



GUATEMALA

CAPITAL: Guatemala City

POPULATION: 14.0 million

GNI PER CAPITA (PPP): \$4,690

SCORES	2006	2010
ACCOUNTABILITY AND PUBLIC VOICE:	4.33	4.38
CIVIL LIBERTIES:	3.36	3.48
RULE OF LAW:	3.18	3.26
ANTICORRUPTION AND TRANSPARENCY:	3.21	3.33

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Anita Isaacs

INTRODUCTION

Guatemala's long history of political repression and instability culminated in nearly four decades of armed conflict (1960–96) that pitted leftist guerrillas against the army and paramilitary groups aligned with the economic elite and supported by the United States. Although peace accords signed in December 1996 brought the conflict to a close, Guatemala still faces monumental challenges in its quest to consolidate peace and build a firm democratic foundation. While economic growth accelerated prior to 2009, the country has yet to effectively address the entrenched poverty, inequality, and social exclusion that have marred it since the colonial era. Even the best-intentioned policymakers have been hard pressed to transform the comprehensive peace agreement into meaningful democratic reforms.

During much of the internal conflict, a series of military or military-dominated governments conducted violent counterinsurgency campaigns, the most brutal of which took place between 1979 and 1983 under the direction of Generals Lucas García and Efraín Ríos Montt. The country's truth commission, mandated to clarify the nature of wartime violence, concluded that the conflict constituted genocide. Indigenous civilians made up 83 percent of the roughly 200,000 casualties, with many perishing in massacres and scorched-earth tactics that destroyed more than 400 Mayan communities.

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The country's stark political and socioeconomic divisions continue to be substantially drawn along ethnic lines. Although Guatemala's indigenous groups, comprised mainly of speakers of Mayan languages, make up at least 45 percent of the population, they have been consistently excluded from mainstream economic, social, and political life. The gulf between the political elite and the indigenous population is one of the most profound challenges confronting Guatemalan democracy today.

There has been some gradual democratic progress. Following decades of turmoil, a new constitution enacted in 1985 paved the way for elected civilian rule in 1986. The 1996 peace agreement provided for the demobilization of the Guatemalan National Revolutionary Unity (URNG) guerrillas and their legalization as a political group. In addition to its thorough and damning catalogue of abuses, the truth commission issued a series of key reform recommendations designed to strengthen peace and democracy.

Nonetheless, the country continues to struggle with the war's brutal legacy. Former combatants enjoy virtual impunity for wartime human rights violations. Many former military officers moved from combat to crime, organizing criminal networks that operate at will. Increasingly fueled by the drug trade that has affected the entire region, local and transnational criminal groups—in which former military and police officers play an integral role—have captured parts of the Guatemalan state and fostered untenable levels of violence in society. The year 2008 was among the most violent in the country's history, with over 6,200 reported homicides. In addition to ordinary citizens, the victims included human rights defenders, union leaders, journalists, and judges working on cases of corruption and organized crime. Government countermeasures are constrained by insufficient political will and a major shortfall in human and material resources when compared with those at the disposal of criminal organizations.

The 2007 elections, which brought Álvaro Colom to the presidency, were reflective of Guatemala's progress as well as its problems. The voting was generally considered free and fair, peacefully replacing a probusiness government with a social democratic one. At the same time, the campaign was marred by the deaths of 50 people—including candidates, their family members, and supporters—along with numerous allegations of candidate ties to organized crime. Other aspects of governance are similarly conflicting. While the government opened wartime military archives to citizens, General Ríos Montt continues to enjoy immunity from prosecution thanks to his seat in Congress. A wide variety of civil society groups operate without government interference, but the state is unable to protect them from intimidation and violence. Since taking power, the Colom administration has demonstrated considerable resolve in improving governance practices. Nevertheless, due to both the magnitude of the country's problems and the weakness of national political institutions, the leadership faces an uphill battle.

ACCOUNTABILITY AND PUBLIC VOICE	4.38
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.25
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	3.00
CIVIC ENGAGEMENT AND CIVIC MONITORING	6.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.29

In the 2007 national elections, Álvaro Colom of the center-left National Unity of Hope (UNE) party won the presidency with nearly 53 percent of the vote in a runoff against retired general Otto Pérez Molina of the right-wing Patriotic Party (PP).¹ Colom and Pérez had won 28 and 24 percent in the first round, respectively; the winner would have needed more than 50 percent to avoid a runoff. Local and international observers applauded the free, fair, and competitive balloting, highlighting both the rapid tabulation of results and the swift and unequivocal concession speech by the losing candidate.² The positive outcome stemmed in part from a 2006 package of electoral reforms designed to enhance participation and fairness.³ A rural registration drive increased the voter rolls by more than 50 percent, and voter participation was facilitated by the establishment of 6,000 additional polling places. The resulting rural turnout figure of about 60 percent surpassed the urban turnout for the first time.⁴ Although the three largest parties received the bulk of media attention, with some 55 percent devoted to Colom during the runoff, observers commended the campaign coverage as mostly fair and objective, especially during the initial round.⁵

Despite the reforms, there were a number of problems with the electoral process. Voter registries were accurate for only 60 percent of the voters; in several instances the number of registered voters exceeded local population figures; and an estimated 20 to 30 percent of eligible Guatemalans were not officially registered (many did not even possess an official identity document, which was required to cast a ballot). Electoral authorities also allegedly permitted members of the police to cast ballots, violating the ban on voting by security forces.⁶ Meanwhile, new campaign finance regulations were undermined by the Supreme Electoral Tribunal's lack of oversight and enforcement capabilities. Roughly 40 percent of the parties competing in the 2007 elections did not provide the tribunal with their campaign budgets as required, and 12 percent did not submit final financial reports.⁷ Weak enforcement and oversight, indicative of an ongoing political resistance to the new rules, may also cloud the next elections, scheduled for 2011. Notably, a lack of funding, competition over contracts, and local political authorities' refusal to provide their civil registries have all made for delays in the adoption of a single identity card designed to guard against the current problems with alleged multiple and fraudulent voting.⁸

Although mostly free of fraud and voter intimidation, the 2007 elections were marred by political violence on a scale not witnessed since the 1985 elections, which were conducted in the midst of the internal conflict. A total of 61

acts of violence targeting political candidates and party officials were registered during 2006 and 2007. Attackers victimized UNE members on 16 separate occasions, killing eight people associated with the Colom campaign.⁹ While direct violence diminished during the runoff, the campaign degenerated from the earlier debate on programs and policy into a mudslinging contest in which the two sides traded accusations of ties to organized crime.¹⁰

Ultimately, political violence and negative campaigning trumped electoral reforms to depress voter turnout. In the first round, which included mayoral and congressional elections, turnout was 60 percent, a two-point increase from the corresponding 2003 figure. In the presidential runoff, turnout fell to 47 percent, marking a one-point drop from the previous election.¹¹

The 16 parties competing in the 2007 elections represented diverse interests and policy positions. Colom's victory, assisted by massive support from the rural indigenous poor, signaled a shift to the political left, in keeping with a broader Latin American trend. Breaking two barriers, an indigenous female candidate, Nobel Peace Prize winner Rigoberta Menchú, also competed for the presidency. Her disappointing seventh-place finish, with just over 3 percent of the vote, was attributed to her late entry into the race, at a point when Mayan politicians and the indigenous electorate had already committed to other candidates, and to a campaign strategy that at times appeared to take indigenous votes for granted.

The constitution and laws guarantee the independence of the three branches of government and delineate their respective functions, such as congressional budget oversight, executive veto power, and judicial responsibility to uphold the constitution and the rule of law. While the Colom administration has established a more productive working relationship with Congress, checks and balances between the two branches continue to be used more for obstructive political purposes than to ensure oversight and accountability. Legislative logjams, while less severe in recent years, have held up important bills on mining, the right of indigenous peoples to be consulted on matters affecting them, and the annual budget.

The weak institutionalization of political parties, which tend to serve merely as electoral vehicles, aggravates the dysfunctional relations between the branches. In the 2007 elections, Colom's UNE won 48 out of 158 seats, increasing its representation by a third. The center-right Grand National Alliance (GAN) followed with 37 seats, while the PP won 30 seats. Several smaller parties made up the remainder. These results have had little bearing on the structure of congressional coalitions. During the first year of the Colom administration alone, some 35 lawmakers defected from the parties with which they had run for election. Ten of the representatives who abandoned the UNE denounced excessive meddling in legislative affairs by the president and his wife, Sandra de Colom, who was seen as an unelected power broker with ambitions to run as the UNE presidential candidate in 2011.¹²

The state remains largely captive to organized criminal networks, including drug cartels. These networks are widely believed to have funded the campaigns

of several candidates in the 2007 elections and have also infiltrated the judiciary, where poorly paid judges are regularly exposed to bribes, intimidation, harassment, and violence. The police are similarly afflicted. The special counter-narcotics police force has been completely dismantled because of the high levels of penetration by organized crime, and in August 2009 the former head of the Criminal Investigation Division of the National Civilian Police was arrested and charged with trafficking one ton of cocaine.¹³

The civil service is considered one of the most incompetent in the region, scoring at half the regional average in a 2005 Inter-American Development Bank assessment.¹⁴ While the Colom administration has backed reforms of the 1968 civil service law, the proposed legislation continues to encounter resistance from a political class that regards civil service appointments as a valuable form of patronage.¹⁵

Unlike its predecessor, the Colom administration has sought to distance itself somewhat from the traditional economic oligarchy. Fewer members of the economic elite occupy key ministries, and certain legislative proposals have engendered bitter confrontations between the government and the private sector. Colom has picked his battles, however. He was perceived by some segments of civil society as having capitulated to the private sector in passing a watered-down munitions law, but the government stood up to the Chambers of Agriculture and Construction on enhanced regulation of the quality and distribution of fertilizers and control over infrastructure projects.¹⁶ While the latter two items are consistent with UNE pledges to promote equitable development and enhance transparency, reducing the preserve of traditional private sector actors that rely on backroom deals to secure contracts, the new policies could simply feed state corruption and foster a new economic elite that is more closely allied with the current administration.

Civil society organizations have played an increasingly prominent role in the country's political process. Operating mostly without legal constraints, civic organizations have prodded the Colom administration to make good on its promise to address the needs of poorer and marginalized groups, including the disabled, indigenous people, and women and children. However, these organizations are often heard but not listened to, and members of human rights, labor, and environmentalist groups figure disproportionately among the victims of the country's rampant violence (see Civil Liberties section).

The Colom administration has sent mixed signals regarding the role of the media. Constitutional guarantees of freedom of expression were bolstered by legislation approved in October 2008 that called for the protection of Guatemalan artists and diversity of artistic expression. The September 2008 passage of a long-overdue access to information law came on the heels of the signing of the Declaration of Chapultepec, in which the government agreed that official advertising could not be used, as it sometimes had been in the past, to reward or punish the media.¹⁷ In addition, the Guatemalan state does not hinder access to the internet. However, Mexican entrepreneur Ángel González

controls four of the country's six free-to-air television stations; the remaining two licenses are held by the Congress, which has yet to launch its channel, and the Mayan Linguistic Academy, whose station operates on a very irregular basis and does not receive the public funding it desperately requires. A journalist who complained of influence peddling between González and the Guatemalan political class was subject to a public campaign of harassment, both on television and on the radio stations that González controls.¹⁸ Furthermore, in February 2009, the government abruptly canceled all state advertising in the print media while either maintaining or increasing television allocations. It cited budgetary cutbacks for the decision, but the newspapers have appealed to the Inter-American Commission on Human Rights and the Inter American Press Association, suspecting a repetition of previous administrations' efforts to force fledgling and independent news organizations into bankruptcy.¹⁹

Alarming rates of violence against journalists have provoked self-censorship. Between 2006 and April 2009, six journalists were killed and another was abducted, and scores have faced attacks and threats while covering gangs and street violence, drug trafficking, organized crime, abuses dating to the civil war, and even the presidential campaign. Impunity for crimes against journalists prevails, making those based in rural areas understandably reluctant to cover sensitive stories; those who do frequently publish their work without bylines.²⁰

CIVIL LIBERTIES

3.48

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	1.88
GENDER EQUITY	3.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.50
FREEDOM OF CONSCIENCE AND BELIEF	5.33
FREEDOM OF ASSOCIATION AND ASSEMBLY	3.00

In recent years, endemic violence has seriously crippled Guatemala's progress in the realm of civil liberties. According to the human rights ombudsman, 2008 was the most violent year in the country's history, a startling claim given the genocidal proportions of the 1960–96 civil conflict. Homicide rates have increased by an estimated 137 percent over the past decade, and over 6,200 Guatemalans were murdered in 2008.²¹ The problem is exacerbated by impunity and state paralysis; for example, some 98 percent of all attacks on human rights defenders reportedly go unpunished.²²

While attacks on politicians ebbed following the violent electoral campaign, human rights defenders continue to operate in a climate of fear. The decline in attacks in 2007—to 195, from 277 in 2006—has proven temporary, as 220 assaults on human rights defenders were reported in 2008, and 257 were recorded between January and August 2009.²³

Defenders of social and economic rights, such as trade unionists and indigenous activists, are targeted most often, followed closely by those focusing on abuses committed during the armed conflict. Illegal and clandestine security organizations are presumed responsible for the vast majority of these crimes. They have infiltrated state institutions, including the police, the military, and political parties, severely crippling the state's willingness and ability to protect its citizens.²⁴ Complicating matters further, urban areas have been afflicted by gang-related violence, while rural Guatemala has suffered from an incursion of Mexican drug traffickers as well as private security forces hired by landowners and transnational corporations to repress indigenous community organizers engaged in land disputes. The government has done little to denounce, investigate, or prosecute this violence, and it tends to criminalize rural activists and protesters. There were 388 documented cases of arrest warrants issued for members of indigenous peasant communities involved in land disputes between 2004 and 2007.²⁵ In the northeastern Izabal region, a police raid in early 2008 claimed the life of peasant leader Mario Caal and led to the arrest of fellow activist Ramiro Choc. Charged with theft and usurpation of lands, Choc received an eight-year prison sentence in March 2009, while Caal's killers remain at large.²⁶

Reinforcing existing constitutional protections, legislation passed in October 2006 outlined the rehabilitative functions of prisons and defined inmate rights and responsibilities. Nonetheless, routine violations persist, including frequent excessive use of force by police against suspected criminals. Although Guatemala is a signatory to the UN Convention against Torture, there has been little effort to train the police in legal interrogation methods, strengthen legislation criminalizing torture, investigate its incidence, or sanction its perpetrators. The human rights ombudsman's office claims that within the criminal justice system, torture remains an acceptable means of securing evidence.²⁷ Inmates held in both the national penitentiary system and regional detention centers are regularly denied their legal and constitutional rights. Frequently detained for extended periods without trial, they tend to live in unsanitary conditions and are deprived of food, conjugal visits, medical attention, and access to education.²⁸ These conditions exacerbate prison violence, which often takes the form of clashes between rival street gangs that enjoy easy access to weapons smuggled in by guards.²⁹

The administrations of both Colom and his predecessor, Óscar Berger (2004–08), have adopted measures to ameliorate key aspects of the human rights situation. After a prolonged political battle, the International Commission Against Impunity in Guatemala (CICIG), headed by UN-appointed Spanish jurist Carlos Castresana, was established in August 2007. Initially granted a two-year mandate, the commission was tasked with investigating the structure, operations, and financing of illegal security groups and clandestine networks; promoting their dismantlement; investigating, prosecuting (in cooperation with the attorney general's office), and punishing crimes committed by their members; and recommending legal and institutional reforms designed to ensure the

permanent eradication of these networks. The CICIG has made small steps toward uprooting Guatemala's culture of impunity,³⁰ removing 1,700 police officers and 50 police chiefs with links to organized crime.³¹ It has also proposed and advocated for numerous legal reforms and pressured the state to prosecute in a number of high-profile cases. However, success remains dependent on the political will of those in other institutions, who do not always rule in the CICIG's favor or embrace its proposals.

The Colom government has also enacted important legal and institutional reforms, including stiff criminal penalties for crimes against women and legislation to stem human trafficking. The illicit trade has involved young women and children sold into prostitution, as well as children sold and sometimes stolen for adoption or even organ harvesting.³² Such concerns led the U.S. government to ban adoptions from Guatemala in 2008.

Among other measures, the Colom administration has secured passage of legislation regulating the possession and use of firearms, and extended the CICIG's mandate for a further two years. It also erected a human rights unit within the police force's Criminal Investigation Division and set up a Body for the Analysis of Attacks Against Human Rights Defenders under the auspices of the vice minister of security. The latter entity convenes representatives from the Interior Ministry, the police, and the intelligence services, as well as national and international nongovernmental organizations (NGOs), to develop a coordinated response. The human rights ombudsman's office (Procuraduría de los Derechos Humanos, or PDH) and the presidential Commission on Human Rights (COPREDEH), headed by a respected human rights defender, maintain their watchdog and advisory functions, and COPREDEH has enhanced the provision of police protection to threatened civil society activists.

These various initiatives have yet to ameliorate the troubled human rights environment.³³ In the absence of effective witness protection programs and reforms to a police force that is seen as abusive and corrupt, victims avoid reporting violations and remain reluctant to accept police accompaniment. The two new human rights entities are hampered by a lack of clear parameters for their work, and they were dealt another blow by the recent unexplained dismissal of their directors, who had worked to establish interagency communication.³⁴

In the face of spiraling violence, the government unveiled a broad security pact in April 2009, proposing a set of measures including prison, police, and judicial reform. Experts were quick to denounce the pact, questioning the clarity of the proposals and the political commitment to transform them into reality.³⁵

The constitution provides for the equality of all individuals, but in practice, the rights of women and indigenous people are often neglected or denied. An analysis of government spending between January and May 2008 reveals the disparity between political rhetoric and the actual allocation of resources, with women's issues receiving just 0.17 percent, and programs for indigenous people receiving 0.14 percent.³⁶

While the law prohibits discrimination and violence against women, both remain widespread. Guatemalan women, particularly indigenous women, continue to face workplace bias as well as sexual harassment. Women tend to be employed in low-paying agricultural and service sector jobs, and are far more likely than men to work in the informal sector. Women and children also account for the bulk of domestic servants and workers in export-processing zones, two job types that are largely unregulated and commonly feature exploitative conditions.³⁷

Violence against women persists, with an estimated 60 percent of women facing domestic violence. Some 6,000 women filed complaints of sexual assault and 658 cases of femicide were reported in 2008, with the latter number virtually unchanged from the previous year. In May 2008, the Public Ministry launched a program to provide comprehensive assistance to female victims of violence. Long-overdue legislation has also been enacted to curb femicide and criminalize sexual violence, exploitation, and even harassment.³⁸ There have been tentative signs of progress in investigating and prosecuting those responsible for violence against women. The women's congressional caucus reported that arrests were made for 254 of the 600 capture orders lodged in 2008, and several individuals found guilty of rape and femicide have recently been sentenced to the harsher prison terms set out in the new legislation. However, expectations that impunity will diminish considerably are dampened by the lack of training for police and their continued reluctance to become involved in domestic disputes. The government has failed to allocate adequate resources to the investigation of violence against women, and it recently decided to close the police unit dedicated to the collection and analysis of data on such crimes.³⁹

Although Guatemala boasts the second-greatest participation rate for women's organizations in the region, women remain seriously underrepresented in political positions. There is only one female cabinet member, women hold just 19 of the 158 seats in Congress, and only 8 of 332 mayors are women.⁴⁰ Women fare slightly better in the judiciary. Of the 13 members of the Supreme Court, two are women, while one woman serves on the five-member Constitutional Court.

Indigenous Guatemalans continue to face discrimination that is both cultural and structural. While they comprise roughly half of the country's population, the indigenous Mayans account for about three-quarters of Guatemalans who live in conditions of poverty or extreme poverty. Mayans also have significantly less access to health care and education, and their employment opportunities are considerably more circumscribed. A number of steps have created a somewhat more tolerant environment, including constitutional provisions; the passage of a peace accord on indigenous rights and identity; the ratification of international conventions; and even legislation that criminalizes racial discrimination, protects Mayan lifestyles and customs, and calls for bilingual education. Still, much more remains to be done to transform prevailing attitudes and structures. Some 92 percent of those queried in a May 2009 survey described

their country as racist, with over three-quarters noting that the indigenous population suffers the greatest levels of discrimination. Moreover, the constitutional recognition of their rights has yet to be supported by a specific legal framework, and existing laws are rarely enforced. Only one of the 196 complaints formally registered by the Commission Against Racism and Discrimination since the passage of an antiracism law in October 2002 has yielded a criminal sentence.⁴¹

Colom, who campaigned as the indigenous candidate, rewarded his Mayan supporters with a single cabinet position, minister of culture and sport, and the largely symbolic creation of a Presidential Commission to Combat Racism and Discrimination Against Indigenous Peoples and a Presidential Secretariat for Indigenous Peoples. The newly elected Congress includes just 18 indigenous deputies, four of whom are female. Indigenous citizenship rights are poorly guaranteed by a legal system in which only 14 percent of the police force and one Supreme Court justice are Mayan, and despite some improvements, there remains a severe shortage of bilingual judges and court interpreters.⁴²

My Family Making Progress (*Mi Familia Progres*a) stands out as the most substantive initiative addressing the needs of impoverished and marginalized Guatemalans, many of whom are female and indigenous. Modeled on similar endeavors in Mexico and Brazil, the program provides cash transfers of roughly US\$40 a month to poor parents who are willing to guarantee the health, nutrition, and education of their children. The program was welcomed for its focus on breaking the cycle of poverty, but critics objected to the tight control exercised over the program by the executive branch, the central role played by the president's wife in light of her perceived political aspirations, and an initial lack of transparency that included failure to release lists of beneficiaries to either auditors or legislators. Partly in response, the government transferred the program to the Ministry of Education, embarked on an external evaluation of its efficacy, and improved access to data. Still, recent budget reallocations that increased outlays to *Mi Familia Progres*a while cutting funds to key ministries have done little to assuage concerns about the program's patronage aims.⁴³

While the constitution does not contain specific prohibitions against discrimination based on disability, the law provides for some protections, including equal access to public facilities. In addition, in March 2009 the government ratified the UN Convention on the Rights of Disabled Peoples.⁴⁴ Nevertheless, the rights of disabled people are often violated in practice.⁴⁵ The state upholds freedom of religious belief, avoids restrictions on religious practice, and does not seek to regulate either faith-based organizations or religious instruction in schools. Mayan communities, however, have been engaged in a prolonged battle to acquire administrative control over their religious sites, many of which are official tourist venues that impose entry fees.

The government recognizes freedom of association and assembly, including the right to form independent labor unions and to organize, mobilize, and advocate for peaceful purposes. However, labor legislation does not comply with

ratified International Labor Organization (ILO) conventions. Onerous membership requirements impede the creation of unions and collective bargaining, and the right to strike is legally circumscribed. The government reserves the right to ban strikes that it deems “gravely prejudicial to the country’s essential activities and public services,” and to compel workers to resolve disputes through mediation and arbitration boards. Organized labor has protested the government’s use of emergency-situation arguments to suppress protests, and has argued that the widespread arrest and imprisonment of union demonstrators is a violation of ILO conventions.⁴⁶ Weak labor inspection panels and lax enforcement of existing laws in both the private and public sectors, including by the Public Ministry and the Ministry of Justice, further undermine worker rights. Employers evade punishment for failing to pay wages and benefits, engaging in illegal firings, using subcontractors to circumvent labor obligations, and retaliating against labor organizers with measures including dismissal and blacklisting.⁴⁷

Over the past year, labor leaders have become the top targets in the escalating spiral of attacks against human rights defenders. There were five recorded attacks against union activists in 2005, and the figure increased to 13 in 2006 and 15 in 2007 before jumping to 47 in 2008. Labor leaders have been harassed, threatened, and illegally detained, often during peaceful marches and demonstrations that tend to substitute for strikes; seven labor leaders have also been assassinated in the past two years. Security forces have failed to halt the attacks, which are believed to be the work of thugs hired by private companies, and investigations have been grindingly slow. There has been just one arrest in these cases as of July 2009, whereas national security provisions were quickly invoked to justify the detention of 49 transport workers for striking in early 2008.⁴⁸

RULE OF LAW

3.26

INDEPENDENT JUDICIARY	3.60
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY	
TO CIVILIAN AUTHORITIES	3.25
PROTECTION OF PROPERTY RIGHTS	3.00

While the independence of the judiciary is guaranteed by law, this principle is not upheld in practice. Political interference remains pronounced throughout the judicial branch, including the Supreme Court.⁴⁹ International support for judicial reform has focused on improving the quality of judges, who are obliged to pass competitive exams and undergo training in judicial ethics.⁵⁰ However, the training has tended to focus on judges in trial courts rather than the court of appeals or Supreme Court, and it has not been accompanied by the introduction of systematic performance reviews. Formal complaints lodged against

judges are typically dismissed and rarely lead to disciplinary action. Of the 910 complaints filed between 2006 and 2008, only three resulted in the dismissal of judicial personnel.⁵¹

Constitutional and legal experts place much of the blame for judicial corruption and bias on an appointment process that allows the president to designate top law enforcement officials, and Congress to appoint judges to the Supreme Court, which controls the remaining judicial appointments.⁵² Although many countries have similar processes, politicization in Guatemala is complicated by criminal penetration of state institutions, allowing powerful and often shadowy political and economic interests to effectively determine the composition of the country's judiciary and by extension its rulings. Joining forces with civil society organizations, the CICIG waged a political battle with legislators, pressing for reforms of the selection process that would improve transparency and enhance the input of legal experts.⁵³ It took the scandalous assassination of lawyer Rodrigo Rosenberg to generate the political momentum for passage of the legislation in late May 2009. [See box.]

Noncompliance with judicial decisions is less of a problem in Guatemala than the judicial system's failure to render decisions, as evidenced by the widely cited 98 percent impunity rate.⁵⁴ The inefficiency and inefficacy of the justice system is worsened by the influence of criminally linked political and economic groups, which exploit legal devices like the right of *amparo*, or injunction, to bog down legal proceedings and suborn judges. Members of the judiciary are also commonly threatened and assaulted, with 119 reported attacks in 2007 and 76 during the first half of 2008, including seven assassinations of judges and prosecutors. Like other cases of human rights violations, these are rarely investigated and almost never resolved.⁵⁵

Criminal defendants are presumed innocent until proven guilty. They are guaranteed a fair, public, and timely hearing, and the right to independent counsel. Over the past several years, legal proceedings have been accelerated, although illegal and prolonged detention without a court appearance or trial still occurs. Approximately 40 percent of those behind bars are awaiting trial. In addition, while the law limits pretrial detention to three months, pretrial detainees often spend years in prison. The number of public defenders increased by 31 percent between 2006 and 2008, and their caseload expanded by 22 percent during the same period. International donations compensate for state funding shortfalls in the provision of public defense.

Some promising programs designed to enhance access to legal counsel have encountered roadblocks. Planned 24-hour and mobile courts have yet to be established in the country's often remote interior. While the numbers of bilingual judicial personnel have risen slightly, most of the increase has been among administrative and auxiliary personnel rather than judges, and the languages spoken do not begin to approximate Guatemala's linguistic diversity. Language and distance thus continue to impede access to the judicial system for the majority of rural residents.⁵⁶

In contrast to the judicial selection process, candidates for attorney general are vetted by civil society organizations, and only three of the seven members of the Public Ministry Council are selected by the legislature. The relatively transparent selection process has not, however, translated into transparency on the job. Public Ministry officials are widely viewed as corrupt, and the country's chief prosecutor, Juan Luis Florido, was forced to resign in July 2008 over alleged ties to organized crime.⁵⁷ In a promising departure from the norm, assisted by the presence of the CICIG, several former and current public officials—including former president Alfonso Portillo (2000–04) and president of Congress and UNE member Eduardo Meyer Maldonado—have either faced criminal investigation or were formally charged with crimes involving abuse of public funds during the past year. The CICIG has assumed the Portillo brief as one of its high-profile cases. In addition, it is prosecuting Public Ministry officials and judges accused of corruption, and serving as a plaintiff in another major case, in which six military officers—including General Enrique Ríos Sosa, the son of former dictator and president of Congress Efraín Ríos Montt—stand accused of embezzling millions from the Defense Ministry budget.⁵⁸

Over the past decade, the police and the military have become increasingly subordinate to democratically elected civilian leaders. However, the relationship remains contentious and fragile, especially regarding accountability for wartime violations of human rights, as evidenced by the military's failure to surrender two of four solicited operational plans detailing the army's counterinsurgency strategy.⁵⁹ Police corruption and violations of human rights also remain widespread. The CICIG's efforts notwithstanding, members of the National Civilian Police are still believed by the human rights community to regularly perpetrate and cover up crimes, at once exacerbating and benefiting from the prevailing culture of impunity. In one recent example, a retired military officer, two retired members of the police force, and two active-duty officers were among the nine members of a crime syndicate arrested on September 11, 2009, as alleged material authors of the Rosenberg assassination.⁶⁰

Although the state guarantees property rights and prohibits expropriation, contracts can be difficult to enforce. Moreover, there are over 500 ongoing land disputes in the country, and 33 peasants engaged in land disputes were murdered between 2004 and 2008. As the human rights ombudsman has emphasized, these cases indicate the persistent struggles generated by landlessness, although they also reflect a dramatic intensification of conflicts in which indigenous and peasant leaders seek to defend their land rights against major landowners and, increasingly, mining corporations and hydroelectric projects.⁶¹ Indigenous demands for consultation on land use, a right granted to them by the government-ratified UN Declaration on the Rights of Indigenous Peoples as well as ILO Convention 169, have gone largely unheeded. A grievance lodged with the ILO in 2007 appears to have only exacerbated the violence perpetrated against the complainants and rural protesters more generally, who suffered nine violent attacks during the first two months of 2009 alone. The government has

done little to denounce, investigate, or prosecute the culprits or to curb the growth of private security forces that are believed to be involved. In a sign of low confidence in Guatemala's public institutions, the number of private security agents now exceeds that of police personnel.

ANTICORRUPTION AND TRANSPARENCY

3.33

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.25
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	2.75
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	3.00
GOVERNMENTAL TRANSPARENCY	4.33

Entrenched corruption continues to pose a serious challenge to democratic governance in Guatemala. The staggering levels witnessed during the Portillo government (2000–04) declined during the Berger administration (2004–08), and this trend persisted during the first year of Colom's presidency. The progress is reflected in steadily improved rankings and scores on Transparency International's Corruption Perceptions Index. After being positioned close to the bottom of the list of countries surveyed in 2004, Guatemala gained its highest ranking yet in 2008, placing 96th out of 180 countries. But while the country's score has registered a similar upward trend, it reached only 3.1 out of a possible 10 in 2008, indicating the persistent severity of corruption.⁶² In a recent survey, 83 percent of respondents regarded officeholders as corrupt, and only 40 percent regarded their country's democratic institutions as legitimate.⁶³

While no single institution is responsible for combating corruption, the Presidential Commission for Transparency and the attorney general's office both hold legal mandates to carry out anticorruption efforts and address denunciations. These agencies do not enjoy protection from political interference, which limits their effectiveness.⁶⁴ The comptroller general and the CICIG also play a role in combating corruption. The extension of the CICIG's mandate for an additional two years, coupled with the establishment of a Commission to Promote Transparency and Corruption that convenes governmental and civil society actors, highlight the government's willingness to sustain the Berger administration's focus on eradicating corruption, as do the extradition of former president Portillo and the resignation of Congress president Eduardo Meyer Maldonado, both in 2008. However, the October 2008 extradition of Portillo, who had fled to Mexico to escape corruption charges in 2004, was marred by his quick release on US\$132,000 in bail, prompting concerns that his corruption trial would only make a further mockery of the judicial system.⁶⁵

Corruption remains deeply embedded in Guatemalan governance. The regulatory environment remains cumbersome, opaque, and inconsistent, contributing to a high incidence of bribery and the tendency of companies to

EDITOR'S NOTE: THE RODRIGO ROSENBERG CASE

On the morning of May 10, 2009, Guatemalan lawyer Rodrigo Rosenberg Mazano was shot and killed by gunmen while riding a bicycle in Guatemala City. Witnesses saw two vehicles, which were caught on tape by security cameras, speed away from the scene. The next day, a video recorded by Rosenberg several days prior to his death surfaced in which he accused the president of Guatemala of ordering his murder, stating, "If you are watching this message it is because I was assassinated by President Álvaro Colom, with help from Gustavo Alejos." Rosenberg tied his fate to his involvement with clients Khalil Musa, a prominent businessman and member of the Rural Development Bank (Banrural), and Marjorie Musa, his daughter, who were both assassinated on April 14. According to Rosenberg, his clients had gained insider knowledge of a scheme whereby President Colom, his wife, and their inner circle were laundering public funds through Banrural. Rosenberg accused President Colom and his associates of ordering their deaths, as well as his own, in order to silence the scandal.

The video plunged Guatemala into deep political turmoil. Tens of thousands of protesters took to the streets to demand Colom's resignation, while an equivalent number came out in support of the president, and several politicians requested that the president temporarily step down so as to ensure an impartial investigation into Rosenberg's death. The media fueled the public reaction by repeatedly airing the video. Colom vigorously rejected Rosenberg's accusations and solicited the help of international investigative bodies in the case. The president also claimed that the video was part of a right-wing conspiracy against him waged by opponents linked to organized crime. In September and October, Guatemalan authorities arrested 12 suspects, including gang members, drug traffickers, and police in connection with the assassination. On January 12, 2010, the CICIG revealed its conclusion: Rosenberg ordered his own assassination. According to the investigation, Rosenberg, emotionally distressed following the murder of his girlfriend (Ms. Musa), solicited the help of his ex-wife's cousins to arrange the death of a supposed extortionist—whose description was in fact that of Rosenberg himself. The cousins, oblivious to the deception, hired hitmen to carry out the killing. The assassins are currently awaiting trial for the murder, while the two cousins reportedly remain in hiding. President Colom and his associates were cleared of all charges.

bypass public registration and operate in an unregulated informal sector with ties to organized crime.⁶⁶ The political class continues to use public office as a means of personal enrichment.⁶⁷ Although officials who manage public funds or earn more than 8,000 quetzals (US\$1,000) a month are subject to financial disclosure laws, these and other oversight provisions are weakly enforced by the underfunded and understaffed comptroller general's office.⁶⁸ The latest round of proposed reforms—including improved contracting procedures, revisions to parliamentary immunity rules, financial disclosure upgrades, and tax modernization—have stalled amid political disputes.⁶⁹

The roughly 20 percent of Guatemalans (and 45 percent of those with higher education) who claimed in a recent survey to have been victims of corruption in 2008 have neither adequate means nor a secure environment in which to seek redress. Allegations of corruption are aired in the media, but whistleblowers fear retaliation for implicating public officials, a concern most graphically illustrated by the Rosenberg case. Losing bidders on government contracts are not afforded an official review process other than litigation, which they rarely pursue given the inefficiency and corruption of the judicial system. Similarly, a special unit within the attorney general's office dedicated to solving cases of corruption reported receiving 89 accusations in 2008, of which 53 were processed and only 19 investigated. In July 2008, civil society organizations launched an Anti-Corruption Legal Aid Initiative that permitted citizens to make free accusations by telephone. Within the first two weeks, the initiative was deluged with callers reporting corruption in courts, government ministries, and the civil service.⁷⁰

Neither access to education nor foreign assistance is widely perceived to be subject to bribes, and recent administrations have shown a growing political resolve to combat corruption. In an effort to minimize fraud in a mostly privatized economy, the government reformed its procurement regulations, notably requiring competitive public bidding on purchases over roughly US\$110,000 and insisting since 2004 that transactions be processed through an internet system, *Guatecompras*. Although compliance with *Guatecompras* increased steadily between 2004 and 2007, rates of evasion again increased in 2008, as brokering organizations reasserted their role in contract bidding.⁷¹ The Inter-American Development Bank recently announced a US\$400 million loan program to continue strengthening public finances by further modernizing the tax system and implementing new mechanisms to control the quality and transparency of government budgeting and procurement.⁷²

Government transparency is supported by constitutional guarantees and a special congressional oversight committee charged with reporting on government spending and income. The budget-making process is subject to review by congressional commissions and receives media coverage. However, recent progress in enhancing transparency in the executive branch has been difficult to sustain, and it has not been matched by improvements in the legislative

or judicial realms, at the regional or municipal levels, or in the civil service. Furthermore, whereas access to government operations has become somewhat more fluid and transparent, information on spending remains opaque. This could change thanks to the September 2008 passage of the Law for Free Access to Public Information. The long-overdue legislation grants citizens the right to petition for access to the records of all public and private, domestic and international entities that administer public resources. It removes virtually all barriers to swift, free, and easy public access to information, with the notable exception of the judicial right of amparo, the mechanism mentioned above that regularly bogs down judicial proceedings.⁷³ Since the law took effect, agencies including the Ministry of Finance, the Central Bank, the Tax Superintendency, and the Social Security Institute have shown both the willingness and capacity to comply with citizen requests for information. At the same time, there are concerns that the legislation will be subverted if government administrators do not receive the requisite training and resources to process requests.⁷⁴

RECOMMENDATIONS

- Reopen discussion of a security pact in an effort to build societal consensus around the specific measures proposed by engaging a broad array of civic and political actors including the private sector, civil society, and a range of government institutions.
- Establish a witness protection program and revise the right of amparo in order to prevent accused criminals from evading justice through methods of intimidation and legal manipulation.
- Pass and enforce legislation establishing a legal framework entrenching indigenous rights and establish a permanent mechanism to assure compliance with ILO Convention 169.
- Enact and enforce the legislative and judicial reforms proposed by the CICIG in order to modernize and streamline judicial practices in accordance with international standards.
- Tighten enforcement of campaign laws so as to ensure greater autonomy from both the private sector and organized crime, and strengthen political party attachments in order to enhance legislative stability, efficiency, and independence.

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