresponds to the Disciplinary Board Judicial knowledge and exercise of the disciplinary actions and remedies provided in this Act and its regulations. Exceptions to the available cases of dismissal, which are reserved by the respective appointing authority. However, the formation of relevant records and appropriate recommendations are functions of the Boards."

**Yes:** A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

**No:** A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

The journal La Hora asked judge Walter Villatoro about the criticism brought against the Disciplinary Board: whether it is absurd that a judge has to judge other judges, whether there is any objectivity in this trial? And the judge responded: "That's a reasonable doubt they are right, in the sense that how come I can try a friend or colleague, and that's why I make the difference of judicial independence and objectivity that the Disciplinary Board must have in order to hear a case. This would be worse to come because someone in the street or trustee, as the human resources manager, and feels to judge me when he does not know the court, does not know my competition, and how he handles a family court, employment or first instance, then that is where I see the doubt that has offset the population, then we are in the same thing when we evaluated for eligibility to five years to the judiciary, because we assessed for judgments, which is not target because they know how to work us, I can have a debate a month, but if it's a big debate we can not measure them all with the same scale. For me it is more objective than I am, judge me if I am objective and seek the truth, discover that there is a fault and the endorsement, because I know the work of a judge, that is the compensation for even one friend or another, but if I needed the judge .."

According Siglo XXI: In fact, this year the judges involved are 10. This can be interpreted as a low tolerance for abuses and failures that come from the court offices.

But it is incontestable that in a much-criticized state, where power and its image are in a bad shape because of corruption and impunity, the least we can expect is the application of iron discipline.

It should not be a great bureaucratic battle to access to this information, since the additional message to the reprimand should also go through the public knowledge of their actions. Of course, assuming that the Judicial Disciplinary Board has exhausted legal levels set correctly.

Therefore, it is worth repeating that the time is now to be relentless, and must keep a close watch on the judges warned, as in the case of the former chief judge of execution, Marie Antoinette Morales Castillo, who on March 8 received three-month suspension for a very serious offense, but a month later and had a written reprimand for a minor offense.

So, it calls for exemplary discipline in the judiciary.

**References:**

"Strength groups manage magistrates and judges".  
Diario La Hora, Nationals, Sept. 30, 2010.  
<http://www.lahora.com.gt/notas.php?key=74100>

O. López, C. Acuña y S. Valdez.  
"Disciplinary Judicial Board sanctions judge".  
Prensa Libre, Nationals, March 19, 2010.  
[http://www.prensalibre.com/noticias/Junta-sanciona-Corte-ordena-traslado\\_0\\_227977230.html](http://www.prensalibre.com/noticias/Junta-sanciona-Corte-ordena-traslado_0_227977230.html)

Editorial.  
"Discipline must be ruthless".

**100:** The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

**75:**

**50:** The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

"Therefore, it is worth repeating that the time is now to be relentless, and to keep a close watch on the judges warned, as in the case of the former chief judge of execution, Marie Antoinette Morales Castillo, who on March 8 received a three-month suspension for a very serious offense, but a month later was reprimanded for a minor offense.

Unfortunately the Supreme Court has not been exemplary in their trials in recent years. Just remember how last year the judges were engaged in a struggle of interests that prevented them for months to reach an agreement to elect the president of the agency." (Siglo XXI)

**References:**

"Strength groups manage magistrates and judges".  
Diario La Hora, Nationals, Sept. 30, 2010.  
<http://www.lahora.com.gt/notas.php?key=74100>

O. López, C. Acuña y S. Valdez.  
"Disciplinary Judicial Board sanctions judge".  
Prensa Libre, Nationals, March 19, 2010.  
[http://www.prensalibre.com/noticias/Junta-sanciona-Corte-ordena-traslado\\_0\\_227977230.html](http://www.prensalibre.com/noticias/Junta-sanciona-Corte-ordena-traslado_0_227977230.html)

Editorial.  
"Discipline must be ruthless".  
Siglo XXI.com Guatemala, National, July 31, 2010  
<http://www.sigloxxi.com/opinion.php?id=16221>

**100:** When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

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38. Are there regulations governing conflicts of interest for the national-level judiciary?

46

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

**References:**

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002). Chapter V, Article 20. "Asset declaration. The declaration of assets is the statement of assets, rights and obligations under oath with shall be filed with the Comptroller General; for public officials it is a prerequisite for the exercise of office or employment, and, on leaving it, a prerequisite to extend the settlement concerned. The following persons are subject to the obligation to comply with the affidavit assets: a) The subject of responsibility referred to in paragraphs a), b), c) d) e) of Article 4 of this Act, except those whose monthly salary is less than eight thousand quetzals (Q8,000, US\$1,056), and do not handle or administer public funds." <http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

**Yes:** A YES score is earned if all members of the national-level judiciary 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 national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

**Comments:**

Article 65 is the only one that refers to gifts.

**References:**

Ley de la carrera judicial, Decreto número 41-99, 27 de octubre de 1999. (Judicial career law, Decree No. 41-99, Oct. 27, 1999). Title III, Chapter I, Article 65. "Incorruptible. It prohibits officials and employees of the Judiciary to receive emolument, gratuity or gift, directly or indirectly from concerned or any other person."

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002). Chapter IV, Article 18, c) "Soliciting or accepting directly or through intermediaries, bribes, gifts, payments, fees or any additional emoluments other than those normally seen by the performance of their duties is forbidden." <http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

Código penal, Decreto número 17-73, 5 de Julio de 1973. (Penal Code, Decree No. 17-73, July 5, 1973). Part II, Title XIII, Chapter III, Articles 439 and 443. "Passive Bribery" and "Unlawful acceptance of gifts" <http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-penal>

**Yes:** A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

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

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | No

**References:**

Ley orgánica de la Contraloría General de Cuentas, Decreto número 31-2002, 14 de mayo de 2002. (Organic Law of the Comptroller General, Decree No. 31-2002, May 14, 2002). Chapter 1, Article 1. "The Comptroller General is a technical institution and it is decentralized. Under this law, it is independent

functionally, technically and administratively,..." Article 4. "o) Verify the accuracy of the information contained in the statements of probity submitted by public officials and employees..."  
[http://www.contraloria.gob.gt/i\\_docs/i\\_ley\\_cgc.pdfq](http://www.contraloria.gob.gt/i_docs/i_ley_cgc.pdfq)

**Yes:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary 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 national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | **No**

**Comments:**

The only requirement is to present the asset declaration within 30 days after leaving the position. Article 22 of Integrity and Accountability Act of Public Officials and Employees.

**References:**

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002). Chapter V, Article 20. "ASSET DECLARATION. The declaration of assets is the statement of assets, rights and obligations under oath shall be filed with the Comptroller General; for public officials it is a prerequisite ... to extend the settlement concerned."  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

**Yes:** A YES score is earned if there are regulations restricting national-level judges' 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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

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

**Comments:**

The Republic of Guatemala has ratified several international agreements against corruption, but Congress doesn't make any law to regulate corruption. And there is no law, agreement or act that deny that civil servant employment in the private sector after leaving his/her position. There is no transparency.

**References:**

Editorial.  
"Illicit enrichment".  
El Periódico Guatemala, Opinion, March 3, 2010.  
<http://www.elperiodico.com.gt/es/20100303/opinion/140232>

Editorial.  
"Transparency of governance".  
El Periódico Guatemala, Opinion, Feb. 5, 2010.  
<http://www.elperiodico.com.gt/es/20100205/opinion/136407/>

**100:** The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges 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 cases, judges 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. Judges 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

It's considered that there may be nepotism within the judiciary branch, since impunity is rooted in issues such as influence peddling and political bill payments.

"In the opinion of some judges, the appointment of Javier Sotomora Chacón, son of Judge of the Constitutional Court, Gladys Chacon, is just the tip of the iceberg for a number of anomalous appointments expected in the future.

Sotomora Chacon was confirmed in his position as head of the First Criminal Enforcement of the Judiciary on May 18 by the judges of the Supreme Court of Justice (CSJ), despite a fierce legal battle that the Association of Judges started against his appointment, and although he has not met the requirements of the Judicial Career Law.

On March 22, the Association of Judges challenged the appointment of Sotomora Chacón as head of the First Court of Criminal Enforcement through an internal appeal and a request to revoke the appointment by the Supreme Court on the grounds that such action violated article 209 of the Constitution and 30 of the Judicial Career Law,

Despite the legal battle initiated by judges themselves, which has not been exhausted, the Criminal Chamber confirmed May 18 as a starting day for Sotomora Chacón, arguing that the judge's appointment is legal. This was confirmed in his post.

**TIP OF THE ICEBERG**

Carlos Aguilar, president of the Association of Judges, said he did not agree with the appointment of a judge through a "transgression of the Judicial Career Law, which regulates and identifies the requirements to be followed through an internal call to fill the vacancy," he said.

Aguilar insisted that action will continue against the appointment of Sotomora Chacón, through an appeal against the decision of the Supreme Court, which is illegal.

"A judge told us that there are 30 vacancies right now and what worries us is that this illegal appointment (of Sotomora Chacón) will produce more illegal appointments, because the Supreme Court intends to appoint former judges without going through the exercise of choice and without going through the School of Legal Studies. This is going to go back to judges appointed by sponsorship or finger, which is illegal. Judges would violate the law," complained the judge.

I consulted some judges who asked not be named for fear of retribution, and who explained that the Judicial Career Law states that an aspiring trial judge should be required four years of experience as judge of peace.

Another judge found that based on the above, the external call can occur only for trial lawyers to apply for a position in the peace judiciaries.

**VIOLATION OF LAW**

**Influence Peddling**

Marco Antonio Canteo, director of the Institute for Studies in Criminal Sciences Purchased, was consulted on this call. He believes that any announcement must be done without violating the Judicial Career Law and the Constitution.

The analyst also said there are enough lawyers who may occupy the seats of judges of first instance and that the call generates a violation of judicial independence, but also the principle of equality of the judges.

"The Supreme Court should avoid such appointments that cast doubt on the judicial career. Such mechanisms and messages from the state agency gives rise to think that this situation might encourage nepotism, which is prohibited by the Constitution," says the analyst. (Diario La Hora). The Influence exists in the Judiciary Branch.

**References:**

Ortiz, Gerson.

"Trading in influence or favors payment of appointments in the OJ?".

Diario La Hora, Nationals, June 1, 2010.

<http://www.lahora.com.gt/notas.php?key=67747&fch=2010-06-01>

Castillo, Juan.

"Erick Alvarez President OJ: 'I rested. It's that simple'".

El Periódico Guatemala, Country, Feb. 11, 2010.

<http://www.elperiodico.com.gt/es/20100211/pais/137257>

**100:** The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges 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 are rarely or never enforced. Judges 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

Within the Directorate of probity, there is an Analysis and Verification Unit, which is responsible for analyzing the information in the affidavits of probity. After examination, the next step is to verify the information; if any irregularities are found, the case is transferred to the Department of Audit, who audits all public servants obliged to declare their assets. By irregularities uncovered, public servants and public officials are responsible administratively, civilly or criminally.

"One of the main weaknesses of affidavits is to ignore the universe of public officials in general. First, not having this information jeopardizes the effective and accurate receiving or applying for the declaration to all affected by the legal framework, which reduces the coverage and effectiveness of the system, which encourages discriminatory treatment under the law (which requires the presentation or punishment of those officials who are known). Second, the absence of such data impedes an effective registration and monitoring, measurable and comparable to other phases of the system of sworn statements, as its starting point is a vacuum or a course (it is not possible to know how many officials meet the obligation in relation to the total required.)" (Transparency coalition. P. 15)

**References:**

María Flores, Integrity Department officer, Comptroller General of Accounts, interview by author, Nov. 11, 2010, Guatemala, Guatemala, written recording). "Probity."

Transparency coalition. "Diagnosis of the financial disclosure system of Guatemala". October 2006. P. 11, 15. <http://www.accionciudadana.org.gt/Documentos/diagnosticodeclaraciones.pdf>

Batres, Alexis.  
"Six auditors caught due to links to Fraijanes II Case".  
Diario La Hora, Nationals, Sept. 22, 2010.  
<http://www.lahora.com.gt/notas.php?key=73679&fch=2010-09-22>

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary 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: The regulations are rarely or never enforced. Judges 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.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

**Comments:**

The information provided by the heads of state and government, including public employees, is given within the guarantee of confidentiality.

**References:**

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002). Chapter V, Article 21. Confidentiality of the asset disclosure.

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

**Yes:** A YES score is earned if members of the national-level judiciary 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-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

In these media reports, the comptroller general of accounts says that citizens can't access the asset disclosure records of senior civil servants.

**References:**

Pérez, José.

"Arzu illicit enrichment".

El Periódico Guatemala, Opinion, Jan. 30, 2010.

<http://www.elperiodico.com.gt/es/20100130/opinion/135456>

Albedrío.

"Rep. Baldetti Q4.5 million (US\$595,000) home opens at Marina South".

Albedrío electronic magazine, Jan. 8, 2008.

<http://www.albedrio.org/htm/noticias/ep070108.htm>

**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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

In these media reports, the comptroller general of accounts says that citizens can't access the asset disclosure records of senior civil servants.

**References:**

Research team.

"Rep. Baldetti Q4.5 million (US\$595,000) home opens at Marina South".

El Periódico Guatemala, Country, January 8, 2008.

<http://www.elperiodico.com.gt/es/20080107/investigacion/47237>

Editorial.  
"Presidential Salary".  
El Periódico Guatemala, Opinion, Feb. 10, 2010. <http://www.elperiodico.com.gt/es/20100210/opinion/137069>

Albedrío.  
"Rep. Baldetti Q4.5 million home opens at Marina South".  
Albedrío electronic magazine, Jan. 8, 2008.  
<http://www.albedrio.org/htm/noticias/ep070108.htm>

**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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

The quality of asset disclosure records is not known, because citizens cannot access the records.

**References:**

Research team.  
"Rep. Baldetti Q4.5 million (US\$595,000) home opens at Marina South".  
El Periódico Guatemala, Country, January 8, 2008.  
<http://www.elperiodico.com.gt/es/20080107/investigacion/47237>

Editorial.  
"Presidential Salary".  
El Periódico Guatemala, Opinion, Feb. 10, 2010. <http://www.elperiodico.com.gt/es/20100210/opinion/137069>

Albedrío.  
"Rep. Baldetti Q4.5 million home opens at Marina South".  
Albedrío electronic magazine, Jan. 8, 2008.  
<http://www.albedrio.org/htm/noticias/ep070108.htm>

**100:** The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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### 3.4. Budget Process Oversight & Transparency

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

40a. In law, the legislature can amend the budget.

Yes | No

**References:**

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title IV, Chapter II, Section II, Article 171 (b). "Amend the budget..."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Budget organic law, Decree No. 101-97. October 17, 1997. Title II, Chapter II, Section II, Articles 23 and 24. "Amend the budget".

[http://www.contraloria.gob.gt/i\\_docs/i\\_lpres.pdf](http://www.contraloria.gob.gt/i_docs/i_lpres.pdf)

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

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

**Comments:**

"The government has implemented public information spaces that encourage accountability and transparency in social spending. As a result, Guatemala rose 4 points in the evaluation of the Open Budget Survey 2010, prepared by the International Budget Partnership (IBP), which comprised 94 countries worldwide.

The average Latin American and Caribbean region of 16 countries was 43 points. Guatemala is located above this average, after obtaining a score of 50 points.

Open Budget Survey is a survey of perception or opinion, but uses the internationally accepted criteria for assessing each country's budgetary transparency and accountability." (Finance Ministry)

The National Budget must be approved by the Legislative branch, according to the Constitution of the Republic. So, if the government needs or wants a big amount, this project have to go first to Congress.

"Guatemala's OBI 2010 score is 50 out of 100, which is above the average for countries in Central America & Caribbean and the rest of the world. Still, Guatemala's score shows that the government provides the public with only some information on the central government's budget and financial activities during the course of the budget year. This makes it challenging for citizens to hold the government accountable for its management of the public's money." (International Budget Partnership).

**References:**

Finance Ministry.

"Guatemala improved transparency issue worldwide, over Latin America and the Caribbean, according to International Budget Partnership Survey."

Oct. 21, 2010.

[http://www.minfin.gob.gt/index.php?option=com\\_content&view=article&id=959:guatemala-mejora-en-el-tema-de-transparencia-a-nivel-mundial-por-encima-de-paises-de-latinoamerica-y-el-caribe-segun-encuesta-de-international-budget-partnership&catid=22:comunicados&Itemid=225](http://www.minfin.gob.gt/index.php?option=com_content&view=article&id=959:guatemala-mejora-en-el-tema-de-transparencia-a-nivel-mundial-por-encima-de-paises-de-latinoamerica-y-el-caribe-segun-encuesta-de-international-budget-partnership&catid=22:comunicados&Itemid=225)

International Budget Partnership.

"Open budget index 2010, Guatemala". International Budget Partnership, 2010. Accessed on Nov. 4, 2010.

<http://www.internationalbudget.org/files/OBI2010-Guatemala.pdf>

**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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

**Comments:**

The Congress has enough financial and physical resources to carry out its duties. There were many reports of corruption against the Congress.

**References:**

Noticias de Guatemala.

"Former Congress President Eduardo Meyer is being investigated for embezzling millions".

Noticias de Guatemala, Jan. 7, 2010.

<http://noticias.com.gt/nacionales/20100107-ex-presidente-del-congreso-eduardo-meyer-es-investigado-por-millonario-desvio-de-fondos.html>

Editorial.

"Hospitality 2008: The use of petty cash challenged directive".

Siglo XXI.com Guatemala, National, June 14, 2010

<http://www.sigloxxi.com/nacional.php?id=12990>

**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.

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## 41. Can citizens access the national budgetary process?

58

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

**Comments:**

There are always bad comments addressed to legislators and chiefs of political parties.

**References:**

Batres, Alexis.

"Construction House objects to a budget".

Diario La Hora, Nationals, Oct. 28, 2010.

<http://www.lahora.com.gt/notas.php?key=75454&fch=2010-10-28>

Ismatul, Oscar.

"Directors and legislators negotiate budget".

Prensa Libre, Nationals, Oct. 19, 2010.

[http://www.prensalibre.com/noticias/Legisladores-negocian-directiva-presupuesto\\_0\\_356364402.html](http://www.prensalibre.com/noticias/Legisladores-negocian-directiva-presupuesto_0_356364402.html)

**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.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

**Comments:**

Civil society can participate in discussions and proposals about the national budget.

"Social organizations present their proposals to the four tables formed by the Government to address tax issues, economic revitalization, governance and social programs." (El Periódico Guatemala).

**References:**

Acción Ciudadana.

"Transparency project". Acción Ciudadana (Citizen action), 2010.

Accessed on Nov.4, 2010.

[http://accionciudadana.org.gt/index.php?option=com\\_content&task=section&id=8&Itemid=36](http://accionciudadana.org.gt/index.php?option=com_content&task=section&id=8&Itemid=36)

Alvarez, Lorena. "Civil society will tax proposals".

El Periódico Guatemala,

Economy, Feb. 11, 2010.

<http://www.elperiodico.com.gt/es/20100211/economia/137243/>

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

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

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

**Comments:**

It's hard to get the latest updated budget project. Citizens have to go to the Congress office and request the budget information they want.

**References:**

Finance Ministry.

"2011 Budget project". 2010. Accessed on Nov. 4, 2010.

<http://www.minfin.gob.gt/archivos/proypre11/inicio.htm>

"Detail budget". Accessed on Nov. 4, 2010.

<http://xa.yimg.com/kq/groups/17809804/1835646910/name/PRESUPUESTO+2011.ppt>

Parellada, Ramón.

"Inflation for 2011 budget".

Siglo XXI.com Guatemala, Opinion, Sept. 30, 2010.

<http://www.sigloxxi.com/opinion.php?id=20228>

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

**75:**

**50:** Citizens, journalists and NGOs 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.

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

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

### Comments:

Public Finance and Currency Commission, and Probity Commission, oversee public funds.

### References:

Public Finance and Currency Commission, and Probity Commission.

Ley orgánica del organismo legislativo, Decreto número 63-94, 1 de Diciembre de 1994. (Organic law of legislative body, Decree 63-94, Dec. 1, 1994). Section II, Article 31. Regular commissions. "15. Public Finance and Currency; 24. Probity"  
[http://www.congreso.gob.gt/Pdf/Normaliva/DECRETO63-94Ley\\_Organica.pdf](http://www.congreso.gob.gt/Pdf/Normaliva/DECRETO63-94Ley_Organica.pdf)

**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 within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

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

25

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

### References:

Prensa Libre.com.

"Montenegro will denounce Emetra ignore quoted".

Prensa Libre, Nationals, Oct. 19, 2010.

[http://www.prensalibre.com.gt/noticias/Montenegro-denunciara-Emetra-ignorar-cita\\_0\\_323967638.html](http://www.prensalibre.com.gt/noticias/Montenegro-denunciara-Emetra-ignorar-cita_0_323967638.html)

Cardona, Karen.

"Comptroller shall report to the Integrity Commission".

Prensa Libre, Politics, July 28, 2010.

[http://www.prensalibre.com/noticias/politica/Contralor-rendira-cuentas-comision-Probidad\\_0\\_306569538.html](http://www.prensalibre.com/noticias/politica/Contralor-rendira-cuentas-comision-Probidad_0_306569538.html)

Nicolle, Sheila.

"Transurbano (Transport) still assessing intervention".

**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.

43b. 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 12 Integrity commission members have the following affiliations: Gana with 8; Partido Patriota with 1; FRG with 1; and UNE with 2.

Last May, GANA and UNE announced they would run together next year.

**References:**

Congress of the Republic.  
"Integrity commission members".  
Nov. 4, 2010.  
[http://www.congreso.gob.gt/comision\\_1.asp?id=26](http://www.congreso.gob.gt/comision_1.asp?id=26)

Congress of the Republic.  
"Integrity commission members".  
Nov. 4, 2010.  
<http://www.congreso.gob.gt/integrantesdiputadoscom.asp>

O. FIGUEROA y K. CARDONA.  
"UNE, GANA AND FRG ALLIANCE".  
Prensa Libre, Politics, May 3, 2010.  
[http://www.prensalibre.com/noticias/politica/UNE-Gana-FRG-oficializan-alianza\\_0\\_254974551.html](http://www.prensalibre.com/noticias/politica/UNE-Gana-FRG-oficializan-alianza_0_254974551.html)

**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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

**Comments:**

Mostly citations of Congress come from others commissions and political parties. There are those from deputy Ninth

Montenegro, who is one of the most respected members of Congress.

**References:**

Prensa Libre.com.

"Montenegro will denounce Emetra ignore quoted".

Prensa Libre, Nationals, Oct. 19, 2010.

[http://www.prensalibre.com.gt/noticias/Montenegro-denunciara-Emetra-ignorar-cita\\_0\\_323967638.html](http://www.prensalibre.com.gt/noticias/Montenegro-denunciara-Emetra-ignorar-cita_0_323967638.html)

Cardona, Karen.

"Comptroller shall report to the Integrity Commission".

Prensa Libre, Politics, July 28, 2010.

[http://www.prensalibre.com/noticias/politica/Contralor-rendira-cuentas-comision-Probidad\\_0\\_306569538.html](http://www.prensalibre.com/noticias/politica/Contralor-rendira-cuentas-comision-Probidad_0_306569538.html)

Nicolle, Sheila.

"Transurbano (Transport) still assessing intervention".

Siglo XXI.com Guatemala, National, July 3, 2010.

<http://www.sigloxxi.com/nacional.php?id=14323>

**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.

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Category 4. Public Administration and Professionalism

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#### 4.1. <sup>66</sup>Civil Service: Conflicts of Interest Safeguards and Political Independence

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

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | No

**References:**

Ley del servicio civil, Decreto número 1748, 10 de Mayo de 1968. (Civil service law, Decree No. 1748, May 10, 1968). Title I, Chapter 1, Article 2. "PURPOSE: The overall purpose of this Act is to regulate relations between the Administration and its servers in order to ensure efficiency, ensure justice, encourage them in their work, and establish rules for the implementation of a management system staff."

and Article 4. "Article 3. PRINCIPLES: These are fundamental principles of this law the following: 1. All Guatemalan citizens are entitled to opt for public office, and none can be prevented from exercising this right, if it meets quality requirements and law demands. Such charges should be granted solely on the merits of ability, preparation, efficiency and honesty. 2. For the granting of public office should not be any discrimination based on race, sex, marital status, religion, birth, social position or economic or political opinion."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/ley-de-servicio-civil>

Ley del servicio municipal, Decreto número 1-87, 8 de Enero de 1987. (Municipal service law, Decree No. Decree No. 1-87, Jan. 8, 1987). Title I, Chapter 1, Article 2. "This law regulates relations between municipalities and their servers, ensuring them justice, equity and encouragement in their work, ensuring the efficiency and administrative efficiency by implementing a workforce

management system to strengthen the civil service without affecting municipal autonomy .”  
[http://www.anam.org.gt/LAIP/cabanass/attachments/005\\_ley%20de%20servicio%20publico%20mpal\\_.pdf](http://www.anam.org.gt/LAIP/cabanass/attachments/005_ley%20de%20servicio%20publico%20mpal_.pdf)

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title II, Chapter II, Section 9, Article 107. “STATE WORKERS. Government workers are serving the public and never a political party, group, organization or individual.  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

**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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

**Comments:**

The system of civil service does not work within the legal framework. Political parties have sufficient influences on the entire civil service, especially the major positions in the government.

**References:**

Código Penal, Decreto número 17-73, 5 de julio de 1973. (Penal Code, Decree No. 17-73, July 5, 1973). Part II, Title XIII, Chapter II, Article 418. “Abuse of authority. The official or public employee who, abusing his position or duties, ordering or committing any act arbitrary or to unlawful detriment of the Government or individuals, not specifically covered by the provisions of this Code shall be punished imprisonment of one to three years.”  
<http://www.onsec.gob.gt/descargas/Digesto/A-G/D11.pdf>

Ley del servicio civil, Decreto número 1748, 10 de Mayo de 1968. (Civil service law, Decree No. 1748, May 10, 1968). Title VI, Chapter 1, Article 65. Article 65. “General Prohibitions. ... 1. To discriminate on grounds of political, social, religious, racial or gender prejudice or favor to public servants or aspiring to join the Civil Service is forbidden.”

**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.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

**References:**

The National Service Board is the institution within the system of civil service charged of resolving any appeal or claims administratively .

Ley del servicio civil, Decreto número 1748, 10 de Mayo de 1968. (Civil service law, Decree No. 1748, May 10, 1968). (Civil service law, Decree No. 1748, May 10, 1968). Title II, Chapter 3, Article 19. (6) “6. Investigate and resolve administratively, on appeal, a request, claim arising from the implementation of this law in the following areas: recruitment, selection, appointment, assignment or reassignment of positions, transfers, suspensions, layoffs and dismissals.”  
<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/ley-de-servicio-civil>

**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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism’s decisions to the judiciary.

**No:** A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | No

**Comments:**

They can return to civil service after passing three years of good conduct.

**References:**

Ley del servicio civil, Decreto número 1748, 10 de Mayo de 1968. (Civil service law, Decree No. 1748, May 10, 1968). Title IX, Chapter 2, Article 78. "Rehabilitation. All public servants of the competitive service who have been dismissed for any of the grounds mentioned in Article 76, Civil Service, may return after spending three years, after the date of the act which gave rise to dismissal, provided that during such period have observed good conduct and submitted to the personal selection tests established by this Act and its regulations. Exceptions are those who have been convicted for crimes of treason, violation of trade secrets, infidelity in the custody of documents, abuse of power, extortion, bribery, misappropriation of public funds, fraud, forgery and falsification of public documents, murder, and general all those crimes against government property."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/ley-de-servicio-civil>

**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 or if the ban is not a lifetime ban.

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

39

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

Some Civil servants are influenced, especially those who had been working in politics.

"For a long time, many people who become politicians and candidates to fill public office have found a way to get the State funds into their personal accounts, for their own benefit, or the benefit of their family or associates" (Sigüenza, La Noticia).

For example: Four Workers of the Comptroller General are arrested and investigated as they have been identified to benefit government-linked companies in regard to the control of public resources. An alleged employer has benefited from contracts worth millions to build prisons and renovations of certain ports.

**References:**

Sigüenza, Mynor.

"Crisis of values among public officials".

La Noticia, March 5, 2010.

<http://www.periodicolanoticia.com/opinion05032010/2730-crisis-de-valores-entre-funcionarios-publicos>

Research team.

"Comptroller's Office investigating possible influence peddling".

El Periódico Guatemala, Country, June 28, 2010.

<http://www.elperiodico.com.gt/es/20100922/pais/176107>

R.G.

"Arrested Rodrigo Lainfiesta by bad jail construction".

El Periódico Guatemala, Country, Sept. 12, 2010.

<http://www.elperiodico.com.gt/es/20100912/pais/174595>

**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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

However, there are several civil servants who have passed exams and others who have not. There is a nepotism.

**References:**

Sigüenza, Mynor.

"Crisis of values among public officials".

La Noticia, March 5, 2010

<http://www.periodicolanoticia.com/opinion05032010/2730-crisis-de-valores-entre-funcionarios-publicos>

Team research.

"Solidarity Fund Q5.4 million (US\$712,730) spent on the purchase of films with shell companies".

El Periódico Guatemala, Country, Sept. 20, 2010.

<http://www.elperiodico.com.gt/es/20100920/pais/175530>

**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.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

**Comments:**

However, there are several civil servants who have passed exams and other who have not. There is a nepotism.

**References:**

Sigüenza, Mynor.

"Crisis of values among public officials".

La Noticia, March 5, 2010

<http://www.periodicolanoticia.com/opinion05032010/2730-crisis-de-valores-entre-funcionarios-publicos>

Team research.

"Solidarity Fund Q5.4 million (US\$712,730) spent on the purchase of films with shell companies".

El Periódico Guatemala, Country, Sept. 20, 2010.

<http://www.elperiodico.com.gt/es/20100920/pais/175530>

**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.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

**Comments:**

Sometimes responsibilities are confusing or non-existent.

**References:**

Caballeros, Harold.

"Our institutions".

El Periódico Guatemala, Country, Oct. 5, 2010.

<http://www.elperiodico.com.gt/es/20101005/opinion/177915>

Acción Ciudadana.

"Impunity and corruption in the tax field".

Acción Ciudadana, January, 2000.

<http://www.accionciudadana.org.gt/Documentos/impunidadambitofiscal.pdf>

**100:** Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

**Comments:**

There is a bonus called bonus 14, which represents less than 10 percent, but is one of the 14 annual payments and it's important to workers.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Labor"

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Labor"

**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.

45f. 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

**Comments:**

The government does not publish positions.

**References:**

Oficina Nacional del Servicio Civil.

"Management of positions".

Oficina Nacional del Servicio Civil. Accessed on Oct. 28, 2010.

<http://www.onsec.gob.gt/acerca%20de%20onsec/administracion%20de%20puestos.php>

Acción trabajo.

"Job Opportunities".

Acción trabajo, Accessed, Oct. 28, 2010.

<http://acciontrabajo.com.gt/>

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.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

**Comments:**

The National Civil Service Office (ONSC – Oficina Nacional del Servicio Civil) is to be notified by the appointing authority about the dismissal of a public servant; it should be secured so that the administrative procedure rules respect labor laws.

**References:**

Menéndez, Marcia.

"Implications of the implementation of article 83 of the civil service law and the violation of the principle of stability and job relocation scheme of public servants"

(Degree, University of San Carlos de Guatemala, 2007).

<http://docs.google.com/viewer?>

[http://docs.google.com/viewer?a=v&q=cache:fi5y6H0PZbEJ:biblioteca.usac.edu.gt/tesis/04/04\\_6783.pdf+reinstalaci%C3%B3n+laboral+servicio+civil&hl=es&gl=gt&pid=bl&srcid=ADGEfCXYGJufE07govMjbrK-NVzqpJfZNH68q4CT2i6\\_eQ0sh0RHGvYaD8-J2HMw4NWHzZ7hmtrSaZ54\\_tjp\\_BR-67TVcrgRZGi8GRYZFgeMSN4NPRdfYHnk0QL7bHzeWA&sig=AHIEtbRUDDcdGZG9rQa3zM6Ld7pN26zplw](http://docs.google.com/viewer?a=v&q=cache:fi5y6H0PZbEJ:biblioteca.usac.edu.gt/tesis/04/04_6783.pdf+reinstalaci%C3%B3n+laboral+servicio+civil&hl=es&gl=gt&pid=bl&srcid=ADGEfCXYGJufE07govMjbrK-NVzqpJfZNH68q4CT2i6_eQ0sh0RHGvYaD8-J2HMw4NWHzZ7hmtrSaZ54_tjp_BR-67TVcrgRZGi8GRYZFgeMSN4NPRdfYHnk0QL7bHzeWA&sig=AHIEtbRUDDcdGZG9rQa3zM6Ld7pN26zplw)

Marín, Orlando.

"The right to immobility and reinstallation of pregnant women"

(Degree, University Francisco Marroquín, 2002)

<http://www.tesis.ufm.edu.gt/pdf/3379.pdf>

Inforpressca.

"Farewell to the middle of municipal budgeted personnel",  
Inforpressca, April 18, 2008.

<http://www.inforpressca.com/municipal/boletin/164-2.htm>

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.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

**Comments:**

Salaries frequently are paid with two, three or four months delay.

**References:**

Interview with civil servant from Ministry of interior, Oct. 27, 2010. Guatemala, Guatemala, Transcript. "Salary."

Antonio Estrada, Civil servant from Ministry of Education, interview by author, Oct. 27, 2010, Guatemala, Guatemala, transcript. "Salary."

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.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

**Comments:**

Members of Congress are involved in criminal cases and they're still working in the legislative branch.

**References:**

Prensa Libre.com.

"Convicted lawyer involved in the case Chilero".

Prensa Libre, News, Justice, July 2, 2010

[http://www.prensalibre.com.gt/noticias/justicia/Condenan-abogado-implicado-caso-Chilero\\_0\\_290971155.html](http://www.prensalibre.com.gt/noticias/justicia/Condenan-abogado-implicado-caso-Chilero_0_290971155.html)

Castillo, Juan.

"Meyer and Giron asked to face up to Congress embezzlement trial".

El Periódico Guatemala, Country, Jan. 6, 2010.

<http://www.elperiodico.com.gt/es/20100106/pais/130865/>

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. Some bans are only temporary.

25:

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

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

47

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

### References:

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002). Chapter V, Article 20. "Asset declaration. The declaration of assets is the statement of assets, rights and obligations under oath and shall be filed with the Comptroller General; for public officials is a prerequisite for the exercise of office or employment, and, on leaving, as a prerequisite to extend the settlement concerned. The following persons are subject to the obligation to comply with the affidavit assets: a) The subject of responsibility referred to in paragraphs a), b), c) d) e) of Article 4 of this Act, except those whose monthly salary is less than eight thousand quetzals (Q8,000, US\$1,056), and do not handle or administer public funds."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

**Yes:** A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | No

### Comments:

Employees or civil servants are not obligated to execute illegal orders or criminal acts.

### References:

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title IV, Chapter II, Article 156.

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

**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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | No

### Comments:

The only requirement is to present the asset declaration within 30 days after leaving the position. Article 22 of Integrity and

**References:**

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002).

Chapter V, Article 20. "Asset declaration. The declaration of assets is the statement of assets, rights and obligations under oath and shall be filed with the Comptroller General; for public officials is a prerequisite for the exercise of office or employment, and, on leaving, as a prerequisite to extend the settlement concerned. The following persons are subject to the obligation to comply with the affidavit assets: a) The subject of responsibility referred to in paragraphs a), b), c) d) e) of Article 4 of this Act, except those whose monthly salary is less than eight thousand quetzals (Q8,000, US\$1,056), and do not handle or administer public funds."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/ley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

**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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | **No**

**Comments:**

It's the only one article that regulates gifts and hospitality.

**References:**

Ley del servicio civil, Decreto número 1748, 10 de Mayo de 1968. (Civil service law, Decree No. 1748, May 10, 1968). Title VI, Chapter 1, Article 66. "Special prohibitions. Civil servants are especially forbidden to: 1. Solicit or receive gifts or rewards from their subordinates or individuals and ask, give or receive gifts from their superiors or individuals, in order to execute, refrain from executing or running with great care or delay inherent in any act or related to their work, 2. Run any of the acts described in the preceding paragraph to obtain appointment, pay raise, promotion or other similar benefit."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/ley-de-servicio-civil>

**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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

**Yes** | No

**References:**

Ley orgánica de la Contraloría General de Cuentas, Decreto número 31-2002, 14 de mayo de 2002. (Organic Law of the Comptroller General, Decree No. 31-2002, May 14, 2002). Chapter 1, Article 1. "The Comptroller General is a technical institution and it is decentralized. Under this law, it is independent functionally, technically and administratively..." Article 4. "o) Verify the accuracy of the information contained in the statements of probity submitted by public officials and employees..."

[http://www.contraloria.gob.gt/i\\_docs/i\\_ley\\_cgc.pdf](http://www.contraloria.gob.gt/i_docs/i_ley_cgc.pdf)

**Yes:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no law that prohibits that.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Labor"

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Labor"

**100:** The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

The police are known for receiving some amounts of money.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Labor"

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Labor"

**100:** The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

Civil servants when they have the power they'll act and influence the decisions towards their personal interests.

**References:**

Castillo, Juan.

"Meyer and Giron asked to face up to Congress embezzlement trial".

El Periódico Guatemala, Country, Jan. 6, 2010.

<http://www.elperiodico.com.gt/es/20100106/pais/130865/>

Prensa Libre.com.

"Convicted lawyer involved in the case Chilero".

Prensa Libre, News, Justice, July 2, 2010.

[http://www.prensalibre.com.gt/noticias/justicia/Condenan-abogado-implicado-caso-Chilero\\_0\\_290971155.html](http://www.prensalibre.com.gt/noticias/justicia/Condenan-abogado-implicado-caso-Chilero_0_290971155.html)

**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.

46i. In practice, civil service asset disclosures are audited.

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

**Comments:**

Within the Directorate of probity, there is an Analysis and Verification Unit which is responsible for analyzing the information in the affidavits of probity. After examination, the next step is to verify the information; if any irregularities are found, cases are transferred to the Department of Audit, which audits all public servants. If irregularities are uncovered, public servants and public officials are responsible administratively, civilly or criminally.

"One of the main weaknesses of affidavits is to ignore the universe of public officials in general. First, not having this information jeopardizes the effective and accurate receiving or applying for the declaration to all affected by the legal framework, which reduces the coverage and effectiveness of the system, which encourages discriminatory treatment under the law (which requires the presentation or punishment of those officials who are known). Second, the absence of such data impedes an effective registration and monitoring, measurable and comparable to other phases of the system of sworn statements, as its starting point is a vacuum or a course (it is not possible to know how many officials meet the obligation in relation to the total required.)" (Transparency coalition. P. 15)

**References:**

María Flores, Integrity Department officer, Comptroller General of Accounts, interview by author, Nov. 11, 2010, Guatemala, Guatemala, written recording). "Probity."

Transparency coalition.

"Diagnosis of the financial disclosure system of Guatemala".

October 2006. P. 11,15.

<http://www.accionciudadana.org.gt/Documentos/diagnosticodeclaraciones.pdf>

Batres, Alexis.

"Six auditors caught due to links to Fraijanes II Case".

Diario La Hora, Nationals, Sept. 22, 2010.

<http://www.lahora.com.gt/notas.php?key=73679&fch=2010-09-22>

**100:** Civil service asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Civil service 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: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

## 47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | **No**

### Comments:

The information provided by the heads of state and government, including public employees, is given within the guarantee of confidentiality.

### References:

Ley de probidad y responsabilidades de los funcionarios y empleados públicos, Decreto número 89-2002, 6 de Diciembre de 2002. (Integrity and Accountability Act of Public Officials and Employees, Decree No. 89-2002, Dec. 6, 2002). Chapter V, Article 21. Confidentiality of the asset disclosure".

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/lley-de-probidad-y-responsabilidades-de-los-funcionarios-y-empleados-publicos>

**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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

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

### Comments:

In these media reports, the comptroller general of accounts says that citizens can't access the asset disclosure records of senior civil servants.

### References:

Research team.

"Rep. Baldetti Q4.5 million (US\$595,000) home opens at Marina South".

El Periódico Guatemala, Country, January 8, 2008.

<http://www.elperiodico.com.gt/es/20080107/investigacion/47237>

Albedrío.

"Rep. Baldetti Q4.5 million home opens at Marina South".

Albedrío electronic magazine, Jan. 8, 2008.

<http://www.albedrio.org/htm/noticias/ep070108.htm>

**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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

In these media reports, the comptroller general of accounts says that citizens can't access the asset disclosure records of senior civil servants.

**References:**

Research team.

"Rep. Baldetti Q4.5 million (US\$595,000) home opens at Marina South".  
El Periódico Guatemala, Country, January 8, 2008.

<http://www.elperiodico.com.gt/es/20080107/investigacion/47237>

Albedrío.

"Rep. Baldetti Q4.5 million home opens at Marina South".  
Albedrío electronic magazine, Jan. 8, 2008.

<http://www.albedrio.org/htm/noticias/ep070108.htm>

**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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

The quality of asset disclosure records is not known, as citizens cannot access them.

**References:**

Research team.

"Rep. Baldetti Q4.5 million (US\$595,000) home opens at Marina South".  
El Periódico Guatemala, Country, January 8, 2008.

<http://www.elperiodico.com.gt/es/20080107/investigacion/47237>

Albedrío.

"Rep. Baldetti Q4.5 million home opens at Marina South".  
Albedrío electronic magazine, Jan. 8, 2008.

<http://www.albedrio.org/htm/noticias/ep070108.htm>

**100:** The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

## 4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

25

48a. 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:**

There's no legislation about this topic. The Organized Crime Act gives special protection to those who have collaborated in the investigation of a crime or criminal prosecution, but only on criminal facts.

**References:**

Ley contra la delincuencia organizada, Decreto NO. 21-2006. 19 de julio de 2006. (Law against Organised Crime, Decree NO. 21-2006. July 19, 2006). Title 5, Chapter 1, Articles 90 and 103.

<http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2006/pdfs/decretos/D02006.pdf>

**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.

48b. 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.

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

**Comments:**

These people always face negative consequences. But there are unions which help civil servants. One example is a case of abuse of authority in the Ministry of Education. The employee put his claim in the court of justice, but he received bad treatment, so he began applying for his retirement, and ended up out of work against his will.

**References:**

Interview with civil servant from Ministry of interior, Oct. 27, 2010. Guatemala, Guatemala, Transcript. "Administration."

Antonio Estrada, Civil servant from Ministry of Education, interview by author, Oct. 27, 2010, Guatemala, Guatemala, transcript. "Administration."

**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.

48c. 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's no legislation about this topic. The Organized Crime Act gives special protection to those who have collaborated in the investigation of a crime or criminal prosecution, but only on criminal facts.

**References:**

Ley contra la delincuencia organizada, Decreto NO. 21-2006. 19 de julio de 2006. (Law against Organised Crime, Decree NO. 21-2006. July 19, 2006). Title 5, Chapter I, Articles 90 and 103.

<http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2006/pdfs/decretos/DO2006.pdf>

**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.

48d. 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:**

The whistle-blowing is partially protected by unions, then whistle-blower and the union may go to courts to demand redress.

**References:**

José Duarte, private sector employee, interview by author, Oct. 28, 2010, Guatemala, Guatemala, transcript, "Administration".

Benjamín González, private sector employer, interview by author, Oct. 28, 2010, Guatemala, Guatemala, transcript, "Administration".

**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.

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49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Yes | No

**Comments:**

Mostly institutions have web pages with e-mail addresses where claims can be lodged.

**References:**

The Public Prosecutor is responsible to bring the criminal investigation and receive the peoples' claims.  
The Human Rights Ombudsman is responsible to investigate criminal facts against humans rights. It could receive complaints.  
Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title V, Chapter VI, Article 251, Paragraph (2).  
Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title VI, Chapter V, Article 275 (c).  
<http://www.onsec.gob.gt/descargas/Digesto/A-G/D12.pdf>

**Yes:** A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

**No:** A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Most institution do not have enough resources.

**References:**

Interview with civil servant from Ministry of interior, Oct. 27, 2010. Guatemala, Guatemala, Transcript. "Administration."

Antonio Estrada, Civil servant from Ministry of Education, interview by author, Oct. 27, 2010, Guatemala, Guatemala, transcript. "Administration."

José Duarte, private sector employee, interview by author, Oct. 28, 2010, Guatemala, Guatemala, transcript, "Administration".

Benjamín González, private sector employer, interview by author, Oct. 28, 2010, Guatemala, Guatemala, transcript, "Administration".

**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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

It depends on the political situation. If the media put pressure on the state entity, this will generate funds to get a transparent administration.

**References:**

Interview with civil servant from Ministry of interior, Oct. 27, 2010. Guatemala, Guatemala, Transcript. "Administration."

Antonio Estrada, Civil servant from Ministry of Education, interview by author, Oct. 27, 2010, Guatemala, Guatemala, transcript. "Administration."

José Duarte, private sector employee, interview by author, Oct. 28, 2010, Guatemala, Guatemala, transcript, "Administration".

Benjamín González, private sector employer, interview by author, Oct. 28, 2010, Guatemala, Guatemala, transcript, "Administration".

**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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Internal control mechanisms act appropriately and bring research evidence to the complaint or grievance. The internal mechanism acts quickly if the complaint is full of details and evidence. Complaints can be lodged by telephone, email, or orally.

**References:**

Interview with government official from the Superintendency of Tax Administration, Nov. 11, 2010, Guatemala, Guatemala, written record. "Control, customs and others".

Gabriel Vides, Officer at Judiciary Branch, interview by author, Nov. 4, 2004, Guatemala, Guatemala, script recording. "Public Administration and professionalism."

**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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

When an irregularity is discovered, internal control quickly begins investigations; then a superior officer will make an appropriate decision.

**References:**

Interview with government official from the Superintendency of Tax Administration, Nov. 11, 2010, Guatemala, Guatemala, written record. "Control, customs and others".

Gabriel Vides, Officer at Judiciary Branch, interview by author, Nov. 4, 2004, Guatemala, Guatemala, script recording. "Public Administration and professionalism."

**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.

58  
4.3. Government Procurement: Transparency, Fairness, and  
Conflicts of Interest Safeguards

51. Is the public procurement process effective?

85

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

**Comments:**

There are regulations of law which allow procurement officials abstain to act in conflicts of interest to themselves.

**References:**

Ley de Contrataciones del Estado, Decreto número 57-92, 5 de octubre de 1992. (State Procurement Act, Decree No. 57-92, October 5, 1992).

Title II Chapter 1, Article 14. "Disqualification. Causes for disqualification as a member of the Tender Board, the same as impediments and excuses."

[http://www.contraloria.gob.gt/i\\_docs/i\\_lcontr.pdf](http://www.contraloria.gob.gt/i_docs/i_lcontr.pdf)

Ley del organismo judicial, Decreto número 2-89, 19 de Enero de 1989. (Judiciary law, Decree No. 2-89, Jan. 10, 1989). Title IV, Chapter II, Articles 122 to 134. "Impediments, excuses and disqualifications"

**Yes:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

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

51b. In law, there is mandatory professional training for public procurement officials.

Yes | No

**Comments:**

Rule 14 of the Organic Law of INAP states all the specialized training and training of public servants who run through defined strategies.

**References:**

Ley orgánica del Instituto Nacional de Administración Pública, Decreto número 25-80, 3 de Junio de 1980.

(National Institute of Public Administration, Decree No. 25-80, June 3, 1980).

Article 14.

<http://www.clad.org/formacion/redes-del-clad/redes-academicas/el-aporte-de-los-institutos-nacionales-de/inap-guatemala>

**Yes:** A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

**No:** A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

**Comments:**

Government advisers are were involved in public businesses, which means that law is weak and not enforced.

"The status of employees is defined by budget category to which they are assigned. In Guatemala, permanent employees are allocated to the budget category 011. The second category includes contract employees. Usually these are individuals who are hired for projects for a defined period of time, for example, projects infrastructure or externally funded projects. These employees are allocated in the budget category 022. The two categories, 011 and 022, represent the majority of government jobs and are the categories

for which there is as much reliable information as payment the salaries of these categories is processed in the Ministry of Finance, where there is centralizing the issuance of the payroll of the Executive.

A third category of employees "temporary" hired by the hour, 041 (returns of wages). Most of these workers are workers engaged in manual tasks and working in public works and in hospitals. However, many have taken their places continuously for several years. They are not entitled to all

benefits provided to permanent employees. It is difficult to determine the amount of this class of employees, in part because the amount can fluctuate considerably depending on the season and also because there is no centralized source of information on this class of employees.

The fourth category is 029. This category was created to allow recruitment of skilled, professional and technical support for products defined and time without the constraints imposed by Civil Service regulations and without category of public employees.

In practice they are usually exercising professional duties under this category. This kind of employees are hired for periods up to one year. Each ministry processes contracts and requests for payment without the intervention of the Civil Service office, and in the case of employees under the lines 011 and 022. However, contracts can be renewed as long as there are allocation funds.

While the employees included in the category 029 represent a small fraction of the total number of jobs, this line has grown significantly since its inception. These employees do not have the same rights to benefits as permanent employees, they only receive fees. According to the Civil Service Law and Law on Civil Service Salaries, persons hired under this line are not as officials or public servants." (Inter-American Development Bank).

The rules of conflict of interest exist but are not in compliance with all public service workers.

**References:**

Inter-american Development Bank.

"Institutional Diagnosis Civil Service System of Guatemala". August, 2002.

<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=626916>

Team research.

"Government advisers were part of the Tender Board of Renap".

El Periódico Guatemala, Investigation, May 29, 2009. <http://www.elperiodico.com.gt/es/20090526/investigacion/101761>

Contreras, Geovanni.

"They fear that the tender is customized".

**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.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | No

**Comments:**

The Government Auditor is responsible for conducting the audit institutions and individuals who manage public funds and state interests. (Ley orgánica de la Contraloría General de Cuentas).

**References:**

The Public Prosecutor is the responsible to bring criminal investigation and receive peoples' claims.  
Human Rights Ombudsman is the responsible to investigate criminal facts against humans rights. It could receive complaints.

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title V, Chapter VI, Article 251, Paragraph (2).

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title VI, Chapter V, Article 275 (c).  
<http://www.onsec.gob.gt/descargas/Digesto/A-G/D12.pdf>

Ley orgánica de la Contraloría General de Cuentas, Decreto número 31-2002, 14 de mayo de 2002. (Organic Law of the Comptroller General, Decree No. 31-2002, May 14, 2002). Chapter IV, Article 27.  
[http://www.contraloria.gob.gt/i\\_docs/i\\_ley\\_cgc.pdf](http://www.contraloria.gob.gt/i_docs/i_ley_cgc.pdf)

**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.

51e. In law, major procurements require competitive bidding.

Yes | No

**References:**

Ley de Contrataciones del Estado, Decreto número 57-92, 5 de octubre de 1992. (State Procurement Act, Decree No. 57-92, Oct. 5, 1992).

Title III Chapter 1, Article 17. "Amount. When the total amount of goods, supplies and works exceeds the amounts set forth in Article 38, the purchase or public bidding must be made."  
[http://www.contraloria.gob.gt/i\\_docs/i\\_lcontr.pdf](http://www.contraloria.gob.gt/i_docs/i_lcontr.pdf)

Ley de Contrataciones del Estado, Decreto número 57-92, 5 de octubre de 1992. (State Procurement Act, Decree No. 57-92, Oct. 5, 1992).

Title III Chapter 2, Article 38. "Amount. When the price of goods, or supplies or the remuneration for services exceeding thirty thousand Quetzales (Q.30,000, US\$3,960) and not exceed the following amounts, purchase or procurement may be made by the trading system, as follows:

- a) For municipalities, not to exceed nine hundred thousand Quetzales (Q.900,000, US\$118,811).
- b) For the State and other entities, not to exceed nine hundred thousand Quetzales (Q.900,000)."

[http://www.contraloria.gob.gt/i\\_docs/i\\_lcontr.pdf](http://www.contraloria.gob.gt/i_docs/i_lcontr.pdf)

**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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

**References:**

Ley de Contrataciones del Estado, Decreto número 57-92, 5 de octubre de 1992. (State Procurement Act, Decree No. 57-92, October 5, 1992).

Title II Chapter 3, Article 43. "Buy Direct. The recruitment takes place in a single act, with the same person and for a price of thirty thousand Quetzales (Q.30,000, US\$3,960), will be under the responsibility and authorization of the higher administrative authority of the entity concerned, taking into account price, quality, delivery and other conditions to serve the interests of the State, its decentralized and autonomous nature, following the procedure by that authority."

[http://www.contraloria.gob.gt/i\\_docs/i\\_lcontr.pdf](http://www.contraloria.gob.gt/i_docs/i_lcontr.pdf)

**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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

**Comments:**

Unsuccessful bidders can appeal through the Resource Revocation and Resource of Reposition in the first 10 days from notification of the resolution.

**References:**

Ley de Contrataciones del Estado, Decreto número 57-92, 5 de octubre de 1992. (State Procurement Act, Decree No. 57-92, Oct. 5, 1992).

Title X Chapter 1, Articles 99 and 100 "Resource Revocation and Resource of Reposition".

[http://www.contraloria.gob.gt/i\\_docs/i\\_lcontr.pdf](http://www.contraloria.gob.gt/i_docs/i_lcontr.pdf)

**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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes | No

**Comments:**

Article 19 paragraph (3) of Administrative Litigation Law states that for the administrative proceedings to be initiated a resolution is required.

**References:**

Ley de lo contencioso administrativo, Decreto número 119-96, 21 de noviembre de 1996. (Administrative Litigation Law, Decree

**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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | No

**Comments:**

The law establishes that once a person or company is found guilty, they will be excluded from the register of pre-selected enterprises. The Guatecompras web site will contain the information that shows the entire process. There is no formal blacklist, but if an enterprise wants to participate in tenders or quotations it must be registered.

**References:**

Ley de Contrataciones del Estado, Decreto número 57-92, 5 de octubre de 1992. (State Procurement Act, Decree No. 57-92, Oct. 5, 1992).

Title VII Chapter 1, Article 80 to 88. "Prohibitions and penalties"

[http://www.contraloria.gob.gt/i\\_docs/i\\_lcontr.pdf](http://www.contraloria.gob.gt/i_docs/i_lcontr.pdf)

Reglamento de la ley de contrataciones del Estado, Acuerdo gubernativo número 1056-92, 22 de diciembre de 1992. Title I, Chapter I, Article 4 bis. "Information System of the State Procurement. Information System of the State Procurement under the Ministry of Finance, shall be used for publication of any process of buying, selling and procurement of goods, supplies, works and services required by the regulated entities in Article 1 of the Act, since the call, resolution of disputes if any, to the award, including emergency purchases and all procedures established by this Regulation Act.

Interested parties wishing to seek clarification on the bidding documents, listing, open contracts, including purchases by exception should do so through the system of State Procurement, called GUATECOMPRAS. The helpful responses must also be published in the scheme."

[http://www.contraloria.gob.gt/i\\_docs/i\\_rlcont.pdf](http://www.contraloria.gob.gt/i_docs/i_rlcont.pdf)

**Yes:** A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

**No:** A NO score is earned if no such process exists.

51j. 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:**

There are so many cases in which the system does not work properly. Sometimes there are sanctions, but in general it's not the case, as corruption for a tender starts from the beginning.

"During the Annual Assembly of Governors, Inter-American Development Bank (IDB) revealed that 52 penalties applied for fraud and corruption in 2009, of which 22 were directed at Guatemala. Among these were investigated embezzlement, bribery, falsification of qualifications, conflicts of interest, and manipulation of tender processes.

The document also notes that last year the Bank received a total of 309 inquiries and complaints about possible fraud or corruption, which were channeled through the Office of Integrity Agency, which resulted in a total of 152 investigations; of these 69 percent corresponded to fraud and corruption.

According to the multilateral organization, "individuals and legal entities were able to respond to complaints in accordance with the procedures."

Last year, this office prepared and distributed a document to alert people and businesses that have been sanctioned. Other countries included on the list are Honduras and Paraguay." (Moctezuma. Siglo XXI).

To illustrate, please see the following case: "The interests of deputies who rushed billionaire loan approval, in the tradition of preferences shown towards the bidder, approved the multimillion-dollar loan for the construction of Highway Franja Transversal del Norte, the largest infrastructure project in the entire national history, which lies in the hands of the questionable consortium Solel Boneh FTN SA, the only tenderer that keeps within its ranks the country's most powerful families.

The Berger administration inherited the ambitious project is to pave the unpaved section of the Northern Transversal Strip, which covers 17 municipalities in five departments — the section from Livingston, Izabal to Nentón, Huehuetenango, with 362 kilometers in length and must be completed in three years, and which will cost approximately one billion Q (US\$132 million). The Central American Bank for Economic Integration (BCIE) will finance 85 percent of the project cost, while Solel Boneh International SA FTN (SBI FTN) will pay the rest after completion of the section and will begin maintenance work for 10 years. (...) The project is located in a region with many natural resources in Central America and if not completed in time poses a great risk. Today, the construction of the road in the Northern Transversal Strip is full of many illegalities.”

**References:**

Boche, Pedro.

“Roads of the abuse”.

Y qué? Magazine, September 2009.

<http://www.revistayque.com/v1/candentes/actualidad/467-caminosdelabusos>

Moctezuma, Wendy.

“The IDB issued 22 sanctions on the country”.

Siglo XXI Guatemala, National, March 24, 2010.

<http://www.sigloxxi.com/nacional.php?id=5944&b=1>

\*1\$ = 8 Q

Bank of Guatemala, Accessed on Dec. 14, 2010.

<http://www.banguat.gob.gt/>

**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.

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## 52. Can citizens access the public procurement process?

92

52a. In law, citizens can access public procurement regulations.

Yes

No

**Comments:**

The Guatecompras web site has all the information about tenders and quotations, including the bidding documents and their requirements.

**References:**

Reglamento de la ley de contrataciones del Estado, Acuerdo gubernativo número 1056-92, 22 de diciembre de 1992.

(Regulations of the State procurement law, Government Agreement number 1056-1992, Dec. 22, 1992). Title I, Chapter I, Article 4 bis. “Information System of the State Procurement. Information System of the State Procurement under the Ministry of Finance, shall be used for publication of any process of buying, selling and procurement of goods, supplies, works and services required by the regulated entities in Article 1 of the Act, since the call, resolution of disputes if any, to the award, including emergency purchases and all procedures established by this Regulation Act.

Interested parties wishing to seek clarification on the bidding documents, listing, open contracts, including purchases by exception should do so through the system of State Procurement, called GUATECOMPRAS. The helpful responses must also be published in the scheme.”

[http://www.contraloria.gob.gt/i\\_docs/i\\_rlcont.pdf](http://www.contraloria.gob.gt/i_docs/i_rlcont.pdf)

**Yes:** A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

**No:** A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

**Comments:**

Guatecompras web site publishes the names of those who won the bidding.

**References:**

Reglamento de la ley de contrataciones del Estado, Acuerdo gubernativo número 1056-92, 22 de diciembre de 1992. (Regulations of the State procurement law, Government Agreement number 1056-1992, Dec. 22, 1992). Title I, Chapter I, Article 4 bis. "Information System of the State Procurement. Information System of the State Procurement under the Ministry of Finance, shall be used for publication of any process of buying, selling and procurement of goods, supplies, works and services required by the regulated entities in Article 1 of the Act, since the call, resolution of disputes if any, to the award, including emergency in the scheme."

[http://www.contraloria.gob.gt/i\\_docs/i\\_rlcont.pdf](http://www.contraloria.gob.gt/i_docs/i_rlcont.pdf)

**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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Regulations for procurement of goods and services for the State are available both electronically and on paper.

**References:**

Prensa Libre.com.

"Ministry of Finance reform Guatecompras use".

Prensa Libre, Nationals, April 7, 2010.

[http://www.prensalibre.com.gt/noticias/Minfin-reforma-uso-Guatecompras\\_0\\_251374903.html](http://www.prensalibre.com.gt/noticias/Minfin-reforma-uso-Guatecompras_0_251374903.html)

Guatecompras.

"Legal and regulatory base".

Guatecompras. Accessed on Nov. 2, 2010.

<http://www.guatecompras.gt/info/legislacion.aspx>

Guatecompras.

"Current contest".

Guatecompras. Accessed on Nov. 2, 2010.

<http://www.guatecompras.gt/>

**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. These records are defined here as the rules governing the competitive procurement process.

**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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Accessibility is guaranteed to all citizens.

**References:**

Prensa Libre.com.

"Ministry of Finance reform Guatecompras use".

Prensa Libre, Nationals, April 7, 2010.

[http://www.prensalibre.com.gt/noticias/Minfin-reforma-uso-Guatecompras\\_0\\_251374903.html](http://www.prensalibre.com.gt/noticias/Minfin-reforma-uso-Guatecompras_0_251374903.html)

Guatecompras.

"Legal and regulatory base".

Guatecompras. Accessed on Nov. 2, 2010.

<http://www.guatecompras.gt/info/legislacion.aspx>

Guatecompras.

"Current contest".

Guatecompras. Accessed on Nov. 2, 2010.

<http://www.guatecompras.gt/>

**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. These records are defined here as the rules governing the competitive procurement process.

**75:**

**50:** Records impose a financial burden on citizens, journalists or NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

**Comments:**

Any offer must first be published on the web site of Guatecompras. Depending on the importance of supply, it is also published in the Escuchar and Leer fonéticamente newspapers.

**References:**

Guatecompras.

"Legal and regulatory base".

Guatecompras. Accessed on Nov. 2, 2010.

<http://www.guatecompras.gt/info/legislacion.aspx>

Guatecompras.

"Current contest".

Guatecompras. Accessed on Nov. 2, 2010.

<http://www.guatecompras.gt/>

**100:** There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

**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. The time between advertisements and bidding may be too short to allow full participation.

**25:**

**0:** There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

**Comments:**

On the web site, anyone can find out the Contracting entity, Provider company, Beneficiary, as well as winner of the tenders. The exception, sometimes, is the little time that remains available between making the tender public and the actual bidding.

**References:**

Guatecompras.  
"Guatemalan development process". Contractor.  
Accessed on Nov. 2, 2010.  
<http://www.guatecompras.gt/proveedores/consultaadyprovee.aspx>

Guatecompras.  
"National fund for peace". Contractor.  
Accessed on Nov. 2, 2010.  
<http://www.guatecompras.gt/proveedores/consultaadyprovee.aspx>

**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.

#### 4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

**Comments:**

The last privatization was Guatemala Telecommunications (Guatel) which became Telecomunicaciones de Guatemala (Telgua).

This is how Gutiérrez refers to it in his article named "Efeméride de la privatización": "A decade after the irregular sale of assets Guatel and shady dealings of the process, we can all get a phone without much fuss. The cell is the most popular symbol of social belonging. Technology geared toward the mass consumer market and lowers costs, with some competition, unleashes the imagination of supply: there are phones for minimum wage and for magnates."

**References:**

Ley de Contrataciones del Estado, Decreto número 57-92, 5 de octubre de 1992. (State Procurement Act, Decree No. 57-92, Oct. 5, 1992).  
Title VIII Chapter 1, Article 89. "For the sale and transfer of immovable property, movable or materials owned by the State or its autonomous and decentralized entities, and to the sale of goods or materials, follow the procedure of public auction, tender offer, or other procedures in which bidders can submit bids through transparent mechanisms, subject to compliance with the requirements of publication and bases established for this purpose and in each case as provided in this Law and its Regulations."  
[http://www.contraloria.gob.gt/i\\_docs/i\\_lcontr.pdf](http://www.contraloria.gob.gt/i_docs/i_lcontr.pdf)

Gutiérrez Edgar.  
"Efeméride de la privatización".

**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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes | No

**Comments:**

The law is not such specific but is sufficient to regulate conflicts of interest.

**References:**

Ley de Contrataciones del Estado, Decreto número 57-92, 5 de octubre de 1992. (State Procurement Act, Decree No. 57-92, Oct. 5, 1992).

Title VII Chapter 1, Article 80. (3) "Be a servant or public employee of the State or entities referred to in Article 1. of this law when contracts should be held with the departments in which such employee of the state provides services, or under its authority. The same prohibition applies to legal persons where such officer is a partner or representative thereof."

[http://www.contraloria.gob.gt/i\\_docs/i\\_lcontr.pdf](http://www.contraloria.gob.gt/i_docs/i_lcontr.pdf)

**Yes:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

**No:** A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

**Comments:**

This case illustrates the impunity in the privatization of Telecomunicaciones de Guatemala -GUATEL-, when the bidding process was not transparent.

Four relatives of ex-directors of GUATEL received at the end of their mandates an exorbitant compensation of nearly Q1 million (US\$132,000). To date, they have not been required to repay the illegal rewards.

The newspaper La Hora (LH) reported corruption during the administration of Alvaro Arzu (Privatization and TELGUA GUATEL, where Q 250 million (US\$33 million) disappeared in the privatization of electricity services and the postal service, and acts of nepotism benefited his relatives. (Arzu unpunished)."

**References:**

M. Casasola and G. Woltke.

"Portrait of Alvaro Arzu".

Y qué? Magazine, December 2009.

<http://www.revistayque.com/v1/candentes/39-y-que-candentes/534-semblanza-de-alvaro-arzu>

Luna, Héctor.

"The dark of the light".

Diario La Hora, Opinión, Aug. 20, 2010.

<http://www.lahora.com.gt/notas.php?key=72023&fch=2010-10-08>

Bauer, Alfonso.

"Corruption and impunity under the present government".

Diario La Hora, Opinión, Sept. 24, 2007.

<http://www.lahora.com.gt/notas.php?key=21718&fch=2007-12-03>

\*1\$ = 8 Q

Bank of Guatemala, Accessed on Dec. 14, 2010.

<http://www.banguat.gob.gt/>

**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.

#### 54. Can citizens access the terms and conditions of privatization bids?

55

54a. In law, citizens can access privatization regulations.

Yes | No

**Comments:**

Guatecompras is a comprehensive web site that provides information; before Guatecompras existed, this function was performed by the media.

**References:**

Reglamento de la ley de contrataciones del Estado, Acuerdo gubernativo número 1056-92, 22 de diciembre de 1992. (Regulations of the State procurement law, Government Agreement number 1056-1992, Dec. 22, 1992). Article 4.  
[http://www.contraloria.gob.gt/i\\_docs/i\\_rlcont.pdf](http://www.contraloria.gob.gt/i_docs/i_rlcont.pdf)

**Yes:** A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

**No:** A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

**Comments:**

The process is regulated and it's widely published.

**References:**

Parellada, Ramón.  
"Nacionalización del sector eléctrico y de las telecomunicaciones".  
Siglo XXI, Opinión/Hacia la Libertad, June 10, 2010.  
<http://www.sigloxxi.com/opinion.php?id=12707>

Centro de investigaciones económicas y sociales -CIEN-.  
"La privatización una oportunidad". Last modified in 2008.  
<http://www.cien.org.gt/index.aspx?menu=79&indice=177>

**100:** There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

**75:**

**50:** There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

**Comments:**

The government agreements are public documents and are accessible to everyone.

**References:**

Ley de Contrataciones del Estado, Decreto número 57-92, 5 de octubre de 1992. (State Procurement Act, Decree No. 57-92, Oct. 5, 1992).

Title VIII Chapter 1, Article 90. "Disposal and transfer of state property. For sale and transfer of immovable property owned by the State or its autonomous or decentralized entities, a government agreement should be issued through the ministry or ministries, on whether it is state property, or an agreement by the highest authority of the autonomous or decentralized entity."

[http://www.contraloria.gob.gt/i\\_docs/i\\_lcontr.pdf](http://www.contraloria.gob.gt/i_docs/i_lcontr.pdf)

**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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The privatization process requires a Congressional act, which is then published. The offer is also published in national newspapers and on all major global markets. Before Guatecompras existed, the process was publicized in the media and at the physical site of the institution affected. Not all citizens have full access.

**References:**

Centro de estudios urbanos y regionales.

"Privatization Process".

University of San Carlos de Guatemala, Bolletín 14, November 1994.

[http://www.usac.edu.gt/~usacceur/pdf/Boletin/Boletin\\_CEUR\\_24.pdf](http://www.usac.edu.gt/~usacceur/pdf/Boletin/Boletin_CEUR_24.pdf)

Public goods.

Star media, 2010.

[http://html.rincondelvago.com/bienes-publicos\\_6.html](http://html.rincondelvago.com/bienes-publicos_6.html)

**100:** Records (defined here as the rules governing the competitive privatization process) 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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

**Comments:**

For an international tenders the costs are too high for most people.

**References:**

Centro de estudios urbanos y regionales.  
 "Privatization Process".  
 University of San Carlos de Guatemala, Bolletín 14, November 1994.  
[http://www.usac.edu.gt/~usacceur/pdf/Boletin/Boletin\\_CEUR\\_24.pdf](http://www.usac.edu.gt/~usacceur/pdf/Boletin/Boletin_CEUR_24.pdf)

Public goods.  
 Star media, 2010.  
[http://html.rincondelvago.com/bienes-publicos\\_6.html](http://html.rincondelvago.com/bienes-publicos_6.html)

**100:** Records (defined here as the rules governing the competitive privatization process) 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 NGOs. 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 NGOs trying to access this information.

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## Category 5. Government Oversight and Controls

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### 5.1. <sup>76</sup>National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

**References:**

Human Rights Procurator is responsible for defending human rights.

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985).  
 Title II, Chapter, Article 28. Paragraph (1).

Constitution of the Republic of Guatemala, May 31, 1985. Title VI, Chapter V, Article 274.  
[http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20\\_7329559842](http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20_7329559842)

**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.

## 56. Is the national ombudsman effective?

66

56a. In law, the ombudsman is protected from political interference.

Yes | No

### Comments:

The Human Rights Procurator has the same prerogatives as members of Congress.

### References:

Ley de la Comisión de Derechos Humanos del Congreso de la República y del Procurador de los Derechos Humanos, Decreto número 54-86, 1 de Octubre de 1986. (Law of Human Rights Commission of Congress and the Human Rights Procurator, Decree No. 54-86, Oct. 1, 1986).

Title II, Chapter I, Article 8. "...the procurator... will act with absolute independence."

<http://www.chmguatemala.gob.gt/informacion/legislacion-ambiental/legislacion-comun-de-relevancia-ambiental/Ley%20de%20la%20Comision%20de%20Derechos%20Humanos%20del%20Congreso%20de%20la%20Republica%20y%20del%20Procurad%2086.pdf>

**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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

### References:

Human Rights.

"The role of Human Rights Attorney".

Human Rights. Accessed on Oct. 27, 2010.

<http://www.derechos.org/nizkor/guatemala/pdh/funcion.html>

Smith, James.

"Guatemala". Inforpressca. Accessed on Oct. 27, 2010.

[http://www.inforpressca.com/mientras/1689\\_pag1.htm](http://www.inforpressca.com/mientras/1689_pag1.htm)

**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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

The ombudsman's exercise has been normal, but he suffered the kidnapping of his wife. The case has not been clarified. It is Members of Congress who nominate the ombudsman, but the Congress Commission on Human Rights has representatives of all political parties.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Procuracy of human rights and its staff"

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Procuracy of human rights and its staff"

**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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Human rights in Guatemala has almost sufficient staff, but they need more ombudsmen to increase the offices that serve the people.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Procuracy of human rights and its staff"

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Procuracy of human rights and its staff"

**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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

**Comments:**

Members of Congress are always negating these sort of nominations in all institutions or entities. But in reality they happen.

**References:**

Martínez, Francisco.

"Nepotism runs in the country".

Prensa Libre. Feb. 8, 2010.

<http://www.politicagf.com/nepotismo-se-extiende-en-el-pais/>

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Procuracy of human rights and its staff"

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Procuracy of human rights and its staff"

**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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

**Comments:**

At least this year the budget has not been politically influenced.

**References:**

Casasola, Suseth. Siglo XXI.

"Congress includes Q20 million (US\$2.6 million) to Parlacén".

Siglo XXI.com Guatemala, National, Oct. 14, 2010.

<http://www.sigloxxi.com/nacional.php?id=21312>

Procuraduría de los derechos humano.

"Budget Execution". Last modified on June 14, 2010.

[http://www.pdh.org.gt/accesinfo/index.php?option=com\\_content&view=article&id=61&Itemid=74](http://www.pdh.org.gt/accesinfo/index.php?option=com_content&view=article&id=61&Itemid=74)

**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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

**References:**

Procuraduría de los derechos humano.  
"Budget Execution".

Procuraduría de los Derechos Humanos. Updated on June 14, 2010.

[http://www.pdh.org.gt/accesinfo/index.php?option=com\\_content&view=article&id=61&Itemid=74](http://www.pdh.org.gt/accesinfo/index.php?option=com_content&view=article&id=61&Itemid=74)

Girón, Willverth.

"PDH has reported entities that denied public information".

El Periódico Guatemala, Country, March 7, 2010.

<http://www.elperiodico.com.gt/es/20100307/pais/141068/>

**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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

**Comments:**

The Human Rights Office has limited effectiveness in its investigations due to insufficient funds.

**References:**

Redaction.

"There are seven commissioners under investigation for crimes".

Prensa Libre, Nationals, Aug. 2, 2010.

[http://www.prensalibre.com/noticias/comisarios-investigacion-delitos\\_0\\_309569067.html](http://www.prensalibre.com/noticias/comisarios-investigacion-delitos_0_309569067.html)

Noticias Nacionales, Internacionales y Deportes.

"Interior PDH and conducted research".

Cámara Guatemalteca de Periodismo. Nov. 26, 2009.

<http://cgp.org.gt/content/presidios-pdh-y-gobernacio%CC%81n-realizaron-investigaciones-tras-denuncia-de-la-hora-comprueban->

**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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

The sanctions are rather moral and do not contain penalties.

**References:**

Editorial.

"Electoral crimes in Guatemala".

La Noticia, Oct. 27, 2010.

<http://www.periodicolanoticia.com/opinion/2351-los-delitos-electorales-en-guatemala>

Del Cid, Marvin.

"IGSS violates access to information".

El Periódico Guatemala, Country, March 30, 2010.

<http://www.elperiodico.com.gt/es/20100330/pais/144018/>

**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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**Comments:**

Ombudsman's reports are serious, but exceptions exist when a political issue is involved.

**References:**

Girón, Willverth.

"PDH has reported entities that denied public information".

El Periódico Guatemala, Country, March 7, 2010.

<http://www.elperiodico.com.gt/es/20100307/pais/141068/>

Redaction.

"There are seven commissioners under investigation for crimes".

Prensa Libre, Nationals, Aug. 2, 2010.

[http://www.prensalibre.com/noticias/comisarios-investigacion-delitos\\_0\\_309569067.html](http://www.prensalibre.com/noticias/comisarios-investigacion-delitos_0_309569067.html)

Noticias Nacionales, Internacionales y Deportes.

"Interior PDH conducted research".

Cámara Guatemalteca de Periodismo. Nov. 26, 2009.

<http://cgp.org.gt/content/presidios-pdh-y-gobernacio%CC%81n-realizaron-investigaciones-tras-denuncia-de-la-hora-comprueban>

Editorial.

"Electoral crimes in Guatemala".

La Noticia, Oct. 27, 2010.

<http://www.periodicolanoticia.com/opinion/2351-los-delitos-electorales-en-guatemala>

**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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

When investigations are difficult, they last more than several months (six at the very minimum). When investigations are easy, they are resolved in a few days or hours.

**References:**

Batres, Alexis.  
"USAC: Central Campus still provides access to academic activities".  
Diario La hora, National, Aug. 24, 2010.  
<http://www.lahora.com.gt/notas.php?key=72229&fch=2010-08-24>

Procuraduría de los derechos humanos.  
"Call center 1555". Oct. 27, 2010.  
<http://www.pdh.org.gt/>

**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.

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## 57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

**Comments:**

The procurator has to make its reports public each January.

**References:**

Ley de la Comisión de Derechos Humanos del Congreso de la República y del Procurador de los Derechos Humanos, Decreto número 54-86, 1 de Octubre de 1986. (Law of Human Rights Commission of Congress and the Human Rights Procurator, Decree No. 54-86, Oct. 1, 1986).  
Title II, Chapter II, Article 14. (d) "Disclose in the month of January each year, the annual and special reports referred to this law;"  
<http://www.chmguatemala.gob.gt/informacion/legislacion-ambiental/legislacion-comun-de-relevancia-ambiental/Ley%20de%20la%20Comision%20de%20Derechos%20Humanos%20del%20Congreso%20de%20la%20Republica%20y%20del%20Procurad%2086.pdf>

**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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The reports of the Human Rights Ombudsman can be accessed electronically.

**References:**

Human Rights Attorney (Ombudsman).  
"Documents". Accessed on Nov. 12, 2010.  
[http://www.pdh.org.gt/index.php?option=com\\_phocadownload&view=section&id=5](http://www.pdh.org.gt/index.php?option=com_phocadownload&view=section&id=5)

Human Rights Attorney (Ombudsman).  
"Documents, Annual Report". Accessed on Nov. 12, 2010.  
[http://www.pdh.org.gt/index.php?option=com\\_phocadownload&view=category&id=8:informes-anauales](http://www.pdh.org.gt/index.php?option=com_phocadownload&view=category&id=8:informes-anauales)

Human Rights Attorney (Ombudsman).  
"Documents, Special Reports". Accessed on Nov. 12, 2010.  
[http://www.pdh.org.gt/index.php?option=com\\_phocadownload&view=category&id=5](http://www.pdh.org.gt/index.php?option=com_phocadownload&view=category&id=5)

**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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

The reports of the Human Rights Ombudsman can be accessed electronically.

**References:**

Human Rights Attorney (Ombudsman).  
"Documents". Accessed on Nov. 12, 2010.  
[http://www.pdh.org.gt/index.php?option=com\\_phocadownload&view=section&id=5](http://www.pdh.org.gt/index.php?option=com_phocadownload&view=section&id=5)

Human Rights Attorney (Ombudsman).  
"Documents, Annual Report". Accessed on Nov. 12, 2010.  
[http://www.pdh.org.gt/index.php?option=com\\_phocadownload&view=category&id=8:informes-anauales](http://www.pdh.org.gt/index.php?option=com_phocadownload&view=category&id=8:informes-anauales)

Human Rights Attorney (Ombudsman).  
"Documents, Special Reports". Accessed on Nov. 12, 2010.  
[http://www.pdh.org.gt/index.php?option=com\\_phocadownload&view=category&id=5](http://www.pdh.org.gt/index.php?option=com_phocadownload&view=category&id=5)

**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 NGOs. 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 NGOs trying to access this information.

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## 5.2. Supreme Audit Institution

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58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

### References:

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985).

Title V, Chapter III, Article 232. "The Comptroller General of Accounts has oversight functions of the revenues, expenditures, and in general all hacienda interest of state agencies, municipalities, decentralized and autonomous entities, and any person receiving state funds or making public collections."

[http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20\\_7329559842](http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20_7329559842)

Ley orgánica de la Contraloría General de Cuentas, Decreto número 31-2002, 14 de mayo de 2002.

Organic Law of the Comptroller General, Decree No. 31-2002, May 14, 2002. Chapter 1, Article 1.

[http://www.contraloria.gob.gt/i\\_docs/i\\_ley\\_cgq.pdfq](http://www.contraloria.gob.gt/i_docs/i_ley_cgq.pdfq)

**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.

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59. Is the supreme audit institution effective?

63

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

### References:

Ley orgánica de la Contraloría General de Cuentas, Decreto número 31-2002, 14 de mayo de 2002. (Organic Law of the Comptroller General, Decree No. 31-2002, May 14, 2002).

Chapter 1, Article 1. "... Comptroller General of Accounts enjoys operational independence, technical and administrative..."

[http://www.contraloria.gob.gt/i\\_docs/i\\_ley\\_cgq.pdfq](http://www.contraloria.gob.gt/i_docs/i_ley_cgq.pdfq)

**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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

This year the mandate of the Controller General of Accounts expired in accordance with law and in reality.

**References:**

Pérez, Mynor.

"They complain of the 'warmth' of Comptroller's controlling."

Siglo XXI.com Guatemala, National, April 17, 2010.

<http://www.sigloxxi.com/nacional.php?id=8301>

Editorial.

"Choose Controller of Accounts".

El Periódico Guatemala, Opinion, Sept. 23, 2010. <http://www.elperiodico.com.gt/es/20100923/opinion/176228/>

**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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The comptroller has no budget to extend his term, however the agency's current staff have improved work conditions. It is an institutional strengthening that was promoted under the last mandate of the comptroller.

**References:**

Carlos Mencos, Comptroller General of Accounts,

Interview by Estuardo Zapeta, Oct. 18, 2010, on radio Libertopolis, Guatemala.

Comptroller General of Accounts.

"Staff Comptroller General of Accounts' participation".

Sept. 30, 2010.

[http://www.contraloria.gob.gt/i\\_transparencia/VIAJES\\_INTER\\_NUMERAL\\_12\\_SEPTIEMBRE.pdf](http://www.contraloria.gob.gt/i_transparencia/VIAJES_INTER_NUMERAL_12_SEPTIEMBRE.pdf)

**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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

The appointments are usually made in accordance with professional standards, but there are still certain influences.

**References:**

Ajin, Doris.

"Workers of the General Accounting involved in the case Fraijanes II".

El Periódico Guatemala, Country, Sept. 22, 2010.

<http://www.elperiodico.com.gt/es/20100922/pais/176107>

Research team.

"Comptroller's Office investigating possible influence peddling".

El Periódico Guatemala, Country, June 28, 2010.

<http://www.elperiodico.com.gt/es/20100922/pais/176107>

**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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The Comptroller General of Accounts has its budget planned on as part of the general budget of the nation. However, it needs more funds to expand its mandate.

**References:**

Carlos Mencos, Comptroller General of Accounts,

Interview by Estuardo Zapeta, Oct. 18, 2010, on radio Libertopolis, Guatemala.

Flores, Ligia.

"Insufficient budget controllership".

Diario La Hora, Nationals, Nov. 21, 2008.

<http://lahora.com.gt/notas.php?key=40073&fch=2008-11-21>

**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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

The chief of the Comptroller General of Accounts delivers, upon each legal deadline, audit reports to Congress and its members.

**References:**

Carlos Mencos, Comptroller General of Accounts,  
Interview by Estuardo Zapeta, Oct. 18, 2010, on radio Libertopolis, Guatemala.

Casasola, Suseth.  
"Mencos audit report delivered to Congress".  
Siglo XXI.com Guatemala, National, May 29, 2010.  
<http://www.sigloxxi.com/nacional.php?id=11843>

**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.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

**Comments:**

"The Comptroller General does his job every year, delivering reports. However, the end is not known, because the manager forgot to consider the reports for seven years, in order to ascertain whether the facts and figures are correct, and to assess whether the state money has been used efficiently.  
Since 2003, Congress has chosen not to include in its legislative agenda to approve or reject the annual report of the audit."  
Kenya Reyes.

**References:**

Reyes, Kenya.  
"Congress does not address the Comptroller reports for seven years".  
El Periódico Guatemala, Country, July 31, 2010.  
<http://www.elperiodico.com.gt/es/20100731/pais/167213/>

Coronado, Elsa.  
"The Comptroller General found anomalies in firewalls contract Renap". Noticias de Guatemala, Sept. 13, 2010.  
<http://noticias.com.gt/nacionales/20100913-la-contraloria-general-de-cuentas-detecto-anomalias-en-contrato-de-firewalls-del-renap.html>

Consultor Etributarios.  
"Fined SAT".  
Consultores Tributarios, Jan. 5, 2010.  
<http://consultorestributarios.com.gt/?p=6>

**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.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

The Comptroller finds anomalies and accuses the courts.

**References:**

Incidencia Democrática.  
"Mencos drives against MiFaPro".  
Incidencia Democrática, Security and Justice, Nov. 6, 2009.  
<http://www.i-dem.org/?p=24531>

L, Cereser.  
"Comptroller finds anomalies in MiFaPro".  
Prensa Libre, Nationals, May 26, 2010.  
[http://www.prensalibre.com/noticias/Contralor-descubre-anomalias-Mifapro\\_0\\_268773147.html](http://www.prensalibre.com/noticias/Contralor-descubre-anomalias-Mifapro_0_268773147.html)

**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.

---

## 60. Can citizens access reports of the supreme audit institution?

92

60a. In law, citizens can access reports of the audit agency.

Yes | No

**References:**

Ley orgánica de la Contraloría General de Cuentas, Decreto número 31-2002, 14 de mayo de 2002. (Organic Law of the Comptroller General, Decree No. 31-2002, May 14, 2002).  
Chapter 1, Article 9. "The staff of the Comptroller General must maintain confidentiality and discretion regarding the information obtained during the audit conducted on the bodies, institutions and persons covered by the law.  
Semiannually, the Comptroller General will report through the official journal the list of entities that were discussed during the previous six-month period. When completed the audit for each entity audited, the result will be published in the Official Gazette and in the newsletter of the Comptroller General."  
[http://www.contraloria.gob.gt/i\\_docs/i\\_ley\\_cgc.pdf](http://www.contraloria.gob.gt/i_docs/i_ley_cgc.pdf)

Reglamento de la ley Orgánica de la Contraloría General de Cuentas, Acuerdo gubernativo número 318-2003, 19 de mayo de 2003. (Regulation of the Organic Law of the Comptroller General, Government Agreement number 318-2003, May 19, 2003).  
Chapter I, Article 6.  
<http://portalgl.minfin.gob.gt/Descargas/Documents/Reglamento%20de%20la%20Ley%20Org%C3%A1nica%20de%20la%20Contralor%C3%ADa%20Ger>

Ley de acceso a la información pública, Decreto número 57-2008, 23 de Septiembre de 2008. (Law on access to public information, Decree No. 57-2008, Sept. 23, 2008).  
Title I, Chapter I, Article 6. "Entities. Comptroller General;"  
<http://www.sit.gob.gt/uploads/docs/laws/LeydeAccesoInformacion-Guatemala.pdf>

**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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Reports are available on-line, but some of them are not updated.

**References:**

Contraloría General de Cuentas.  
"National fund audit report for the revitalization and modernization of agriculture –FONAGRO–".  
Contraloría General de Cuentas, May 2010.

[http://www.contraloria.gob.gt/i\\_docs/i\\_inf\\_fid09/archivos/fideicomisos/fonagro.pdf](http://www.contraloria.gob.gt/i_docs/i_inf_fid09/archivos/fideicomisos/fonagro.pdf)

Contraloría General de Cuentas. "Audit report on government projects trust".  
Contraloría General de Cuentas, May 2009.

[http://www.contraloria.gob.gt/i\\_docs/i\\_inf\\_fideicomisos08/archivos/fideicomisos/fideiprosa.pdf](http://www.contraloria.gob.gt/i_docs/i_inf_fideicomisos08/archivos/fideicomisos/fideiprosa.pdf)

Contraloría General de Cuentas.  
"Government audit report with emphasis on the implementation of the budget city municipal treasury Jutiapa".  
Contraloría General de Cuentas, May 2008.

[http://www.contraloria.gob.gt/i\\_docs/i\\_inf\\_munis07/archivos/parte2/JUTIAPA.PDF](http://www.contraloria.gob.gt/i_docs/i_inf_munis07/archivos/parte2/JUTIAPA.PDF)

Contraloría General de Cuentas.  
"Reports". Contraloría General de Cuentas. Accessed on Oct. 28, 2010.

[http://www.contraloria.gob.gt/i\\_res.php](http://www.contraloria.gob.gt/i_res.php)

**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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Reports are available for free online, or only at the cost of photocopying.

**References:**

Contraloría General de Cuentas.  
"National fund audit report for the revitalization and modernization of agriculture –FONAGRO–".  
Contraloría General de Cuentas, May 2010.

[http://www.contraloria.gob.gt/i\\_docs/i\\_inf\\_fid09/archivos/fideicomisos/fonagro.pdf](http://www.contraloria.gob.gt/i_docs/i_inf_fid09/archivos/fideicomisos/fonagro.pdf)

Contraloría General de Cuentas.  
"Audit report of government projects trust".  
Contraloría General de Cuentas, May 2009.

[http://www.contraloria.gob.gt/i\\_docs/i\\_inf\\_fideicomisos08/archivos/fideicomisos/fideiprosa.pdf](http://www.contraloria.gob.gt/i_docs/i_inf_fideicomisos08/archivos/fideicomisos/fideiprosa.pdf)

Contraloría General de Cuentas.  
"Government audit report with emphasis on the implementation of the budget city municipal treasury Jutiapa".  
Contraloría General de Cuentas, May 2008.

[http://www.contraloria.gob.gt/i\\_docs/i\\_inf\\_munis07/archivos/parte2/JUTIAPA.PDF](http://www.contraloria.gob.gt/i_docs/i_inf_munis07/archivos/parte2/JUTIAPA.PDF)

Contraloría General de Cuentas.  
"Reports". Contraloría General de Cuentas. Accessed, on Oct. 28, 2010.

**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 NGOs. 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 NGOs trying to access this information.

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85  
5.3. Taxes and Customs: Fairness and Capacity

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61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

**Referencias:**

Superintendency of Tax Administration (Superintendencia de Administración Tributaria SAT)

Ley orgánica de la Superintendencia de Administración Tributaria, Decreto número 1- 98, 12 de Enero de 1998. (Organic Law of the Superintendency of Tax Administration, Decree No. 1-98, Jan. 12, 1998).

Chapter I, Section 1, Article 3. "Purpose and Functions of the SAT.

a) To exercise the administration of the tax, enforce tax collection, control and oversight of all domestic taxes and all taxes levied on foreign trade, to be paid to the State, except those which by law are administered and Municipalities collect;"

<http://www.sat.gob.gt/downloads/Leyes/daj/dto-1-98.doc>

**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.

---

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The Superintendency of Tax Administration has enough staff, who make efforts to increase tax revenue, to fight corruption, and to improve taxpayer service.

**References:**

"Interview with Officer of control office at Superintendency of Tax Administration, Nov. 11, 2010, Guatemala, Guatemala, written record. "Control, customs and others".

"In El Carmen bite more than Q62,000daily (US\$8,184)".

Siglo XXI.com Guatemala, Under scrutiny. Accessed on Nov. 11, 2010.

<http://128.121.66.148/lupa/21>

**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.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

It strengthens the Superintendency of Tax Administration for the next fiscal year.

**References:**

Prensa Libre.com .

"Executive branch presents budget project".

Prensa Libre, Politic, Sept. 2, 2010.

[http://www.prensalibre.com/noticias/politica/presupuesto-congreso-ejecutivo\\_0\\_328167296.html](http://www.prensalibre.com/noticias/politica/presupuesto-congreso-ejecutivo_0_328167296.html)

Políticas de Guatemala.

"Executive branch presents budget project".

Políticas de Guatemala, Sept. 3, 2010.

<http://www.politicagt.com/ejecutivo-entrega-presupuesto-general-de-2011/>

**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.

---

63. In practice, are tax laws enforced uniformly and without discrimination?

0

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

The base is just 1,150,000 taxpayers, and if we remove those who pay taxes for vehicles then it is reduced to only about 700,000 taxpayers, who pay their taxes correctly. So taxes are unfair.

**References:**

Batres, Alexis.

"Only 700 000 fully complying with taxes".

Diario La Hora, Nationals, Oct. 27, 2010. <http://www.lahora.com.gt/notas.php?key=75393&fch=2010-10-27>

Redaction.

"Who will pay taxes as well? ".

Siglo XXI.com Guatemala, National, Oct. 15, 2010.

<http://www.sigloxxi.com/opinion.php?id=21335>

**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.

---

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes

No

**References:**

Superintendency of Tax Administration is the responsible of managing customs systems and collecting tariffs.

Ley orgánica de la Superintendencia de Administración Tributaria, Decreto número 1- 98, 12 de Enero de 1998. (Organic Law of the Superintendency of Tax Administration, Decree No. 1-98, Jan. 12, 1998).

Chapter I, Section 1, Article 3. "b) Manage the customs system of the Republic in accordance with law, international conventions and treaties ratified by Guatemala, and act as the control or non-tariff paratributaria nature, linked with the customs procedure."

<http://www.sat.gob.gt/downloads/Leyes/daj/dto-1-98.doc>

**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.

---

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100

75

50

25

0

**Comments:**

The Superintendency of Tax Administration has enough staff who make efforts to increase tax revenue, fight corruption, and improve taxpayer service.

**References:**

Interview with Officer of control office at Superintendency of Tax Administration, Nov. 11, 2010, Guatemala, Guatemala, written record. "Control, customs and others".

Redaction.  
"In El Carmen bite more than Q62,000 daily (US\$8,185)".  
Siglo XXI.com Guatemala, Under scrutiny. Accessed on Nov. 11, 2010.  
<http://128.121.66.148/lupa/21>

**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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

It strengthens the Superintendency of Tax Administration for the next fiscal year.

**References:**

Prensa Libre.com .  
"Executive branch presents budget project".  
Prensa Libre, Politics, Sept. 2, 2010.  
[http://www.prensalibre.com/noticias/politica/presupuesto-congreso-ejecutivo\\_0\\_328167296.html](http://www.prensalibre.com/noticias/politica/presupuesto-congreso-ejecutivo_0_328167296.html)

Políticas de Guatemala.  
"Executive branch presents budget project".  
Políticas de Guatemala, Sept. 3, 2010.  
<http://www.politicagt.com/ejecutivo-entrega-presupuesto-general-de-2011/>

**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.

---

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

The base is just 1,150,000 taxpayers, and if we remove those who pay taxes for vehicles then it is reduced to only about 700,000 taxpayers, who pay their taxes correctly. So taxes are unfair.

**References:**

Batres, Alexis.

"Only 700 000 fully complying with taxes".  
Diario La Hora, Nationals, Oct. 27, 2010. <http://www.lahora.com.gt/notas.php?key=75393&fch=2010-10-27>

Redaction.  
"Who will pay taxes as well? ".  
Siglo XXI.com Guatemala, National, Oct. 15, 2010.  
<http://www.sigloxxi.com/opinion.php?id=21335>

**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.

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## 5.4. Oversight of State-Owned Enterprises

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67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

**Comments:**

The Comptroller General of Accounts is responsible of overseeing the state-owned companies and others institutions which are linked to the executive branch. That's the case of ministries.

**References:**

Comptroller General of Accounts has oversight functions of auditing state-owned companies.

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985).

Title V, Chapter III, Artículo 232. "The Comptroller General of Accounts has oversight functions of the revenues, expenditures, and in general all hacienda interest of state agencies, municipalities, decentralized and autonomous entities, and any person receiving state funds or making public collections."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley orgánica de la Contraloría General de Cuentas, Decreto número 31-2002, 14 de mayo de 2002.

(Organic Law of the Comptroller General, Decree No. 31-2002, May 14, 2002). Chapter 1, Article 1.

[http://www.contraloria.gob.gt/i\\_docs/i\\_ley\\_cgc.pdf](http://www.contraloria.gob.gt/i_docs/i_ley_cgc.pdf)

Ley orgánica de la empresa portuaria nacional Santo Tomás de Castilla, Decreto número 4-93, 21 de Enero de 1993. (Organic law of the national port company Santo Tomás de Castilla, Decree No. 4-93, Jan. 21, 1993). Chapter 1, Article 5. "... will link with the Executive Branch through the Ministry of Communications and Public Works...".

<http://www.santotomasport.com.gt/documentos/1.3%20LEY%20ORGANICA%20DECRETO%204-93.pdf>

**Yes:** A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

**No:** A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

60

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

**References:**

Ley orgánica de la Contraloría General de Cuentas, Decreto número 31-2002, 14 de mayo de 2002. (Organic Law of the Comptroller General, Decree No. 31-2002, May 14, 2002). Chapter 1, Article 1. "... Comptroller General of Accounts enjoys operational independence, technical and administrative..."

[http://www.contraloria.gob.gt/i\\_docs/i\\_ley\\_cgc.pdfq](http://www.contraloria.gob.gt/i_docs/i_ley_cgc.pdfq)

**Yes:** A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The comptroller has no budget to extend his term, however the agency's current staff have improved work conditions. It is an institutional strengthening that was promoted under the last mandate of the comptroller.

**References:**

Carlos Mencos, Comptroller General of Accounts, Interview by Estuardo Zapeta, Oct. 18, 2010, on radio Libertopolis, Guatemala.

Comptroller General of Accounts.

"Staff Comptroller General of Accounts' participation".

Sept. 30, 2010.

[http://www.contraloria.gob.gt/i\\_transparencia/VIAJES\\_INTER\\_NUMERAL\\_12\\_SEPTIEMBRE.pdf](http://www.contraloria.gob.gt/i_transparencia/VIAJES_INTER_NUMERAL_12_SEPTIEMBRE.pdf)

**100:** The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The Comptroller General of Accounts has its budget planned as part of the general budget of the nation, but it needs more funds.

**References:**

Carlos Mencos, Comptroller General of Accounts,  
Interview by Estuardo Zapeta, Oct. 18, 2010, on radio Libertopolis, Guatemala.

Flores, Ligia.

"Insufficient budget control".

Diario La Hora, Nationals, Nov. 21, 2008.

<http://lahora.com.gt/notas.php?key=40073&fch=2008-11-21>

**100:** The agency, series of agencies, or equivalent mechanism 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, series of agencies, or equivalent mechanism 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

The comptroller finds anomalies and accuses the courts.

**References:**

Incidencia Democrática.

"Mencos drives against MiFaPro".

Incidencia Democrática, Security and Justice, Nov. 6, 2009.

<http://www.i-dem.org/?p=24531>

L, Cereser.

"Comptroller finds anomalies in MiFaPro".

Prensa Libre, Nationals, May 26, 2010.

[http://www.prensalibre.com/noticias/Contralor-descubre-anomalias-Mifapro\\_0\\_268773147.html](http://www.prensalibre.com/noticias/Contralor-descubre-anomalias-Mifapro_0_268773147.html)

**100:** When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

The Comptroller audits only some enterprises or NGOs.

**References:**

Valdez, Sandra.

"Comptroller built fine stops NGOs".

Prensa Libre, Nationals, July 25, 2010.

[http://www.prensalibre.com/noticias/Contraloria-multa-ONG-construyo-paradas\\_0\\_305369504.html](http://www.prensalibre.com/noticias/Contraloria-multa-ONG-construyo-paradas_0_305369504.html)

Cardona, Karen.

"Handle millions of Quetzales".

Prensa Libre, Nationals, March 14, 2010.

[http://www.prensalibre.com/noticias/Q6-mil-millones-administran-ONG\\_0\\_224977509.html](http://www.prensalibre.com/noticias/Q6-mil-millones-administran-ONG_0_224977509.html)

**100:** When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

**75:**

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

**25:**

**0:** The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

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69. Can citizens access the financial records of state-owned companies?

65

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

**References:**

Ley de acceso a la información pública, Decreto número 57-2008, 23 de Septiembre de 2008. (Law on access to public information, Decree No. 57-2008, Sept. 23, 2008).

Title I, Chapter I, Article 6. Entities.

<http://www.sit.gob.gt/uploads/docs/laws/LeydeAccesoInformacion-Guatemala.pdf>

**Yes:** A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

**No:** A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

**Comments:**

The information is not updated.

**References:**

Empresa Portuaria Nacional Santo Tomás de Castilla.

"Monthly Budget Information".

Empresa Portuaria Nacional Santo Tomás de Castilla, Public information, Dec. 31, 2009.

<http://www.santotomasport.com.gt/documentos/Inciso%208%20Informes%20Mensuales%20de%20Ejecucion%20Presupuestaria.pdf>

Empresa Portuaria Quetzal.

"Monthly Budget Information".

Empresa Portuaria Quetzal. Public information. March 2009.

[http://www.puerto-quetzal.com/php/libreacceso/ley\\_uno2.html](http://www.puerto-quetzal.com/php/libreacceso/ley_uno2.html)

**100:** State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

**75:**

**50:** State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

**25:**

**0:** Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

**References:**

Herrera, Gabriel.

"Future election of Controller General of Accounts".

Diario La Hora, Nationals, July 6, 2010.

<http://www.lahora.com.gt/notas.php?key=69688&fch=2010-07-06>

Ismatul, Oscar.

"Deputy points to Comptroller irregularities."

Prensa Libre, Politics, July 20, 2010.

[http://www.prensalibre-fondos-publicos\\_0\\_301770044.html?commentsPage=2](http://www.prensalibre-fondos-publicos_0_301770044.html?commentsPage=2)

**100:** Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

**75:**

**50:** Financial records of state-owned 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:** State-owned 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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Reports are available on-line, but some are not updated.

**References:**

Contraloría General de Cuentas.

"National fund audit report for the revitalization and modernization of agriculture –FONAGRO–".

Contraloría General de Cuentas, May 2010.  
[http://www.contraloria.gob.gt/i\\_docs/i\\_inf\\_fid09/archivos/fideicomisos/fonagro.pdf](http://www.contraloria.gob.gt/i_docs/i_inf_fid09/archivos/fideicomisos/fonagro.pdf)

Contraloría General de Cuentas.  
"Audit report of government projects trust". Contraloría General de Cuentas, May 2009.  
[http://www.contraloria.gob.gt/i\\_docs/i\\_inf\\_fideicomisos08/archivos/fideicomisos/fideiprosa.pdf](http://www.contraloria.gob.gt/i_docs/i_inf_fideicomisos08/archivos/fideicomisos/fideiprosa.pdf)

Contraloría General de Cuentas.  
"Government audit report with emphasis on the implementation of the budget city municipal treasury Jutiapa".  
Contraloría General de Cuentas, May 2008.  
[http://www.contraloria.gob.gt/i\\_docs/i\\_inf\\_munis07/archivos/parte2/JUTIAPA.PDF](http://www.contraloria.gob.gt/i_docs/i_inf_munis07/archivos/parte2/JUTIAPA.PDF)

Contraloría General de Cuentas.  
"Reports". Contraloría General de Cuentas.  
Accessed on Oct. 28, 2010.  
[http://www.contraloria.gob.gt/i\\_res.php](http://www.contraloria.gob.gt/i_res.php)

**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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Reports are available for free on-line, or at the cost of photocopying.

**References:**

Contraloría General de Cuentas.  
"National fund audit report for the revitalization and modernization of agriculture –FONAGRO–".  
Contraloría General de Cuentas, May 2010.  
[http://www.contraloria.gob.gt/i\\_docs/i\\_inf\\_fid09/archivos/fideicomisos/fonagro.pdf](http://www.contraloria.gob.gt/i_docs/i_inf_fid09/archivos/fideicomisos/fonagro.pdf)

Contraloría General de Cuentas.  
"Audit report of government projects trust".  
Contraloría General de Cuentas, May 2009.  
[http://www.contraloria.gob.gt/i\\_docs/i\\_inf\\_fideicomisos08/archivos/fideicomisos/fideiprosa.pdf](http://www.contraloria.gob.gt/i_docs/i_inf_fideicomisos08/archivos/fideicomisos/fideiprosa.pdf)

Contraloría General de Cuentas.  
"Government audit report with emphasis on the implementation of the budget city municipal treasury Jutiapa".  
Contraloría General de Cuentas, May 2008.  
[http://www.contraloria.gob.gt/i\\_docs/i\\_inf\\_munis07/archivos/parte2/JUTIAPA.PDF](http://www.contraloria.gob.gt/i_docs/i_inf_munis07/archivos/parte2/JUTIAPA.PDF)

Contraloría General de Cuentas.  
"Reports". Contraloría General de Cuentas. Accessed on Oct. 28, 2010.  
[http://www.contraloria.gob.gt/i\\_res.php](http://www.contraloria.gob.gt/i_res.php)

**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 NGOs. 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 NGOs trying to access this information.

## 5.5. Business Licensing and Regulation

75

### 70. Are business licenses available to all citizens?

63

70a. In law, anyone may apply for a business license.

Yes | No

#### References:

Código de comercio de Guatemala, 2-70, 28 de enero de 1970. (Commercial Code of Guatemala, 2-70, Jan. 28, 1970). Book I, Title I, Chapter I, Article 6. "Capacity. Traders have the ability to be individuals and legal persons who, under the Civil Code, are working to contract and bind."

<http://www.infomipyme.com/Docs/GT/Offline/Registro/codigodecomercio/Comerciantes.html>

**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.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

#### Comments:

The mechanism is as follows:

1. Commercial Register denies the registration and gives five days to amend mistakes.
2. If the problem continues, the businessman can sue;
3. And if the businessman doesn't receive a satisfaction resolution, he may address the Constitutional Court.

#### References:

Código de comercio de Guatemala, 2-70, 28 de enero de 1970. (Commercial Code of Guatemala, 2-70, Jan. 28, 1970). Book II, Title I, Chapter I, Article 342. "Commercial Register can refuse the registration... and it'll take five days to amend mistakes.."

Article 350. "The judge will resolve the issue on trial."

<http://www.infomipyme.com/Docs/GT/Offline/Registro/codigodecomercio/Comerciantes.html>

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985).

Title VI, Chapter II, Article 265. "Establishing the shelter to protect people against the threats of violations of their rights or to restore the rule when the violation has occurred. There is no area that is not susceptible to protection(...)"

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

**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.

70c. 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:**

An enterprise can obtain its license within one week to one month; after this comes tax registration, which takes one additional week. But when the business is located within historical downtown, obtaining the license takes about one year.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Procuracy of human rights and its staff"

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Procuracy of human rights and its staff"

**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.

70d. 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:**

Licensing costs are to high. Only a few people can open enterprises and support the costs for registration, attorneys and services.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Procuracy of human rights and its staff"

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "Procuracy of human rights and its staff"

**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.

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71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

**References:**

Reglamento de la ley de contrataciones del Estado, Acuerdo gubernativo número 1056-92, 22 de diciembre de 1992. (Regulations of the State procurement law, Government Agreement number 1056-1992, Dec. 22, 1992).

Title I, Chapter I, Article 4 bis. "Information System of the State Procurement. Information System of the State Procurement under the Ministry of Finance, shall be used for publication of any process of buying, selling and procurement of goods, supplies, works and services required by the regulated entities in Article 1 of the Act, since the call, resolution of disputes if any, to the award, including emergency purchases and all procedures established by this Regulation Act.

Interested parties wishing to seek clarification on the bidding documents, listing, open contracts, including purchases by exception should do so through the system of State Procurement, called GUATECOMPRAS. The helpful responses must also be published in the scheme."

[http://www.contraloria.gob.gt/i\\_docs/i\\_rlcont.pdf](http://www.contraloria.gob.gt/i_docs/i_rlcont.pdf)

Ley de Contrataciones del Estado, Decreto número 57-92, 5 de octubre de 1992. (State Procurement Act, Decree No. 57-92, Oct. 5, 1992).

Title III Chapter 1, Article 24. "Tendering and Tender Opening. Offers and other solicitation documents should be delivered directly to the Tender Board. Within thirty (30) minutes of the time fixed for the submission and receipt of bids, they will not accept any more, and will proceed to the public act of opening of tenders. All proceedings shall be recorded simultaneously."

[http://www.contraloria.gob.gt/i\\_docs/i\\_lcontr.pdf](http://www.contraloria.gob.gt/i_docs/i_lcontr.pdf)

**Yes:** A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

**No:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

**References:**

Reglamento de la ley de contrataciones del Estado, Acuerdo gubernativo número 1056-92, 22 de diciembre de 1992. (Regulations of the State procurement law, Government Agreement number 1056-1992, Dec. 22, 1992).

Title I, Chapter I, Article 4 bis. "Information System of the State Procurement. Information System of the State Procurement under the Ministry of Finance, shall be used for publication of any process of buying, selling and procurement of goods, supplies, works and services required by the regulated entities in Article 1 of the Act, since the call, resolution of disputes if any, to the award, including emergency purchases and all procedures established by this Regulation Act.

Interested parties wishing to seek clarification on the bidding documents, listing, open contracts, including purchases by exception should do so through the system of State Procurement, called GUATECOMPRAS. The helpful responses must also be published in the scheme."

[http://www.contraloria.gob.gt/i\\_docs/i\\_rlcont.pdf](http://www.contraloria.gob.gt/i_docs/i_rlcont.pdf)

Ley de Contrataciones del Estado, Decreto número 57-92, 5 de octubre de 1992. (State Procurement Act, Decree No. 57-92, Oct. 5, 1992).

Title III Chapter 1, Article 24. "Tendering and Tender Opening. Offers and other solicitation documents should be delivered directly to the Tender Board. Within thirty (30) minutes of the time fixed for the submission and receipt of bids, they will not accept any more, and will proceed to the public act of opening of tenders. All proceedings shall be recorded simultaneously."

[http://www.contraloria.gob.gt/i\\_docs/i\\_lcontr.pdf](http://www.contraloria.gob.gt/i_docs/i_lcontr.pdf)

**Yes:** A YES score is earned if basic regulatory requirements for meeting public 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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes | No

**References:**

Reglamento de la ley de contrataciones del Estado, Acuerdo gubernativo número 1056-92, 22 de diciembre de 1992. (Regulations of the State procurement law, Government Agreement number 1056-1992, Dec. 22, 1992).  
 Title I, Chapter I, Article 4 bis. "Information System of the State Procurement. Information System of the State Procurement under the Ministry of Finance, shall be used for publication of any process of buying, selling and procurement of goods, supplies, works and services required by the regulated entities in Article 1 of the Act, since the call, resolution of disputes if any, to the award, including emergency purchases and all procedures established by this Regulation Act.  
 Interested parties wishing to seek clarification on the bidding documents, listing, open contracts, including purchases by exception should do so through the system of State Procurement, called GUATECOMPRAS. The helpful responses must also be published in the scheme."  
[http://www.contraloria.gob.gt/i\\_docs/i\\_rlcont.pdf](http://www.contraloria.gob.gt/i_docs/i_rlcont.pdf)

Ley de Contrataciones del Estado, Decreto número 57-92, 5 de octubre de 1992. (State Procurement Act, Decree No. 57-92, Oct. 5, 1992).  
 Title III Chapter 1, Article 24. "Tendering and Tender Opening. Offers and other solicitation documents should be delivered directly to the Tender Board. Within thirty (30) minutes of the time fixed for the submission and receipt of bids, they will not accept any more, and will proceed to the public act of opening of tenders. All proceedings shall be recorded simultaneously."  
[http://www.contraloria.gob.gt/i\\_docs/i\\_lcontr.pdf](http://www.contraloria.gob.gt/i_docs/i_lcontr.pdf)

**Yes:** A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

**No:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

## 72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

17

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

Guatemalan Standards Commission does not have the human or financial resources to monitor the quality of goods and services in the health care system – i.e. they cannot review the compliance certifications or drugs, or the bidding process for procurement of medical goods.

Moreover, the Comptroller General of Accounts does not have updated reports related to the bidding process in the health sector.

**References:**

Comptroller General.  
 "Institutions and entities that are being monitored." November 2009.  
[http://www.contraloria.gob.gt/i\\_docs/nom\\_audgub\\_nov09.pdf](http://www.contraloria.gob.gt/i_docs/nom_audgub_nov09.pdf)

Héctor Herrera, Executive secretary of Guatemalan Standards Commission (Comisión Guatemalteca de Normas -COGUANOR-), interviewed by author, Nov. 13 2010, Guatemala, Guatemala, written record. "Standards in health care".

Ajín, Doris.  
 "Workers of the General Accounting involved in the case Fraijanes II".  
 El Periódico Guatemala, Country, Sept. 22, 2010.  
<http://www.elperiodico.com.gt/es/20100922/pais/176107>

Nuestro Diario.  
 "Catches in the Comptroller General".  
 Nuestro Diario, Digital, 2010.  
<http://media.nuestrodiario.com/video/66UHYOB37BM5/Capturas-en-la-Contraloria-General-de-Cuentas-de-la-Naci%C3%83%C2%B3n>

**100:** Business inspections by the government to ensure that public health standards are being met 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 to ensure public health standards are met 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 to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

There are serious obstacles to the effectiveness of the Ministry of Environment. It doesn't have adequate funds, and it acts according to political influences.

**References:**

"Who does something to prevent air pollution in the city?"

El Periódico Guatemala, Opinion, Aug. 26, 2010.

<http://www.elperiodico.com.gt/es/20100826/opineusted/172094/>

Ramírez, Alberto.

"Ministry of Environment Fine City Mayor".

Prensa Libre, Nationals, July 20, 2010.

[http://www.prensalibre.com/noticias/Ministerio-multa-comuna\\_0\\_301769846.html](http://www.prensalibre.com/noticias/Ministerio-multa-comuna_0_301769846.html)

**100:** Business inspections by the government to ensure that public environmental standards are being met 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 to ensure public environmental standards are met 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 to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

There are a few entities in charge of inspections. Inspections are soft and limited.

**References:**

Ministerio de Gobernación.

"Security commissions".

Ministerio de Gobernación. Accessed on Oct. 28, 2010. [http://www.mingob.gob.gt/index.php?option=com\\_content&view=article&id=64:comisiones-de-seguridad&catid=1:comisiones-de-seguridad-ciudadana-csc](http://www.mingob.gob.gt/index.php?option=com_content&view=article&id=64:comisiones-de-seguridad&catid=1:comisiones-de-seguridad-ciudadana-csc)

Revista GTCIT.

"The Department of Labor Inspection oversees that businesses comply with the law".

Revista GTCIT, Magazine, 2010.

<http://www.gtcit.com/publicaciond.php?PublicacionId=16556> <=es

**100:** Business inspections by the government to ensure that public safety standards are being met 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 to ensure public safety standards are met 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 to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

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Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

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## 6.1. ~~60~~ Anti-Corruption Law

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73. Is there legislation criminalizing corruption?

89

73a. In law, attempted corruption is illegal.

Yes | **No**

**Comments:**

In the Guatemalan criminal law, the attempt itself is a criminal liability. The issue is that under Guatemalan law there is no crime of corruption, i.e. there is no penalty for corruption.

"The UN Commission against Impunity in Guatemala (CICIG) has stressed the need to incorporate the crime of corruption to the bill to seize assets of organized crime." (La Nación).

**References:**

Código Penal, Decreto número 17-73, 5 de julio de 1973. (Penal Code, Decree No. 17-73, July 5, 1973). Book I, Title VI, Chapter II, Articles 63, 64.

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-penal>

La Nación.

"Organized anti-crime legislation".

Mundo, Oct. 21, 2010.

<http://161.58.182.53/2010-08-25/Mundo/NotasSecundarias/Mundo2496532.aspx>

**Yes:** A YES score is earned if corruption laws include attempted acts.

**No:** A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

**Yes** | No

**References:**

Código Penal, Decreto número 17-73, 5 de julio de 1973. (Penal Code, Decree No. 17-73, July 5, 1973).

Book II, Title VI, Chapter IV, Article 261. "Whoever draws an unfair profit or by defraud obliges another, violently, to sign, execute, execute, destroy or deliver a document, to enter into an obligation or condone or waive any right, shall be punished with imprisonment of one to six years."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-penal>

**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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

**References:**

Código Penal, Decreto número 17-73, 5 de julio de 1973. (Penal Code, Decree No. 17-73, July 5, 1973).  
Book II, Title XIII, Chapter III, Article 442. "Active Bribery. Whoever, in exchange of gifts, presents, offers or promises will try to bribe a public official or employees shall be liable to the same penalties that may correspond to the bribed."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-penal>

**Yes:** A YES score is earned if offering a bribe is illegal.

**No:** A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

**References:**

Código Penal, Decreto número 17-73, 5 de julio de 1973. (Penal Code, Decree No. 17-73, July 5, 1973).  
Book II, Title XIII, Chapter III, Article 439. "Passive bribery. The public official or employee who requests or receives, either directly or through an intermediary, a gift or present, or accepts an offer or promise to perform an act concerning the exercise of his office or employment, or to refrain from an act that ought to practice, will be punished with imprisonment of one to five years and a fine of 100-3,000 quetzales (US\$13-396)".

(Penas de multa. Decreto 2-96. 1996.)

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-penal>

**Yes:** A YES score is earned if receiving a bribe is illegal.

**No:** A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

**Comments:**

"Bribery or corruption, both active and passive, are crimes in Guatemala, regardless of who is involved. If this is a diplomat accredited to the government of Guatemala, he/she cannot be put on trial, but the Government of Guatemala may ask him/her to leave the country." (Linares, interview).

Bribing a foreign official is illegal by a new law reform on Penal Code, 442bis, but no cases have been investigated.

**References:**

Código Penal, Decreto número 17-73, 5 de julio de 1993. (Penal Code, Decree No. 17-73, July 5, 1973). Part II, Title XIII, Chapter III, Articles 439 to 442 and 442bis.

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-penal>

International Commission Against Impunity in Guatemala (CICIG), "Anti-corruption", Sept. 16, 2009, P. 7.  
[http://cicig.org/uploads/documents/reforma\\_institucional/18\\_CICIG\\_anticorruccion.13.05.2009.pdf](http://cicig.org/uploads/documents/reforma_institucional/18_CICIG_anticorruccion.13.05.2009.pdf)

José Piche, Judge of first criminal instance, Judiciary Branch, interview by author, Dec. 2, 2010, Guatemala, Guatemala. (written recording). "Anti-Corruption Law".

\*Luis Felipe Linares, Adjunct secretary for Association of Research and Social Studies (Asociación de investigación y estudios sociales -ASIES-, former Minister of labor and expert on municipal affairs, interview by author, November 15, 2010, Guatemala, Guatemala. (written recording). "Political Financing Transparency and Anti-Corruption Law."

Editorial.

"Illicit enrichment".

El Periódico Guatemala, Opinion, Jan. 7, 2010.

<http://www.elperiodico.com.gt/es/20100107/opinion/131147>

Organization of American States.

"Inter-American convention against corruption".

March 29, 1996.

<http://www.oas.org/juridico/english/treaties/b-58.html>

Organization of American States.

"B-58: Inter-American convention against corruption".

Accessed on Nov. 16, 2010.

<http://www.oas.org/juridico/english/sigs/b-58.html>

**Yes:** A YES score is earned if bribing a foreign official is illegal.

**No:** A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes

No

**References:**

Código Penal, Decreto número 17-73, 5 de julio de 1973. (Penal Code, Decree No. 17-73, July 5, 1973). Book II, Title XIII, Chapter IV, Article 447. "Misappropriation. The public official or employee who gives funds or administers an application other than those destined shall be punished by a fine of 100-1,000 quetzales (US\$13-132)."

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-penal>

**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.

73g. In law, using confidential state information for private gain is illegal.

Yes

No

**References:**

Código Penal, Decreto número 17-73, 5 de julio de 1973. (Penal Code, Decree No. 17-73, July 5, 1973). Book II, Title XIII, Chapter II, Article 422. "Disclosure of secrets. The public official or employee who reveals or facilitates the disclosure of facts, acts or documents of which they have knowledge by virtue of office and which must remain secret, shall be punished by a fine of 200-2,000 Quetzales (US\$26-264)"

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-ordinarias/codigo-penal>

**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.

73h. In law, money laundering is illegal.

Yes | No

**References:**

Ley contra el lavado de dinero u otros activos, Decreto número 67-2001, 28 de noviembre de 2001. (Law against money or other assets, Decree number 67-2001, Nov. 28, 2001). Chapter 1, Article 1. "Purpose of the Act. This law aims to prevent, control, monitor and punish money laundering or other assets from the commission of any crime, and establishes the rules for this purpose."

<http://www.secmca.org/LEGISLACION/GT/CLDOAGuatemala.pdf>

**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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

**References:**

Ley contra la delincuencia organizada, Decreto NO. 21-2006. 19 de julio de 2006. (Law against Organised Crime, Decree NO. 21-2006. July 19, 2006). Título I, Capítulo I, Artículo 1. "Purpose and nature. This Act is to establish the criminal conduct attributable to the members and / or participants of criminal organizations, the establishment and regulation of special methods of investigation and prosecution, as well as all measures to prevent, combat, disrupt and eradicate organized crime in accordance with the provisions of the Constitution of the Republic, international treaties signed and ratified by Guatemala, and ordinary laws."

<http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20Leyes/2006/pdfs/decretos/D02006.pdf>

**Yes:** A YES score is earned if organized crime is illegal.

**No:** A NO score is earned if this is not illegal.

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## 6.2. Anti-Corruption Agency or Equivalent Mechanisms

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74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

**References:**

Fiscalía de Sección contra la Corrupción, Acuerdo número 3-99, 28 de diciembre de 1999. (Section Prosecutor against Corruption, Agreement No. 3-99, Dec. 28, 1999).

Article 1. "investigate and prosecute crimes constituting acts of corruption in which public servants are involved."  
<http://www.accionciudadana.org.gt/Documentos/monitoreofiscalia.pdf>

**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.

## 75. Is the anti-corruption agency effective?

56

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

### References:

Ley orgánica del Ministerio Público, Decreto número 40-94, 3 de Mayo de 1994. (Organic law of public ministry, Decree 40-94, May 3, 1994).

Title I, Chapter 1, Article 3. "Autonomy. The Public Prosecutor shall act independently, and in compliance with the duties assigned to by law, without involvement of any of the branches of government or authority, except as provided in this law."

[http://www.oas.org/juridico/mla/sp/gtm/sp\\_gtm-mla-leg-publico.pdf](http://www.oas.org/juridico/mla/sp/gtm/sp_gtm-mla-leg-publico.pdf)

**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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

### Comments:

The former Commissioner of International Commission against Impunity (CICIG) said he gave some instructions to the Executive Branch to change the Prosecutor nominated by the same Executive Branch. So, the Prosecutor is influenced and he has much discretionary power in his job.

### References:

Ugaz, José.

"Risk map of Ministry Public".

Coalition for transparency. 2004.

<http://www.accionciudadana.org.gt/Documentos/riesgomp.pdf>

Carlos Castresana, interview by Prensa Libre.

"There was a plot to kill me". Oct. 24, 2010, transcript, Prensa Libre, Guatemala.

[http://www.prensalibre.com/noticias/trama-matarme\\_0\\_359364068.html](http://www.prensalibre.com/noticias/trama-matarme_0_359364068.html)

**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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

There is a relevant justification, but the former Commissioner of the Commission against Impunity (CICIG) presented his resignation for putting pressure on the Guatemalan Government. Two days later, the Executive Branch removed the prosecutor.

**References:**

Ugaz, José.

"Risk map of Ministry Public".

Coalition for transparency. 2004.

<http://www.accionciudadana.org.gt/Documentos/riesgomp.pdf>

Carlos Castresana, interview by Prensa Libre.

"There was a plot to kill me". Oct. 24, 2010, transcript, Prensa Libre, Guatemala.

[http://www.prensalibre.com/noticias/trama-matarme\\_0\\_359364068.html](http://www.prensalibre.com/noticias/trama-matarme_0_359364068.html)

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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

In Guatemala impunity is 99.75 percent. It's a serious number and it's mentioned by all public servants. But CICIG is doing a great job and it's fighting against impunity and criminal organizations.

**References:**

Hernández, Manuel.

"Conrado Reyes: My goal is to double or triple the results to date".

Siglo XXI.com Guatemala, National, May 26, 2010.

<http://www.sigloxxi.com/nacional.php?id=11603>

Altolaguirre, Marta.

"Reasonable doubt".

El Periódico Guatemala, Opinion, May 26, 2010.

<http://www.elperiodico.com.gt/es/20101026/opinion/180352/>

Valladares, Claudia.

"The effectiveness of persecuting criminal offenses; the special prosecutor against intellectual property".

(Degree, University of San Carlos de Guatemala, 2009)

[http://biblioteca.usac.edu.gt/tesis/04/04\\_7938.pdf](http://biblioteca.usac.edu.gt/tesis/04/04_7938.pdf)

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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The International Commission against Impunity in Guatemala -CICIG- and the Public Ministry do not have enough resources. There are 300,000 reported crimes, of which the Public Ministry (MP) is able to bring charges in 11,000; and of these the judiciary is capable of passing sentence on 1,100. That is a figure of 99.75 percent impunity and 0.25 percent justice.

**References:**

Carlos Castresana, interview by La Nación,  
"There was a plot to kill me",  
Madrid, Spain, Oct. 24, 2010, transcript by Prensa Libre, Guatemala.  
[http://www.prensalibre.com/noticias/trama-matarme\\_0\\_359364068.html](http://www.prensalibre.com/noticias/trama-matarme_0_359364068.html)

Altolaguirre, Marta.  
"Reasonable doubt".  
El Periódico Guatemala, Opinion, May 26, 2010.  
<http://www.elperiodico.com.gt/es/20101026/opinion/180352/>

Acuña, Claudia.  
"Defenders are not enough".  
Prensa Libre, Justice, Oct. 3, 2010.  
[http://www.prensalibre.com/noticias/justicia/Defensores-suficientes\\_0\\_346765337.html](http://www.prensalibre.com/noticias/justicia/Defensores-suficientes_0_346765337.html)

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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The MP worked in 2010 with the same budget as in 2009, which is Q754 million (US\$99.5 million). So it's regular, but insufficient.

**References:**

Pérez, Rodrigo.  
"Serious deficiencies facing the Attorney General to protect informants".  
Siglo XXI.com Guatemala, National, Feb. 8, 2010.  
<http://www.sigloxxi.com/nacional.php?id=2100>

Política de Guatemala.  
"The MP needs funds to sustain progress".  
Jan. 23, 2010.  
<http://www.politicagt.com/el-mp-necesita-fondos-para-sostener-avances/>

**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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

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

**Comments:**

At times the reports do not seem to be true.

**References:**

Carrera, Fernando.  
"CICIG: Autonomy and Supervision".  
El Periódico Guatemala, Opinion, Oct. 21, 2010.  
<http://www.elperiodico.com.gt/es/20101021/opinion/179943/>

Woltke, Gabriel.  
"CICIG before an incredulous population".  
Revista Y qué, September 2010.  
<http://www.revistayque.com/v1/analisis/800-la-cicig-ante-una-poblacion-incredula>

**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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

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

**Comments:**

Public Ministry funds are insufficient. Another problem is corruption.

**References:**

AFP agency.  
"UN Commissioner calls on Guatemala Congress on impunity laws".  
Prensa Libre, Aug. 12, 2010.  
[http://www.prensalibre.com/noticias/politica/dall-anese-cicig-congreso\\_0\\_315568627.html](http://www.prensalibre.com/noticias/politica/dall-anese-cicig-congreso_0_315568627.html)

Orozco, Andrea.  
"Colom formally requested the extension of CICIG, UN agrees".  
Diario La Hora, Nationals, Sept. 21, 2010.  
<http://www.lahora.com.gt/notas.php?key=73595&fch=2010-09-21>

**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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

For the last two years, the Public Ministry -MP- and International Commission against Impunity in Guatemala -CICIG- have worked together. MP cooperates with CICIG and starts criminal investigations.

**References:**

Galeano, Gladis.

"CICIG MP guard case evidence in the OJ Fraijanes II".

El Periódico Guatemala, Country, Sept. 18, 2010.

<http://www.elperiodico.com.gt/es/20100918/pais/175467/>

Ortiz, Gerson.

"Musa catches Case involving same band as in Case Rosenberg".

Diario La Hora, Justice, Sept. 22, 2010.

<http://www.lahora.com.gt/notas.php?key=73677&fch=2010-09-22>

**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.

---

## 76. Can citizens access the anti-corruption agency?

25

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The investigation hardly yields a decision within three months, or within six months when it's extended.

**References:**

Fuentes, Otto.

"Analysis of article 324 bis criminal procedure code, as judicial control and the need that the term of the site be extended". (Degree, University of San Carlos de Guatemala, 2007).

**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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

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

**Comments:**

There's no legislation about this topic. The Organized Crime Act gives special protection to those who have collaborated in the investigation of a crime or criminal prosecution, but only on criminal facts. However, in most state institutions there are telephone numbers and electronic addresses where complaints can be lodged.

**References:**

Lara, Julio.  
"Protected witness dies of apparent shooting".  
Prensa Libre, Nationals, Oct. 24, 2010.  
[http://www.prensalibre.com/noticias/Testigo-prottegido-perece-baleado\\_0\\_359364076.html](http://www.prensalibre.com/noticias/Testigo-prottegido-perece-baleado_0_359364076.html)

Valenzuela, Felipe.  
"The country of the forbidden".  
Siglo XXI.com, Opinion, The agile mind, Oct. 25, 2010.  
<http://www.sigloxxi.com/opinion.php?id=22047>

**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.

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60  
6.3. Judicial Independence, Fairness, and Citizen Access to  
Justice

---

77. Is there an appeals mechanism for challenging criminal judgments?

50

77a. In law, there is a general right of appeal.

Yes | No

**References:**

Código procesal penal, Decreto número 51-92, 28 de Septiembre de 1992. (Criminal Procedure Code, Decree No. 51-92, Sept. 28, 1992).

Book III, Title V, Chapter 1, Article 415.

<http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnálisisDocumentaciónJudicial/cds/CDs%20leyes/2004/PDFs/Codigos/C>

**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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Deadlines are respected only in very important cases.

**References:**

Instituto de la Defensa Pública Penal.

"Control of the charge".

Accessed on Oct. 26, 2010.

<http://www.idpp.gob.gt/.../Control%20de%20la%20Acusacion.pdf>

Fuentes, Otto.

"Analysis of article 324 bis criminal procedure code, as judicial control and the need that the term of the site be extended". (Degree, University of San Carlos de Guatemala, 2007).

Accessed on Oct. 26, 2010.

**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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

The appeal involves high costs, which most middle-class citizens can't afford.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of the second instance, that means appeal, are high."

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

**25:**

**0:** The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

---

## 78. In practice, do judgments in the criminal system follow written law?

50

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

### Comments:

There are some exceptions when there is a political issue.

### References:

Ortiz, Gerson.  
"Prisons are filled with minor criminals".  
Diario La Hora, Reportage, Jan. 4, 2010.  
<http://www.lahora.com.gt/notas.php?key=60526>

Fuentes, Mario.  
"Executive business".  
El Periódico Guatemala, Opinion, Aug. 23, 2010.  
<http://www.elperiodico.com.gt/es/20100823/opinion/171206/>

**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.

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## 79. In practice, are judicial decisions enforced by the state?

50

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

**Comments:**

It's almost a normal practice that all civil servants accused of crimes, immediately go to hospital instead of jail.

**References:**

R. González, J.M. Castillo and A. Pérez.  
"Rep. Rubén Darío Morales evades prison and goes to hospital".  
El Periódico Guatemala, Cover, Nov. 27, 2009.  
<http://www.elperiodico.com.gt/es/20091127//126006>

Orellana, Gabriel.  
"In conformity with the law".  
Siglo XXI.com Guatemala, Opinion, Vox signata, Oct. 2, 2010.  
<http://www.sigloxxi.com/opinion.php?id=20411>

**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.

---

80. Is the judiciary able to act independently?

81

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

**References:**

Código procesal penal, Decreto número 51-92, 28 de Septiembre de 1992. (Criminal Procedure Code, Decree No. 51-92, Sept. 28, 1992).

Book I, Title I, Chapter I, Article 7. "Independence and impartiality. The trial and determination of criminal cases will be held by impartial and independent judges, subject only to the Constitution and the law. Criminal enforcement will be headed by sentencing judges.

For no reason other authorities of the State may assume the prosecution of pending cases or the reopening of the already completed cases. No one can be tried, sentenced, punished or subjected to a correction, but by the courts designated by law."

<http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2004/PDFs/Codigos/C>

**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 includes 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.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

Judges sometimes are influenced in their judgments by political orders. Some judges have been demoted or relocated up to nine times during a trial.

National-level judges are commonly influenced by violence or pay cuts, relocations and threats.

**References:**

Ortiz, Gerson.  
"Trading in influence or favors payment of appointments in the OJ".  
Diario La Hora, Reportage, June 1, 2010.  
<http://www.lahora.com.gt/notas.php?key=67747&fch=2010-06-01>

Cerigua.

"Judge to judge former President Alfonso Portillo is inhibited from hearing the case".  
Noticias de Guatemala, National, June 28, 2010.

<http://noticias.com.gt/nacionales/20100628-juez-que-juzgara-a-ex-presidente-alfonso-portillo-se-inhibe-de-conocer-el-caso.html>

**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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | No

**References:**

The Criminal Administrative Management Center is responsible for the equitable distribution of criminal cases. Designa al Centro Administrativo de Gestión Penal como dependencia encargada de llevar a cabo los procedimientos de distribución equitativa, de designaciones para conocimiento en juicio de delitos de los diferentes Juzgados de Primera Instancia del Municipio de Guatemala, Acuerdo número 54-2003, 10 de diciembre de 2003. (Administrative Center of Penal Management is the unit responsible of the equitable distribution of cases (...), Agreement No. 54-2003, Dec. 10, 2003).  
Article 1.

<http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnálisisDocumentaciónJudicial/cds/CDs%20Leyes/2004/PDFs/Acuerdos/03.pdf>

**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.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

**References:**

Constitución Política de la República de Guatemala, 31 de mayo de 1985. (Constitution of the Republic of Guatemala, May 31, 1985). Title IV, Chapter IV, Article 208.

<http://www.mintrabajo.gob.gt/org/leyes-y-convenios/leyes-constitucionales/document.2008-06-20.7329559842>

Ley de la carrera judicial, Decreto número 41-99, 27 de octubre de 1999. (Judicial career law, Decree No. 41-99, Oct. 27, 1999). Título I, Article 3.

**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.

## 81. Are judges safe when adjudicating corruption cases?

0

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | **No**

### Comments:

Specifically judges have not been killed, but they have been badly attacked. The daughter of a judge was murdered.

### References:

"Asking judges to step up security".  
Siglo XXI.com Guatemala, Opinion, Vox signata, March 24, 2010.  
<http://www.sigloxxi.com/nacional.php?id=5951>

Magistrados de la Corte de Constitucionalidad. "publicly denounce the threats, interference and violation of the guarantee of operational independence of the Court."  
Paper presented to press, Guatemala, Guatemala, May 14, 2010.  
[http://www.cc.gob.gt/index.php?option=com\\_content&view=article&id=207:conferencia](http://www.cc.gob.gt/index.php?option=com_content&view=article&id=207:conferencia)

R. González and J.M. Castillo.  
"Labor Judge Assassinated".  
El Periódico Guatemala, Cover, Aug. 4, 2009.  
<http://www.elperiodico.com.gt/es/20090804/pais/109237/>

González, Rosemary.  
"Man attacked in San Cristobal was the son of judge".  
El Periódico Guatemala, Cover, Oct. 22, 2010.  
<http://www.elperiodico.com.gt/es/20101022/pais/179999>

**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. YES is a positive score.

**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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | **No**

### Comments:

A woman was attacked when she entered her car on the 5th. Avenue and 15 Street in Zone 9, Guatemala City. It was Flor de María Gil Ovalle, 64, judge at Twelfth Court of Labor and Social Welfare.

An official part of the National Civil Police (PNC) it can be read that according to witnesses who observed the incident, while the red marking lights, a young man on a motorcycle approached the victim and knocked the glass on the right. At the same time, another came from the left side and without a word he began shooting. The report states that she received 11 bullet wounds in the body, and 12 automatic weapon warheads were found. The judge was presumed to head home to the Tower of Courts.

According to researchers at the National Civil Police (PNC), the judge had opened a case against a domestic worker for the crime of theft. In the judiciary headed by Gil Ovalle, other cases include the National Electrification Institute (INDE), the Supreme Electoral Tribunal (TSE), and National Port.

### References:

"Asking judges to step up security".  
Siglo XXI.com Guatemala, Opinion, Vox signata, March 24, 2010.  
<http://www.sigloxxi.com/nacional.php?id=5951>

Magistrados de la Corte de Constitucionalidad. "publicly denounce the threats, interference and violation of the guarantee of operational independence of the Court."

Paper presented to press, Guatemala, Guatemala, May 14, 2010.

[http://www.cc.gob.gt/index.php?option=com\\_content&view=article&id=207:conferencia](http://www.cc.gob.gt/index.php?option=com_content&view=article&id=207:conferencia)

R. González and J.M. Castillo.

"Labor Judge Assassinated".

El Periódico Guatemala, Cover, Aug. 4, 2009.

<http://www.elperiodico.com.gt/es/20090804/pais/109237/>

**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. YES is a positive score.

**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.

## 82. Do citizens have equal access to the justice system?

46

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

### References:

Comisión presidencial contra la discriminación y el racismo contra los pueblos indígenas de Guatemala.

"Judge, charged with misconduct before the Disciplinary Board of the judiciary and the crime of discrimination". Oct. 26, 2010.

[http://www.codisra.gob.gt/index.php?option=com\\_content&view=article&id=41:juez-de-paz-acusado-por-faltas-ante-la-junta-disciplinaria-del-organismo-judicial-y-del-delito-de-discriminacion-hacia-un-subalterno&catid=16:noticias](http://www.codisra.gob.gt/index.php?option=com_content&view=article&id=41:juez-de-paz-acusado-por-faltas-ante-la-junta-disciplinaria-del-organismo-judicial-y-del-delito-de-discriminacion-hacia-un-subalterno&catid=16:noticias)

Velásquez Nimatuj, Irmalicia. "

Say no to Candelaria".

El Periódico Guatemala, Opinion, March 29, 2010. 2010. <http://www.elperiodico.com.gt/es/20100329/opinion/143955>

Ramírez, Alberto.

"Indigenous eradicate racism claim".

Prensa Libre, Politics, March 2, 2010.

[http://www.prensalibre.com/noticias/politica/Indigenas-reclaman-erradicar-racismo\\_0\\_228577145.html](http://www.prensalibre.com/noticias/politica/Indigenas-reclaman-erradicar-racismo_0_228577145.html)

**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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

### Comments:

Women have to use intermediaries to access justice. They suffer serious discrimination because of their condition, race and education level.

**References:**

Vega, Melissa.  
 "OJ should invest in the devolution of justice".  
 Diario La Hora, Departmental, Aug. 21, 2010.  
<http://www.lahora.com.gt/notas.php?key=72102&fch=2010-08-21>

Camey, Ignacio.  
 "Women and their access to justice".  
 La Noticia, July 7, 2010.  
<http://www.periodicolanoticia.com/opinion09072010/4177-mujer-y-acceso-a-la-justicia>

**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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

**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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

**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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

**References:**

Ley del servicio público de defensa penal, Decreto número 129-97, 5 de diciembre de 1997. (Public Service Act for Criminal Defense, Decree No. 129-97, Dec. 5, 1997). Title I, Chapter I, Article 1.  
[http://www.aidef.org/downloads/Ley\\_del\\_Servicio\\_P%C3%BAblico\\_de\\_Defensa\\_Penal.pdf](http://www.aidef.org/downloads/Ley_del_Servicio_P%C3%BAblico_de_Defensa_Penal.pdf)

**Yes:** A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

**No:** A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

**Comments:**

There are insufficient public defenders — only 25 in Guatemala City, the capital. They have 15 audiences daily.

**References:**

"Public Defense, a system of impunity".  
 Diario La Hora, National, Sept. 11, 2010.  
<http://www.lahora.com.gt/notas.php?key=72102&fch=2010-08-21>

Acuña, Claudia.  
 "Defenders are not enough".  
 Prensa Libre, News, Justice, Oct. 3, 2010.  
[http://www.prensalibre.com/noticias/justicia/Defensores-suficientes\\_0\\_346765337.html](http://www.prensalibre.com/noticias/justicia/Defensores-suficientes_0_346765337.html)

**100:** State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

**50:** State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished 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 impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**Comments:**

Most middle-class citizens cannot afford the cost of trials.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of the second instance, that means appeal, are high."

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of the second instance, that means appeal, are high."

**100:** In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

**0:** The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**Comments:**

Small retail businesses also seek redress in courts.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of the second instance, that means appeal, are high."

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of the second instance, that means appeal, are high."

**100:** In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

**0:** The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

**Comments:**

The access is really difficult for some people (especially in some regions in the north-west), and the costs of travel are high.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of the second instance, that means appeal, are high."

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of the second instance, that means appeal, are high."

**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.

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## 6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

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83. Is the law enforcement agency (i.e. the police) effective?

33

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

**References:**

Ortiz, Gerson.  
"Cambios no terminan de cuajar".  
Diario La Hora, Nationals, Sept. 2, 2008.  
<http://www.lahora.com.gt/notas.php?key=36118&fch=2008-09-02>

Castillo, Juan.  
"Expectation for appointment of new chief of Public Prosecutions".  
El Periódico Guatemala, Country, May 25, 2010.  
<http://www.elperiodico.com.gt/es/20100525/pais/153351/>

**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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

**Comments:**

Last year the Judiciary had a budget cut of Q100 million (US\$13.2 million), which has led to suspending the creation of extended jurisdiction courts and ordinary courts, and to not completing several projects in the mobile courts.

**References:**

Ortiz, Gerson.

"No funds".

Diario La Hora, Nationals, June 26, 2010.

<http://www.lahora.com.gt/notas.php?key=51148&fch=2009-06-26>

Ortiz, Gerson.

"Cambios no terminan de cuajar".

Diario La Hora, Nationals, July 27, 2010.

<http://www.lahora.com.gt/notas.php?key=70780&fch=2010-07-27>

Diario de Centroamérica.

"Judicial budget requests refund".

Dequate.com, Sept. 3, 2009.

<http://www.dequate.com/artman/publish/noticias-guatemala/autoridades-judiciales-piden-restitucion-de-presupuesto.shtml>

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.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

The law enforcement agency is not protected, because the General Attorney is nominated by the executive branch and magistrates and judges are nominated by members of Congress.

**References:**

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of appeals are high."

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of appeals are high."

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.

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## 84. Can law enforcement officials be held accountable for their actions?

54

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

### Comments:

Citizens can bring their complaints to the Office of Professional Responsibility, which investigates them.

### References:

The Office of Professional Responsibility is responsible for investigating the conduct of police officers.

Reglamento disciplinario de la Policía Nacional Civil, Acuerdo gubernativo número 420 – 2003, 18 de Julio de 2003. (Disciplinary regulations of the National Civil Police, Government Agreement number 420 – 2003, July 18, 2003). Title IV, Chapter XIII, Article 98. Article 98.

[http://200.35.163.189/iaipmingob/images/c/ce/POLICIANACIONAL\\_POLICIANACIONAL\\_ACUERDO\\_GUBERNATIVO\\_403-2003\\_REGLAMENTO\\_DISCIPLINARIO.pdf](http://200.35.163.189/iaipmingob/images/c/ce/POLICIANACIONAL_POLICIANACIONAL_ACUERDO_GUBERNATIVO_403-2003_REGLAMENTO_DISCIPLINARIO.pdf)

**Yes:** A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

**No:** A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

There are trials that last two years. Deadlines are not respected.

### References:

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of appeals are high."

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of appeals are high."

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.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

**Comments:**

The Office of Professional Responsibility is responsible for investigating the conduct of police officers and bringing charges to the Public Ministry and Disciplinary Tribunal of the National Police.

**References:**

The Office of Professional Responsibility is responsible for investigating the conduct of police officers.

Reglamento disciplinario de la Policía Nacional Civil, Acuerdo gubernativo número 420 – 2003, 18 de Julio de 2003. (Disciplinary regulations of the National Civil Police, Government Agreement number 420 – 2003, July 18, 2003). Title IV, Chapter XIII, Article 98.

[http://200.35.163.189/lajpmingob/images/c/ce/POLICIANACIONAL\\_POLICIANACIONAL\\_ACUERDO\\_GUBERNATIVO\\_403-2003\\_REGLAMENTO\\_DISCIPLINARIO.pdf](http://200.35.163.189/lajpmingob/images/c/ce/POLICIANACIONAL_POLICIANACIONAL_ACUERDO_GUBERNATIVO_403-2003_REGLAMENTO_DISCIPLINARIO.pdf)

**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 may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

**No:** A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

**Comments:**

The Office of Professional Responsibility (OPR) of the National Civil Police is investigating 59 officers who have been accused of the crime of passive bribery.

**References:**

Bonillo, Cristina.

"More complaints against the police".

Prensa Libre, News, Justice, July 27, 2010.

[http://www.prensalibre.com.gt/noticias/denuncias-policias\\_0\\_305969456.html](http://www.prensalibre.com.gt/noticias/denuncias-policias_0_305969456.html)

Alvarado, Hugo.

"59 Police officers investigating allegations of bribery".

San Pedro Ayampu official site, Sept. 8, 2009.

[http://www.sanpedroayampuc.net/index.php?option=com\\_content&view=article&id=70:policia&catid=1:noticias-spa&Itemid=55](http://www.sanpedroayampuc.net/index.php?option=com_content&view=article&id=70:policia&catid=1:noticias-spa&Itemid=55)

**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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

**Comments:**

Enforcement officials are not immune.

**References:**

Ley de la Policía Nacional Civil, Decreto número 11-97, 4 de febrero de 1997. (Law of the Civil National Police, Decree No. 11-97, Feb. 4, 1997). Chapter VI, Article 42. "System of Criminal Procedure .

Reglamento disciplinario de la Policía Nacional Civil, Acuerdo gubernativo número 420 – 2003, 18 de Julio de 2003. (Disciplinary regulations of the National Civil Police, Government Agreement number 420 – 2003, July 18, 2003). Title IV, Chapter I to XIII, Articles 45 to 87. "Disciplinary administrative procedure."

[http://200.35.163.189/iajpmingob/images/c/ce/POLICIANACIONAL\\_POLICIANACIONAL\\_ACUERDO\\_GUBERNATIVO\\_403-2003\\_REGLAMENTO\\_DISCIPLINARIO.pdf](http://200.35.163.189/iajpmingob/images/c/ce/POLICIANACIONAL_POLICIANACIONAL_ACUERDO_GUBERNATIVO_403-2003_REGLAMENTO_DISCIPLINARIO.pdf)

**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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

**Comments:**

Although the police officers have been caught and are under investigation, there have been no convictions yet.

**References:**

Bonillo, Cristina.

"More complaints against the police".

Prensa Libre, News, Justice, July 27, 2010.

[http://www.prensalibre.com.gt/noticias/denuncias-policias\\_0\\_305969456.html](http://www.prensalibre.com.gt/noticias/denuncias-policias_0_305969456.html)

Alvarado, Hugo.

"59 Police officers investigated for allegations of bribery".

San Pedro Ayampu official site, Sept. 8, 2009.

[http://www.sanpedroayampuc.net/index.php?option=com\\_content&view=article&id=70:policia&catid=1:noticias-spa&Itemid=55](http://www.sanpedroayampuc.net/index.php?option=com_content&view=article&id=70:policia&catid=1:noticias-spa&Itemid=55)

Ricardo Recinos, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of appeals are high."

Claudia Guzmán, lawyer and public notary, interview by author, Oct. 26, 2010, Guatemala, Guatemala, transcript. "The costs of appeals are high."