PROSECUTORIAL REFORM INDEX

FOR

GUATEMALA

May 2011

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Introduction

The Prosecutorial Reform Index (PRI) is a tool developed by the American Bar Association’s Rule of Law Initiative. Its purpose is to assess a cross-section of factors important to prosecutorial reform in transitioning states. In an era when legal and judicial reform efforts are receiving more attention than in the past, the PRI is an appropriate and important assessment mechanism. The PRI will enable the ABA, its funders, and the local governments themselves, to better target prosecutorial reform programs and monitor progress towards establishing accountable, effective, and independent prosecutorial offices.

The ABA embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in prosecutorial reform. There are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after working in the field on this issue for over 20 years in different regions of the world, the ABA has concluded that each of the 28 factors examined herein may have a significant impact on the prosecutorial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the PRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department’s Human Rights Report and Freedom House’s Nations in Transit. This assessment will not provide narrative commentary on the overall status of the prosecutorial system in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country’s prosecutorial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The PRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country’s prosecutorial system.

Methodology

The ABA was able to borrow heavily from the Judicial Reform Index (JRI) and Legal Profession Reform Index (LPRI) in terms of structure and process. However, the limited research on legal reform that exists tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, “[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary.” Carothers, Promoting the Rule of Law Abroad: the Knowledge Problem, CEIP Rule of Law Series, No.34, (Jan. 2003). Moreover, as with the JRI and LPRI, the ABA concluded that many factors related to the assessment of the prosecutorial system are difficult to quantify and that “[r]eliance on subjective rather than objective criteria may be … susceptible to criticism.” ABA/Central European and Eurasian Law Initiative, Judicial Reform Index: Manual for JRI Assessors. (2001).

The ABA sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental norms, such as those set out in the United Nations Guidelines on the Role of Prosecutors; the International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors; Council of Europe Recommendation R(2000)19 “On the Role of Public Prosecution in the Criminal Justice System; and the American Bar Association Standards for Criminal Justice: Prosecution Function.”

In creating the PRI, the ABA was able to build on its experience in creating the JRI, the LPRI, and the more recent CEDAW Assessment Tool and Human Trafficking Assessment Tool in a number
of ways. For example, the PRI borrowed the JRI’s factor “scoring” mechanism and thus, as with the LPRI, was able to avoid the difficult internal debate that occurred with the creation of the JRI. In short, the JRI, the LPRI, and now the PRI employ factor-specific qualitative evaluations. Each PRI factor, or statement, is allocated one of three values: positive, neutral, or negative. These values only reflect the relationship of that statement to that country’s regulations and practices pertaining to its prosecutorial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of “positive” for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a “negative.” If the conditions within the country correspond in some ways but not in others, it will be given a “neutral.” Like the JRI and LPRI, the PRI foregoes any attempt to provide an overall scoring of a country’s reform progress since attempts at aggregate scoring based on this approach could be counterproductive.

The results of the 28 separate evaluations are collected in a standardized format in each PRI country assessment. As with the JRI and LPRI, the PRI utilizes an assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast performance of different countries in specific areas and—as PRIs are updated—within a given country over time. There are two main reasons for borrowing the JRI’s and LPRI’s assessment process, “scoring,” and format. The first is simplicity. Building on the tested methodology of the JRI and LPRI enabled the speedier development of the PRI. The second is uniformity. Creating uniform formats will enable the ABA eventually to cross-reference information generated by the PRI into the existing body of JRI and LPRI information. This will eventually give the ABA the ability to a much more complete picture of legal reform in target countries.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of prosecutors, judges, and defense counsel. Sensitive to the potentially prohibitive cost and time constraints involved, the ABA decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, and outside observers with detailed knowledge of the legal system. Overall, the PRI is intended to be rapidly implemented by one or more assessors who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

The PRI was designed to fulfill several functions. First, local government leaders and policymakers can utilize the findings to prioritize and focus reform efforts. Second, the ABA and other rule of law assistance providers will be able to use the PRI results to design more effective programs related to improving the quality of the prosecutorial system. Third, the PRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the prosecutorial system in countries where the PRI is implemented. Fourth, combined with the JRI and LPRI, the PRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fifth, PRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of prosecutors in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the prosecutorial function.

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1 CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. CEELI developed the CEDAW Tool in 2001-2002. The Human Trafficking Assessment Tool is based on the UN Trafficking Protocol and was developed in 2004-2005.
2 For more in-depth discussion on this matter, see Larkins, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, 44 AM. J. COMP. L. 605, 611 (1996).
Acknowledgements

The ABA would like to thank the team that developed the concept and design of the PRI, including the project coordinators Simon Conté, Director of ABA ROLI’s Research and Assessments Office, and Mary Greer, ABA ROLI’s Senior Criminal Law Advisor, as well as a splendid team of research assistants: Jasna Dobricik, Malika Levarlet, Lada Mirzalieva, Jaspreet Saini, and Gideon Wiginton. In addition, the ABA gratefully acknowledges the contributions made to this project by a number of valued colleagues, including Wendy Patten, Carson Clements, Olga Ruda, Andreea Vesa, and Monika Jaworska.

During the year-long development process, input and critical comments were solicited from a variety of experts on prosecutorial reform matters. In particular, the ABA would like to thank the members of its PRI Expert Working Group, who helped to revise the initial PRI structure and factors: Mark Dietrich, Barry Hancock, Christopher Lehman, Martin Schönteich, Irwin Schwartz, and Raya Boncheva; as well as those submitting written comments: Wassim Harb, Woo Jung Shim, Antonia Balkanska, and Feridan Yenisy.

Assessment Team

The 2011 Guatemala PRI field assessment was conducted by Claudia González, a Guatemalan attorney, and Jessie Tannenbaum, ABA ROLI Senior Legal Analyst, who also served as overall project coordinator. The other members of the assessment team were ABA ROLI Guatemala Financial Manager Rebeca Aldana and Administrative Assistant Rita Recinos. The assessment team received strong support from staff of ABA ROLI’s Latin America and the Caribbean Division, including Guatemala Country Director Alfonso Sierra, Program Manager Tom Hare, Program Officer Francisco Ciampolini, Program Associate Adriana Courembis, and Division Director Michael McCullough, and ABA ROLI’s Research and Assessments Office, including extern Rachel Ramos, Senior Criminal Law Advisor Mary Adele Greer, and Director Simon Conté. ABA ROLI is extremely grateful to Mario A. Flores, M.A., J.D., who served as editor of the Spanish-language version of the report.

The conclusions and analysis contained within this report are based on interviews of more than 65 individuals conducted throughout Guatemala in February 2011, as well as relevant de jure and secondary source materials gathered through May 2011. Records of relevant authorities and a confidential list of interviewees are on file with ABA ROLI. ABA ROLI extends sincere gratitude for the time and assistance rendered by interviewees and by the institutions that provided information for this report.
Executive Summary

Brief Overview of the Results

The 2011 Prosecutorial Reform Index (PRI) for Guatemala reflects an institution in crisis. Despite the dedicated efforts of prosecutors and staff, the Public Ministry of Guatemala faces severe budget and staffing shortages while confronting an increasingly high crime rate, lack of public trust in the justice system, and even threats to the physical safety and life of criminal justice system actors. As illustrated in the Table of Factor Correlations below, 15 factors received a negative correlation, with 12 receiving a neutral correlation and only one factor receiving a positive correlation. Despite the predominantly negative overview, the PRI analysis highlights a number of areas in which there are positive trends.

Positive Aspects Identified in the 2011 Guatemala PRI

- Despite the many challenges they face in their work, the prosecutors themselves received high praise from interviewees. Prosecutors are perceived to conduct themselves with integrity, to make their best effort to zealously pursue cases, and to fulfill their duties even when presented with risk to their personal safety.

- The Public Ministry is generally accountable to the public, presenting detailed statistics on case resolution in its annual report. The Ministry also takes steps to maintain openness with the media, both through its Press and Information Office and through contact between media and individual prosecutors.

- The Public Ministry maintains close relationships with civil society organizations that provide direct services to victims, join cases as criminal plaintiffs, and advocate against impunity. These close relationships enable the delivery of needed services that victims would otherwise not receive.

- Prosecutors generally have professional and cordial relationships with judges and defense attorneys, and respect the rights of defendants. Prosecutors are generally perceived to behave ethically, and to be free from conflicts of interests.

- The Public Ministry has taken steps to increase efficiency, including with the implementation of a pilot model prosecutor’s office in Quetzaltenango and a new organization proposed by the Prosecutor General in 2011.

Major Concerns Identified in the 2011 Guatemala PRI

- Impunity remains a serious problem in Guatemala, with the International Commission against Impunity in Guatemala reporting that only half of crimes are reported and an estimated two percent of reported crimes lead to a trial. Although statistics vary according to the method of calculation, the Public Ministry reported that it resolved only 12.34% of the cases it pursued in 2010, a number that does not include reported crimes that were dismissed or transferred prior to the opening of a case file.

- The Public Ministry has inadequate resources, including finances, personnel, and infrastructure, to effectively carry out its mandate. The Ministry’s budget is insufficient, and despite significant foreign assistance, a lack of resources permeates every aspect of the Ministry’s work. Among other concerns, the Ministry is unable to provide adequate buildings and work spaces throughout the country; provide adequate technology and
other equipment needed for investigations; and hire and train sufficient personnel. Interviewees identified the lack of resources as a primary cause of the Public Ministry’s inability to effectively resolve the vast majority of cases.

- Interviewees reported that cases generally fall apart due to deficiencies in the investigative stage, blaming a lack of training, equipment, and resources as well as lack of coordination between various investigating bodies for authorities’ failure to properly investigate crimes. The use of forensic evidence was a particular concern, with interviewees noting that the independent agency responsible for forensics frequently mishandles evidence.

- Inadequate legal education and continuing education opportunities leave the Public Ministry staff unprepared to carry out their work. Although the Ministry has established a Unit for Training, interviewees believed that a lack of resources dedicated to training and a lack of time for busy staff to pursue training left most new and junior prosecutors unprepared to carry out their work, especially as relates to conducting and supervising investigations. Interviewees also noted that many prosecutors lack legal writing and advocacy skills, and indicated that law schools do not adequately prepare students to enter a career as a prosecutor.

- Prosecutors reported that they face a lack of independence and serious internal pressures in their work. Prosecutors were especially concerned with a quota system which requires them to file a certain number of charges per month or receive negative performance reviews, which limited their ability to pursue complex cases and promotes speed and quantity over thoroughness. Some interviewees also called the independence of the Public Ministry itself into question, pointing out that the Executive Branch has the authority to remove the Prosecutor General and has historically used this authority for perceived political reasons.

- Prosecutors’ physical safety is frequently threatened, especially in cases involving organized crime, and inadequate security measures are available to protect prosecutors. A number of prosecutors have been physically attacked or even murdered as a result of inadequate security. The Public Ministry’s security department works under poor conditions, and is inadequately staffed and funded. Interviewees pointed to inadequate financial resources as the primary reason why prosecutors are not provided with greater security.
Guatemala Background

General Context

The Republic of Guatemala is located in Central America. Its indigenous culture is the result of Mayan heritage and a Spanish influence dating from Colonial times. It is divided in 22 administrative departments, with an estimated population of 14,361,666. NATIONAL INSTITUTE OF STATISTICS, DEMOGRAPHIC INFORMATION 2010. It is basically a rural country (65% of the total population), predominantly agricultural, where 43% of the population is indigenous.

As stated in its Constitution, Guatemala is a free, independent, sovereign country, organized to guarantee rights and freedoms for all its inhabitants. Its system of government is republican, democratic and representative. POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA art. 140 (adopted May 31, 1985) [hereinafter, CONST.]

Guatemala has significant ethnic and cultural diversity. Approximately, there are 22 linguistic communities belonging to the Mayan family, in addition to the Xinka and the Garifuna. The Xinka might be the oldest indigenous peoples living in southern Guatemala. They are also the ones that have suffered a more accelerated process of acculturation. Although the language is practically extinct, their ethnic revitalization has enabled several communities in the departamentos of Santa Rosa and Jutiapa, located in the southeastern part of the country, to call themselves Xinkas.

The present-day Mayans are one of the largest indigenous groups in America, and one of the most diverse. They descend from the classic civilization that inhabited the lowlands of Middle America as well as migrations from Mexico.

There is no official census on religious affiliation. Guatemala’s Episcopal Conference, the governing body of the Catholic Church, estimates that 65% to 70% of the population is Catholic (2009). The Evangelical Alliance, the official organization that groups Protestants, estimates that 35% to 40% of the population is protestant. A 2006 survey by Latinobarómetro\(^3\) shows that Catholics represent 56.9% of the population and Evangelical Protestants, 30.7%. There are also Baptists, Presbyterians, Lutherans, Episcopalians and Adventists of the Seventh Day, as well as the Church of Jesus Christ of Latter-day Saints (Mormons) and Jehovah’s Witnesses. Jews (approximately 2,000) and a small community of Muslims reside mainly in Guatemala City.

Catholics and Protestants are disseminated across the country and their followers belong to all the ethnic groups and major political parties. According to the leaders of the Mayan spiritual organizations and Catholic and Protestant missionaries, many Catholic indigenous individuals and some Protestants also practice some sort of indigenous spiritual ritual. OFFICE FOR DEMOCRACY, HUMAN RIGHTS AND LABOR, REPORT ON INTERNATIONAL FREEDOM OF RELIGION (2009).

During 2000 to 2010, the domestic economy has grown at an average annual rate of 3% to 3.5% of gross domestic product. BANK OF GUATEMALA, 2009 GDP GROWTH RATE ESTIMATE REVISION. Industrial activity is concentrated in Guatemala City, although agro-industrial activities are distributed more extensively in the Southern Coast, where there are large farms that grow traditional export products, nowadays sugar, before cotton, and the most important product, coffee. The Highlands and the Eastern part of the country grow most of the basic grains (corn and beans, in particular), usually in small plots of land or micro-farms.

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\(^3\) Latinobarómetro is a public opinion poll that performs 19,000 interviews every year in 18 countries throughout Latin America, representing more than 400 million people.
Seventy-three per cent of the total population is 10 years or older and make up the working-age population, of which 54% are either working or looking for work. The remaining 46% are the economically inactive. The high level of under-employment is what characterizes the labor market, affecting the most vulnerable groups. This under-employment indicator is associated with low levels of income and education. NATIONAL SURVEY ON EMPLOYMENT AND INCOME (2010).

The 2006 National Survey on Living Conditions, published in August 2007, offered a comprehensive portrait of the drama of poverty that the country is facing. The results show that 51% of the Guatemalan population lives in poverty, 15.2% live in extreme poverty and 35.8% live in non-extreme poverty. The poor live mainly in rural areas, where poverty levels reach 72%, whereas it reaches 28% in the urban areas. Carlos Barreda, GUATEMALA: ECONOMIC GROWTH, POVERTY AND REDISTRIBUTION, at 4 (2007) at www.albedrio.org.

Wealth is concentrated in the departamento of Guatemala City, which reports the lowest poverty rate as a result of the high concentration of public services in the city. Poverty is concentrated in the Northern departamentos of Alta and Baja Verapaz, and in the Northwestern region of Quiché and Huehuetenango; here, 75% of the population lives in poverty. It is important to highlight that it is in the departamentos of Alta and Baja Verapaz where the highest percentage of population lives in extreme poverty.

Poverty affects indigenous peoples more acutely. The poverty rate for the Kaqchikel is 62.6% and for the Quichés 64.4%. Likewise, 83.5% of the Qeqchi population lives in poverty, and 40% of these in extreme poverty. The poverty rate for the Mam is 90% and approximately 34% of them live extreme poverty. World Bank, POVERTY IN GUATEMALA (2004).

Guatemala is one of the Latin American countries where the effects of inequality are more evident. Factors like extreme unfairness and inequality in the distribution of wealth clearly obstruct progress to reduce poverty. The deep social inequalities of Guatemala are clearly evidenced in the high concentration of income and consumption. About 62.1% of the national income is concentrated in 20% of the population with higher incomes, while 20% of the poorest population only has access to 2.4% of the national income. The concentration of wealth increased in Guatemala as a result of factors such as economic, financial and commercial opening; reduction of the State and the elimination of its promotion, counseling and redistribution activities; and the privatizations that took place at the end of the nineties, which transferred State monopolies into private hands, free from regulations or controls by the State. GUATEMALA: ECONOMIC GROWTH, POVERTY AND REDISTRIBUTION at 7.

Another factor that explains the deep inequality is the high concentration of the use and ownership of the land. The GINI coefficient for land distribution is 0.84, very close to 1, which represents absolute inequality. Id. at 8.

Fifty-two percent of the Guatemalan population over 15 years of age is illiterate, the highest in Central America according to the National Institute of Statistics. The global fertility rate is the highest in Latin America, with a clear difference between the rural rate of 6.2 children and the urban rate at 3.8 children.

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4 GINI Coefficient is an index used to measure Income Distribution in a society.
DEPARTAMENTOS OF GUATEMALA AND THEIR POPULATION

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<th>Department</th>
<th>Population</th>
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</table>


Recent History

Beginning in the 1980s, several historical events have reconfigured the Guatemalan State. In the early 80s, the features and functions of a developing State started to decline in the turmoil of external debt. In 1985, a new Political Constitution of the Republic was enacted, allowing a return to democracy and in 1986, Guatemala had its first democratic Government of the new era. As a consequence of the profound socioeconomic and political changes that occurred throughout the world, the developing State disappeared and a subsidiary State emerged. In 1996, the Agreements for a Strong and Lasting Peace were signed, putting an end to a long internal armed conflict. The Peace Agreements opened spaces to amend the Constitution; however, the referendum held in 1999 did not support the changes. To comply with the Agreements, institutions were created, laws were enacted, public policies were implemented or redirected, a fiscal agreement was negotiated and financial resources were allocated pursuant to new priorities, among other actions.

After almost 25 years since the return to democracy, since the transition from a Developing State to a Subsidiary State, since the signature of the Peace Agreements that opened opportunities for the State to evolve into a promoter of equality in a deeply unequal society, where the indigenous peoples had been historically excluded, there has been little incidence in poverty alleviation and inequalities have not been sufficiently reduced.  

5 National Human Development Index 2009/2010.
**Armed Conflict**

The internal armed conflict started in Guatemala in 1960, and lasted close to thirty-six years. During this period, Guatemala experienced crimes that included forced disappearances, murders, kidnappings and sexual abuse, especially against indigenous women. According to the information provided by the Commission for Historical Resolution [hereinafter CEH], the internal armed conflict victimized 42,272 persons. The total number of dead and disappeared, taking into account those who were affected by political violence in Guatemala, was over 200,000 persons.

Guatemala’s conflict has multiple causes as there is no single cause that can explain on its own why the violence unleashed and why it persisted. Among the multiple causes, not all factors carry the same weight, nor exercise the same influence as time goes by, because they derive from the context or set of conditions wherein each cause lies. Although the Army and the insurgency appear as visible actors in the armed conflict, the historical investigation carried out by the CEH has shown the responsibility and participation of the groups that held financial power, political parties, and various sectors of civil society. The whole State with all its mechanisms and agents was involved. Therefore, reducing the conflict to only two actors is not only insufficient but also deceiving, since this would not explain the extent or the significance of the participation of political parties, financial powers and churches in the origins, development and perpetuation of the violence, nor the constant mobilization and participation of social sectors in their search for social, economic and political rehabilitation.

Guatemala’s internal armed conflict, which lasted close to 36 years, concluded in 1996 with the signature of the Peace Agreements that launched the ambitious process of establishing a democratic and global society. However, 15 years later, the country is riddled by generalized common and organized crime and chained by a legacy of inefficiency of the institutions of the justice sector. As has been the experience of many other countries after conflicts, the application of the Peace Agreements has been hindered by the weakness of the institutions, the lack of political will and the increase in violent crimes.

**Insecurity in Guatemala**

Even after the Agreement for a Strong and Lasting Peace (1996), clandestine and illegal security organizations were not dismantled and continued to operate in impunity. Their criminal activities, which were originally aimed at state interests, evolved to satisfy their own interests of illicit gain and evolved into organized crime structures, achieving symbiosis with transnational organized crime groups.

Nowadays, these groups have diversified their activities and have been able to expand their powers of infiltration. During the internal armed conflict, they had control over certain areas, like ports, airports, border checkpoints, and others. Currently, these groups are so developed that they have professional networks that include judges, lawyers and journalists in both the public and private sectors, who advocate and operate to ensure that the illegal organizations and their clandestine structures, now organized crime groups, continue operating in impunity.\(^6\)

On December 19, 2010, the Guatemalan Government declared a state of siege in the *departamento* of Alta Verapaz, to take back governance of this region that had been taken over by drug traffickers, mainly by the group known as Zetas.\(^7\) Security forces worked in two separate ways: one group carried out crime prevention operations, vehicular checks and seizure of

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\(^6\) International Commission against Impunity in Guatemala (CICIG), Third Annual Report.

\(^7\) The Zeta Unit, known as the Zetas, is a criminal Mexican organization whose main businesses are kidnappings, vehicle thefts, and extortions. They are one of the most important groups involved in the war against drug trafficking.
weapons; another group, working jointly with Public Ministry prosecutors [hereinafter MP], carried out raids in specific places looking for criminals and alleged drug traffickers. Colom declares state of siege in northern region affected by drug trafficking (Colom decreta estado de sitio en región norteña afectada por narcotráfico), Diario Siglo XXI, Dec. 19, 2010, at http://www.s21.com.gt/nacionales/2010/12/19/colom-decreta-estado-sitio-region-nortena-afectada-narcotrafico. The Council of Ministers signed the initial order to declare a 30-day state of siege and then, on January 18, 2011, the President of the Republic expanded the measure for an additional 30 days. On February 19, during a meeting with mayors and representatives of civil society, President Alvaro Colom, together with Government authorities, decided to lift the state of siege in Alta Verapaz.

According to the interior minister, crimes against life came down by 50%, and crimes against property were reduced from 72 to 18 incidents. However, he clarified that the continuing violence in the departamento was the result of the country's historical social violence. The security forces working in the departamento were not withdrawn in order to continue investigating and to guarantee the safety of the citizens in Alta Verapaz. President Colom lifts state of siege in Alta Verapaz (Presidente Colom levanta Estado de Sitio en Alta Verapaz), Government of Guatemala Press Release, Feb. 18, 2011, at http://www.guatemala.gob.gt/noticia4.php?codigo=11566&titulo2=Altaverapaz.

Legal Context

About the Justice Sector

The Judiciary is probably the State power that has had the most reform and modernization programs in the last 25 years. It is also the one that has received more financial resources, in both annual budgets and international aid. In the early 80s, Guatemala’s justice system depended mostly on the Executive. This did not provide the judiciary with the guarantees required by Article 8 of the American Convention on Judicial Independence and Impartiality. See UNITED NATIONS DEVELOPMENT PROGRAMME, Guatemala: Towards a State for Human Development, UNITED NATIONS NATIONAL HUMAN DEVELOPMENT REPORT 2009/2010, Chapter 8 “Searching for Independence from the Executive Power” at 206. (2010) [hereinafter, UNDP HDR], citing the Inter-American Commission on Human Rights. Neither did the Judiciary function effectively to safeguard human rights against power. UNDP HDR, citing CEH. Arbitrary and illegal arrests with no judicial oversight were common.

In 1985, coverage by the justice system was poor (2.63 judges for every 100,000 inhabitants), especially in rural areas. Municipal mayors handled conflict resolution and were charged with judicial duties in smaller cases. Judicial procedures were characterized by the prevalence of written records throughout the proceedings, by delegation of duties to court clerks and officials, and by bureaucratic steps for notifications and summons. Between 1985 and 1991, the return to democracy initiated the transformation of the justice system in order to strengthen its independence, mainly from the Executive. UNDP HDR.

The criminal procedural reform facilitated changes in criminal procedure, which used to be an inquisitorial system, carried out in writing and through a process eminently secret; it also concentrated the investigation and judgment duties in the judge of first instance. This was replaced, in law, by an adversarial system, which includes an oral process, as well as public trials as the main decision-making procedure. In addition, the duties of investigation, charge filing and judgment have been assigned, respectively, to the police, the MP and the Judiciary.

The enactment of the Criminal Procedural Code, in force since 1994, intended to achieve a criminal justice system that was more agile and effective in the prosecution of crimes, in particular crimes of high social impact. CRIMINAL PROCEDURAL CODE OF THE REPUBLIC OF GUATEMALA
(Decree-law No. 51-92, adopted Sep. 28, 1992, last amended by Decree-law No. 7-2011, May 24, 2011) [hereinafter, CRIM. PROCE. CODE]. To this end, several measures were included, such as:
a) modification of the duties of the MP, to turn it into an entity specialized in criminal prosecution;
b) redefinition of the role of the National Civil Police [hereinafter, PNC], turning it into a body that supports the MP in criminal investigations; c) the expansion of victim involvement in the criminal process, allowing also for reparations to the harm caused by the crime; d) case selection criteria that allow for resolution of minor cases through conciliatory formulas; and e) simplification of procedures to guarantee prompt justice.

The implementation of the Criminal Procedure Code faced challenges because it did not come with measures that allowed for a change by the justice operators who had learned their profession based on the previous system. Furthermore, no administrative and management reforms were carried out to allow for its appropriate implementation during the transition stage. UNDP HDR. However, the Crim. Proc. Code has been implemented gradually through criminal policy reforms, creation of a judicial career and reforms regarding gender issues, among others.

Oral Trials and their Implementation in Guatemala

The basis for oral trials is found in the first constitutional provision that addresses Guatemala's criminal system, which states that no one can be sentenced, or deprived of their rights without being summoned, heard and defeated in the legal process before a judge or a tribunal. CONST. art. 12. One of the latest significant reforms implemented by the Judiciary was the Oral Trial. Although oral models where implemented from the start, specifically during the trial phase and in some hearings during the investigative process, there were residuals that persisted from the previous written process.

The management of criminal cases through hearings began in Guatemala in 2005. A pilot Criminal Management Model was implemented in the departamento of Quetzaltenango by first instance judges, sentencing judges, and justices of the fifth court of appeals with active participation from the Criminal Chamber, the Supreme Court of Justice, the Public Criminal Defenders Institute and the MP.

The Criminal Management Model through hearings involves a redefinition, reorganization and the specialization of the judicial entities, maximizing jurisdictional functions through the strengthening of oral arguments at hearings and the administrative duties of judicial support staff. It is a simple, effective and efficient system that complies with all the elements of procedural principles and constitutional guarantees.

An oral trial allows society to witness the facts in discussion and form a conclusion on the historic truth of the events being discussed at trial. The system satisfies the demands for better citizen monitoring over the actions of the court. The implementation has been slow but steady and it has been gradual, starting in the departamentos of Quetzaltenango, Totonicapán, San Marcos, Zacapa, and Guatemala City. At present, 70% of the national territory has implemented oral arguments. See Judiciary Branch, Presentation of the Criminal Management Model through Hearings (March 2009).

Improvements in the justice system as a result of the implementation of the Management Model through Hearings include:

- Compliance and shortening of procedural systems
- Reduction in backlog of cases
- Reduction of workload
- Compliance with the objectives of the code to establish a system for the administration of justice that is prompt, simple and optimal.
The implementation of the oral system has been endorsed from the beginning by the Supreme Court of Justice with the support of the Spanish Agency for International Development Assistance, which donated most of the technological platform for its implementation.

The Prosecution Service

Background and History

During colonial times, the Spanish model was applied in Central America, which included prosecutors as representatives of the Attorney General. The political independence achieved on September 15, 1821, where Guatemala frees itself from the Spanish Crown, brought a strengthening of the function of the Prosecutors, who were considered government advisors. Later, the Federal Constitution of Central America established that prosecutors were attached to the Supreme Court of Justice.

The 1921 Constitution brought about the creation of the nation’s Prosecutor General and Chief of the MP, and established that the legislative branch was in charge of defining his faculties. In 1929, the MP was assigned to the Secretary of State for Governance and Justice, wholly dependent on the Executive Branch. The President appointed the nation’s Prosecutor General, and prosecutors handled mostly issues related to Public Finances.

With the enactment of the Constitution of the Republic in 1944, it became necessary to adapt the old MP Organic Law to the new provisions. Among these new functions, those of the Court of Appeals prosecutors were regulated. The nation’s Prosecutor General was appointed by the Executive Branch. This gives birth to the involvement in the judicial system of the Congress of the Republic, directing the faculties of the Prosecutor’s Offices, MP, and Advisory sections.

In addition, it was established that the MP acts on behalf of the State. The nation’s Prosecutor General and Chief of the MP was appointed by the President of the Executive Branch, selected from three candidates proposed by the Council of State.

Guatemala is a country not immune from the effects of eminently political activities, and every so often there are judicial or political schisms. The MP has been affected in different ways by these brusque changes. The March 23, 1982 breakdown in constitutional order brought about the exclusion from the law of the Judiciary and Legislative Branches. Consequently, all jurisdictional and legislative activity became concentrated in just one State entity: the Executive Branch. The actions of the MP were compromised as the institution could not comply with the duties assigned by its Organic Law. The functions of the legal system were established in Decree-law 24-82 which contained the Primary Statute for Government, that is, the nation’s Prosecutor General could be removed as a result of this constitutional breakdown, and a substitute could be appointed, who was not appointed by the President of the Republic but by the Head of State.

This abnormal legal situation continued until 1986, when the new 1985 Political Constitution of the Republic came into effect. This Constitution included the nation’s Prosecutor General and Chief of the MP, appointed by the President of the Republic, thus maintaining the legal supremacy of the MP Organic Law (Decree-law 512 of the Congress of the Republic). This Constitution recognizes the institution as autonomous, where the Prosecutor General enjoys the same privileges as the Justices of the Supreme Court of Justice.

In 1993, the institutional history of Guatemala, characterized by coups and dictatorships, entered a new period of legal uncertainty when the President, in order to break down the institutional order attempted, by Governmental Agreement, to concentrate in one sole Branch (the Executive) the functions of the other two Branches (the Legislative and the Judiciary), significantly modifying the Law for Constitutional Guarantees and Habeas Corpus, dismantling the Supreme Court of
Justice and the Constitutional Court, as well as the Human Rights Ombudsman, by removing the Prosecutor General and Chief of the MP, and insisting that the Supreme Electoral Tribunal call for a general election as soon as possible.

There was an immediate reaction by individuals, entities, unions and the international community against breaking down the constitutionality through dictatorial measures. The Constitutional Court declared the “temporary government regulations” unconstitutional for their blatant violation of the Political Constitution of the Republic, terminating the presidential term. Next, the Constitutional Court declared that the vice president was prevented by law from assuming the presidency for his involvement in the coup d'état attempt, resulting in a clamor to cleanse governmental institutions via an open referendum, as established by the Constitution. Congress then appointed a new President to complete the presidential term.

During this political phase, the new government promoted the Constitutional reform and a referendum was held on January 30, 1994 pursuant to Articles 173 and 280 of the Political Constitution of Guatemala, which allowed the enactment of Legislative Agreement No. 18-93 approving the Constitutional Reforms. One of these reforms, article 251, separates the functions of the MP and those of the Attorney General of the Nation. Decree-law 512 of the Congress of the Republic was also partially derogated since the Constitutional Reforms produced the MP Organic Law, creating the position of Prosecutor General of the Republic as Chief of the MP and responsible for its operations.

The authority of the Prosecutor General [hereinafter PG] extends to the entire country. Consequently, she performs all public criminal actions and executes those duties that the law grants the institution she represents, personally or via institutional means, her duties and faculties completely independent from the Attorney General of the Nation.

This reform included some new elements like the administrative organization of the institution: the MP Advisory Board, District and Section Prosecutors, Agency Prosecutors, Auxiliary Prosecutors and Secretaries, and everything related to the Administrative Career at the Ministry.

The PG and Chief of the MP is authorized to issue specific agreements related to the organizational structure of the administration or investigative areas, in order to adapt them to the needs of the service and the administrative dynamic. The MP Advisory Board is in charge of creating, or eliminating, and determining the headquarters and territorial scope of District, Section and Municipal Prosecutors’ Offices, based on the proposal submitted by the PG and Chief of the MP.

Article 2 of the MP Organic Law assigns the following functions to the institution, without affecting those that may be assigned pursuant to other laws:

- Investigating public criminal actions and promoting criminal prosecution before the courts, pursuant to the faculties conferred to it by the Constitution, the Laws of the Republic and International Treaties and Agreements.
- Exercising civil actions in cases provided by law and providing counsel to those who decide to take legal action for crimes of private acts, pursuant to what is established in the Criminal Procedural Code.
- Directing the police and other security governmental entities in the investigation of criminal acts.
- Preserving the Rule of Law and the respect for human rights, carrying out the necessary procedures before the courts of justice.

The legal instruments determining its actions are the following:

- **Criminal Procedural Code**.
- **MP Organization Manual** (Agreement No. 11-95 of the Prosecutor General of the Republic and Chief of the MP).
- **Handbook for Classification of Positions in the MP** (Agreement No. 11-95 of the Prosecutor General of the Republic and Chief of the MP).
- **Regulations of the MP Advisory Board** (Agreement No. 1-96 and its amendments).
- **Regulations for the Distribution of Cases for Section Prosecutor’s Offices** (Agreement No. 69-96 of the Prosecutor General of the Republic and Chief of the MP).
- **Regulations for the Career of the MP** (Agreement No. 3-96 of the MP Advisory Board and its amendments).
- **MP Internal Employment Regulations** (Agreement No. 2-98 of the Prosecutor General of the Republic and Chief of the MP).
- **Collective Agreement on Job Conditions between the MP of the Republic of Guatemala and the MP Workers Union** (Resolution No. 183-2006 of the Labor Ministry and Social Security).
- Other legal and administrative provisions that regulate MP operations, including instructions issued by the PG.

*The MP’s Relationship with the Branches of Government*

**Executive Branch**

The Constitution establishes that the MP supports the Public Administration but it does not state that it is dependent on it. An important connection between the Public Administration and the MP is the appointment of the PG, since the Constitution establishes that the PG is appointed by the President of the Republic from a list of six candidates. *Const.* art. 251. Another link between the Public Administration and the MP is that as long as the President of the Republic appoints the PG, he may also remove him, on the basis of duly established good cause. *Id.*

Pursuant to Article 3 of the MP Organic Law, the MP has an annual budget line item in the General Budget of the Nation.

The Public Administration is also connected to the MP in the sense that pursuant to Article 6 of the MP Organic Law, the MP may require the cooperation of any official and administrative authority of any governmental bodies and their decentralized entities, autonomous or semi-autonomous, for the performance of its duties. These bodies are required to cooperate without delay and must provide any documents or reports that the MP requests. In addition, the authorities, officials and entities must comply with the MP requests within the legal time periods and the terms set out in the requests.

Lastly, the MP directs the PNC, which is part of the Ministry of the Interior, in the investigative phase of criminal proceedings and in executing arrest orders.
**Judicial Branch**

There is no doubt that the MP exercises its functions within the scope of the judiciary branch, as this is where it requests the just application of Law and submits those petitions necessary to achieve the activities it is charged with.

The constitutional article that governs the MP also establishes that this institution supports the Public Administration and the Courts. From a structural framework point of view, one of the purposes of the MP is to ensure strict compliance with the laws of the country, but since it is a constitutional institution within the framework of the Rule of Law, it must also guarantee the effective independence of the Courts and play a role ensuring that judgments are enforced.

**Legislative Branch**

The interaction with the Congress of the Republic of Guatemala results from the fact that the PG must render an annual report to the citizens on the results of her administration. The MP must publish an annual report and send a copy to the President of the Republic and another one to the Legislative Branch. Pursuant to Article 16 of the MP Organic Law, the annual report shall contain the following elements: 1) summary of the work performed during the term; 2) performance review, detailing the barriers encountered and the measures taken to overcome them; 3) Review; 4) review of the budget; 5) specific proposals for modifications or improvements that the MP requires. A summary of the annual report must be provided to the media.

The PG shall also send to the Executive and Congress an annual budget proposal for the MP and any modifications, within the timeline set by law.

In addition, Congress shall have the power to declare whether charges should be brought against the PG for possible criminal acts. The PG enjoys the right of impeachment in order to safeguard her duties. However, if there are signs that the PG has committed a crime, a petition is submitted to Congress in order to appoint a commission that determines if criminal charges should be filed.

The influence of the Legislative Branch over the MP cannot be minimized as it appoints three of MP Advisory Board members. Article 19 of the MP Organic Law states, “Once the Prosecutor General has been appointed, the Congress of the Republic shall select three members from the pool of candidates for the position of prosecutor general for the term that corresponds to the Prosecutor General of the Republic. The selection shall be made within five days of the appointment of the Prosecutor General…” As a result, Congress has a high degree of influence in the MP.

**Organization of the MP**

The MP is composed of the following:

1. Prosecutor General of the Republic
2. MP Advisory Board
3. District Prosecutors and Section Prosecutors
4. Agency Prosecutors
5. Auxiliary Prosecutors

*See MP ORGANIC LAW art. 9.*
ORGANIZATION OF THE PROSECUTORIAL SERVICES

1. Agencies and Offices work in all District and Municipal Prosecutors' Offices, with the exception of some that only work in the Evidence Warehouse. The Evidence Warehouse only works in District Offices.

2. These Offices have a basic organizational structure.

3. Specialized units against criminal organizations deal with narcotics, money laundering, and other acts.

4. Exclusively for the COI.
The PG is the Chief of the MP, whose authority extends throughout the nation. *Id.* art. 10. She must be a licensed attorney and notary and must meet the same requirements as the Justices of the Supreme Court of Justice. The PG also enjoys the same privileges and immunities as the Justices.

The MP Advisory Board is composed of the PG, who presides it, three prosecutors elected from district, section and agency prosecutors at the prosecutors’ general meeting, and three members elected by the Legislative Branch from the candidates to the position of PG. The Advisory Board may agree that during its term, member prosecutors will not exercise their duties, with the exception of the PG. *Id.* art. 17.

District Prosecutors are the Chiefs of the MP in the departamentos or regions they are assigned to, and are responsible for the operations of the institution in their area. They perform public criminal prosecutions and exercise those duties that the law assigns the MP, personally or through agency and auxiliary prosecutors, except when the PG assumes that function directly or assigns it to another officer, jointly or separately. *Id.* art. 24. As of the date of this report, there are 40 District Prosecutors, including 15 Municipal Prosecutors, according to the information provided by the MP Department of Human Resources.

The Section Prosecutors are the Chiefs of the MP for those sections they have been assigned, and are responsible for the operations of the institution in matters of their competence. They exercise those duties that the law assigns the section under their responsibility, personally or through agency prosecutors or auxiliary prosecutors, except when the PG assumes that function directly or assigns it to another officer, jointly or separately. As of the date of this report, there are 24 section prosecutors.

The Section Prosecutor’s Offices currently in operation are:

1. Prosecutor’s Office for Constitutional Affairs, Relief and Habeas Corpus
2. Prosecutor’s Office Against Corruption
3. Prosecutor’s Office Against Organized Crime, with the following agencies:
   a. Human Trafficking Unit
   b. Vehicular Robbery Unit
   c. Bank Robbery Unit
   d. Extortion Unit
   e. Kidnapping Unit
4. Prosecutor’s Office Against Money Laundering or Other Assets
   a. Forfeiture Unit
5. Prosecutor’s Office for Administrative Crimes, with Attorney General’s Unit for Internal Affairs
   a. Internal Affairs Unit
6. Prosecutor’s Office for Crimes Against the Environment
7. Prosecutor’s Office for Crimes Against the Cultural Heritage of the Nation
8. Prosecutor’s Office for Crimes Against Intellectual Property
9. Prosecutor’s Office for Crimes Against Life and Personal Safety
10. Prosecutor’s Office for Financial Crimes
11. Prosecutor’s Office for Crimes of Drug Trafficking
12. Prosecutor’s Office for Human Rights with the following agencies
   a. Prosecutorial Unit of Crimes Against Human Rights
   b. Prosecutorial Unit of Crimes Against Human Rights Activists, Operators of Justice, and Reporters
   c. Unit for Union Members
   d. Prosecutorial Unit for special cases related to the internal armed conflict
   e. Analysis Unit Liaison Area
15. Prosecutor’s Office for Execution of Judgments
14. Prosecutor’s Office for Minors or Children
15. Prosecutor’s Office for Women
   a. Prosecutorial Unit for Child and Juvenile Victims

The Section Prosecutor’s Offices perform the same functions as District or Municipal Prosecutor’s Office, pursuant to crimes of their competency based on subject matter or social impact, except for the Prosecutor’s Office for Constitutional Affairs, Relief, and Habeas Corpus, Prosecutor’s Office for Execution of Judgments, and Prosecutor’s Office for Minors or Children, which are subject to specific procedures.

Agency Prosecutors assist District or Section Prosecutors. They perform public criminal prosecutions and sometimes private criminal actions pursuant to the law and the faculties of the MP. They direct the investigation of criminal cases; draft charges, motions to dismiss or for temporary closures; and file cases before the appropriate jurisdictional body. They are also involved in the trial at the trial courts, and may advance appeals filed with the Criminal Tribunals of the Court of Appeals, the Supreme Court of Justice, and the Constitutional Court. As of the date of this report, there are 289 agency prosecutors, including those at the district prosecutor’s and the section prosecutor’s offices.

Auxiliary Prosecutors assist District, Section, and Agency Prosecutors. and are in charge of the investigation during the pretrial stages of the criminal process in all public acts crimes and in crimes that require party action. They may intervene directly in all parts of the investigation and in statements by defendants that occur during the pretrial stages. They can sign all the requests for production, motions, and memorandums filed with the court during the pretrial proceedings. Auxiliary Prosecutors Level II, who are Attorneys and Notaries Public, may assist and participate at trial, in support of the Agency Prosecutors. As of the date of this report, there are 1,061 auxiliary prosecutors level I and 26 auxiliary prosecutors level II.

**Offices within the MP That Provide Support in Criminal Prosecutions**

The General Secretariat is the agency responsible for assisting the Prosecutor General and the MP’s Advisory Board in the coordination, execution, follow-up and evaluation of the institutional policies and strategy for prosecution of crimes with high social impact. This office also provides technical legal support for different prosecutorial procedures and case preparation.

The Secretariat of Criminal Policy is in charge of the design, coordination, and evaluation of policies and strategies, in addition to defining the procedures and activities related to criminal prosecutions and attention that should be given to the victims of crimes.

The Special Methods Investigatory Unit [hereinafter UME], coordinates and controls the application of the special investigatory methods under the Law against Organized Crime. In addition to acting as a control for the use of the special methods in form and appropriateness, the UME also coordinates with prosecutors in the implementation of the policies approved by the Prosecutor General and the Chief of the MP in matters relating to special investigatory methods.

The Specialized Unit for International Affairs supports the Prosecutor General in all the activities necessary for the efficient implementation of the cooperative international methods with regards to criminal prosecution, in conformity with laws, agreements, treaties, conventions, and other international instruments, in coordination with the Secretariat of International Affairs and Cooperation. The responsibilities of this unit include cooperation with international counterparts to maintain fluid communication that allows for implementation.
The Department of the Case Management Information System of the MP supports the Public Ministry Case Control and Management System [hereinafter SICOMP], which controls the information systems used in managing case data. The department. Responsibilities of this office include tasks associated with technical support, development of programs, installation, and maintenance of equipment as well as the training of users within the MP.

The Analysis Unit collects, analyzes, and produces information and statistics to prosecutors, the Secretariat of Criminal Policy and the Directorate of Criminal Investigations to help them make strategic decisions in the execution of criminal prosecutions.

The Office of Protection is the support office responsible for the protection of the parties to proceedings and persons associated with proceedings as approved in plans approved by the Board of Directors.

The Training Unit organizes and executes job-related training courses and runs academic scholarship contests as established in the regulations of the institution. They have also established the teaching-learning process with the person in charge of the Virtual Training Center to promote distance education.

The Administrative Office assists the prosecutor's office in the execution of the purchase and contracting for goods and services required for operations, in accordance with the State Contracting Law and accompanying regulations. The office of Human Resources handles management of worker attendance, punctuality; leave policies, vacations, transfers, resignations, sanctions and other personnel issues. The Directorate of Analysis and Planning, also within the Administrative office, handles the creation and institution of the strategic policies required for institutional development.

The Office for Continuous Services [hereinafter OAP] is organized in each district by the District Prosecutor, under the responsibility of an agency prosecutor. They are in charge of receiving complaints or police notifications. This office also receives, records, and distributes the files and documents that enter and exit the institution. MP ORGANIC LAW art. 25.

Office for Victim Services [hereinafter OAV] is organized in each district by the District Prosecutor, and is staffed by professionals in medicine, psychology, and social work charged with providing services to victims. It is mandated to provide victims with all necessary and urgent information and assistance. ld. art. 26.

The Criminal Investigations Department [hereinafter DICRI] is comprised of expert professionals in various sciences and reports directly to the PG. DICRI is in charge of the planning and execution of criminal investigation operations including the collection of evidence and other trial requirements. The Department is composed of the Sub-Office of Criminal Investigation Operations and the Sub-Office of Criminal Investigations. Currently, the labs and technicians of this unit are part of the Institute of Forensic Sciences [hereinafter INACIF]. Only a team of field investigators that carry out police investigation tasks remain in the original Department.

The Witness Protection Unit is a unit within the MP structure that has authority and autonomy in criminal proceedings. Officially, it provides comprehensive protection to individuals entering the program (Judiciary officers, civil society representatives, women, security forces, journalists, experts, etc.), safeguarding their life and personal safety so that they can appear before the Judiciary Branch. In practice, it only provides services to certain witnesses and victims given, among other things, the lack of financial resources.
Chapter II of the MP Organic Law governs the relationship with the nation’s security forces. Article 51 states that the Director of the PNC, the authorities and any other public or private security force shall comply with the orders issued by the MP Prosecutors and must account for any investigation they carry out.

The police and other security forces may not investigate on their own, except in urgent cases and for police prevention actions. The PG, District, and Section Prosecutors may appoint, on their own or at the request of the prosecutor in charge of a case, the officers or police agents that will assist in the investigation.

Additionally, the MP has the cooperation of other government institutions and civil society. INACIF supports the administration of justice, and has national jurisdiction and responsibility in matters of technical and scientific expert analyses. INACIF provides its services at the request or order of judges, the Public Criminal Defense, private technical defenders and procedural parties in the criminal branch, through the MP or through the appropriate Jurisdictional Entity, the PNC8 and other persons or entities in charge of investigating in specialized proceedings.

The International Commission Against Impunity in Guatemala [hereinafter, CICIG] was created as an independent international body, for the purpose of supporting the MP, the PNC and other State institutions in the investigation of crimes committed by members of illegal security groups and clandestine security organizations, as well as in general actions aimed at dismantling these groups. CICIG provides support in the investigation and criminal prosecution of a limited number of complex cases, and carries out other actions pursuant to its mandate, intended to strengthen the institutions of the Justice Sector to help them continue countering these illegal groups.

The Public Criminal Defense Institute [hereinafter, IDPP] is the entity that manages the public criminal defense services, and provides free assistance to low income individuals. They are also in charge of the management, administration, and supervision of private practice lawyers when they carry out public defense work. The IDPP has operational autonomy and absolute technical independence to carry out its functions. LAW OF THE PUBLIC CRIMINAL DEFENSE SERVICE art. 1 (Decree-law No. 129-97, Dec. 5, 1997).

The Coordinating Office for the Modernization of the Justice Sector was created in 1997 to support compliance with the Peace Agreements and to follow up on the recommendations contained in the “Final Report of the Commission for the Strengthening of Justice.” It seeks to perform joint actions for the comprehensive modernization of the justice sector, and it enjoys support at the highest levels of the Judiciary. It coordinates the efforts and actions of the criminal justice sector as it promotes the modernization of the institutions, directing financial resources to achieve this goal. It is composed of the President of the Judiciary and the Supreme Court of Justice, the PG and Chief of the MP, the Interior Minister and the Director of the IDPP.

The Prosecutor’s Office for Human Rights receives support from the following civil society organizations:

- Mutual Support Group (GAM)
- Myrna Mack Foundation
- Institute of Forensic Anthropology

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8 In the development of preliminary investigations in urgent cases, informing and providing the MP immediately the results of its actions, so that the MP may direct the ensuing investigation. The PNC may not, under any circumstance, directly request reports or expert analyses on the evidence obtained during raids, arrests, detentions or judicial seizures.
Center for Legal Action on Human Rights (CALDH)
Center for Forensic Analysis and Applied Sciences (CAFCA)
Archbishop’s Office for Human Rights (ODHAG)

The Prosecutor's Office for Women receives support from the following civil society organizations:

- Center for Investigation, Training and Support of Women (CICAM)
- National Coordination Office for the Prevention of Domestic Violence and Violence Against Women (CONAPREVI)
- International Mission of Justice
- Survivors Foundation
- Guatemalan Group of Women
- The United Nations Children’s Fund (UNICEF)

In addition, Group Pro Justice has provided support to various prosecutors’ offices and to SICOMP.

These organizations litigate at the MP, many even have cooperation agreements with the MP.

**Pilot Model Prosecutor’s Office at Quetzaltenango**

The search for effective criminal prosecutions resulted in the reorganization of the prosecutor’s offices into common service units that would allow the MP to meet institutional objectives and projected goals. For that reason, the PG, in Agreement No. 23-2009, issued new Internal Regulations for District Prosecutor’s Offices intended to replace agency prosecutor’s offices in favor of specialized units. The plan kicked off in Quetzaltenango.

The regulations reorganize the personnel at the district prosecutor’s offices, establishing common service units for case management, determining the faculties and responsibilities for each command line, the technological support tools and the relationship of the prosecutors with investigation agents. The new plan includes a Litigation Unit which coordinates con the Office of the Prosecutor and the Criminal Investigation Office concerning the legal and administrative activity required leading up to actual proceedings and interrogations.
ORGANIZATION OF THE PILOT MODEL PROSECUTOR’S OFFICE AT QUETZALTENANGO

Before the new model was implemented, it took up to three years to try a case. The process currently takes from seven to nine months. Strategic analysis is one of the pillars of the model being implemented in Quetzaltenango. The model is still missing a technical investigation unit.

2010 Prosecutor General Election Process

The election of the PG has far-reaching implications for the enforcement of the laws in the country. During this process, Congress calls for an Appointing Commission, four months before the present PG’s term ends. This Commission has 12 members, including the President of the Supreme Court of Justice, who chairs the Commission, the President of Guatemala’s Bar Association, the President of the Honor Tribunal of Guatemala’s Bar Association, and the Deans of the nation’s various law schools. The Appointing Commission appoints a Secretary and an Alternate Secretary and determines where its meetings are to be held.

Subsequently, the Appointing Commission accepts curriculums, verifies requirements, and reviews the files to decide on a list of six candidates to be submitted to the President of the Republic, who then appoints the PG and Chief of the MP.

The selection process of the PG and Chief of the MP must ensure that:

- The Commission interviews the candidates publicly regarding the basic qualifications required for the post of PG.
• The Commission members assert their reasoned vote at the time of the election, taking into account, among other things, the candidate’s background, proposed plan, and the challenges presented against her.
• The candidates’ honorableness is reviewed, and those who do not meet this requirement are excluded, based on what was done by the Appointing Commission for Comptroller General.
• The Commission requests from the previous Appointing Commission for PG and Chief of the MP the challenges and files of those candidates who applied at that time and who once again are applying for the position.

CICIG, REPORT ON THE ELECTION OF PROSECUTOR GENERAL AND CHIEF OF THE MP at 5 (Nov. 22, 2010).

CICIG points out various basic characteristics required in a candidate for the position of PG, such as experience in the management of judicial institutions, or development of criminal prosecution policies, or litigation of entire cases, demonstrating independence from political or economic power sectors. In addition, the candidate must not have legally represented or regularly advised the main elements of organized crime or defendants in cases of drug trafficking, money laundering, fraud, tax evasion, financial crimes, irregular adoptions, human rights violations, corruption or abuse of power. CICIG states that it is of particular concern that candidates must be free of any issues regarding criminal, administrative or ethical matters that could cast a doubt on their honorableness or suitability. Id.

2010 Prosecutor General Election

On May 25, 2010, the President of the Republic appointed attorney Conrado Reyes Sagastume as PG and Chief of the MP. This decision put an end to a three-month process that had at its climax the confrontation between CICIG and the Appointing Commission, after CICIG declared that the list of six candidates had been pre-arranged, given that the members of the commission chose the six from a list of 29 in only 15 minutes. The Commission was ordered to re-review of the files to discuss the honorableness of the 29 candidates. However, observers thought that this review was not done as thoroughly as expected. Conrado Reyes will be the new Prosecutor General for the next four years. (Conrado Reyes será el nuevo fiscal general para los próximos cuatro años), May 25, 2010, at, http://www.prensalibre.com/noticias/politica/colom-conrado_reyes-mp-fiscal_general_0_268173350.html.

On June 10, 2010, Conrado Reyes who, according to CICIG, had links to organized crime, was removed from his position as PG after the Constitutional Court revisited an appeal regarding the selection process that resulted in his election. The Constitutional Court ruled that the election should be repeated, a historic decision for the country. The position was temporarily assigned to the prosecutor María Encarnación Mejía,9 selected by the previous MP Advisory Board. The appointment of the new PG took place after the President of the Republic reviewed the list of six candidates proposed by the Appointing Commission on December 3, 2010. The Licenciada Claudia Paz y Paz Bailey, age 44, was appointed and sworn in by President Alvaro Colom, and became the first woman to formally assume command of the institution in charge of criminal prosecutions. It is important to note that both civil society and the international community supported the present PG’s selection process.

Claudia Paz y Paz Bailey

The present PG holds a Doctorate in Human Rights and Criminal Law from the University of Salamanca, specializing in investigations. Her law and notary public degree is from the Rafael

9 María Encarnación Mejía was Chief of the District Prosecutor’s Office at Sacatepéquez, and had worked for 16 years in the institution.
Landívar University of Guatemala. She has been practicing law since May 1992, litigating criminal and constitutional cases in the national justice system and before the Inter-American System of Human Rights. She was a Justice of the Peace in the municipality of Sumpango, Departamento of Sacatepéquez. She worked for two years as Legal Counsel for the Archbishop’s Human Rights Office of Guatemala. She headed the Legal Office of the UN High Commissioner for Refugees (UNHCR). She coordinated the Program for Democratization and Strengthening of the Rule of Law in Central America, sponsored by the Inter-Ecclesiastic Organization for Development Cooperation (ICCO), among other activities.

As a political appointee, however, her appointment does not guarantee permanency in her position. Indeed, the only constant that has been in seen in the new appointment process is the changing of the politically-appointed Prosecutor General with transfers in government.

The first prosecutor general appointed under the new model lasted in the position as long as the government that appointed him. In a recent case, the government in power during 2004-2008 removed Carlos de León Argueta and appointed Juan Luis Florido, who was then removed when the current government came into power, temporarily appointing Amilcar Velásquez Zárate. It is unknown how long the person chosen using the new procedure established in the Law of Appointing Commissions will remain in her position, but a congressional committee has reportedly been discussing how to resolve this issue.

The New Organization Proposed Under the New Strategic Plan of the Prosecutor General

Improving efficiency and effectiveness
- Implementing specialized methodologies for criminal prosecution and investigation.
- Developing management models for the early resolution of cases.
- Strengthening investigation units to fight criminal structures and organized crime.
- Allocating resources according to levels of criminality.

Services for Victims and Witnesses
- Facilitate access to MP services for crime victims.
- Improve the channels of information, public services and communication.
- Improve risk assessment mechanisms and tools to provide protection for victims.
- Strengthen referral networks for victim services throughout the country.

International Cooperation
- Strengthen coordination and work methodologies with CICIG.
- Strengthen internal and external coordination and cooperation to improve criminal prosecutions and investigations.

Institutional Strengthening
- Improving Human Resources management.
- Establishing better specialized educational and training systems.
- Implementing planning and results-based management models.
- Improving communication mechanisms with the population.
Guatemala PRI 2011 Analysis

While the correlations drawn in this exercise may serve to give a sense of the relative status of certain issues present, the ABA would underscore that these factor correlations possess their greatest value when viewed in conjunction with the underlying analysis, and the ABA considers the relative significance of particular correlations to be a topic warranting further study. In this regard, the ABA invites comments and information that would enable it to develop better or more detailed responses in future PRI assessments. The ABA views the PRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

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</table>
I. Qualifications, Selection, and Training

Factor 1: Legal Education

Prosecutors have the appropriate legal education and training necessary to discharge the functions of their office, and should be made aware of the ideals and ethical duties of their office, of the protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by international law.

<table>
<thead>
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<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tr>
<td>University-level education and passage of licensing exams are required of all attorneys, including prosecutors. All law schools include criminal law coursework in their curriculum, and the two most prominent law schools also require practical training in criminal law. There is no accreditation process or oversight of the quality of law schools’ curricula, and interviewees reported that the quality of legal education varies greatly among law schools. Interviewees believed that law students are not well prepared to enter careers as prosecutors, and that schools should place greater emphasis on teaching oral advocacy and writing skills.</td>
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</tbody>
</table>

Analysis/Background:

In order to be licensed as an attorney and notary, an individual must have obtained the degree of licenciado (a five- or six-year undergraduate degree), including writing and defending a thesis and completing a practical training; pass the exams required to obtain the professional titles of attorney and notary; join the professional association; register with and be sworn in by the Supreme Court of Justice; and register with the national tax authority. See, e.g., JUDICIAL BRANCH OF THE REPUBLIC OF GUATEMALA, Prerequisites for Registering as an Attorney and Notary, at www.oj.gob.gt/index.php/inscripcion-abogados-y-notarios. Except for auxiliary prosecutors, prosecutors must be licensed attorneys, therefore these educational requirements apply equally to them.10 Auxiliary prosecutors must, at a minimum, have completed all required coursework, and some auxiliary prosecutors are licensed attorneys. MP ORGANIC LAW art. 46.

Only legally-authorized universities may offer degrees and diplomas. CONST. art. 89. Foreign degrees may be recognized in Guatemala as required by international treaties. Id. art. 87. University graduates with professional degrees are required to join the corresponding professional association. Id. art. 90. There are ten Guatemalan universities offering the law-related licenciado, most often in legal and social sciences or legal sciences and justice: the private universities Universidad Mariano Gálvez de Guatemala, Universidad Rural de Guatemala, Universidad del Istmo, Universidad de Occidente, Universidad Panamericana, Universidad Mesoamericana, Universidad San Pablo de Guatemala, Universidad Francisco Marroquín, and Universidad Rafael Landívar [hereinafter URL], and the national public university, Universidad San Carlos de Guatemala [hereinafter USAC]. The professional association for lawyers, including

10 The Guatemalan prosecutorial system includes district attorneys, who are the head prosecutors responsible for the prosecution of general crimes within a given department or municipality; section attorneys, who are the head prosecutors responsible for a given type of crime on a national level; agency prosecutors, who are experienced prosecutors who manage a caseload and directly report to a district or section attorney; and auxiliary prosecutors, who may either be candidates for a law degree who have completed all required coursework or recently-licensed attorneys, who work under the supervision of agency prosecutors. See Country Background, above, or Factor 3, below, for greater detail.
prosecutors, is the Association of Lawyers and Notaries of Guatemala [hereinafter, Bar Association].

USAC is the national public university, founded in 1676 and with a current enrollment of 146,299 students on campuses in 19 departamentos, including 10,887 law students who may study full-time or part-time. UNIVERSIDAD DE SAN CARLOS DE GUATEMALA, www.usac.edu.gt [hereinafter USAC Website]. USAC's status as the national public university is guaranteed by the Guatemalan Constitution, which establishes USAC’s University Superior Advisory Board made up of the rector, the deans of each school, a graduate of each school who is a licensed member of a professional association, and a professor and student from each school. The board is responsible for directing, organizing, and developing public higher education. CONST. arts. 82, 83. USAC is self regulating, subject to its own Organic Law and regulations. Id. art. 82, see also ORGANIC LAW ON THE UNIVERSIDAD SAN CARLOS DE GUATEMALA (Decree No. 325, adopted Jan. 28, 1947).

Private universities are authorized and overseen by the Advisory Board on Private Higher Education [hereinafter CEPS], which consists of two representatives from USAC, two representatives (total) from private universities, and one representative elected by the heads of Guatemala’s professional associations and is charged with ensuring private universities' academic quality. CONST. art. 86, see also the Advisory Board on Private Higher Education, www.ceps.edu.gt. Once legally established, a private university has legal personhood and can independently create schools and institutes, carry out academic and teaching activities, and develop plans and programs of study. CONST. art. 85.

There is no national accreditation body, although universities may seek international accreditation and URL’s law school has been accredited by the Mexican accrediting body, the Council for the Accreditation of Law Teaching. Once a private university has been legally created, CEPS oversees its compliance with its own regulations and, upon the vote of a majority of its members, can request that the President of Guatemala impose sanctions on the university, but it is not clear if CEPS conducts any review or oversight of universities' academic quality. Notably, there is no supervisory or accreditation body for law schools, and there does not appear to be external review of law school’s curricula or quality of instruction.

Two universities, USAC and URL, were universally recognized by interviewees as providing the best legal education in Guatemala. Interviewees unanimously pointed to USAC and URL’s requirement that all students complete practical training as a primary reason why USAC and URL produce more highly skilled and qualified graduates than other law schools. Both URL and USAC have multiple campuses throughout the country; URL has 13 campuses and USAC has 19. At URL, students must complete 180 hours of practical training in order to graduate, including in the areas of criminal law, civil law, and labor law. The practical training is carried out through participation in the legal clinic, which arranges internships for students at different legal institutions. Students have not been permitted to directly provide legal assistance on criminal cases since Guatemala revamped its criminal procedure in 1996, so students in the criminal law practical training may serve as interns with the MP or other institutions within the criminal justice system.

USAC requires 9 months of participation in practical training, which is also required in criminal law, civil law, and labor law and carried out through USAC’s legal aid clinic. Both USAC and URL students can complete their criminal law practical training at the MP in the departamento in which they are studying, although interviewees stated that there are more students interested than there are positions available. Although the Universidad Mariano Gálvez also offers the practical training at the MP, interviewees did not offer their opinions on its quality and reputation. Interviewees noted that, due to agreements between the MP and the legal clinics at USAC, URL, and the Universidad Mariano Gálvez, students from other universities do not have the opportunity to intern at the MP. See MP Website, Programas especiales, www.mp.gob.gt.
Interviewees had mixed opinions of the benefits of completing an internship at the MP. Although the legal clinics expect MP interns to be assigned substantive work, students reported that the MP internship largely consisted of administrative work, although the work varies depending on the particular prosecutor’s office or section to which the intern is assigned. Interns are not able to indicate a preference for being assigned to a particular section or type of case, and there is no post-internship evaluation process to assess whether the student was satisfied with and benefited from the internship. Prosecutors generally stated that interns’ knowledge and skill levels were satisfactory, but prosecutors did not appear to be invested in ensuring that the internship would be a valuable experience for the intern. Students stated that they do not receive a lot of information on pursuing a career in criminal law, and students in the interior of the country generally do not even have the option to pursue a criminal law practicum. Students who did participate in a criminal law practicum indicated that the practicum did not inspire them to pursue a career as a prosecutor, stating that there are few job openings for aspiring prosecutors and that a prosecutor’s career is “dangerous and low paid”.

Interviewees’ opinion of the quality of courses offered by law schools also varied. Although the requirements for law school curriculums are not established in law and there is no national accreditation body, all law schools appear to require basic courses in criminal law for all undergraduate students, and offer more in-depth coursework in criminal law for students specializing in criminal law (although some law schools do not offer a criminal law specialization). Even at those universities that offer a specialization, there is no training on how to conduct a criminal investigation and prosecution that would prepare them to be a prosecutor. Both URL and USAC require several levels of courses in criminal law and procedure as well as courses in public international law; URL also requires coursework in human rights law and one professional ethics course. Some schools, including URL, also offer criminal law moot court, but students believed that moot court was not as beneficial as completing an internship. Notably, most schools do not require any ethics or professional responsibility coursework, and students participating in practical training do not receive training on professional ethics.

Overall, interviewees believed that law graduates are not well prepared to enter a career as a prosecutor. Many interviewees reported that the legal skills of auxiliary prosecutors are extremely deficient, particularly related to investigations and the drafting of charging documents. Supervising prosecutors and judges noted that law schools do not teach students to be good writers, and that the quality of written court submissions is quite low. However, judges also emphasized that law schools do not provide adequate training in oral advocacy and that new lawyers’ skills in hearings and arguments are extremely weak, skills which have become increasingly important as Guatemala moves toward a completely oral system of criminal justice.
Factor 2: Continuing Legal Education

In order to maintain and improve the highest standards of professionalism and legal expertise, prosecutors undergo continuing legal education (CLE) training. States sponsor sufficient and appropriate CLE training, which is professionally prepared on specific issues and is relevant to the prosecutors’ responsibilities, taking into account new developments in the law and society.

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<tr>
<td>Although UNICAP is charged with providing training and education for all MP employees, a lack of course offerings and high workloads prevent most prosecutors from taking part in trainings. Prosecutors reportedly lack skills even on basic legal techniques, with investigations and charging documents identified as particular areas of concern. A lack of personnel and financial resources reportedly prevents UNICAP from offering more frequent or better quality training.</td>
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Analysis/Background:

Continuing legal education for prosecutors is carried out by the Unit for Training [hereinafter UNICAP]. UNICAP is overseen by the Advisory Board of the MP, which also names UNICAP’s director and sub-director. MP ORGANIC LAW art. 81. UNICAP is charged with organizing, carrying out, and promoting training and specialization courses for both MP staff and candidates for positions at the MP, as well as awarding scholarships for study. Id. The Advisory Board also develops UNICAP’s annual plan and appoints the instructors who lead courses at UNICAP. UNICAP is directly managed by the Attorney General and does not have its own budget, although it does have a petty cash fund of GTQ 10,000 (USD 1,304) for minor daily expenses; funds for personnel, equipment, and other major needs must be requested from the MP Administrative Office. UNICAP reported that it receives significant financial support from international donors in order to implement its educational and training programs. Currently, UNICAP does not have a director, and does not currently have established operational procedures, which a new director will be expected to develop in conjunction with the Unit for Planning.\textsuperscript{12}

Currently, UNICAP is charged with providing training for the employees of the MP, including 64 district and section prosecutors, 289 agency prosecutors, 1,061 level one auxiliary prosecutors, 26 level two auxiliary prosecutors,\textsuperscript{13} 471 administrative personnel, 527 support staff members, 346 security staff members, and 1,000 DICRI staff members (according to personnel data provided by the MP), in addition to candidates for positions at the MP. Despite these large numbers of potential trainees, UNICAP has only four instructors, down from 10 in 2005, even though the MP has grown significantly since then. In 2010, according to information provided by the MP, 256 training sessions (including courses, chats, workshops, seminars, and conferences) were offered for auxiliary and agency prosecutors. In 2009, UNICAP offered 248 training sessions for prosecutors, which had 3,672 attendees (attendees who attended multiple trainings were counted multiple times).

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\textsuperscript{11} In this report, Guatemalan Quetzales (GTQ) are converted to United States Dollars (USD) at the average rate of exchange during the dates of the assessment interviews (USD 1 = GTQ 7.66).

\textsuperscript{12} In March 2011, after completion of interviews for this assessment, a director was named.

\textsuperscript{13} Level one auxiliaries have completed coursework in law, while level two auxiliaries are fully licensed attorneys. Data on the number of prosecutors was provided by the MP Office of Human Resources.
Participation in UNICAP’s courses by existing MP employees, including prosecutors, is optional; there is no obligatory continuing legal education or training beyond the initial orientation given to new MP employees. According to information provided by UNICAP, its courses currently cover seven areas:

- orientation of new MP staff and staff assigned to a new position, excluding administrative and DICRI staff, by referral from the MP’s human resources department;
- continuing education, including updates on new legislation and amendments to existing legislation, general instructions issued by MP leadership, and information on trainings offered by international institutions and civil society. Currently there are no continuing education programs for administrative personnel, although UNICAP would like to develop courses;
- specialization;
- technical expertise, including anti-discrimination training and training for DICRI technicians and OAV personnel;
- personal development, including courses led by a psychologist on stress management and interpersonal relations;
- practical internships for law students, via memoranda of understanding between UNICAP and the law school or university legal clinic. Beginning in 2011, psychology students will reportedly also be offered practical internships in the OAVs; and
- pre-selection training for candidates for positions with DICRI, which includes 4 weeks of training for general applicants or 2 weeks of specialized training for field investigator candidates.

UNICAP does not currently offer training on the Ethics Code, although ad hoc trainings have been held in certain prosecutors’ offices. UNICAP is planning to develop systemic trainings to familiarize all MP employees with the Ethics Code. The Secretariat for Criminal Policy has also worked with UNICAP to implement trainings on other topics, including financial investigations; the extinguishing real estate titles; interrogation skills; phases of the criminal process; international standards for evictions; investigations and charging; genocide and crimes against humanity; and forensic investigations.

UNICAP uses a collaborative, cooperative, and participatory teaching model, drawing on participants’ experience and providing relevant information in order to analyze issues collectively. UNICAP also offers an online “e-learning” program created in 2010 in order to reach more prosecutors, although at the time of this assessment the program had not been fully implemented nationwide and it was not clear how many prosecutors had access to e-learning. Generally, district and section prosecutors have internet access but lower-ranking prosecutors do not and thus are unable to access e-learning, although UNICAP plans to implement e-learning more broadly in 2011.

According to information provided by the MP, UNICAP offers specific training curricula for auxiliary and agency prosecutors. Prior to being hired, auxiliary prosecutor candidates should receive training in institutional norms and the MP’s philosophy, preparatory courses in criminal procedure and constitutional rights, and orientation. As part of their orientation, courses are offered in using SICOMP (the MP’s computerized case management system), criminal investigation techniques, human development, prosecutorial ethics, chain of custody, and risk analysis and personal security. Specialized courses for auxiliary prosecutors include more advanced courses in criminal procedure, criminal law, criminology, human development, a crime scene clinic, criminal investigation techniques, criminal justice policy, prisoners’ rights, investigation of specific types of crime, forensics, financial investigation techniques, oral and written techniques, and conflict mediation. Continuous education is offered in comparative criminal justice, legal information technology, narco-activity, family and children’s rights, the legal framework for investigating specific types of crimes, forensic dentistry, intellectual property
legislation, handwriting analysis, dermoscopy, examining documents, ballistics, identification of persons, investigation of odors and prints, and victims’ interests.

Prior to being selected, agency prosecutor candidates should take courses in legal information technology, oral argument techniques, criminal investigation techniques, comparative criminal justice, victims’ interests, intellectual property law, justice and multiculturalism, criminology, human development, and criminal psychology. The orientation course for agency prosecutors includes criminal procedure rights, criminal justice policy, criminal appeals, criminal investigation techniques, human development, office management, alternative dispute resolution, prosecutorial ethics, teamwork, witness examination techniques at trial, risk analysis and personal security, the legal framework for investigating specific crimes, criminal law, and sociology of behavior in different geographical regions. Specialized courses are offered in criminology, the legal framework for investigating specific crimes, oral argument techniques, constitutional law, justice and multiculturalism, criminal justice and the freedom of the press, environmental law, administrative strengthening, and legal logic.

Despite the ambitious structure developed by UNICAP, the vast majority of prosecutors do not participate in any training beyond the initial orientation. Due to the low number of instructors at UNICAP and lack of adequate space and equipment, only limited courses can be offered; UNICAP reviews data provided by the various prosecutors’ offices in order to determine in which areas training is most needed. UNICAP’s limited staff must also provide training for DICRI candidates and evaluate the oral and written exams taken by candidates for agency and auxiliary prosecutor positions. In recent years, with the support of international donors and non-governmental organizations, UNICAP has offered training on anti-discrimination law and cases arising from the internal armed conflict. UNICAP is also relying on the support of international donors to provide equipment such as tables, chairs, and computers. Further, classroom space is very limited in its small campus in Zone 2 of Guatemala City and UNICAP does not have any training facilities outside of the capital.

In addition to the lack of resources discussed above, UNICAP staff identified a lack of coordination with other MP offices and secretariats. In particular, interviewees believed that coordination is needed with the Performance Evaluation Unit to target trainings toward problem areas, with the Office of International Affairs and Cooperation to explore opportunities for international trainings, and with the Secretariat for Criminal Policy.

UNICAP’s courses appear to be inaccessible to a majority of prosecutors. Prosecutors working outside the capital reported that excessively high case loads prevented them from being able to take time out to attend trainings; in Escuintla, where 9,136 new complaints were filed in 2010, with only 4 agency prosecutors, including one dedicated solely to cases involving juvenile offenders, and their auxiliaries to handle them, this problem seemed particularly acute. In Quetzaltenango, interviewees indicated that they could not spare staff members for a day or two in order to send them to the capital for training and did not yet have access to e-learning.

Interviewees also raised concerns about the quality of instruction offered at UNICAP. Reportedly, several instructors have been transferred from positions within prosecutors’ offices to UNICAP as a demotion or form of punishment. Instructors are not required to have prior experience as educators, nor are their required to have reached a certain level of tenure as prosecutors. Many prosecutors interviewed indicated that the trainings offered did not correspond to their needs or interests; others remarked that the discussion-based teaching style was not useful and what they really need are updates on emerging legal changes and skills trainings. The mandatory initial orientation was reported to be perfunctory, with more emphasis placed on learning the layout of the office than on necessary skills. This problem is compounded by the transfer or turnover of prosecutors. In the case of transfers, the prosecutors retain their initial training but are often not re-trained in the new specialty.
According to many interviewees, particularly judges and prosecutors who supervise other prosecutors, many prosecutors’ legal skills are extremely deficient, and UNICAP does little to address this. As a general training body, UNICAP lacks specialized training modules such as those which might pertain to the prosecution of crimes against life, nacrotrafficking and economic crimes, in particular. Both Investigative and Trial Court judges uniformly emphasized that the charging documents are frequently defective, with prosecutors regularly making rudimentary mistakes such as not individualizing the charges among multiple defendants, alleging the crime was committed on the incorrect date, or filing charges not substantiated by the allegations as drafted. Such mistakes often lead to the dismissal of charges or the acquittal of the defendant. Judges believed that these mistakes are made because the charging documents are drafted by auxiliary prosecutors who have not received adequate training on how to draft charges. Although agency prosecutors should review charging documents before they are filed, judges believed that they either do not have time to adequately supervise their auxiliaries, or they also lack the skills to identify the basic flaws in a charging document. Judges and prosecutors alike emphasized a need for greater training in this area.

Another fundamental area in which interviewees believe training is needed is participating in and supervising investigations. Auxiliary prosecutors are required to go to the crime scene and conduct an investigation, MP ORGANIC LAW art. 45, and prosecutors are also charged with supervising the investigation carried out by DICRI or PNC. CRIM. PROC. CODE art. 107. However, judges and supervising prosecutors repeatedly stated that the investigations are often extremely deficient and inadequately supervised, and significant training is needed for all actors involved in investigations.

Interviewees also raised the issue of a lack of training for non-prosecutorial personnel. Skills trainings for administrative personnel responsible for receiving complaints from the public and OAV staff were identified as particular areas of need.

**Factor 3: Selection: Recruitment, Promotion, and Transfer of Prosecutors**

*Prosecutors are recruited, promoted, and transferred through a fair and impartial procedure based on objective and transparent criteria, such as their professional qualification, abilities, performance, experience, and integrity.*

*While political elements may be involved, the overall system should foster the selection of qualified individuals with integrity and high professional qualifications.*

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<tr>
<td>Objective and impartial criteria for the recruitment and promotion of prosecutors are established in law and are followed in practice, although it is not clear upon what criteria successful candidates are ranked to be appointed as positions become vacant. There are no established criteria for transfers, and interviewees reported a lack of transparency and objectivity in the transfer process. Inadequate staffing is a major challenge affecting the work of the MP throughout the country.</td>
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**Analysis/Background:**

The MP Advisory Board oversees the selection of prosecutors, other than the Attorney General. MP ORGANIC LAW art. 79. Appointments of prosecutors at all levels are made via a call for applications, which should take into consideration the requirements established by the Organic
Law for appointments at each level, legal education and specialization, and professional or previous prosecutorial experience. *Id.* art. 75; *see also* REGULATIONS FOR THE MP CAREER art. 3. The call for applications must be made at least once per year and be open to all, and applicants must participate in a competitive oral examination. MP ORGANIC LAW arts. 75, 76; *see also* REGULATIONS FOR THE MP CAREER art. 4. Applications are evaluated by a five-person jury, made up of five professionals nominated by UNICAP and appointed by the MP Advisory Board. MP ORGANIC LAW art. 77. The jury must rank successful candidates, in order of merit, for district prosecutor, section prosecutor, agency prosecutor, and auxiliary prosecutor. The criteria for determining a candidate’s merit is not explained in the law. The list of successful candidates is published three times over a 15-day period in the *Journal of Central America*, which is Guatemala’s official gazette (www.dca.gob.gt). *Id.* Candidates may remain on the list for up to two years or until they are called to fill a vacant position. *Id.* art. 76. Candidates must be assigned to vacant positions in the order they appear on the list, unless they request to be moved down on the list (for example, because they do not wish to accept the next available vacant position because the position is not in their desired city). *Id.* art. 78. Any person or organization may challenge the list of successful candidates published in the official gazette, on the grounds that an individual on the list does not meet the requirements for the position; the jury will resolve the challenge and there is no appeals process. *Id.* art. 77.

According to information provided by the MP’s Human Resources Department, prosecutors seeking a promotion apply following the same procedures explained above. It is not clear what weight their prosecutorial experience is given in comparison with the experience of outside applicants.

The requirements for appointment as a prosecutor at each level are laid out clearly in the Organic Law. The Attorney General is the head of the Public Ministry and is ultimately responsible for its operations nationwide. *Id.* art. 10. He or she is appointed by the President of the Republic from among six candidates nominated by a commission made up of the president of the Supreme Court of Justice, the deans of all the law schools in the country, the chair of the Board of Directors of the Bar Association, and the president of the Honor Council of the Bar Association. MP ORGANIC LAW art. 12; *see also* CONST. art. 251. The Attorney General must be a licensed attorney and possess the same qualifications required of a member of the Supreme Court of Justice. MP ORGANIC LAW art. 13; *see also* CONST. art. 251. (Magistrates of the Supreme Court of Justice must be Guatemalan by birth, be recognized as honorable persons, enjoy the free exercise of all the rights of citizens, be licensed attorneys, be over 40 years of age, and have either served a full term on the Court of Appeals or an equal-level court or have practiced law for more than 10 years. LAW ON THE JUDICIAL CAREER (Decree No. 41-99, *adopted* Nov. 29, 1999.) He or she can be removed by the President of the Republic for just cause, defined as a conviction for a crime and the failure to carry out the responsibilities of the office of Attorney General. MP ORGANIC LAW art. 14. If the post of Attorney General becomes vacant, the MP Advisory Board appoints an acting Attorney General until such time as the new Attorney General is appointed. *Id.* art. 15. The current Attorney General is Dr. Claudia Paz y Paz Bailey, who has held the position since December 2010.

The Attorney General is advised by the MP Advisory Board, made up of three prosecutors (either district prosecutors, section prosecutors, or agency prosecutors) elected by the General Assembly of Prosecutors and three members appointed by the Legislative Branch from among the five unsuccessful candidates for Attorney General.

District prosecutors, who are the heads of the Public Ministry for the department or region to which they are assigned, and section prosecutors, who are the heads of the Public Ministry sections responsible for the prosecution of specific types of crime, are the most senior prosecutors, reporting directly to the Attorney General. A district or section prosecutor must be at least 35 years old, be licensed attorneys, be Guatemalan by birth, and have practiced law or
been a investigative judge, agency prosecutor, or auxiliary prosecutor for at least five years. *Id.* art. 28. According to information provided by the MP’s Human Resources Department, there are currently 40 district prosecutors, including 15 who are municipal prosecutors within a larger district, and 24 section prosecutors.

Agency prosecutors assist district or section prosecutors and are responsible for criminal prosecutions. *Id.* art. 42. Agency prosecutors must be over age 30, be licensed attorneys and notaries, be Guatemalan by birth, and have practiced law or been a investigative judge or auxiliary prosecutor for at least three years. *Id.* art. 43. According to the MP’s Human Resources Department, there are 289 agency prosecutors as of the date of this report, who may work within either district or section prosecutors’ offices.

Auxiliary prosecutors assist the district, section, and agency prosecutors, and work under their supervision. CRIM. PROC. CODE art. 107(2). They are responsible for the investigation and preparatory work required for prosecutions. MP ORGANIC LAW art. 45. Auxiliary prosecutors must be Guatemalan and have finished the required academic coursework to become a licensed attorney and notary. *Id.* art. 46. Auxiliary prosecutors who are licensed attorneys and notaries may also participate in trials. *Id.* art. 45. As of the date of this report, there are 1,061 level one auxiliaries (who are law graduates), and 26 level two auxiliaries (who are licensed attorneys), according to the MP’s Human Resources Department.

Special prosecutors may also be hired in specific cases where it is necessary to guarantee the independence of prosecutors involved in the investigation and criminal prosecution. They have the same faculties and responsibilities as a district or section prosecutor, but the requirements to be a special prosecutor are not enumerated in the law. *Id.* art. 44.

In addition to the above requirements, all applicants for positions at the MP must be physically and mentally able to carry out the requirements of the position and must not have been disqualified from holding public office, from practicing law or practicing as a notary, or have lost any of the rights of citizens (e.g. upon being found guilty of certain crimes as specified in the Criminal Code). *Id.* art. 80.

The Attorney General has the authority to transfer prosecutors for professional reasons, and district and section prosecutors have the same authority over prosecutors within their region or section. *Id.* art. 71. Prosecutors used to have the right to challenge a transfer before the MP Advisory Board, which can nullify the transfer upon a finding that the transfer was intended to remove the prosecutor from a particular case, due to the prosecutor’s refusal to obey illegal instructions, or did not follow established procedure, although the recent decision declaring unconstitutional the Advisory Board’s power to overrule the Attorney General has left it unclear whether prosecutors may still challenge transfers before the Advisory Board. *Id.* art. 72; see also Constitutional Court Eliminates MP Advisory Board’s Decision-Making Faculties (El CC elimina facultad de decision al Consejo de MP), EL PERIÓDICO DE GUATEMALA (Feb. 4, 2011), [available at http://www.elperiodico.com.gt/es/20110204/pais/190240/](http://www.elperiodico.com.gt/es/20110204/pais/190240/).

In practice, the human resources department of the MP coordinates the appointment and promotion of prosecutors. They receive applications following the call for applications, and conduct a review of applicants’ academic background, professional experience, and, for existing MP employees, performance evaluations and any complaints filed against them, and require applicants to submit to medical and psychological exams to determine their suitability for the position. The information is compiled in a computerized database and sent information to the MP Advisory Board. Once the list of successful candidates is compiled, it is maintained in the database in order to ensure transparency. According to the human resources department, on average, a total of four calls for applications are issued each year, one each for district, section, agency, and auxiliary prosecutors, with approximately 1,200 total applicants. Reportedly, Human
Resources is tasked with ensuring that there is always a sufficient number of candidates available such that no prosecutorial post will remain vacant. Interviewees reported no concerns with the recruitment and promotion process, although several interviewees noted that positions above the auxiliary prosecutor level rarely become available.

Additionally, human resources implements recruitment, hiring, and promotion of other MP personnel, including administrative, OAV, and DICRI staff; there are no legally-established procedures for hiring of non-prosecutorial staff. Human resources reported a dearth of qualified applicants for positions with DICRI despite the required pre-selection training, leading them to hold approximately 2–3 calls for applications annually.

Despite the well-established procedures for hiring, prosecutors throughout the country identified low staffing levels as a major challenge affecting their work, indicating that there is less of a problem with the staff recruitment process itself than with the need to create additional positions and raise staffing levels. Insufficient staffing levels reportedly affect the quality of investigations, charging documents, and litigation and prevent prosecutors from attending training. In Quetzaltenango, prosecutors estimated that they have only 50% of the number of auxiliary prosecutors and DICRI investigators they need to adequately investigate cases. In Escuintla, as in many other prosecutors’ offices in the interior of the country, the three agencies coordinate to form a monthly system which rotates the four auxiliary prosecutors through 24 hour, on-call shifts for investigating crime scenes and appearing in the rotation courts. Due to low staffing, if more than one crime scene requires investigation, assistance must be requested from a neighboring office. Prosecutors may also request assistance from an office closer to the crime scene, though the requesting office technically has jurisdiction over the area of the crime scene. Judges throughout the country reported that agency prosecutors fail to adequately supervise the work of auxiliary prosecutors, believing that the agency prosecutors’ high workloads leave them without time to review charging documents and investigative reports prepared by auxiliary prosecutors. Moreover, outside the capital, there is a pronounced lack of adequate specialized staff, particularly in the OAV and the Prosecutors’ Office for Women.

Insufficient funding was cited as a primary reason for low staffing levels. One interviewee lamented that it was not uncommon to have 200 qualified applicants for only five available positions. Additionally, some interviewees indicated that it is unusual for auxiliary prosecutors to be promoted to agency prosecutor, stating that generally outside applicants are hired, which interviewees believed to be unfair to the auxiliary prosecutors who have spent years working within the MP.

There is no established practice regarding transfers of prosecutors. Human resources reported that approximately 400 prosecutors request a transfer each year; it is not clear how many are granted, or how many prosecutors are transferred involuntarily. Many interviewees indicated that the criteria used for transfers appear to be arbitrary or non-existent; interviewees repeatedly mentioned cases where talented prosecutors were transferred to a different practice area where their talents were not being put to use. Additionally, there were many reports of transfers being used as a form of punishment or retaliation against prosecutors. Interviewees also indicated that they can be transferred anywhere within the country without regard for their current geographical location, leading some prosecutors to resign rather than move their entire families away from their home. Troublingly, several interviewees reported that requests for transfers made because the prosecutor had been the target of threats or intimidation are not always given due consideration.
Factor 4: Selection Without Discrimination

The recruitment, promotion, and transfer of prosecutors at every level of hierarchy shall not be unfairly influenced or denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, national, social or ethnic origin, physical disabilities, or economic status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a citizen of the country concerned.

Conclusion
Correlation: Neutral

Interviewees reported no discrimination in the recruitment, promotion, or transfer of prosecutors and few instances of harassment or bias in the workplace. Despite the lack of overt discrimination, however, many interviewees indicated that the MP has not recruited an adequate number of persons of Mayan descent and/or speakers of Mayan languages. As a result, there is an insufficient number of speakers of Guatemala’s Mayan languages on the MP staff, which presents challenges when working with victims, witnesses, and defendants who are among the 30% of Guatemalans who are not native Spanish speakers.

Analysis/Background:

As discussed in Factor 3 above, recruitment and promotion of prosecutors is carried out according to objective and transparent procedures enumerated in the MP Organic Law. All prosecutors are subject to strict criteria for appointment as specified in the MP Organic Law. The requirements for appointment at each level of prosecutor do not include consideration of an applicant’s race, ethnicity, sex, sexual orientation, religion, or political viewpoints. District, section, and agency prosecutors must be Guatemalan by birth, and auxiliary prosecutors must be Guatemalan citizens. See MP ORGANIC LAW arts. 28, 43, 46. Prosecutors must be physically and mentally capable of carrying out their job responsibilities, but the specific physical and mental requirements are not enumerated in the law. Id. art. 80.

The Attorney General has the authority to transfer prosecutors for professional reasons, and district and section prosecutors have the same authority over prosecutors within their region or section. Id. art. 71. There are no specific criteria established for transfers. Although interviewees reported irregularities related to transfers as discussed above in Factor 3, no interviewees reported discriminatory practices related to transfers.

The MP does not practice affirmative action or positive discrimination. Approximately 1/3 of current prosecutors are women. Statistics are not kept on the number of prosecutors from ethnic minority or indigenous groups, or on the number of minority or indigenous applicants, although language can be used as a proxy for ethnicity. Guatemala has 24 official languages, including 21 Maya languages, Garifuna, and Xinca. Nearly 40% of the Guatemalan population is of Mayan descent, mostly of the K’iche’ (11.3%), Q’eqchi’ (7.6%), Kaqchikel (7.4%), and Mam (5.5%) ethnic groups, although 17 other Maya ethnic groups are present in Guatemala in addition to small Xinca and Garifuna communities. NATIONAL INSTITUTE OF STATISTICS, 2002 Census Data, available in Spanish only at www.ine.gob.gt. Only 68.9% of Guatemalans are native Spanish speakers, with nearly all of the remaining population being native speakers of one of Guatemala’s 21 Maya languages, most often K’iche’ (8.7%), Q’eqchi’ (7%), Mam (4.6%), and Kaqchikel (4.3%), while less than one-tenth of one percent (3,564 people) are native speakers of Garifuna and only about 1,200 people speak Xinca. Id. Despite this, only 221 MP staff members (out of approximately 4,000), or around 5%, speak a Maya language.
Although a few female interviewees reported isolated incidents of harassment or discrimination based upon gender, none believed that there was any systematic practice of discrimination against women. Some longtime prosecutors believed that there used to be a bias against promoting women to higher positions, but pointed to their own success and the appointment of Dr. Paz y Paz Bailey as Attorney General as support for their opinion that bias against women no longer is a problem.

More problematic is the low number of speakers of Mayan languages employed at the MP. Prosecutors throughout the interior of the country reported that the lack of translators or attorneys who speak Mayan languages presents a serious issue of access to justice for indigenous people. In particular, prosecutors noted a need for increased officials who receive complaints and OAV personnel who are able to converse with indigenous victims in their native language. Many OAV personnel reported having to ask civil society groups, as part of the Referral Network, to provide interpreters to interview victims, assist in psychological or medical exams, or attend court hearings; this depended on the interpreters’ availability, and MP staff often had to provide the interpreter with transportation in their personal vehicles.

Although many indigenous people are able to speak and understand Spanish, prosecutors reported that it is not unheard of for a case to proceed in which a party is unable to understand the proceedings due to a lack of interpretation. Prosecutors and judges alike pointed out that it is not uncommon for victim or witness who had previously spoken in Spanish to suddenly state, before appearing in court, that he or she does not understand Spanish, presumably as a tactic to avoid testifying. See Factor 12 on Victim Rights and Protection, below. Some interviewees also reported that many non-indigenous prosecutors and MP personnel are not familiar with the social and cultural situations of members of different indigenous groups, which affects their ability to understand the context of the case and the needs of the victim; however, others believed that prosecutors and personnel understand the socio-cultural context of the communities in which they work, but may not always be able to apply indigenous cultural norms to a legal case, particularly in cases where the cultural norm is contradictory to Guatemalan law or human rights.

Interviewees did not believe that that the lack of representation of indigenous people among MP staff was due to any overt discrimination by the MP, nor did they believe that it was due to a lack of opportunities for indigenous people to obtain the qualifications required to work at the MP, pointing out that there are many indigenous people working as attorneys and in other professional positions with public defenders’ offices or civil society organizations. Rather, interviewees believed that indigenous people are generally not interested in working at the MP as attorneys, translators, or other professionals, although they were at a loss to explain why. Interviewees believed that it is necessary to recruit more speakers of the major Maya languages in order to ensure access to justice and promote efficiency within the justice system, citing cases that were delayed or dismissed because an interpreter could not be located or was not available.

A lack of personnel proficient in sign language was also noted as a problem. Although interviewees were not aware of any discrimination against disabled applicants or employees of the MP, nearly all interviewees working with victims stated that sign language interpreters or staff proficient in sign language were needed to work with victims and, in some cases, to interpret for defendants as well.
II. Professional Freedoms and Guarantees

Factor 5: Freedom of Expression

Prosecutors, like other citizens, are entitled to freedom of expression, belief, association, and assembly. In exercising these rights, prosecutors should always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

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<td>The law guarantees the right to freedom of expression and to communicate ideas to all citizens. But given that prosecutors are public officers who perform their duties within the MP, a hierarchical organization, and are responsible for criminal prosecutions, they are bound by public policy as established by the Prosecutor General. Their job performance suffers from pressure by the media and the lack of institutional internal policies and procedures.</td>
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Analysis/Background:

Prosecutors' right to freedom of expression differs from that of ordinary citizens, insofar as the prosecutor is a public officer, whose obligation is to comply with all such practices imposed by domestic and international regulations regarding respect for other rights that may be affected by criminal prosecutions. In that sense, Guatemalan laws encompass the following several features.

First, the Constitution regulates the Right to Freedom of Expression by everyone, affording all citizens the intangible right to freedom of expression or to communicate ideas. The Constitution establishes that the communication of ideas via any means of communication is to be free, uncensored and requires no prior license, and that this right cannot be restricted by law or governmental provisions. See art. 35. The exercise of this right enjoys a broad scope of application. However, the public function performed by prosecutors entails limitations inherent to their position since they are in charge of criminal prosecutions. Prosecutors must protect the constitutional guarantees to freedom of expression ensuring that they are not violated or clash with other fundamental rights in the criminal process.

Although the right to freedom of expression and to communicate ideas is fundamental, it is not absolute. It is subject to certain restrictions, as provided for by international instruments, which are applicable to public officers. For example, the International Covenant on Civil and Political Rights establishes that the right to freedom of expression may be subject to certain restrictions that need to be set expressly by law and necessary to ensure the respect of the rights or the reputation of others and for the protection of national security, public order or public health or morals. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS art. 19 (adopted by the General Assembly Resolution No. 2200A/XXI, Dec. 16, 1966, in force Sep. 11, 1992). Accordingly, one of the limitations established in the MP Organic Law regarding the right to freedom of expression or to communicate ideas deals with guaranteeing the principle of the defendant's innocence, and states that the MP can only report on the results of investigations as long as there is no violation of this principle, the right to privacy and the dignity of individuals; additionally, the investigations being carried out cannot be jeopardized. MP ORGANIC LAW art. 7. As a public officer, the scope of the right to freedom of expression of a prosecutor is restricted as it refers to information regarding the investigations and criminal prosecutions she is involved in, and there is a clear limitation imposed on the information she can make public about a specific case.

Likewise, the Law on Access to Public Information sets out that information that could seriously harm or jeopardize criminal investigations, crime prevention, or criminal prosecutions is not to be
disclosed to the public, as well as information involving intelligence activities by the state or the administration of justice. LAW ON ACCESS TO PUBLIC INFORMATION art. 23 (Decree-law no. 57-2008, Sep. 23, 2008) [hereinafter, LAW ON ACCESS TO PUBLIC INFORMATION]. Additionally, public disclosure is not allowed for information defined as confidential by the Law for the Comprehensive Protection of Children and Juveniles. Id. art. 4. This allows prosecutors to reinforce what is stated in the Criminal Procedure Code, that an open investigation file is subject to confidentiality in order to protect the human rights of the parties involved.

Based on this right and the restrictions imposed by law, the media faces challenges involving the right to the information versus the need for discretion of investigations and criminal prosecutions in paradigmatic cases. According to a journalist interviewed for this report, print, radio and television media made excessive use of the right to freedom of information in a big impact case despite concerns by the investigative entity. The prosecutors could have certain levels of information in order to prevent contradictions between the prosecutorial function and the media's right to freedom of information in order to guarantee transparency in criminal prosecutions; but there must be trust and maturity in the relationship between prosecutors and journalists. On the other hand, there are prosecutors who do not generate channels of communication, do not make statements, or are not willing to do so and then what happens, for example, is that the sources of the information provided to the media at the scene of the crime are the PNC agents, who do so at their own discretion.

Interviewees from the media stated that the media have relationships with specific section or district prosecutors, but not with agency prosecutors, who provide information at their discretion on cases of social relevance that they may be handling, in such a way that it does not affect the case. However, this information should be provided by the MP's Press and Information Office.

The MP has grown in a disorganized and accelerated fashion since 2006, generating ongoing public presence and constant public opinion. According to several interviewees, these circumstances have not allowed the MP to create an adequate framework that provides prosecutors, through the Press and Information Office, effective mechanisms to relate to the media, mainly in the performance of their duties. This is especially relevant at crime scenes, where there are constant issues with the media demanding respect for their right to freedom of information in its widest meaning. Journalists from different media outlets obtain photographs (usually from the firemen), publish the names of the defendants as well as victims, with no privacy protections for their identity. Only a few representatives from the media use discretion and understand that providing certain information could jeopardize the investigation of a case. But most of the print media embark on personal attacks against the prosecutors when they provide no information, or if they refuse to comment on a case.

On the other hand, MP staff stated that they had a good relationship with civil society organizations and/or nongovernmental organizations [hereinafter NGOs] but not with the media. Sometimes information gets published that affects the investigation of a case, or otherwise exerts negative pressure on the prosecutors. For example, the names of suspects may be disclosed and published with photographs, license plate numbers of vehicles involved.

The Press and Information Office is the unit in charge of creating strategies for internal and external communications. Using the most appropriate channels of communication, the Press and Information Office must keep the citizenship informed on the activities related to the duties and performance of the MP. The External Communication Operational Unit of the Press and Information Office is responsible for developing and coordinating programs aimed at the disclosure of information through the different media, supporting the work performed by all the different departments, divisions and units within the MP, as well as implementing permanent information procedures for the users and the population, aimed at strengthening the credibility of the institution. PRESS AND INFORMATION OFFICE ORGANIZATIONAL HANDBOOK, Agreement 65-2010
(Dec. 1, 2010). However, despite the clear regulatory framework for the activities of this unit, it has no ongoing contacts with the District Prosecutor’s Offices located in the interior of the country.

Another important component that needs to be highlighted is the MP hierarchy. MP Organic Law Article 5 provides that agency prosecutors are subordinated to their superiors, and points out that the MP is an indivisible unit with hierarchical organization in which officers assisting a hierarchical superior are to follow instructions pursuant to the law.

Pursuant to CICIG criteria, there must be a culture of respect to hierarchy within the MP that allows adequate case management as part of the principle of transparency and clarity, independent of what the media may think. The interviewees stated that there should be, within the rule of law, an educational component for prosecutors regarding balancing prosecutorial priorities with the rights of the media.

Factor 6: Freedom of Professional Association

*Public prosecutors have an effective right to freedom of professional association and assembly.*

*They are free to join or form local, national, or international organizations to represent their interests, to promote their professional training and to protect their status, without suffering professional disadvantage by reason of their participation or membership in an organization.*

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<td>Fifty percent of MP employees throughout the country belong to a legally and formally established union within the MP, and the right to unionize is protected in law and in practice. Despite this, there is no strong association that supports the rights and interests of MP employees.</td>
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Analysis/Background:

Professional associations in Guatemala have been created and organized to look after the professional interests of their members, to guarantee professional independence and common interests, and to seek out educational opportunities for their members. Article 34 of the Constitution recognizes the right to freedom of association, as well as the right not to associate with self-defense, or similar, groups or associations, with the exception of professional associations. On this issue, the Constitutional Court clarifies that membership in professional associations is mandatory and that the restriction aims to provide for the moral, scientific, technical and material improvement of university professions and to regulate their practice, to the direct benefit of professional associations. *Judgment 12-10-97*, Constitutional Court, (Gazette No. 46, file No. 1434-96, p. 34, Dec 10. 1997).

Likewise, article 102(q) of the Constitution incorporates the right to unionize as part of a minimum set of social labor rights, when it states that such right is to be exercised free of discrimination and not subject to prior authorization, that workers cannot be fired for taking part in the creation of a union. This right has no limitations or restrictions related to the performance of criminal prosecutions.
The MP Workers Union is a legal entity created for the purpose of reviewing, improving and protecting the economic, social and cultural interests of its MP members. See Ministerial Agreement No. 203, Ministry of Labor and Social Security (Mar. 26, 1996). The union reports that membership currently includes at least 50% of all MP employees.

Five members of an Executive Committee and three members of an Advisory Committee form the leadership of the union, which has jurisdiction in all locations where there is a job center, affording it national reach. In addition, the union is part of Guatemala’s National Federation of Workers Unions, which groups 32 public unions. The other union within the MP, created by DICRI personnel, exists only in paper and currently has no worker representation.

Union membership is voluntary based on the principle of the right to unionize, and each member has the right to vote and to run for office. Accordingly, MP personnel from all departments (e.g., OAV, DICRI), the administrative area, the security unit, etc. qualify for membership. According to the membership profile, most members are auxiliary prosecutors and officers and, to a lesser degree, agency prosecutors from the agencies. Members or staff in positions of trust cannot join the union, but they can continue as members if they had joined earlier. In addition, those individuals working at the MP under an independent professional services contract cannot join the union either, as they lack an institutional appointment or a working relationship with the MP.

According to the information provided by members of the union, membership dues are set by law on the basis of a percentage of a member’s salary which must be deducted every month. But the dues are not being charged because of the low salaries of institutional staff. Therefore, the union is supported through donations in order to carry out its activities.

The union activities have been affected by the different administrations. During the administration of Carlos de León Argueta14 (2002–2004), there was persecution at work, intimidation and threats against the members of the union’s executive committee and advisory board, especially against the union’s advisor. Later, during the administration of Juan Luis Florido Solís (2004–2008), the institution was under court injunction and no actions could be taken against the union members. See Labor Code art. 378 (Decree-law no. 14-41, May 5, 1971, and its amendments). Nonetheless, personnel was fired and though their reinstatement was sought before the labor courts, the rulings were for the PG.

In 2006, the union negotiated a Collective Agreement between employers and workers, based on the prior 2003 agreement, which expired in 2009. Attempts were made to negotiate a new one but they failed, since the PG José Amilcar Velásquez Zarate was about to conclude his term and the next PG, María Encarnación Mejía de Contreras, was provisional while a permanent PG was appointed. Therefore, the prior agreement remains in force.

The administration of Claudia Paz y Paz B. has opened channels of communication and there are plans to employ a labor advisor to negotiate a good Collective Agreement and for discussions to begin as soon as possible. In addition, the PG granted the union the opportunity to contribute to the amendments to the MP Organic Law on the issue of labor rights.

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14 Ramses Cuestas Gómez, (May 1994 to March 1996); Héctor Hugo Pérez Aguilera, (March 1996 to May 1998); Adolfo González Rodas (May 1998 to May 2002); Carlos David De León Argueta, (May 2002 to February 2004); Juan Luis Florido (February 2004 to July 2008); José Amilcar Velásquez Zarate (July 2008 to May 2010); María Encarnación Mejía García de Contreras, (May 15, 2010 to May 25, 2010); Conrado Arnulfo Reyes Sagastume (May 25, 2010 to June 10, 2010); María Encarnación Mejía García de Contreras (June 11, 2010 to December 9, 2010); Claudia Paz y Paz Bailey (December 9, 2010 to the present).
According to union leadership, the staff has seen no improvements on employment conditions since 2006 in the following areas:

- No increase in financial benefits (no salary increases).
- Disciplinary proceedings rules have not been complied with as the union considers the lack of defense evidence to be arbitrary, since previous rulings show inconsistency and demonstrate that there is no objective criteria to assess such evidence. This is because there have been similar cases where the same evidence has been assessed differently.
- Regarding promotions, transfers, resignations and disciplinary hearings, since it is the PG who approves them, worker conditions are unstable. It is believed that transfers are used as punishment, or that they make no sense; for example, in the departamento of Quiché, a member of the MP received death threats and, for safety reasons, the union requested his relocation, but he was then transferred to an even less safe area within the same municipality. In some cases, situations like this have resulted in a request for help from the Human Rights Ombudsman [hereinafter, PDH].

Union members are concerned about the Constitutional Court’s ruling on article 18 of the MP Organic Law, which regulates the functions of the MP’s Advisory Board, since the Advisory Board hears appeals filed by workers. Therefore, the right to appeal has been left at an impasse. The right to appeal is established in international instruments, which is why the MP’s Advisory Board asked the Constitutional Court to clarify what authority would handle the right to appeal enjoyed by MP workers. *MP’s Advisory Board loses power, Prensá Libre, Feb. 4, 2011.*

Union members believe that the MP’s Advisory Board has usually supported the decisions of the PG, since the rulings in most appeals have been against the workers. The Board has confirmed 99% of penalties and transfers. Despite the fact that the worker sees no benefit from appeals heard by the MP’s Advisory Board, the right to appeal for the union is a right that must prevail as part of the victories achieved within labor law.

According to the union, the safety situation for prosecutors is precarious, since personal security is only provided to district prosecutors, section prosecutors and some “star” agency prosecutors. The MP has no policies in place regarding security, which renders everyone vulnerable. In some cases, prosecutors have resigned due to the risks inherent in the performance of their duties.

In addition, the union points out the pressure exerted on MP workers by the requirement to comply with the goals established for staff members at prosecutors’ offices, who are required to file a certain number of charges and diversions every month. See Factor 10 below. Because of the pressure to meet goals, prosecutors find it difficult to apply objective criteria, even in smaller cases. Prosecutors feel that there is no prosecutorial independence.

Even though the union has a physical space at the institution for members to use, most feel that the union does not play the role it should. It is not a strong and firm association that enforces their rights. MP personnel stated that they believe that freedom of association is restricted because staff is afraid to participate and express themselves, especially against the authorities, as they could be transferred or it could result in administrative proceedings against them.

In addition to the MP Workers Union, there is another union formed by DICRI’s investigative staff. This union was never extended to include the rest of the MP workers, and it has recently lost membership. MP security agents have also formed a third union, which is not yet officially recognized, aimed at improving the working conditions for security personnel and which obtained an injunction against the MP after research was concluded for this report. *See Group of security agents obtains injunction against MP, Prensá Libre, July 27, 2011.* Some interviewees highlighted the creation of a new union as an example of the official union’s poor performance at protecting the rights of all MP employees.
Factor 7: Freedom from Improper Influence

Prosecutors are able to perform their professional functions without improper interference from prosecutorial and non-prosecutorial authorities.

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<td>Guatemala's legal framework provides that the prosecutorial function must be independent. However, in practice, the MP as an institution is subject to influence by the Executive Branch and through the budgetary process, while prosecutors often find themselves facing internal pressure as well as pressure from organized crime. Interviewees believed that prosecutors generally conduct themselves with integrity despite the pressures they face, although unethical actions by MP staff are not unheard of.</td>
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Analysis/Background:

The Constitution establishes the conditions necessary for the exercise of the prosecutorial function. Article 251 states that the MP is an institution that supports the public administration and the court system, vested with independent functions, whose main objective is to enforce strict compliance with the laws of the country. Its organization and operations are governed by its organic law. Likewise, Article 3 of the MP Organic Law reasserts the institutional autonomy stating that the MP shall act independently, on its own initiative and in compliance with the duties that the laws grant the institution, not subordinated to any governmental entities or any other authority. It also establishes that the MP shall have a line item in the nation's Annual General Budget, and that it shall manage its resources independently, based on its own requirements.

Article 8 of the CPC addresses the independence of the MP, stating that the MP enjoys absolute independence in criminal prosecutions and investigations, subject to the hierarchical organization established by its own law, and that no authority may instruct the PG or her subordinates on how to proceed with criminal investigations or restrict the exercise of their duties, with the exception of the powers granted by this law to the courts of justice. The relevance of this is that the structure of the investigative body is subject to its own internal hierarchy, but the institution is not subordinated to any other entity in the justice system.

A number of court officers believe that the independence of the office of the PG is in question, since the position is subject to both presidential appointment and removal. In addition, the pressure exerted through the budget must also be taken into account.

The removal of the PG by the President of the Republic is subject to certain conditions contained in article 14 of the MP Organic Law, which provides that the President of the Republic shall be able to remove the PG for duly established good cause. Good cause is to be understood as the commission of a crime during the performance of her duties, for which she has been convicted after trial, and poor performance of the position’s duties as established by law. That removal from the PG position is a political and not a technical decision is evident by the eleven administrations that have been cut short:

1. Rámses Cuestas Gómez, term from May 15, 1994 to March 14, 1996; appointed by President Ramiro de León Carpio
2. Héctor Hugo Pérez Aguilera, from March 15, 1996 to May 14, 1998; interim, replaces his predecessor who had been appointed by President Álvaro Arzú
3. Adolfo González Rodas, from May 15, 1998 to May 17, 2002; appointed, then removed by President Óscar Berger
4. Carlos David de León Argueta, May 18, 2002 to February 25, 2004; appointed, then removed by President Óscar Berger
5. Juan Luis Florido Solis, from February 26, 2004 to July 30, 2008; interim for two years and then appointed; submitted his resignation two years later to President Álvaro Colom
6. José Amílcar Velásquez Zárate, from July 31, 2008 to May 14, 2010; interim, appointed by resignation of predecessor
7. María Encarnación Mejía García de Contreras, from May 15, 2010 to May 25, 2010; interim, first term
8. Conrado Arnulfo Reyes Sagastume, from May 25, 2010 to June 10, 2010; removed by the Constitutional Court
9. María Encarnación Mejía García de Contreras, from June 11, 2010 to December 9, 2010; interim, second term.

Another important feature is the hierarchical structure of the MP, since district and section prosecutors are forced to obey the instructions or general guidelines clearly issued with the series of guarantees that promote compliance with the PG’s work plan. Prosecutors stated that there are several features they consider to be external influences that affect their independence in criminal proceedings. There might be incidents of interference and/or pressure against prosecutors during the proceedings by other persons involved in the criminal cases. Prosecutors feel that instead of applying pressure against them if there is disagreement with their acts or motions, the appropriate legal recourses should be exercised, or the complementary prosecutor could object during the proceedings. One chief prosecutor feels that due to the nature of the cases his Section Prosecutor’s Office handles, they have no backlog of cases nor is civil society involved in any of them. Personally, there have been no attempts to influence or bribe him. Regarding goals, they are a matter of reason and objectivity. The lack of convictions does not mean that the system is not effective. There exists a lot of pressure by MP authorities to solve cases and have statistics. Although the staff may have the will to solve the cases, they lack the capacity to do so due to the heavy workload (cases) that comes in every month, which keeps generating more work.

There are also external influences by the media and civil society. Several interviewees stated that the media influence the behavior of the OAV psychologists by stereotyping victims, which results in greater attention towards the most vulnerable victims. Civil society usually demands action from the MP, but there is also pressure from the victims and witnesses who, because of fear and the passage of time, may abandon the case. See Factor 23 below.

Threats, intimidation, and the overall conditions of insecurity influence MP staff. In general, prosecutors receive threats that are not considered unusual within the normal course of work for a prosecutor. Some interviewees believed that the lack of protection for public officials makes them easy targets of threats and pressure from criminal organizations. An example mentioned by interviewees is that of a high impact case in the City of Quetzaltenango involving the trial judge as well as the prosecutor in charge of the case, both shot in front of their homes. The lead prosecutor was threatened by the private defense. This case caused the prosecutor anxiety, and doubts during closing arguments, and he thought about resigning while the arguments were read. However, believing it was his responsibility to do so, he continued prosecuting the case until the final judgment. Although the outcome was a conviction, upheld by the Court of Appeals, the Supreme Court decided to remand the case, which vacated the two prior rulings. Following the vacating of the convictions, the prosecutor decided not to get involved to avoid any attacks against him.

According to many prosecutors, prosecutors are not regularly confronted with opportunities for corruption, but even if they are confronted, integrity prevails. In that sense, investigative and trial judges stated that during their constant daily dealings with the prosecutors in the performance of their duties, the integrity of each prosecutor is clear as well as their desire to work, or whether a prosecutor is negligent or lacks the technical skills. Judges mentioned corruption by the court
staff and by INACIF. In a case involving the rape of two minors, the court officer “lost” the file while at INACIF, and an expert agreed to switch the DNA tests. According to the information provided, the officer was paid GTQ 10,000. Once the judge found out, he was able to have the officer transfer out of that courthouse, but was unable to provide evidence that would result in his removal. In addition, the judges stated that they often see cases where there is conflict between the parties, and people make negative comments about court and MP staff. However, this is not certain.

Judges believe that the pressure and influence exerted against prosecutors is mostly internal, since oftentimes prosecutors could exercise their prosecutorial discretion to allow for out-of-court diversions in many cases, but prosecutors now have to meet a quota of monthly resolved cases. In addition, the justice system is under pressure by society and NGOs regarding their performance. See Factors 10 and 23 below. Civil society organizations think that the cases of corruption in the justice system are many, especially in the interior of the country, pointing out what happened at the trial court in Jalapa, where the presiding judge accepted money to avoid termination of a case. In another case, in the departamento of Cobán, the prosecutor did not want to issue a warrant for the arrest of some individuals charged with rape, and it took a great deal of effort by the civil society organization to secure an arrest warrant.

The issue of the budget also affects the autonomy of the MP. See Factor 25 below. A judge who was interviewed stated that although PG is appointed by the Executive Branch, it is difficult to be fully autonomous without an adequate budget. Some interviewees, including a member of Congress, considered that the low salaries allocated to MP staff make them susceptible to external influences.

Factor 8: Protection from Harassment and Intimidation

Prosecutors are able to perform their professional functions in a secure environment and are entitled, together with their families, to be protected by the State.

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<th>Conclusion</th>
<th>Correlation: Negative</th>
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<td>Although Guatemala has a recent regulatory framework for the protection of individuals involved in criminal cases, the MP rarely applies measures for the safety of prosecutors since the government does not allocate financial resources for the implementation of these mechanisms. Furthermore, the government does not have in place law enforcement policies or sufficient resources to fully guarantee the safety of prosecutors and judges, especially in the interior of the country.</td>
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Analysis/Background:

According to the report Violence in Guatemala, societal violence, criminality, and their present impact in Guatemala are due mainly to the “lack of historical foresight to deal seriously and responsibly with the phenomena. It is impossible to address violence as a whole from one single perspective because the factors that produce this violence correspond to different objective and subjective conditions, as well as material and psychological situations. To explain these phenomena, it is essential the convergence of interpretations that relate the position, and social and family situation of individuals, including social, economic and cultural dimensions, as well as contextual and institutional elements.” INTERNATIONAL CENTER FOR THE RESEARCH OF HUMAN RIGHTS (CIIDH), VIOLENCE IN GUATEMALA (FACTORS RELATED TO ITS ORIGIN, FORMS OF MANIFESTATION AND POSSIBLE SOLUTIONS) (Jun. 6, 2006). Violence in the country has increased
steadily since 2003. Of all violent acts, those of particular relevance are violence against women, children, and youth, mainly in view of the social impact they entail.

The State and its machinery to control, repress and prevent violence and criminal activity have been practically overwhelmed by crime, affecting the population at large and even the personnel that works in the justice system. The organization of the MP includes a number of units in charge of security.

The Office for the Protection of Witnesses [hereinafter, Protection Office] was established pursuant to the LAW FOR THE PROTECTION OF PERSONS INVOLVED IN CRIMINAL CASES AND PERSONS LINKED TO THE ADMINISTRATION OF CRIMINAL JUSTICE (Decree-law No. 70-96, Sep. 25, 1996) [hereinafter, Protection Law]. The main purpose of the protection services is to provide protection to the officials and employees of the Judiciary, civilian security agencies and the MP, as well as to witnesses, experts, consultants, complementary prosecutors and other persons exposed to risks as a result of their involvement in criminal proceedings. Protection services are also provided to journalists who need them because they might be at risk as a result of their reporting function. Id. art. 1. This law requires that the Protection Office operate within the framework of the MP.

An Advisory Council was created to implement and execute the Protection Law. Its members are the PG, who presides over it, an appointee of the Minister of the Interior and the Director of the Protection Office. However, prosecutors do not qualify for protection services from this office and, instead, other persons involved in criminal cases are prioritized in order to optimize the resources available.

The Protection Office is part of the structure of the MP and enjoys authority and autonomy in criminal proceedings. The Protection Office includes a Director, a Deputy Director, a Technical Unit (psychologist and social worker), DICRI investigators and a group from the PNC that provides protection to witnesses. The lack of leadership for more than 3 years generated an increase in all its personnel’s workload.

Among the general objectives of the Protection Office is to provide comprehensive protection to those who enter the program, safeguarding the life and personal safety of persons who are involved in criminal cases and presenting them before the Judiciary anywhere in the nation. However, the persons under protection from the Protection Office lack protection at the regional level because there are no agreements in Central America for this purpose. The program is managed following criteria related to risk factors and importance and seriousness of the events, and the following protective measures can be applied: reincorporation, financial assistance, financial support for the family, rent, personal security and medical coverage. In situations of maximum security, distance learning is also provided. One of the policies that is most frequently exercised is monetary assistance, depending on the level of risk and integration within the criminal proceedings, but under no circumstances can it match the salary of the beneficiary. The socio-economic profile of the users of the service is usually lower middle class.

Protection terminates with the protected individual’s exclusion or withdrawal, relocation, termination of reasons for which protection was initiated, fulfillment or because the beneficiary fails to comply with the rules. Individuals who do not participate in the criminal proceedings are excluded from the program. Several interviewees reported cases where errors were made during the decision process that determines whether witnesses qualified for protection and on the hasty admission of witnesses into the program. The prosecutor in charge of the case is responsible for reviewing this decision.

The Protection Office staff is governed by the MP Organic Law. Therefore, they are subject to the institution’s disciplinary procedures. Personnel that join the institution and the Protection Office do
not receive orientation for the post, creating the need for training in several areas, especially in risk analysis.

Pursuant to its internal accountability system, the Protection Office has procedures like the following:

- The Director reports to the council on the work done during the month, and submits expenses, payments made and pending from a budget of 14.5 million that is managed under a revolving fund. Only specific line items are restored.
- The Protection Office is subject to the MP Annual Operational Plan.
- The Protection Office does not have internal controls because its performance is not registered in SICOMP.
- The procedural handbook of the Protection Office is awaiting final review by the PG.
- The personnel that work in the Protection Office is free to join the Workers Union.

Another important regulation is provided by the UN Convention against Transnational Organized Crime, subscribed by Guatemala on Dec. 12, 2000, and approved via Decree-law No. 36-2003. Thus, there is a law aimed at promoting cooperation to effectively prevent and combat transnational organized crime. See LAW AGAINST ORGANIZED CRIME (Decree-law No. 21-2006, adopted on Aug. 2, 2006). This law commits the State of Guatemala to adopting legislative measures directed at combating and eradicating organized crime, establishing specialized investigation mechanisms. The purpose of the law is to establish which criminal acts can be attributed to the members and/or participants of criminal organizations, and to establish and regulate such specialized investigative methods and criminal prosecutions, as well as all the measures aimed at preventing, combating, dismantling and eradicating organized crime. Id. art. 1. In a way, this article provides prosecutors with tools that allow for a more efficient investigation and better security in the performance of their duties.

The application of one of the specialized methods of investigation is regulated by the GENERAL INSTRUCTION FOR THE APPLICATION OF THE SPECIALIZED METHOD OF INVESTIGATION INVOLVING TELEPHONE WIRETAPPING AND OTHER MEANS OF COMMUNICATION (May 20, 2009), which aims to establish specific procedures for the wiretapping of communications that aid in prosecuting crimes attributed to the members and/or participants of criminal organizations, pursuant to the Law Against Organized Crime.

To this end, prosecutors must review the launching of a specialized investigation. Once prosecutors decide that implementing wiretapping as a specialized method of investigation is necessary, they have to submit a request to the Unit for Specialized Methods of Investigation of the MP [hereinafter UME], together with a detailed report and a copy of the basic elements of the investigation that show the need and relevance of using this method.

The UME has limited resources to execute telephonic wiretaps, which is overcome by the resources of organized crime. UME’s operational capacity has to be increased in order to be truly useful to the MP, especially in kidnapping cases, since you cannot have a waiting list before proceeding to investigate organized crime.

According to the PG, this law and the UME help counteract crimes committed by organized crime, differentiating them from standard or ordinary violence. Therefore, each prosecutorial unit needs to be reorganized in order to better address these issues. This reorganization will start in March 2011, switching to handling cases based on a unit model instead of by agencies.

Similarly, a judge interviewed stated that prosecutors can improve investigations if they increase the use of this investigative tool. The profile of the investigative agent also needs to improve since, given the current situation and financial circumstances, she is vulnerable to external
influences. For example, the staff is currently qualified to listen in on telephonic wiretaps, but there are no incentives in place to perform specialized assignments and work in high impact cases. Staff information from the UME needs to be handled properly; and there needs to be in place psychological counseling given the nature of the information constantly listened to, which involves extortions and death threats. During the brief administration of Conrado Reyes, the PG requested information from all the MP staff, which led to the perception that the safety of the people who work at the institution had been compromised.\(^{15}\)

According to several interviews, organized crime can infiltrate any institution in Guatemala, their personnel, recruitment procedures and prosecutors offices’ work assignment system as long as there are no mechanisms to strengthen the organizations, such as maintaining investigation protocols within a system that generates open and effective performance reviews or evaluations.

In addition, the MP has a Security Department, whose goal is to provide security and protection to the PG and to the Chief of the MP, as well as to the personnel and facilities of the MP across the country. At the time of interviews for this report, the Security Department had a Deputy Chief; an Executive Secretary; four security agents who are supervisors; two security agents who are service coordinators; four security agents who are assistant coordinators; four security agents who are drivers; and three security agents who act as support personnel. The operations of the Security Department are governed by the **ORGANIZATION AND OPERATIONS REGULATIONS OF THE MP SECURITY DEPARTMENT** (Agreement No. 05-2010, Feb. 2, 2010), as well as by the general laws and regulations of the MP.

The Security Department operates with 421 staff members, 388 of which are security guards and 33 PNC officers, part of the Department of Protection for VIPs, to provide security to the employees of the MP and protect its 81 buildings throughout the country (21 buildings owned by the MP and 60 leased buildings, some of which have been leased taking into account specific criteria to guarantee the safety of the staff). The Department has 8 vehicles assigned to it, half of which are currently being repaired.

The Security Department does not have a quick-response team, which requires at least 12 more persons and two vehicles in order to act quickly in case of an emergency.

The Security Department works as follows: two groups in alternate shifts of 7 x 7 days. One group operates during daytime (Monday through Friday, 7 AM to 4:30 PM), and two individuals in alternate shifts of 48 x 48 hours, who provide security to the staff at crime scenes.

Before 2009, the chief of each department exercised their discretion in the recruitment and selection of security agents. The Department of Human Resources currently has a profile for the recruitment and selection of security agents. The requirements now are the following:

- Officer I: Proof of 9th Grade Diploma; proof of one year of experience in security of assets; known honesty; no criminal and police records; driver’s license (optional); and at least 23 years old.\(^{16}\)

\(^{15}\) The latest attacks against buses, the discovery of heads and mutilated bodies, and the appointment of a PG believed to have links to drug trafficking organizations has the Guatemalan society concerned, and demanding more safety as well as the removal of the leader of the organization in charge of criminal investigations in the country, a decision that at the time of this report is in the hands of the Constitutional Court. **Castresana to Provide Evidence (Castresana Dará Pruebas)**, **Prensa Libre**, Jun. 10, 2010.

\(^{16}\) It should be noted that according to the **Law on Firearms and Munitions**, persons under age 25 may not be licensed to carry a firearm. **LAW ON FIREARMS AND MUNITIONS** art. 71(a) (Jun. 29, 1989).
Officer II: Proof of General Basic Education degree or diploma (depending on the case); proof of two years of experience in specific activities related to security of individuals and assets, preferably with knowledge of security through electronic systems; known honesty; no criminal and police records; driver’s license; and at least 23 years old.

Officer III: Proof of General Basic Education degree or diploma, preferably with university education; proof of three years of experience in activities specifically related to the security of individuals and assets, and preferably inventory control; known honesty; no criminal and police records; driver’s license; and at least 23 years old.

Sixty-eight appointments were made during 2010 (new hires); there were five resignations; five removals; one transfer from line 022 to line 011; three dead; and two 8-day work suspensions without pay.

Currently, the MP Department of Security has 1,280.3 vacation periods outstanding because of the high demand for their services, which has rendered the institution in breach of minimum labor rights. There are vacations pending since 2002, which means that some staff has up to eight vacation periods outstanding. There are constant requests to recruit staff exclusively to cover vacation time. The department’s goal is to reduce the backlog by at least 50%, and a plan has reportedly been put into place to allow staff members to take leave.

The services rendered by the personnel of the MP Department of Security involve providing executive security to 45 Prosecutors and Auxiliary Prosecutors. The 130 security agents are distributed in two groups with alternate shifts of 7 x 7 days. There are 31 posts at the Gerona MP Headquarters that should be covered by the agents of the MP Department of Security. However, during nighttime, the Department of Security has only eight security agents to protect the facilities, leaving 23 posts without security.

The agents of the Department of Security do not have even the minimum conditions to render their services, such as access to a space with a bed, refrigerator, stove, microwave oven, lockers, break area, fans (as needed). The agents usually purchase enough food to cover the seven days of their shift, but they have no space to leave their personal items and food at the location of their post.

Training program modules require that security agents need to do shooting practice at least twice a month per group, which implies staff time and logistical support for ammunition, silhouettes, wood to build the frames, cleaning supplies for the weapons, rental of shooting ranges, ongoing training on security of facilities and personal security, among others. Furthermore, there is need for training for the security personnel in the following areas: human rights, constitutional law, criminal law, criminal procedural law, discipline, human and public relations, theory on the use of firearms, communications, physical training, personal security, security of facilities, detection of suspicious packages, report drafting, income monitoring, first aid, among others.

Between January and December of 2010, the Department of Security provided a total of 1,112 security escorts to crime scene teams, in addition to security for the staff of the 38 Section Prosecutors’ Offices and the 59 District Prosecutors’ and Municipal Offices, as well as for proceedings at the Bureau for the Control of Weapons and Munitions [hereinafter DIGECAM].

Information provided to the assessment team suggests that the main weakness of this unit is not having a specific line item in the MP budget to cover the needs for human resources and quick-response mechanisms to assist whenever there are threats against the staff of the prosecutor’s office. As a result, it has been necessary to request the support of the PNC. The staff at the prosecutor’s office who were interviewed stated that having a personal security agent represents a financial burden and that there is distrust towards the PNC staff. Therefore, they would rather not have a security guard.
The Prosecutor’s Office against Organized Crime indicates that internal protective mechanisms are used before requesting personal security in cases of harassment and intimidation because they are aware of the lack of resources. For example, when an auxiliary prosecutor needed to travel to the departamento of Huehuetenango, he was followed by several vehicles on the way to a hearing, so another auxiliary prosecutor was assigned to the case. Other times, security support is requested from the Interior Ministry or the Military.

According to a Section Prosecutor, some checks have been implemented over the activities of the staff in order to improve the issue of security, such as creating attendance checklists, as well as checklists of who uses information programs and the operations performed. In addition, the staff rotates between the different units of the Prosecutor’s Office.

The investigation personnel of the DICRI has also received threats, especially when performing fieldwork, mainly in red zones or marginal areas; they feel vulnerable because they carry no weapons, have no security personnel assigned to accompany them and, at times, have been shot at because the MP vehicles are easily identifiable as they are usually Hilux pickup trucks.

As some interviewees reported that, as a result of violence against various prosecutors’ offices, the MP Department of Security has offered to provide security to these offices with personnel that volunteer their services during their seven-day rest periods. However, this security has reportedly not been widely put into place, because the security staff need their rest periods. If put into effect, they would provide security to the facilities, to the crime scene teams and escort personnel that goes to court, among others. Interviewees reported that some security services are currently being provided to the Prosecutor’s Offices in Malacatán (San Marcos), Esquipulas (Chiquimula), Mazatenango (Suchitepéquez), Drug Trafficking (Chiquimula) and San Benito (Petén), although it is not clear to what extent.

In 2008, the following members of the MP suffered attempts against their lives:

- Fernando Mayén, Prosecutor of Villa Nueva, was murdered on January 29, when he was attacked together with two colleagues in the community of La Carretera, San José Acatempa, Jutiapa.
- Ingrid Hernández, officer of Agency 18 of the Prosecutor’s Office for Crimes against Life, was murdered on March 11, when she was going to the MP building in Zone 1.
- Rudy Pineda, District Prosecutor of Chiquimula, was murdered on May 19. It is believed that his death came after a number of threats he received in connection with the high impact cases he had been assigned.
- Juan Carlos Martínez Gutiérrez, auxiliary prosecutor of the Prosecutor’s Office for Crimes against Life, was murdered on July 14 when he was going to a meeting with the former PG, Juan Luis Florido. He was leading the investigation into the deaths of two police officers involved in the Parlacén case.
- At the Deputy Municipal Prosecutor’s Office in Mixco, an auxiliary prosecutor of Agency Number 5, Eduardo Antonio Gómez Aquino, 39 years old, was murdered in a case of extortion. His body was found with nine knife wounds inside his residence, located at 4-77, community of Lo de Coy, Zone 1 of that municipality.

Another relevant case is the murder of prosecutor Licenciado Rufino Velásquez in May of 2010. He had been working for seven years at the District Prosecutor’s Office in Quetzaltenango and, at the time of his death, was working at the MP Litigation Unit. He had previously worked at the Municipal Prosecutor’s Office in Nebaj, Quiché. Several colleagues and a number of judges stated that Licenciado Velásquez was a hard-working, effective prosecutor committed to his work.

The District Prosecutor of Quetzaltenango stated that Velásquez had several difficult, high impact cases, but only by chance since the system assigns cases on the basis of the SICOMP shift.
A week before his death, Velásquez had successfully obtained a 25-year prison term conviction against Juan Ordóñez Hernández, alias *el chicharra*, for the crime of femicide against Leticia Yaneth Sotovando Rodas. He was a member of a group responsible for several kidnappings in the *departamento* of Quetzaltenango. This was a complicated case because the defendants were dangerous and there was no substantive evidence. During the trial, Velásquez was able to secure the statement of a girl as new evidence, which led to the conviction. However, it was not until after his death that the threats he had received because of the case were discussed. The staff at his agency knew about these threats, but did not share them with the District Prosecutor.

A week after the conviction, *Licenciado* Velásquez was violently murdered as he was entering his home. According to the District Prosecutor, the act was premeditated and well-organized. It is regrettable that there are no conditions in place to protect the work of the prosecutors.

The Prosecutor’s Office for Administrative Crimes reported that there was an investigation against *Licenciado* Marvin González of the Section Prosecutor’s Office against Organized Crime in Quetzaltenango, based on information that surfaced indicating that he was involved in the death of *Licenciado* Velásquez. This case was closed after the investigative court ruled that the evidence submitted by the MP was not strong enough to link the three defendants. See Factor 14 below; also see Investigative Judge Closes Case at Request of MP (*Jueza Primera cierra caso a petición del Ministerio Público*), *Prensa Libre*, (Mar. 25, 2011), at http://www.prensalibre.com/noticias/Jueza-cierra-caso-peticion-MP_0_450554963.html.

The fear caused among the staff at the District Prosecutor’s Office of Quetzaltenango by the death of *Licenciado* Velásquez was evident. Even an agency prosecutor (who had received death threats in the Eastern region of the country) preferred that cases be dismissed because he feared carrying out objective criminal prosecutions. Security conditions make everyone feel vulnerable, especially because the reasons for the death of *Licenciado* Velásquez are of public knowledge. Threats are a concrete mechanism to push a prosecutor out of a case.

In 2011, the MP Department of Security will take over the management or administration of the Human Resources that provide protection to four (4) agency prosecutors of the Specialized Prosecutor’s Office of CICIG, while continuing to provide security with the ten (10) MP Security Agents and twenty (20) PNC agents who currently render services at CICIG.

Security must be provided 24 hours every day because staff from the prosecutor’s offices across the country, especially from district prosecutor’s offices, needs to go to crime scenes using their own vehicles, devoid of any security protection.

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17 During the investigation into the murder of *Licenciado* Velásquez, investigators discovered that the auxiliary prosecutor accused, a member of the Unit against Organized Crime of Quetzaltenango, was allegedly part of the group of kidnappers for about two or three years. According to the statements made by a protected witness, the main task of the defendant was to keep the Los Pitágoras band informed on the status of all court proceedings against them. In exchange, he received about GTQ20,000.00. See *Pitagoras Band paid auxiliary prosecutor for information (Banda los Pitágoras pagaban a un auxiliar fiscal por información)*, *Prensa Libre*, (Jan 25, 2011), at http://www.prensalibre.com/noticias/Pitagoras-pagaban-auxiliar-informacion_0_418758166.html. Although the case has been filed, fear and insecurity reign at the MP office in Quetzaltenango, since this murder seems to be linked to organized crime.
Factor 9: Professional Immunity

Prosecutors have immunity for actions taken in good faith in their official capacity.

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<td>Prosecutors do not have immunity for actions taken in the exercise of their duties prosecuting crimes since there is no statute that addresses this issue. This is detrimental to their performance as they can be subject to arbitrary legal actions aimed at restricting their work.</td>
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Analysis/Background:

The law establishes that only the PG has immunity for actions taken in an official capacity, except if she commits a crime, as provided for in Article 251 of the Constitution. This article also affords the PG “the same preeminence and immunities granted to the justices of the Supreme Court of Justice” during the four years she is in office, except that the President of the Republic can remove the PG for duly established good cause. The PG is subject to the same rules on impeachment as magistrates and judges, “Magistrates and judges are subject to impeachment as established by law. The Congress of the Republic has jurisdiction to rule on whether charges can be filed against the President of the Judiciary and the justices of the Supreme Court of Justice.” CONST. art. 206. Therefore, the Constitution establishes the PG’s immunity on the same basis as that of the President of the Judiciary and the justices of the Supreme Court.

Articles 28 and 43 of the MP Organic Law originally established that district and agency prosecutors were subject to impeachment, and the procedure was set in the LAW ON THE MATTER OF IMPEACHMENT (Decree No. 85-2002, Dec. 4, 2002). However, the articles were ruled unconstitutional. “… The MP district prosecutors, section prosecutors are in violation of art. 153 of the Constitution by providing for new cases to be subject to impeachment or providing exceptions to the principle that guarantees equality under the law to officers that the Constitution does not provide for, such cases are in violation of the mandate that the protection of law applies to all individuals who are in the territory of the Republic. The addition of new officers by the ordinary lawmaker who lacks the constitutional power to do so is a violation of the Constitution.” Judgment on file 670-2003, generalized unconstitutionality (Sentencia del expediente 670-2003 inconstitucionalidad de carácter general), Constitutional Court Gazette No. 74 (2004). Prosecutors do not have immunity because there are no provisions for them in the Constitution, which prevents them from acting freely when they perform their duties in criminal prosecutions as they can be subject to legal action.

According to the MP Workers Union, the professional immunity established in constitutional law is applicable only to the PG, but the union believes that there should be immunity for the prosecutorial staff because they have become aware of cases where charges have been brought against prosecutors in retaliation for the performance of their job duties.

Impeachment law would allow prosecutors to have general immunity, unless they are involved in criminal activity or they intentionally perform negligent acts for which they should be liable for any harm caused, as their duties are to guarantee faithful compliance with the Constitution and international laws. Article 47 of the MP Organic Law states that, “Prosecutors shall be subject only to the Political Constitution of the Republic of Guatemala, international Treaties and Agreements, the law and the instructions issued by their hierarchical superior, under the terms established by this law.” It should be noted that MP staff operates under general and issue-specific instructions that promote the performance of their duties, under the terms and scope established by law.
Therefore, the report team was informed that it is necessary to establish what kind of immunity should be afforded to staff in charge of criminal prosecutions, especially where there are inappropriate actions. For example, prosecutors claim that they cannot change the motion for final action when it is filed at the intermediate phase, because they must meet the goals established for each Prosecutor’s Office. To that end, they ask the review judge prior to the hearing to apply an alternate resolution mechanism. According to an interviewed judge, he has been unable to submit any of the many cases of this kind in his docket to the MP General Review Office to initiate the administrative procedure.

Currently, there are two ways to complain about damages caused by the actions of prosecutors: either by submitting a formal complaint before the MP General Review Office in order to initiate disciplinary proceedings, and/or by reporting a crime to the Prosecutor for Internal Affairs at the Internal Affairs Unit of the Prosecutor’s Office for Administrative Crimes.

This unit reported that they receive many cases filed in bad faith by the complainants. Once the investigation is carried out and determining that the facts do not correspond to a crime, a dismissal is requested. According to the statistical information provided by the Prosecutor’s Office for Administrative Crimes, there were 2374 complaints filed between January and December of 2010, of which 421 (17.73%) were dismissed, 70 cases were transferred to other prosecutor’s offices for various reasons, leaving 1883 cases at the Internal Affairs Unit. In 2010, 105 charges were filed, 12 alternative resolution mechanisms were applied (04 waivers of prosecution and 08 cancellations of criminal prosecution). A total of 38 final judgments were secured (13 in regular proceedings and 25 in abbreviated proceedings), including 30 convictions and 12 acquittals.
III. Prosecutorial Functions

Factor 10: Discretionary Functions

Prosecutorial discretion, when permitted in a particular jurisdiction, is exercised ethically, independently, and free from political interference, and the criteria for such decisions are made available to the public. The prosecutor's power to waive or to discontinue proceedings for discretionary reasons is founded in law, and, if applied, sufficiently justified in writing and placed in the prosecutor's file.

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<td>Although prosecutorial discretion is enshrined in law, in practice, a quota system requires prosecutors to file a certain number of charges per month or receive negative marks on their performance evaluation. While some interviewees stated that the quotas are low relative to the number of crimes committed in Guatemala, a majority of interviewees believed that the quotas lead prosecutors to file charges that are not supported by the investigation and significantly limits prosecutors' ability to exercise discretion.</td>
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Analysis/Background:

Under the MP Organic Law, district, section, and agency prosecutors are responsible for carrying out criminal proceedings. MP ORGANIC LAW arts. 24, 31–37, 42. The criminal process begins when an individual makes a complaint to the MP, generally by coming in person to the MP to report a crime to an administrative officer. CRIM. PROC. CODE art. 297. After receiving the complaint, MP staff conduct an investigation, in conjunction with other investigative bodies. See Factor 21 below. The auxiliary prosecutor is charged with carrying out the investigation and completing all the preparatory work for criminal proceedings. MP ORGANIC LAW art. 45. The auxiliary prosecutor appears before the rotation court or before a justice of the peace to obtain authorization for the suspect's arrest and detention during the investigation, which is supervised by the investigative court. See CRIM. PROC. CODE art. 308. Once the investigation is completed, the agency prosecutor files charges and the trial begins before the trial court. See id. art. 332.

Prosecutors have the discretion to request that the investigative court archive the case when the investigation shows that the action committed by the defendant is not punishable or it is otherwise not possible to proceed. id. art. 310. Prosecutors may also request that the investigative court dismiss the case when they conclude that there is no basis for charges. id. art. 325. If the prosecutor concludes that charges are supported, he or she requests that the investigative court opens the case and, upon the case's opening, files the charges. id. art. 324.

In cases where charges are supported by the investigation the prosecutor, with judicial authorization, may choose to waive criminal prosecution where the MP considers that the public interest and citizen security are not seriously affected or threatened only in cases of crimes not punishable by incarceration, crimes for which private prosecution is possible, crimes carrying a maximum prison sentence of less than five years, crimes in which the defendant's participation was minimal, or crimes where the defendant was directly and seriously harmed by the consequences of the crime and the sentence would be inappropriate, or in certain cases where the defendant is charged with helping to cover up another person's crime and testifies against that person. CRIM. PROC. CODE art. 25. Waiver of prosecution may only take place when the
defendant has made reparations to the victim\textsuperscript{18} or the defendant and victim have entered into an agreement, including agreements to use traditional justice mechanisms, and only when this would not violate constitutional or international human rights. \textit{Id.} art. 25(2). In a case of a crime without a direct victim, the prosecutor may request to conditionally suspend prosecution when the defendant has made reparation for any harm caused to society or can guarantee reparations within one year. \textit{Id.} Once a party has requested conditional suspension of prosecution, the Justice of the Peace calls the parties, including the victim, to a settlement hearing. If the victim will not accept a settlement but the prosecutor considers it appropriate to waive prosecution, the prosecutor can authorize the conversion of the case to a private action. \textit{Id.} art. 25(3).

Prosecutors may also propose the conditional suspension of prosecution in crimes carrying a prison sentence of no more than five years, negligent crimes, or certain tax crimes, subject to the approval of the investigative judge. \textit{Id.} art. 27. Prosecution may be suspended for no less than two or more than five years and the charges will be considered extinguished if the period of suspension passes without the defendant's committing another willful crime. \textit{Id.}

Both the prosecution and defense, as well as parties who have joined the case as a complementary prosecutor (also sometimes called a private prosecutor), have the right to appeal judicial acts and sentences. See, e.g., \textit{id.} arts. 398, 404, 416, 438. Additionally, prosecutors have the discretion to appeal a judicial act on behalf of the defendant, when to do so would be in the interest of justice. \textit{Id.} art. 398.

In practice, although by law the MP does not have the discretion to simply archive or ignore filed complaints, prosecutors reported that the number of complaints filed is overwhelming and as a result many complaints are never investigated at all or are never pursued but also never formally dismissed or closed. For example, in 2010, 90,845 complaints were received in Guatemala City, of which 26,143 led to some sort of legal proceeding (such as dismissals, waiver of prosecution, archival, \textit{etc.}), including 1,027 in which prosecutors requested the filing of charges. \textit{MP ANNUAL REPORT} \textsc{2010}. Statistics varied in the interior of the country: for example, in Escuintla, 9,136 complaints were received, of which 3,414 led to a legal proceeding including 366 in which prosecutors requested the filing of charges; in Jalapa, 4,944 complaints were received, of which 725 led to a legal proceeding, including 306 in which charges were requested; in Quetzaltenango, 17,682 complaints were received, of which 15,103 led to a legal proceeding, including 732 in which charges were requested; in el Peten, 5,333 complaints were received, of which 1,575 led to a legal proceeding, including 329 in which charges were requested; in the Section for Crimes against Women, 7,344 complaints were received of which 4,501 led to a legal proceeding, including 631 in which charges were requested. \textit{Id.}\textsuperscript{19}

Prosecutors reported receiving significant pressure from within the MP to meet quotas for the numbers of charges they must file. Although the exact quota was not clear—some interviewees stated that agency prosecutors needed to file 30 charges per month, while others stated that each auxiliary prosecutor needed to recommend the filing of charges in 10 cases per month—the quotas are set in a circular issued by the Attorney General and failure to meet the quotas results in a negative mark on a prosecutor’s performance evaluation. Due to the quotas, prosecutors reportedly pursue charges in simple cases that meet the criteria for waiver of prosecution, settlement, suspension of prosecution, or dismissal. On the other hand, complex cases that require weeks or months of work to support a single charge may not be pursued because

\textsuperscript{18} The Guatemalan Criminal Procedure Code defines victim to include the immediate family, partner, or person who lives with the victim, as well as representatives of groups who were targeted by a crime. See art. 117 (\textit{as amended} May 24, 2010) and Factor 12 below.

\textsuperscript{19} Only a small sample of the data available in the Annual Report is included here. For complete statistics for each office of the MP by district and by section, as well as data for previous years, see the Annual Reports (\textit{Memoria de Labores}) on the MP website at www.mp.gob.gt.
devoting extensive time to a single case may prevent the prosecutor from meeting the quota. Many judges and defense attorneys believed that the quota requirement leads to rushed investigations and drafting of charges, which contributes to the significant systemic problem of deficient investigations and poorly drafted or unsubstantiated charges.

Despite the pressure to file charges, agency prosecutors were mixed in their responses to cases in which they believed that the investigation did not support charges, even if the auxiliary prosecutor recommended that charges be filed. Some prosecutors reported that if the investigation is clearly deficient or otherwise does not support the filing of charges, they consider it their responsibility to request archival or dismissal of the case pursuant to article 310 of the Criminal Procedure Code. However, a majority of interviewees indicated that prosecutors almost always file charges when the auxiliary prosecutor or other investigative bodies recommend that charges should be filed, even if the investigation was clearly deficient or the evidence does not support the charges. Many interviewees believed that the quotas were a primary factor leading prosecutors to file unsupported charges.

Other interviewees believed that the quota system does not harm prosecutorial discretion. They pointed toward the high rate of crime in Guatemala, and stated that it was evident that there is a far higher number of crimes committed than cases in which charges are filed. They believed that the quota requirements were low when compared to actual crime rates, and thus did not coerce prosecutors into filing unsupported charges. However, prosecutors and judges alike reported that although it is true that the number of crimes committed is much higher than the number of charges filed, the number of cases in which the charges are actually supported by the investigation is low. Although they believed that this is usually due to sloppy investigative work and poor drafting of charges, not due to the actual innocence of the defendant, they believed that the filing of charges not supported by the investigation has a negative impact on due process.

Defense attorneys also reported that auxiliary prosecutors almost always ask for arrest and preventative detention of suspects, and are unwilling to consider the alternative measures permitted by law; several interviewees noted that, due to backlogs, individuals may be placed in pretrial detention whose cases are scheduled to be heard in two years. See CRIM. PROC. CODE arts 259, 264. However, there was no indication that this was due to any set policy or restriction on discretion; interviewees also pointed out that it is the judge, not the prosecutor, who makes the decision to impose preventative detention. Interviewees also noted that many auxiliaries are not fully licensed attorneys and auxiliaries’ work is subject to the strict supervision of agency prosecutors, which reduces their capacity to exercise discretion.
Factor 11: Rights of the Accused

Prosecutors shall be impartial in the performance of their functions and must promote equality before the law and respect for the rights of the accused.

Prosecutors shall refuse to use evidence obtained in violation of the accused’s human rights.

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<td>Although the rights of defendants are enshrined in the Constitution and laws, violations of defendants’ rights with relation to the gathering and disclosure of evidence are reportedly common. Interviewees believed that prosecutors were not impartial and did not seek out or disclose exculpatory evidence. Many interviewees believed that the rights guaranteed defendants are overly broad, given the lack of resources available for the MP to carry out prosecutions and the high rates of crime and impunity in Guatemala.</td>
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Analysis/Background:

Individual rights, including the rights of persons accused of crimes, are enshrined in the Constitution and in the Criminal Procedure Code. These include the right not to be deprived of liberty except upon the order of a competent judicial authority for the commission of a crime or infraction, except in cases where a suspect is caught in flagrante delicto; the right of suspects arrested in flagrante delicto to be brought before a court within six hours; the right to be notified verbally and in writing for the reasons for their detention; the right to be informed of their rights; the right to be interrogated only by judicial authorities and within 24 hours; the right to be detained only in legally-established detention centers; the right to a defense; the right to a trial before a pre-established, competent tribunal; the right to the presumption of innocence; the right of the defendant and his representatives to attend all legal proceedings and see all filings and legal documents; and the right against retroactive application of laws unfavorable to the defendant.

CONST. arts. 6–17. The Constitution prohibits the search of a residence without a judicial order. CONST. art. 23. Correspondence, documents, and books may only be searched upon a judicial order, and documents or information gathered without such an order may not be used as evidence at trial. Id. art. 24. Interrogations made outside judicial supervision also may not be used as evidence. Id. art. 9.

A suspect may be arrested by the police in flagrante delicto or immediately after committing a crime, or based on an arrest order. CRIM. PROC. CODE arts. 257, 258. The defendant or his attorney can assert his rights during any legal proceedings. Id. art. 71. Defendants who do not speak Spanish have the right to use an interpreter of their choosing during hearings, at trial, and when making a statement, or may be assigned an interpreter by the court. Id. art. 90. Defendants have the right to choose their own defense attorney, and if they do not choose their own attorney the court must assign them no later than the time at which the defendant is first questioned; defendants may represent themselves only when doing so will not prejudice the efficacy of the defense. Id. art. 92. Even a defendant represented by an attorney has the right to formulate questions and observations. Id.

The defendant has the right not to make a statement or submit to questioning, and the decision not to make a statement may not be used against him. Id. art. 81. Prior to making a statement, the defendant has the right to be informed in detail of the act of which he is accused and to be given a summary of all the evidence against him. Id. art. 81. The defendant may not be threatened, coerced, or made promises, or induced to make a statement against his will. Id. art.
85. In the preliminary and investigative stages, the defendant’s statement should be made before
the competent court (either the justice of the peace or the investigative court). Id. art. 87. Both the
defense attorney and prosecutor have the right to question the defendant if he chooses to make a
statement. Id. art. 82.

The prosecutor is obliged not only to investigate evidence that shows the defendant’s guilt, but
also exculpatory evidence. Id. art. 290. The court may order pretrial detention only when
necessary to ensure the defendant’s appearance at trial. Id. art. 259.

At trial, the court must advise the defendant of his right to testify or to abstain from testifying, and
if he testifies he may be questioned by the prosecutor, complementary prosecutor, defense
attorney, and civil parties, as well as by the court. Id. art. 370. The defendant can make any
statements he considers pertinent, so long as they are relevant to the trial, and has the right to
consult with his lawyer while testifying. Id. art. 371. The defendant also has the right to attend the
trial free of physical restraints. Id. art. 355.

Interviewees generally believed that prosecutors were not impartial. However, some interviewees
pointed to the high level of judicial control exercised over the investigation by investigative courts
as a reason why prosecutorial impartiality was not likely to significantly affect defendants’ rights.
Notwithstanding that judicial control, many interviewees identified considerable problems with
respect for defendants’ rights at the investigative stage. Investigative judges reported that the MP
fails to diligently conduct investigations and does not control the investigations carried out by the
PNC as required by law. Many interviewees reported cases in which the MP arrived on the scene
hours after the crime occurred, such that the scene had already been contaminated by
emergency medical personnel, media, and passersby.

Defense lawyers noted that prosecutors almost never share evidence with them, such that the
defense may never become aware of the existence of evidence gathered during the investigation
that is not presented before the investigative court. Defense lawyers believed that prosecutors
thus ignore exculpatory evidence. Judges and defense lawyers alike believed that prosecutors
were unlikely to investigate any exculpatory evidence, due to a lack of resources as well as a lack
of impartiality.

Some prosecutors reported that they would not request to file charges in a case where the charge
was not supported by the investigation. However, according to trial judges, they commonly
receive cases where the charges are not supported by evidence, even though the investigative
court must approve the filing of charges and the opening of a trial based on evidence. CRIM.
PROC. CODE art. 341. The reaction of judges to charges not supported by evidence varied. Many
judges, both investigative and trial, reported that they always order dismissal in such cases, and
they complained that the media and society unfairly blames judges for dismissing cases when in
reality they must protect due process by dismissing the charges. However, in one city, trial judges
uniformly reported that they ignore due process concerns and convict defendants whom they
believe to be guilty, even if the charges are not properly substantiated or contain technical errors;
they stated that to do otherwise would lead to an even higher level of impunity. In fact, there are
many cases where the appropriate evidence does not make it into the file in the investigation
phase.

Some defense attorneys also reported prosecutors had illegally attempted to speak with
defendants or question them without judicial supervision, but this did not appear to be a
widespread or systematic problem. Interviewees also pointed to the lack of interpreters, despite
the Criminal Procedure Code’s guarantee of interpretation, as an issue affecting defendants’
rights; several interviewees, both prosecutors and defense lawyers, reported cases in which the
defendant was unable to understand the proceedings against him because he spoke only an
indigenous language or was deaf and mute. Defense attorneys also stated that prosecutors
request pretrial detention in almost every case, even when there is no risk that the defendant will not appear at trial if not detained.

Many prosecutor and MP interviewees criticized the broad protections afforded to defendants by the Constitution and laws. They considered defendants’ rights to be overly broad in a country in which the rate of violent crime is high, the criminal conviction rate is very low, and the state has few resources to adequately investigate and prosecute crimes. Some interviewees believed that defendants’ rights are often respected at the expense of victims’ interests, and lamented that the lack of resources for adequately carrying out investigations often led to the dismissal of or failure to pursue cases against suspects they believed to be guilty.

Factor 12: Victim Rights and Protection

_In the performance of their duties, prosecutors consider the views and concerns of victims, with due regard for the dignity, privacy, and security of the victims and their families._

_Prosecutors must ensure that victims are given information regarding the legal proceedings and their rights, and are informed of major developments in the proceedings._

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<td>Victims’ rights are enshrined in law and a number of bodies, both within and working with the MP, are charged with providing assistance to victims of crime. However, the MP persistently fails to adequately provide for victims’ rights and protection, particularly in cases involving women victims of violence and victims of violent organized crime. The MP’s lack of resources and staffing for victims’ services, lack of training on victims’ rights, and lack of resources to diligently pursue cases all contribute to the denial of victims’ rights and the high level of impunity in Guatemala.</td>
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Analysis/Background:

The criminal prosecution procedure begins when a person files a complaint before the MP or a judge, when a person is captured in _flagrante delicto_, or by a police investigation. _Crim. Proc. Code_ arts. 297, 303, 257, 304. The rights of victims are enshrined in the Criminal Procedure Code. Guatemalan law defines victim to include not only the victim directly affected by the crime, but also his or her spouse, partner, children, parent, or a person he or she lives with; representatives of a social group victimized by a leader of that group; and associations with ties to interest groups when the crime affected the interest they represent. _Crim. Proc. Code_ art. 117 (as amended by 18-2010, April 20, 2010). Victims have the right to be informed of their rights related to the criminal proceedings; receive medical, psycho-social, or other assistance in order to alleviate the effects of the crime; to have their opinions heard by the MP regarding the proceedings, especially before making decisions that would lead to closure of the case; to be informed of prosecutorial and judicial decisions and invited to participate in hearings; to receive compensation for injury; to receive protection when their physical integrity is endangered due to the prosecution of the defendant; and to mechanisms to reduce secondary victimization during the criminal trial. _Id._ The MP is obligated to ensure the protection of these rights, through its own bodies as well as in cooperation with other public or private institutions. _Id._
Victims also may be directly involved in a case as a complementary prosecutor (sometimes also called a private prosecutor). The investigative judge must approve a party’s request to become a complementary prosecutor. CRIM. PROC. CODE art.121. A victim, or his representative or legal guardian, can prompt a criminal prosecution or join the prosecution initiated by the MP. The complementary prosecutor may join the case at any time before trial and has the right to participate in and contribute to the investigation; request to see evidence in advance of the trial; and request a hearing before the investigative court on matters on which he disagrees with the prosecutor. Id. art. 116. The complementary prosecutor has the right to intervene at all stages of the investigation and trial, but not after sentencing. Id. art. 120. To prompt a criminal prosecution if the MP has not initiated a prosecution itself, the would-be complementary prosecutor may file a complaint before a court, which remits the complaint to the MP, which should immediately investigate. Id. arts. 302, 303. The complementary prosecutor, or a person who unsuccessfully requested to intervene as a complementary prosecutor, can join the complaint filed by the MP but explain a different basis for the charge or state that charges should not be filed; bring to the court’s attention defects in the charges that should be corrected; or object to the charges on the grounds that they omit a suspect or allegation and should be expanded. Id. art. 337.

The MP has implemented a model for providing integrated services to victims, called the Model for Victims’ Services. See GENERAL INSTRUCTION OF THE ATTORNEY GENERAL no. 07-2008 (Jul. 14, 2008). This model assigns responsibility to the Office of Continuous Assistance [hereinafter OAP], Office of Victims’ Services [hereinafter OAV], and Department of Coordination of Victims’ Services [hereinafter CAV], as well as to all prosecutors, for ensuring the implementation of the Model for Victims’ Services. The MP has also established a Protocol for the Emotional Stabilization of Crime Victims during the Initial Interview, which establishes the protocol that staff of the OAP, OAV, and the prosecutors themselves should use to ensure the emotional well-being of victims reporting a crime. See GENERAL INSTRUCTION OF THE ATTORNEY GENERAL no. 08-2008 (Jul. 14, 2008). A Protocol for Services for Children and Adolescent Direct and Collateral Victims of Crime is also established for the OAP, OAV, and prosecutors. See GENERAL INSTRUCTION OF THE ATTORNEY GENERAL no. 09-2008 (Jul. 14, 2008).

A number of bodies exist both within and outside the MP to protect the interests of victims. The first body that a victim will encounter within the MP is the OAP. An OAP is established in each district to receive complaints and police reports, supervised by an agency prosecutor. MP ORGANIC LAW art. 25. Members of the public can go to the OAP to report complaints of crimes against them, as well as of crimes they witnessed or know about. The OAP receives verbal and written complaints, police reports, and other judicial acts; opens the file for the complaint, records relevant data, determines provisionally whether criminal conduct may have occurred, assigns the case number in the computer system, and remits the file to the corresponding prosecutor’s office; and provides members of the public with general information regarding cases in which they are involved. See MP Website, at www.mp.gob.gt.

The OAV fulfills the MP’s mandate to provide integral assistance for victims. See MP ORGANIC LAW arts. 8, 26; GENERAL INSTRUCTION OF THE ATTORNEY GENERAL no. 07-2008. The OAV is charged with providing urgent and necessary attention to direct and collateral victims of crime who require professional assistance to recover from the harms caused by the crime. The OAV facilitates access to psychological, medical, social, and legal assistance, by way of the Referral Network that has been set up in each departamento. The OAV staff comprises professionals from various disciplines, which include psychologists, doctors, and social workers in the capital but only psychologists in the interior. The OAV is primarily oriented toward assisting persons of low

In certain cases involving crimes with no public impact, an alleged victim can bring a private prosecution as the “exclusive plaintiff”, without the participation of the MP. See CRIM. PROC. CODE arts. 24(4), 474. Such prosecutions are beyond the scope of this assessment, which only considers cases in which the MP performs the prosecutorial function.
economic means whose rights to life, physical integrity, personal liberty, and sexual integrity, have been seriously affected. See MP Website, Servicios, at www.mp.gob.gt. The OAV staff will reportedly also perform forensic psychological exams in areas where there are no INACIF staff to perform them.

The Department of Coordination of Victims’ Services is a subunit of the MP’s Criminal Policy Secretariat, and is charged with monitoring the national implementation of the Model for Victims’ Services. According to information provided by the Criminal Policy Secretariat, the CAV works in three areas: coordination of integral services, which includes working providing psychological and medical exams for victims in the MP providing psychological exams in other cities, and working with INACIF to conduct forensic exams; coordinating the referral network of CSOs and state institutions that provide services to victims; and coordination of victims’ interests, which includes providing training and orientation for prosecutors, psychologists, and others working with victims. The Criminal Policy Secretariat is also mandated to operate a Department of Coordination of Services for Indigenous People, but that department is not yet operational due to a lack of funding.

Several dedicated section prosecutors’ offices were created to deal with crimes against specific types of victims. These include the Prosecutor for Women, the Prosecutor for Crimes against Life and Physical Integrity, and the Prosecutor for Human Rights. The Prosecutor for Women is responsible for cases that involve a woman or women who were victimized for reasons relating to their gender. MP ORGANIC LAW art. 37. The Prosecutor for Crimes against Life and Physical Integrity was created by the MP Advisory Board pursuant to article 30 of the MP Organic Law and handles cases involving murder and attempted murder. The Prosecutor for Human Rights, which includes the Unit for Crimes against Human Rights Activists, Justice System Actors, Journalists, and Union Members, has jurisdiction over crimes against those categories of people when the crime was committed due to the victims’ work or was intended to intimidate or retaliate against the victim. Additionally, there are section prosecutors dealing with specific types of crimes, including economic crimes, organized crimes, crimes against national patrimony, juvenile offenders, and narcotics, inter alia.

In addition to the victims’ services bodies that are part of the MP, there are several state-run and independent institutions with which prosecutors regularly work. The Attorney General is automatically a member of the National Coordination for the Prevention of Violence against Women, which is part of the Presidential Secretariat for Women and is mandated to develop and advocate for public policy changes to reduce violence against women.

The Secretariat against Sexual Violence, Exploitation, and Human Trafficking, which is part of the Vice-President’s office, is one such body. Created in 2009, the secretariat is charged with assisting other state bodies and providing recommendations to fight sexual violence, exploitation, and trafficking. LAW AGAINST SEXUAL VIOLENCE, EXPLOITATION, AND HUMAN TRAFFICKING arts. 4, 5 (Feb. 18, 2009). The Office of Defense for Indigenous Women [hereinafter DEMI] is another governmental body, which deals particularly with the rights of indigenous victims of violence against women. Among other programs, DEMI provides social and psychological services to indigenous women who have been victims of violence, sexual harassment, discrimination, or other crimes, and works to stop violence and discrimination against indigenous women. See DEMI Website, at www.demi.gob.gt.

Another state institution mandated to provide services to victims is the Institute for Public Criminal Defense [hereinafter IDDP], which is the national public defender office. In addition to its duties defending indigent persons accused of crimes, the public defender is mandated to provide legal services to indigent victims of interfamily violence, in particular in cases of sexual violence. See IDDP website, at www.idpp.gob.gt. The IDDP provides legal assistance to women victims of violence by referral from the Prosecutor for Women, assisting them throughout the prosecution of
the case, if it is prosecuted, as well as in civil or family law matters, and, according to interviewees, currently operates in 10 cities throughout Guatemala.

Justice Centers, overseen by the Authority for Coordinating the Modernization of Justice, of which the Attorney General is a member, operated until recently to facilitate coordination between all criminal justice actors in a given area. The Justice Centers operated in many cities in the interior of the country and provided a space for meetings, consensus building, and coordination between local justice operators. Each Justice Center included a Coordination Unit made up of an investigative judge, the district prosecutor, the coordinator of the local IDDP office, and the head of the local PNC office, whose activities were coordinated by the Justice Center Coordinator. See Authority for Coordinating the Modernization of Justice Website. However, the Justice Centers were supported by USAID, and were unable to retain their staff coordinators when USAID funding ended, which caused the Justice Centers to essentially cease functioning by late 2010.

Several other organizations also have working relationships with the MP. CICIG also regularly joins cases as a complementary prosecutor, pursuant to its mandate to support the Attorney General in prosecuting and investigating cases involving illicit security forces and clandestine security organizations, particularly in cases involving public officials. See CICIG Website, Functions of the Commission – Cases, at http://cicig.org/index.php?page=cases. The NGO International Justice Mission [hereinafter IJM], has a special agreement with the MP by which it investigates child sexual abuse cases on behalf of the MP, provides the necessary information for arrests, and constitutes itself as a complementary prosecutor in child sexual abuse cases in order to provide substantive support for the prosecution. There are a number of other CSOs and NGOs advocating for victims that do not regularly join cases as complementary prosecutors, but interact frequently with prosecutors during the persecution of particular cases, particularly at the investigative stage and in cases involving violence against women and/or children. These organizations often also provide services to the victims in their emotional recovery. See Factor 23 below for a general discussion of the MP’s interaction with civil society.

In practice, despite the abundance of governmental bodies mandated to protect victims and elaborate laws and norms addressing victims’ rights, interviewees repeatedly reported a nearly complete lack of protection for victims’ rights and interests. Interviewees repeatedly referred to Guatemala’s incredibly high impunity rate as a clear indicator that the needs of victims are being systematically disregarded. According to CICIG, the current impunity rate is 99.75% and out of a sample of 600,000 crimes, only 300,000 were reported to the courts and charges were filed in only 11,000. See CICIG, THIRD YEAR OF WORK at 4 (2010), citing César Barrientos, Chief Judge of the Criminal Chamber of the Supreme Court of Justice. An estimated 2% of reported crimes go to trial. See, e.g., United Nations, Press Conference on International Commission against Impunity in Guatemala (Feb. 24, 2009), at http://www.un.org/News/briefings/docs/2009/090224_CICIG.doc.htm.

Prosecutors, including prosecutors assigned to the specialized sections handling crimes against particular groups of victims, generally receive no specialized training in dealing with victims. Prosecutors are reportedly assigned to these sections without regard for the particular needs of the section; prosecutors with the Prosecutor for Women, for example, reported that they are unable to specifically recruit new staff with background and experience relevant to the section’s work, and instead must accept whatever new hires are assigned to the section through the standard recruitment and transfer process. See Factor 3 above.

The OAV is understaffed in many areas of the country; in many districts, there is only one OAV staff member, usually a psychologist. In many places, the OAV psychologist has no private office or meeting space to meet with victims, so that victims seeking assistance must give details of their case, including in extremely sensitive cases such as rape and child abuse, in a semi-public area where other MP staff will overhear the conversation. OAV interviewees throughout the
country reported that it is impossible to carry out their mandate due to a lack of resources and personnel, and that they are often unable to provide any services beyond an initial consultation and referral to a CSO or governmental body providing services to victims. In some cities the OAV is able to work only with victims of particular crimes, such as in Quetzaltenango where the single OAV employee works only with cases referred to the Prosecutor for Women. In the capital, the OAV and the Department of Coordination of Victims’ Services are better staffed and are able to provide psychological and medical services for victims, with the support of the NGO Doctors without Borders, but the capital is the only city in which these integral services are available. Additionally, in most of the country, the MP, including the OAV, closes at 4pm and persons making a complaint or needing assistance outside official hours will not be able to access victims’ services. The MP, with the support of Doctors without Borders, makes victims’ services available 24 hours a day in the capital only.

Interviewees highlighted widespread violence against women as a major concern affecting victims’ rights. According to interviewees, violence against women, including murder, is widespread in a culture steeped in machismo and in which women are often dependent on men for their economic well-being. In 2010, the Prosecutor for Women received 7,344 complaints of crimes against women; the Prosecutor for Crimes against Life and Physical Integrity received an additional 4,257 complaints, although this number was not broken down by gender. MP ANNUAL REPORT 2010. According to Amnesty International, there were 685 reported cases of homicide of women victims in 2010. Amnesty International, Guatemala Must Act to Stop the Killing of Women (Mar. 6, 2011), at http://www.amnestyusa.org/document.php?id=ENGPRE201103062208 &lang=e. Interviewees in southwestern Guatemala reported a particularly distressing problem of widespread incestuous rape of young women and girls by male family members, particularly their own fathers. In response to the prevalence of violence against women, in 2008 the Law against Femicide and Other Forms of Violence against Women was enacted to specifically criminalize and establish special penalties for murder, physical violence, and economic violence against women and provide specific rights social, emergency, and recovery services for women victims of violence. LAW AGAINST FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN, Decree No. 22-2008, adopted Apr. 9, 2008 [hereinafter LAW AGAINST FEMICIDE].

Despite the mandates of the Law against Femicide and the Model for Victims Services, CSO representatives, as well as OAV staff, reported that there is little assistance for women victims of violence. There are no governmental agencies that provide for the physical security of women victims of violence; there are no safe houses for abused women and no social or economic programs to provide assistance to women who are abused by the family breadwinner. As a result, prosecutors and judges alike mentioned a persistent and overwhelming problem of women victims of violence refusing to testify or changing their statements after filing the initial complaint. Victims’ advocates were unanimous in stating that this is due to victims’ fear of retaliation for their testimony or, in cases of interfamily violence, fear of losing the family breadwinner without receiving any economic or social assistance. As a result, as one prominent victims’ rights advocate stated, “when a woman victim of violence breaks the silence, in Guatemala it can cost her her life.”21

Prosecutors affirmed that victims refuse to testify due to fear, but stated that they are unable to provide for the needs of victims due to limited resources. As a result, many prosecutors stated that they request that victims submit to a forensic exam immediately upon filing a complaint. That way, even if the victim changes her mind about testifying, the prosecutor will have gathered forensic evidence and may be able to pursue the case without victim cooperation. Victims’

advocates throughout the country lamented that the MP’s assistance to victims often stops once the relevant evidence is gathered, despite its mandate to provide integral services, and that even when the MP is able to provide integral services, the victim loses access to those services if she decides not to cooperate with the case. Victims’ services organizations such as the IDPP intrafamily violence project, DEMI, and CSOs who receive cases by referral from the MP continue to provide services for victims regardless of their cooperation with the prosecution, but are generally unable to provide for the physical and economic security of victims, such that victims remain unlikely to pursue their case in the face of threats from their abuser or the loss of income due to the arrest of a breadwinner.

Both CSOs and governmental bodies reported mixed results in referring cases for prosecution. As mentioned above, IJM cooperates directly with the MP and carries out its own investigations of child sexual abuse crimes, providing researched information to the MP so that an arrest warrant can be obtained and then joining the case as a complementary prosecutor to assist in its successful prosecution. As IJM provides the funding for investigating the cases it refers to the MP, it is generally successful in seeing these cases prosecuted. On the other hand, the Secretariat against Sexual Violence, Exploitation, and Human Trafficking reports that it identifies cases of trafficking and refers them to a specialized prosecutorial unit within the Section Prosecutor’s Office for Organized Crime, but these cases are rarely resolved. Representatives of several CSOs reported that it is common for evidence to be lost or mishandled during the investigative stage, and that they believed that investigators sometimes falsely conclude that no crime happened so that the case can be easily dropped. CSO representatives reported that they advocate heavily at the investigative stage, because many cases are allowed to drop without ever entering a legal proceeding and many more are archived or dismissed due to inconclusive investigations; CSO representatives believed that the MP’s failure to oversee the investigations, as mandated by law, substantially harms victims’ rights because it as at the investigative stage that many cases slide into impunity.

Prosecutors and judges also reported persistent difficulties in obtaining the testimony of victims in cases involving organized crime. Cases of organized extortion, kidnapping, and murder by criminal syndicates are extremely prevalent in Guatemala, with the extortion of money from public bus drivers, and violent retaliation for failure to pay, being particularly common. See, e.g., PBS Newshour, Buses Targeted by Guatemala City Gangs (Mar. 8, 2011), at www.pbs.org/newshour/updates/latin_america/jan-june11/buses_03-08.html. Prosecutors, judges, and victims’ advocates alike agreed that this failure to testify was primarily due to fear of retaliation, and justice actors themselves regularly receive threats in relation to prosecution of cases against members of criminal syndicates. Interviewees lamented that the protection provided for victims and witness by the MP’s Witness Protection Unit is insufficient and that, even when offered protection, many victims do not want to relocate or give up their livelihoods and instead prefer not to testify.

The demise of the Justice Centers was also identified as detrimental to victims’ interests. The Justice Center Coordinators previously served the function of facilitating dialogue among criminal justice actors in the cities where Justice Centers were located, but when USAID funding ended, the Justice Centers were unable to retain the coordinators. Without the coordinators and meeting space provided by the Justice Centers, formal, organized dialogue among criminal justice actors has essentially come to an end. Interviewees reported that this has resulted in less efficient investigations and prosecutions, which contributes to increasing impunity, and has decreased the ability of other criminal justice actors to dialogue with or educate prosecutors on issues of victims’ rights.

Several interviewees believed that the number of bodies dedicated to helping victims and the proliferation of laws addressing victims’ issues was actually an impediment to assisting victims, as it creates a complex bureaucracy that is difficult for victims to navigate and requires scarce
resources to be dedicated to multiple bodies with similar mandates. Interviewees reported that often victims have to travel to a number of different locations in order to file a complaint, receive legal assistance, obtain a forensic examination, receive medical and psychological care, and so on, making it very difficult for victims of low economic means to access services. Interviewees reported a sharp increase in the number of cases of violence against women being reported to the MP due to increased public awareness of the issue, but there was no corresponding increase in the MP’s capacity to handle such cases, nor was there a corresponding increase in the MP’s ability to provide protection to victims so that they can pursue the case beyond the initial complaint.

Interviewees were also concerned about the sustainability of bodies dedicated to promoting victims’ interests, which are primarily funded by foreign aid and not through the state budget. For example, IJM, which participates in a significant percentage of investigations and supports prosecutions of child sexual abuse, is privately funded and based in the United States; CICIG is an international commission organized and funded by the UN; the Secretariat against Sexual Violence, Exploitation, and Human Trafficking receives funding from UNICEF; the OAV has received training and equipment from the United States Department of State; investigative equipment and training has been largely funded by the Spanish government; prosecutorial training is often carried out by NGOs either based or funded from abroad; and staff providing medical services for victims in the capital are funded and trained by Doctors without Borders. Many essential state functions related to the protection of victims’ rights are being paid for by actors other than the state, like Doctors without Borders, creating an untenable situation where the state would be unable to carry out its essential duties should foreign assistance be cut off. Even with the current high level of foreign and NGO assistance, the situation is largely untenable; one high-ranking official within the MP stated that, despite high levels of assistance for all aspects of the prosecutorial function, the MP cannot hire enough staff to process all of the complaints it receives because state employees must be paid out of the state budget.

Overall, interviewees were unanimous in their belief that victims’ interests do not receive adequate protection in Guatemala. Although prosecutors are tasked with overseeing investigations and ensuring that integrated services are provided to victims, victims’ interests are routinely overlooked at the investigative stage and the MP persistently fails to provide integrated services to victims. Interviewees varied in their opinions on why this is, with some interviewees believing that it is due to incompetence, while prosecutors and MP staff reported a persistent and systematic lack of resources preventing them from carrying out their mandates to provide for victims.
Factor 13: Witness Rights and Protection

Prosecutors perform their functions with due regard for the dignity, privacy, and security of the witnesses and their families.

Prosecutors ensure that witnesses are informed of their rights and conduct every encounter with witnesses fairly and objectively.

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<th>Conclusion</th>
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<td>Individuals may be compelled to provide testimony in criminal cases, but are entitled to protective measures when their lives or physical integrity would be endangered by their testimony. However, witnesses frequently refuse to testify or fail to appear to give testimony due to fear. In many areas, information technology is not sufficient to allow witnesses to testify from outside the court, and witnesses apparently do not have confidence in the MP’s protection mechanisms.</td>
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Analysis/Background:

Any resident or person present within the borders of Guatemala is obligated to comply with an order to provide testimony in a criminal case. Witnesses must tell the truth, to the extent of their knowledge and submit to questioning about the case, and must not conceal information. CRIM. PROC. CODE art. 207. In general, family members, a guardian and ward, and adopted children and their parents cannot be required to testify against each other, but may testify if they so desire. Defense attorneys and representatives and others who possess legally confidential information may not testify, and public, civil, or military officials may not testify on official, secret matters without their superiors’ permission. Id. art. 208. If a witness refuses to provide testimony as ordered, he can be criminally prosecuted. However, if the witness states that he refused to testify because he fears for his life or physical integrity due to threats, coercion, or intimidation, he may testify from his home or a secure location, give early testimony, or receive police protection in order to ensure his testimony. Id. art. 217; see also arts. 210, 317. Witnesses may also testify from another location if they are physically unable to appear at the court. Id. art. 210.

Witness protection is provided by the Office of Protection, Unit for Witness Security. The Office of Protection is headed by a Management Board, which is made up of the Attorney General, an appointee from the Ministry of Governance, and the Director of the Office of Protection, who is an attorney appointed by the President of Guatemala and is ultimately responsible for ensuring the effective protection of persons involved in criminal trial (other than prosecutors, whose security is ensured by the MP’s Security Department. See Factor 8 above.). LAW FOR THE PROTECTION OF PERSONS INVOLVED IN CRIMINAL CASES AND PERSONS LINKED TO THE ADMINISTRATION OF CRIMINAL JUSTICE, Decree No. 70-96, adopted Aug. 27, 1996 [hereinafter PROTECTION LAW]. When a witness requests protection, the prosecutor assigned to the case requests that Office of Protection evaluate the case. Id. art. 10. In evaluating the case, the Office should consider whether it is reasonably certain that the witness is subject to risk, the gravity and social impact of the criminal charge, the probative value of his testimony, the possibility of obtaining the information he’d provide from another source, whether his testimony could lead to the identification of other suspects, the types of protection allowed by law, and the risks that providing protection could represent for the witness’ community. Id. art. 11. The protection provided may include physically protecting the witness with security personnel; relocating the witness, which may include paying his living expenses; protecting the witness’ home and/or workplace with security personnel; changing the witness’ identity; or any other benefits that the Management Board considers appropriate. Id. art. 11.
According to interviewees, the Office of Protection lacks adequate resources and personnel. There is no orientation process for new staff, and UNICAP does not provide training for Office of Protection staff. At the time of this assessment, the Office of Protection was without a director, which complicates their work particularly as the director is responsible for approving new requests for protection. See PROTECTION LAW art. 10. The Office of Protection’s budget is too low; reportedly there are insufficient funds for necessary expenses such as gasoline, vehicles, arms, and disguises that witnesses may wear while testifying. A complex bureaucracy complicates their work; in order to provide protection, the Office of Protection must coordinate with the judiciary, the Ministry of Education, the national identity registry, and the prosecutors.

Interviewees reported that the preferred means of obtaining the testimony of reluctant witnesses is to allow them to testify from outside the courtroom via closed circuit television, an option that is used when the witness is unable to travel to the location of the trial or does not want to face the defendant. However, many courthouses do not have sufficient technology to make this a practical option. In cases where a witness is from another municipality than the one where the trial is being held, courts have the option of allowing the witness to testify from a courthouse in the other municipality, but in rural areas courthouses are unlikely to have the necessary technology even if the courthouse where the trial is being held does have the technology. Courts may also have a room within the court complex where the witness can testify without having to be in the presence of the defendant; this is reportedly most common in sex crimes cases or cases involving children. However, in many courthouses in the interior of the country, the technology often fails; interviewees reported cases in which the witness was unable to hear the proceedings and questions, and stated that often testifying via closed circuit television is not a practical option. In either situation, in conformance with current law which guarantees a defense of the accused, the defense is allowed to cross-examine the witness.

Prosecutors and judges reported significant challenges with obtaining witness testimony, particularly in cases involving organized crime and homicides, which constitute a majority of cases in Guatemala. Even when testifying from outside the courtroom is an option, witnesses often fear for their safety; their identity and the content of their testimony will still be known to the defendant and, presumably, his criminal associates. Therefore, few cases even reach the point where a witness is willing to testify by any method. Often, witnesses refuse to cooperate with the investigation or prosecution. If they do cooperate, they often recant or stop cooperating after receiving threats. The problem of refusing to cooperate is so widespread that interviewees were not familiar with many cases in which a witness had been physically harmed or killed; threats are usually successful in stopping witnesses from testifying. Prosecutors and judges reported, for example, cases of extortion and murder of a bus driver in which none of the dozens of bus passengers were willing to cooperate.

Witnesses reportedly rarely want to take advantage of the physical security measures offered by the MP. The MP lacks sufficient staff and resources to provide physical security for witnesses, and witnesses would continue to face threats even after the trial ends and the security was no longer provided. Witnesses also rarely are willing to be relocated away from their hometowns, families, and livelihoods. One interviewee from the MP lamented that there is no option to relocate witnesses outside of Guatemala, which may be necessary for their protection in cases involving organized crime. The same interviewee also stated that it was not uncommon to provide protection for two or three years while the case is pending, only for the witness to ultimately decline to testify. Witnesses receiving protection also sometimes flee, especially in drug trafficking cases.

Although interviewees agreed that failure to obtain witness cooperation contributes significantly to the situation of impunity, interviewees generally did not place the blame for this solely on the MP and the Office of Protection. Interviewees believed that the epidemic of organized, violent crime throughout the country made it extremely difficult to ensure witness security, and were
sympathetic to witnesses’ reluctance to testify. However, witnesses were aware that this is a circular problem, as it is difficult to combat organized crime if prosecutors cannot win convictions due to witnesses’ refusal to testify. Many interviewees expressed the belief that more diligent and sophisticated investigations would allow prosecutors to obtain convictions without witness testimony, thus reducing impunity and witnesses’ fear of retaliation.

Factor 14: Public Integrity

Prosecutors uphold public integrity by giving due attention to the prosecution of crimes committed by public officials, particularly those involving corruption, abuse of power, grave violations of human rights, and other crimes recognized by international law.

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<td>The International Commission against Impunity in Guatemala was created to carry out investigations and assist in the prosecution of high-impact cases, including many cases involving serious crimes committed by public officials. Although CICIG has been successful in independently and impartially ensuring the investigation and prosecution of a number of high-profile cases, its mandate is limited and set to expire in September 2011. Despite the existence of a dedicated but understaffed prosecutorial section for crimes committed by public officials, the MP lacks the capacity, and some say the will, to investigate and prosecute public integrity cases, and it is widely perceived that public officials continue to be able to engage in corrupt activities with impunity.</td>
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Analysis/Background:

The Section for Administrative Offenses is responsible for investigating the administrative conduct of employees of state entities, including decentralized and autonomous entities, up to and including their directors or heads; carrying out the prosecution of public employees accused of punishable acts; and intervening in criminal cases that are related to public administration or that involve state interests. MP ORGANIC LAW art. 31. The Section, which is based in the capital, is headed by a section prosecutor and has six agency prosecutors, two dealing with crimes committed by police and three dealing with crimes committed by other state employees, in addition to the Unit for Internal Affairs, which deals with crimes committed by MP employees. Currently, the prosecutor’s office contains five agencies: three agencies for public officials, two agencies for crimes committed by agents of the PNC and an Internal Affairs Unit which is exclusively for the employees of the MP.

Two other sections also may deal with crimes committed by public officials. The Section Prosecutor’s Office against Organized Crime, which has 23 agency prosecutors, has units dedicated to kidnapping, extortion, trafficking, vehicle robbery, and bank robbery, as well as agencies in the departamentos of Chiquimula, Quetzaltenango, and San Marcos. According to interviewees from that section, they see cases in which public officials are implicated in organized crime, and the section uses its own investigators rather than relying on assistance from the PNC, because the section considers that the PNC has serious problems with corruption and ties to organized crime. The section also receives investigative support for kidnapping crimes from DICRI and Governance Ministry investigators.

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22 After completion of this report, CICIG’s mandate was extended until 2013.
The Section Prosecutor’s Office against Corruption was created in April 2000 and has 23 auxiliary prosecutors and 6 agency prosecutors, according to information provided by the MP in March 2011. Its mandate includes handling the prosecution of crimes such as embezzlement, misappropriation of state funds, and other acts of corruption.

The International Commission against Impunity in Guatemala (CICIG) also assists in cases involving public officials by joining the cases as complementary prosecutors and assisting the MO in the investigation. CICIG was created in December 2006 as an independent body to support the MP, the PNC, and other state institutions in the investigation of a limited number of sensitive and difficult cases, with the intention of investigating the operations of clandestine security organizations and dismantling such groups. See Agreement between the United Nations and the State of Guatemala on the Establishment of an International Commission against Impunity in Guatemala (Dec. 12, 2006) [hereinafter CICIG Agreement], available at http://cicig.org/uploads/documents/CICIG_AGREEMENT_EN.pdf. CICIG’s mandate includes three principal objectives: investigating the existence of illicit security forces and clandestine security organizations that commit crimes that affect the fundamental human rights of the citizens of Guatemala, and identify the illegal group structures, modes of operation, and sources of financing, including links between state officials and organized crime; supporting the work of Guatemalan institutions, principally the Attorney General, and making recommendations for the adoption of new public policies, mechanisms, and procedures; and providing technical assistance to justice sector institutions. Id. art. 1. CICIG is empowered to join cases as a complementary prosecutor pursuant to article 3(b) of the CICIG Agreement and article 116 of the Criminal Procedure Code. A special unit was created within the MP, the Special Unit Attached to CICIG [hereinafter UEFAC] to handle the investigations being carried out by CICIG; this unit has four agency prosecutors who were selected from within the MP and receive training from CICIG.

CICIG has investigated and worked with the MP to prosecute a number of high-impact cases involving public officials. Perhaps the most publicized CICIG case involved the May 2009 death of attorney Rodrigo Rosenberg, in which Mr. Rosenberg implicated the President and First Lady of Guatemala and the President’s secretary as conspirators in his death in a posthumously-released video in which Mr. Rosenberg predicted his own murder. The case, which received copious international attention, was referred to CICIG by President Colom; CICIG’s investigation revealed that Mr. Rosenberg had arranged his own murder and attempted to frame the President, First Lady, and the presidential secretary because he believed they were responsible for the murder of Mr. Rosenberg’s business associate and his lover, who was the business associate’s daughter. T, and the prosecution of the actual conspirators in the case is pending with some conspirators having already been convicted. See CICIG, THIRD YEAR OF WORK at 17–18. CICIG’s former Commissioner, Carlos Castresana, was successful in pushing for the resignation of the former attorney general Juan Luis Florido, who was suspected of involvement in obstructing the prosecution of high-impact cases, and securing the removal of his successor Conrado Reyes, who was removed by the Constitutional Court after only 2 weeks in office when Castresana accused him of firing honest prosecutors, dismissing sensitive cases, and having ties to organized crime. See El Periodico de Guatemala, Pressured, Colom makes a switch (Apretado, Colom se inclina hacia el viraje) (Aug. 3, 2008), available at http://wwwelperiodico.com.gt/es/20080803//64024; BBC, Guatemalan Attorney General Sacked (Jun. 11, 2010), available at http://www.bbc.co.uk/news/10299442. According to high-ranking interviewees within CICIG and the MP, relations with the current Attorney General, Dr. Paz y Paz

Bailey, are significantly improved over her predecessors and Dr. Paz y Paz has actively facilitated CICIG’s work.

CICIG is participating or has participated in the prosecution of many other high-profile cases involving public officials, including, inter alia, a case against a former prosecutor accused of obstructing the investigation, of which he was in charge, of the murder of a former advisor to the Ministry of the Interior and head of the Anti-Kidnapping Command; the case of 4 PNC officers accused of forming a gang that committed robberies and assaults; the embezzlement case against former President of Guatemala Alfonso Portillo; the case of the kidnapping, rape, and torture of the wife of the Guatemalan Human Rights Ombudsman; embezzlement cases against 6 former officials of the Ministry of Defense’s Finance Department; a case involving extrajudicial executions carried out by employees of the Ministry of Government and the PNC; and a case involving illegal adoptions carried out by employees of the Ministry of Government and the PNC. See CICIG, Intervention in the Criminal Process, at http://cicig.org/index.php?page=cases; CICIG, THIRD YEAR OF WORK at 14–20. Despite CICIG’s three years of efforts to combat impunity, CICIG reported a 99.75% impunity rate in 2010. Id. at 4. CICIG’s mandate is set to expire on September 4, 2011. See CICIG, Mandate, at http://cicig.org/index.php?page=mandate.

The Section for Administrative Offenses deals with a wide range of cases, including everything from cases of employees who are drunk on the job to gang-related murder cases. The Section’s mandate overlaps with CICIG’s and includes high-profile public corruption cases, some in which CICIG is participating and some that do not fall into CICIG’s mandate. One recent high-profile case handled by the Section for Administrative Offenses was the case against an auxiliary prosecutor implicated in the murder of Quetzaltenango agency prosecutor Nicolas Rufino Velásquez, who was murdered four days after winning a conviction against a member of the Pitágoras gang. See Factor 8 above. However, the case was dismissed with prejudice by the investigative judge following the MP’s motion to archive the case; the judge concluded that the MP had not presented evidence that linked the defendants to the crime and ordered the arrest of the prosecution’s star witness for perjury and making false statements. See Prensa Libre, Investigative Judge Closes Case at the MP’s Request (Jueza Primera cierra caso a petición del Ministerio Público) (Mar. 25, 2011), available at http://www.prensalibre.com/noticias/Jueza-cierra-caso-peticion-MP_0_450554963.html.

Until recently, the Section for Administrative Crimes reportedly took minor cases to trial, such as cases of employees drinking on the job, and did not prioritize high-impact cases. Interviewees from the Section reported that, following an analysis carried out by the Secretariat for Criminal Policy, the Section began using alternatives to prosecution to handle minor cases and is prioritizing higher-impact cases that should go to trial. In cases in which there is evidence of the involvement of organized crime, the Section has a unit that works with CICIG; however, at the time of the interviews for this assessment, that unit was unstaffed. Interviewees reported that the Section does not encounter great difficulties in prosecuting relatively small-scale incidences of corruption, such as cases against mayors for misappropriation or abuse of power, but interviewees did not believe that a majority of corruption cases are ever investigated or prosecuted. As is common throughout the MP, the Section reported an overwhelmingly high workload. According to statistics compiled for 2010, the Section received 2,413 complaints for its six agency prosecutors and 18 auxiliary prosecutors; 1,969 cases were resolved or closed, including 37 which reached a final verdict at trial.

Interviewees also reported challenges prosecuting public employees. Arrest orders are routinely leaked, and police have refused to arrest suspects. In one case in Jutiapa, the police refused to execute the arrest order against an auxiliary prosecutor, the district prosecutor refused to cooperate in the case, and the accused prosecutor was allowed to escape from detention. For this reason, the Section tries to have arrest orders issued by the rotation courts in the capital,
where information is less likely to be leaked to the employees in the departamentos who may try to interfere with the case. Interviewees also indicated that the staff of the Section for Administrative Crimes would benefit from increased specialized training with UNICAP.

According to information provided to the assessment team, the Section Prosecutor Against Corruption has not produced the results hoped for at its creation in 2000. Institutional weakness, internal pressures, and the mechanisms of impunity have not permitted investigations into corruption cases to obtain judicial results. Cases of theft and diversion of millions of dollars, alleged transfer of state funds to the personal accounts of high government officials, contracting anomalies, and other cases remain in impunity. Corruption cases and the prosecutors which pursue these types of crimes face violence, internal and external pressures, malicious litigation, and little help from the state authorities. Investigations fail to move forward and citizens increasingly lack trust in the prosecution.

Public corruption is widely believed to flourish with impunity in Guatemala. In 2010, Transparency International ranked Guatemala 91st out of 178 countries for public sector corruption, with a score of 3.2/10; in 2009, Guatemala received its highest-ever ranking, 84th with a score of 3.4/10, a significant improvement over previous years. See Transparency International, Corruption Perceptions Index, available at http://www.transparency.org/policy_research/surveys_indices/cpi. There is a widespread expectation of politically-motivated violence in advance of Guatemala’s 2011 election, particularly following the murder of a mayoral candidate, Mayra Lamus, and eight bystanders in Jutiapa. See, e.g., Prensa Libre, Fear of Extreme Violence Grows (Crece temor de violencia extrema) (Feb. 21, 2011); CNN, Guatemalan Mayoral Candidate Accused of Killing Rivals (Jul. 6, 2011), at http://edition.cnn.com/2011/WORLD/americas/07/06/guatemala.candidates.killed/. Major public corruption is regularly reported in the media; for example, it was recently revealed that the U.S. Embassy suspected police of providing protection for drug trafficking gangs in Cobán, where a state of siege was in effect at the time interviews were conducted for this assessment. See, e.g., El Periódico de Guatemala, Cobán Police Protect Narcos, Reveals Wikileaks Cable (Feb. 14, 2011), at http://wwwelperiodico.com.gt/es/20110214/pais/190784/; Noticias de Guatemala, High Risk Tribunal Absolves Ex-Director of the PNC (Jan. 31, 2011), at http://noticias.com.gt/nacionales/20110131-tribunal-de-alto-riesgo-absuelve-a-ex-director-de-la-pnc-porfirio-perez.html; Prensa Libre, Society Questions Judges’ Actions in Portillo Case (May 11, 2011), at http://www.prensalibre.com/noticias/Sociedad-cuestionaacciones-de-justicias-0_478752134.html. Many organized crime groups are believed to have ties to government actors, at the local, departamento, and national level. See, e.g., InSight: Organized Crime in the Americas, Guatemala Criminal Groups at http://insightcrime.org/criminal-groups/guatemala.

Overall, interviewees did not believe that the MP was capable of effectively combating public corruption, which is endemic in Guatemala. CICIG’s mandate is limited, and although CICIG has more and better-trained staff than the MP as a whole, it is neither intended nor able to ensure the investigation and prosecution of all cases of public corruption. The MP lacks sufficient resources and personnel to adequately investigate and prosecute public corruption cases, and interviewees also believed that many individuals within the MP, including many high-ranking prosecutors and officials, lack the will to do so. In many areas, it is widely believed that some prosecutors and MP staff themselves have engaged in corrupt behavior; for example, the former Section Prosecutor for Crimes against Life and Personal Integrity and the former Vice-Director of the Witness Protection Program were investigated by CICIG for conspiracy, obstruction of justice, abuse of authority, and fail to carry out duties in the investigation of the drug trafficking-related murder of an assistant to the Minister of Government, Victor Rivera.24

24 After completion of research for this report, eight defendants were convicted and two acquitted on this case. The former Section Prosecutor paid a fine for abuse of authority and failure to fulfill his duties, but was never criminally prosecuted for conspiracy. The former Deputy Director of the
IV. Accountability and Transparency

Factor 15: Public Accountability

*In performing their professional duties and responsibilities, prosecutors periodically and publicly account for their activities as a whole.*

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<td>Several measures address prosecutorial accountability, including the publication of an annual report, as well as information on institutional performance, which is available online. However, interviewees considered it problematic that the MP is focused on statistics; some interviewees believed that the MP does not maintain clear and open channels of communication with the public.</td>
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**Analysis/Background:**

By law, prosecutors are required to account periodically for their activities pursuant to the Constitution, as part of transparency and societal monitoring. This is also stipulated in the MP Organic Law, which states that the PG must report annually to the citizenry on the results of her administration, through the publication of an annual report and by sending a copy to the President of the Republic and the Legislative Branch. MP ORGANIC LAW art. 16. This report is published at the beginning of every year and contains a summary of the work carried out by the section and district prosecutor's offices in general terms, the general instructions issued by the PG during that time, and detailed information on implementation of the budget and modifications or improvements to services.

The MP also has a website (www.mp.gob.gt) which provides general information on services, specialized programs, annual report, Law on Access to Information, UNICAP’s distance learning center, the Iberoamerican Association of Public Ministries, job openings or requests for consultant services, and recent news articles on the MP. The population can obtain general information on all MP units on this site as well. The website is not really an efficient way to reach the population since in 2002, only 18.4% of the population had Internet access. Furthermore, the site does not include monthly statistics.

The MP’s system for accountability requires reports and statistics that show the work performed, the objectives achieved, and how criminal justice policies are being implemented. There are two Units in the MP that coordinate accountability-related activities. The first one is the Secretariat for Criminal Policy, which defines the policies on criminal prosecution and establishes the goals for each prosecutor's office and for each individual prosecutor based on the work plan. For 2011, the goal is to achieve a resolution of 25% of the cases that prosecutor’s offices receive.

The Secretariat for Criminal Policy reports that there are monthly meetings with Section and District Prosecutor's Offices to follow up on the compliance of the general objectives, pursuant to article 39 of the MP Organic Law. The Secretariat for Criminal Policy, via SICOMP, ensures compliance with goals and follows up and monitors implementation of the general instructions.

Commenting on this form of accountability, a prosecutor interviewed in the interior of the country remarked that statistical goals should not be used exclusively because they are seen as pressure, and that quality is better than quantity. See Factor 10 above. The argument is that the current system creates more work. For example, the coordination of activities required by the implementation of the new law for the immediate safeguarding of kidnapped or missing children reduces the ability of prosecutors to achieve the goals established, despite their diligent work.

The need for transparency and accountability also involves the relationship between prosecutors and the media. See also Factor 23 below. There is a fine balance between the prosecutorial duties of confidentiality and the legitimate need of the public to know how decisions are made regarding criminal prosecutions. During the early stages of criminal prosecution, the demands for transparency and accountability can be in direct conflict with the pressing obligation of protecting the privacy of the suspects. For example, oftentimes prosecutors do not provide information to the media at crime scenes; therefore, the media look to PNC officers to obtain this information. According to the media, the expectation is that they should receive at least basic information from the person in charge of the investigation, that is, why was the person killed, how many shot wounds were there, what type of weapons were used, whether there is any criminal history, and the name of the person killed.

The lack of effective information mechanisms by prosecutors as a form of accountability to the public because of a lack of public policies is the main problem identified by interviewees, who noted that the results in a Press and Information Unit does not function as an effective liaison between prosecutors and the public. However, MP staff did note that the relationship between prosecutors and the media must be balanced to safeguard the sensitive nature of case investigations but there should be an ongoing interaction without affecting any of the parties. Civil society has held a series of meetings with MP personnel on the topic of public accountability, at which the PG reportedly directly addressed the issue of accountability.

**Factor 16: Internal Accountability**

Prosecutors’ offices have a mechanism to receive and investigate allegations of wrongdoing or improprieties based on written procedures and guidelines. Internal procedures and mechanisms exist to assess or monitor compliance with departmental guidelines.

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<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tr>
<td>There are many internal rules that establish the duties of a prosecutor as well as the procedures to receive complaints regarding irregularities at a prosecutor’s office filed by the public, the media, the PDH and other governmental institutions. Complaints can proceed via an administrative process or a criminal complaint, but there is a lack of awareness regarding the appropriate procedure to ensure compliance with the instructions of the PG, even by the institution’s own staff. The MP constantly receives complaints, pursuant to internal procedures, for acts of bad faith and irregularities filed by the parties and by representatives of civil society against the staff of the prosecutor’s office concerning compliance with the policy guidelines for criminal prosecutions issued by the PG.</td>
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</table>
Analysis/Background:

The MP has general operational guidelines regarding the responsibilities of prosecutors, at several levels, including following instructions on specific issues. Article 39 of the MP Organic Law requires the PG to hold meetings periodically with district and section prosecutors to assess the status of services, to dictate instructions, to request consultations or to discuss issues. According to the information gathered, there are monthly meetings to follow up on the instructions given by the PG to staff at the section and district prosecutors’ offices.

Likewise, the general instructions found in SICOMP outline general prosecution policies that guide the exercise of the discreptional faculties and procedures of the MP, including the following:

- Criminal Prosecution Policy Plan
- Victim Services Policy Plan
- 12 General Instructions for 2005
- 08 General Instructions for 2006
- 9 General Instructions for 2007
- 11 General Instructions for 2008

25 General instruction for the use of mechanisms to simplify the criminal process; general instruction implementing oral arguments in the pretrial stages of criminal proceedings by the MP; general instruction for dismissals; general instruction regulating the use of the MP archive; general instruction on the use of provisional closures by the MP; general instruction on the use of dismissals; general instruction on the use of coercive measures during the criminal legal action by the MP prosecutors; general guidelines for the application of the Handbook on Procedures for Anthropological-Forensic Investigations in Guatemala.

26 General instruction for the application of the Methods of Criminal Investigation; general instruction that rectifies the general instruction on the use of dismissal procedures No. 06-2005, from the PG and Director of the MP; general instruction for the criminal prosecution of illegal acts committed in the process of regular adoptions; general instruction on handling crimes against sexual freedom by the MP; general guidelines for the application of the Procedural Handbook on Processing Crime Scenes; Procedural Handbook on Processing Crime Scenes by the MP; general instruction regulating the requirement of genetic testing (DNA); general instruction for the receipt, recording and transfer of information related to the crime scene.

27 General Instruction 01-2007, general instruction for international legal assistance, active and passive. General Instruction 02-2007, general instruction defining the technical criteria to accept or reject cases for the analysis of firing residues on the hands. General Instruction 03-2007, general instruction for the use of the warehouse for inspection of vehicles of the MP, located at 15 Avenida 15-11, Zona 1, Barrio Gerona in Guatemala City; General Instruction 04-2007, general instruction for the application of the MP Operational Plan for the exercise of its constitutional mandate during the general elections of 2007; General Instruction 05-2007, general instruction for the strengthening of the coordination between the MP and the PNC in the criminal investigation process; General Instruction 06-2007, general instruction for the processing of crime scenes in cases of violent death; General Instruction 07-2007, general instruction for the petition and execution of searches, inspection and raids; General Instruction 09-2007, general instruction for procedures in cases related to the crime of discrimination; General Instruction 10-2007, general instruction on filing charges by the MP.

28 General Instruction 01-2008, general instruction that amends the general instruction on handling the crime of discrimination by the MP, No. 09-2007 of the PG and Chief of the MP; General Instruction 02-2008, general instruction for the management and development of preliminary and pretrial investigations; General Instruction 04-2008, general instruction related to the follow up prosecutors must perform on the execution of the expert procedures requested and the recovery of evidence of the expert analyses carried out; General Instruction 05-2008, general
• 03 General Instructions for 2009\textsuperscript{29}

Although the development and distribution of policies and internal guidelines at the MP is the responsibility of the SPC through UNICAP, no measures have been adopted to monitor their application permanently.

Article 66 of the MP Organic Law establishes the procedures that subordinates must follow to assess the instructions of their superiors. It states that if instructions, both general and specific, are issued within the scope of their professional duties but fall outside of the legal framework, the MP personnel may express their personal position against such instructions.

A prosecutor who receives an instruction that she deems contrary to law, shall so notify the person who issued the instruction via a report that lays out her reasoning. If the individual who issued the instruction insists that it is legitimate, she shall submit it to her immediate superior within the next 24 hours, together with the objection. The superior may listen to the arguments of a board of prosecutors under his supervision or, in complex cases, he can request a ruling from the MP Advisory Board. When the instruction being objected to is from the PG, the MP Advisory Board shall decide. General instructions can be objected to in the abstract by district and section prosecutors. Agency and auxiliary prosecutors may object when instructions affect a specific case and, in such a situation, the victim may also object. MP ORGANIC LAW art. 69. However, to date, there is no known instance of an objection to an instruction.

Starting in 2009, the Unit for the Evaluation of Performance [hereinafter UED] assesses and monitors compliance with the guidelines, keeping a record for each prosecutor, based on quantitative indicators. The UED was created by PG Agreement 52-2009 and is charged with the objective, systematic and ongoing assessment and measurement of staff job performance and that of the various units of the institution. Its functions include measuring and improving personal and institutional performance; applying technical, administrative and computer tools to facilitate the evaluation and information concerning MP staff performance; maintaining an updated record on the results of the performance evaluation process; analyzing and submitting evaluation results to the corresponding units; following up on the recommendations made in prior evaluations; determining the needs for inducement, training or any other circumstance that improves the quality of the services provided by the institution; and promoting through the performance

\begin{itemize}
  \item General Instruction 05-2008; General Instruction 06-2008, general instruction regulating the internal application procedure at the MP of the law that regulates extradition procedures; General Instruction 07-2008, general instruction for the implementation of the Model for Victim Services at the MP; General Instruction 08-2008, general instruction for the implementation of the protocol of stabilization of victims of crimes in their first interview; General Instruction 09-2008, general instruction for the implementation of the protocol of services for children and juveniles who are direct or collateral victims; General Instruction 10-2008, general instruction for the implementation of the protocol of services for victims of crimes against sexual safety and freedom, and decorum at the OAV; General Instruction 012-2008, amendment to instruction 04-2006 containing the general instruction for the criminal prosecution of illegal acts committed in the course of irregular adoption processes; General Instruction 13-2008, general instruction for the investigation of the crime of torture;
  \item General Instruction 014-2009, general instruction for the application of the specialized method of investigation of wiretapping telephone calls and other means of communication, regulated by the Law against Organized Crime; General Instruction 15-2009, specific instruction for the use of the code for national signal points (NSPC) by the Unit for Specialized Investigative Methods; General Instruction 016-2009, amendment to instruction 07-2006 which contains general guidelines for the application of the Procedural Handbook for the Processing of Crime Scenes.
\end{itemize}
evaluation results, opportunities for growth and conditions for effective participation by the MP staff.

Up to now, and pursuant to the work plan, evaluation indicators have been developed for prosecutors but not for the administrative staff. One of the goals of the UED is to perform an annual assessment on the effectiveness of the Prosecutor's Office.

Members of the UED interviewed by the assessment team stated that if the results of the Prosecutor's Office performance evaluation were poor, a conditions report would be developed, per agency, per crime, per worker, that would take into account everything from the time used to the quality of the work on the basis on quantitative data.

According to the interviews, it had also been possible to reconcile administrative systems with respect to the physical location of the personnel hired, since there were cases in which auxiliary prosecutors were carrying out the duties of assistants. At the time of a performance assessment, their results would be poor since they were doing work not in their job description.

The main problem that the UED is facing is the fact that prosecutors do not fill out properly SICOMP's records system. Crosschecks need to be set up so that the quality of the work can be verified and information to the MP General Review Office can be submitted that helps initiate disciplinary actions to penalize mistakes or negligence regarding the files. Currently, the work on performance evaluations is being confused with the work performed by the General Review Office.

Interviewees stated that the General Review Office needs a complaint to initiate disciplinary actions and open the administrative stage. If the case is justified (report stating that the complaint can proceed), it is sent to the individual's direct superior to prepare an administrative record that includes the incident, charging evidence, and work regulation violated on the basis of the Collective Work Agreement, LOMP or the Labor Code. Then, the General Review Office reviews the evidence and submits it to the Chief Superior to issue the appropriate penalty. In case of suspension or removal, there are three days to appeal before the CMP or, in case of a reprimand, before the Hierarchical Superior.

Union members expressed their disagreement with several aspects of the means and procedures for institutional accountability. They believe that because the General Review Office was not created within the LOMP, its operations as an administrative unit are unlawful. Furthermore, these units have no specialized personnel and operate more as a means of repression against MP personnel. Regarding the UED, the union is concerned because they lack information about its structure, objectives, criteria and operating procedures. Workers feel threatened, fearful that a new evaluation system developed by this unit will be unfair. Moreover, they stated that private lawyers attempting to affect their cases positively constantly file complaints against prosecutors and auxiliary prosecutors before the General Review Office.

Furthermore, the PDH, COPREDEH, and other civil society organizations make the PG aware of acts of bad faith or irregularities by the personnel of the prosecutor’s office. What is not clear is the procedure to submit this information to the appropriate authorities because, depending on how it is filed, it may or may not result in certain procedures. What unit should follow up on this type of complaints is not set in writing, there are no statistics on the number of complaints that come in through different channels nor on the procedures followed; also, there is no information on whether the complainants have been informed on the course of action taken to address their concerns.
Factor 17: Conflicts of Interest

Prosecutors are unaffected by individual interests, and avoid conflicts of interest or the appearance thereof.

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<th>Conclusion</th>
<th>Correlation: Positive</th>
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<tr>
<td>The national legal framework regulates conflicts of interest that can affect prosecutors when performing their duties in criminal prosecutions. Interviewees did not report cases in which prosecutors proceeded with a case despite a conflict of interest.</td>
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Analysis/Background:

In the context of criminal prosecutions, conflicts of interest may apply to a wide range of activities: acts of corruption that compromise the integrity of the MP personnel; personal conflict arising when a prosecutor is personally involved in an issue related to the prosecution, or whenever a member of his or her family is involved; and employment conflicts where a prosecutor's second job could present a conflict. The rules that regulate prosecutorial conduct include the MP Code of Ethics, which stipulates a mandatory set of standards and ethical principles applicable to the job performance and conduct of MP public servants, whatever their competence or hierarchy, pursuant to the higher goals of the institution; the MP Organic Law; and Chapter III of the Criminal Code, which defines crimes of bribery.

Guatemala's regulations are in step with international norms, which stipulate that the criminal prosecutorial function should be consistent, objective, impartial and independent free from any conflict of interest. See, e.g., CODE OF CONDUCT FOR THE PROSECUTORS OF THE INTERNATIONAL CRIMINAL COURT, art. 1(9). Article 65 of the MP Organic Law states that it shall be incompatible with the functions of an MP staff member to have another job or a paid public or private position, except for teaching at the university, provided that such teaching does not interfere with the exercise of their functions; to practice as an attorney-at-law and notary public, except in their own defense, the defense of their spouses, parents, minor children or other persons under their custody and guardianship; to be involved in trade or be part of the management or control boards of business entities. Therefore, the ethical parameters and standards that define a conflict of interest related to the liberal work performed by a lawyer who exercises criminal prosecutions are clearly defined.

Section IV of the Code of Ethics reiterates those situations incompatible with the profession of prosecutor. It emphasizes that MP staff shall abstain from participating in activities, situations or behaviors that are incompatible with their functions or that could affect their independence.

According to the operations of the justice system, the prosecutor shall work independently, free from all influences. Article 73 of the MP Organic Law sets forth the causes that can justify the withdrawal of prosecutors from cases, as well as the issue of being related to the judge or magistrate before whom they must appear, which are the same causes established for judges by the Law of the Judiciary. The conflict may be proven by simply providing a signed explanation by the official, and even the victim may submit a request to the district prosecutor, the section prosecutor, or the PG to have a prosecutor removed from a case when there is reason to believe that such prosecutor is not fulfilling her duties appropriately. This request shall be acted upon through a reasoned decision within two days after the request is filed.

If the law establishes the obligation to remove a prosecutor from a specific case, her hierarchical superior shall follow the internal regulations for distribution of workloads. Accordingly, pursuant to
article 43 of the Regulations for the Prosecutorial Profession, prosecutors may not take part in those matters where there is a request for withdrawal against them. Reasons for conflict and withdrawal are those set forth in the Law of the Judiciary, as well as being related to the judge or magistrate before whom they must appear. To this end, the Law of the Judiciary provides that any of the parties in the legal action could have conflicts and challenges set forth in articles 122 and 123:

- Being a party to the issue being heard.
- The prosecutor, or her family, have an interest or have legally represented or acted as expert in the legal action or case.
- Kinship with any of the parties.
- If the judge or any relative has accepted an inheritance, legacy or donation from any of the parties.
- Having heard the same issue in any other instance or in an appeal for annulment.
- When there is a close friendship or relationship with any of the parties, which in the opinion of the court, pursuant to the evidence and circumstances, might affect impartiality.
- When descendants are married to any of the parties, or to blood relatives to any of the parties.
- When the judge or his relatives have acted as tutors, protutors or guardians, proxies or principals to any of the parties or their descendants.
- When expressing an opinion regarding the matter being heard.
- When the prosecutor or her family or any blood relative have a strong animosity against any of the parties. Strong animosity is presumed if one of the parties has caused or attempted to cause harm to the judge or the judge has done so to any of the parties, with respect to their physical persona, their honor or their assets, or to their relatives as mentioned in this paragraph. In criminal cases, an accusation or complaint is a permanent cause for withdrawal.

Interviewees did not identify instances in which prosecutors continued working on a case despite a conflict of interest. However, interviewees did note that improper influence, as discussed in Factor 7 above, sometimes leads MP staff to promote outside interests over the integrity of the criminal prosecution.

**Factor 18: Codes of Ethics**

*Prosecutors are bound by ethical standards of the profession, clearly aimed at delimiting what is and is not acceptable in their professional behavior.*

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<th><strong>Conclusion</strong></th>
<th><strong>Correlation: Negative</strong></th>
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<td>Rules regulate the general behavior and ethical conduct of the MP prosecutors. There is a lack of awareness of the Code of Ethics among prosecutors. In fact, the institutions provided by the Code of Ethics for its enforcement, which were created by regulations passed in 2008, have yet to be designated. As a result, the Code of Ethics has not been widely disseminated or adopted.</td>
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**Analysis/Background:**

The Professional Code of Ethics of the Bar Association of Guatemala [hereinafter the Professional Code of Ethics] is mandatory for all attorney and notary members of the Bar Association. The Honor Tribunal of the Bar Association of Guatemala enforces application of the
Professional Code of Ethics. Prosecutors are also subject to the MP Code of Ethics, which stipulates a mandatory set of standards and ethical principles applicable to the job performance and conduct of MP public servants, whatever their competence or hierarchy, pursuant to the higher goals of the institution.

The MP states in its regulations that in order to perform the institutional mission effectively, it is essential that MP public servants maintain and ensure their loyalty to the values established in the Code, which is mandatory, and applies and should be observed at all times in the exercise of their duties. An Ethics Commission is designated by the PG as the entity to interpret the ethical guidelines contained in the Code and that, at the request of the interested parties, issue the corresponding opinions. The Ethics Commission is composed of the MP Secretary General, who chairs the Commission; the Director of the Training Unit; the Director of Human Resources; and a Career Prosecutor appointed by the PG.

These regulations, in effect since 2008, have not been disseminated and the staff usually confuses them with disciplinary matters. The work plan calls for an awareness campaign in 2011.

The contents of the Code of Ethics address personal ethical job performance, and noncompliance initiates administrative proceedings. After the administrative proceedings, the Ethics Commission reviews whether there was truly an ethical violation on the basis of the Code. However, there is no clarity between a ruling that determines an ethical violation and one that determines an administrative violation.

According to some prosecutors, the staff of the prosecutor’s office has access to the Code of Ethics and should follow it. However, other prosecutors stated that they do not know about the Code of Ethics and have received no training on it. Although some interviewees stated that they did not have access to the Code of Ethics or knowledge about it, the assessment team obtained a copy of the Code by requesting it in person at the Press and Information Office located in the MP building in Guatemala City.

According to a district prosecutor in the interior of the country, it would be positive to reinforce and acknowledge the work of efficient and honest personnel to strengthen the contents of the Code of Ethics and as a way of keeping staff unshakable in the face of conflicts of interest. Based on his personal experience, this prosecutor considers that internal transfers within the MP do not improve the operations of the prosecutor’s office, and that the use of the disciplinary regime against the staff is complex. It is essential that there exist professional ethical standards in the MP, especially in the Unit of Human Resources. Knowledge, aptitude and skills must be evaluated, as well as public integrity. If the leadership at each unit fails to establish a framework of ethical behavior by their own work conduct, the rest of the staff will not act properly.

A judge interviewed expressed that he has had a negative experience regarding the Code of Ethics for prosecutors. Usually before a hearing takes place during the intermediate phase of a legal action, MP personnel motions for the application of alternative out-of-court measures whenever there has been a charge, arguing compliance with the goals established, which generates the ratification of the motion presented. According to what the judge said, he applies an in-court alternate resolution to the case because he considers it to be more appropriate. The judge indicated that he has seen several cases like this but he has been unable to inform the MP General Review Office.

Interviewees from the field of professional academic education consider that ethics and values should be a crosscutting core theme in all courses; not only in the criminal area but in all areas. This would imply an analysis not only of what is legal, but also of what is fair.
On the other hand, the experience in the departamento of Quetzaltenango shows gains in issues of coordination as a result of communication between judges, prosecutors and defense attorneys. This came about from direct interaction between the MP, OJ, PNC and IDDP where specific issues were addressed to review the elements affecting the operations of the system. The Quetzaltenango judges stated that if there were a problem related to conflicts of interest by the prosecutors or defense attorneys, it would be referred to the Honor Tribunal of the Bar Association and, depending on the case, the judges could consider applying the exceptions in the criminal procedural code regarding withdrawals and challenges, as well as the officer’s civil liability.

**Factor 19: Disciplinary Proceedings**

*Prosecutors are subject to disciplinary action for violations of law, regulations, or ethical standards. Disciplinary proceedings are processed expeditiously and fairly, and the decision is subject to independent and impartial review.*

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<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tr>
<td>Prosecutors are subject to disciplinary proceedings that are bureaucratic, complex and their application wears staff down to such a degree that services are rarely improved. Subordinates are accountable to the leadership at the prosecutor's office, but senior levels find this ineffective procedure convenient. At present, who shall be in charge of the appeals process in disciplinary proceedings is yet to be decided.</td>
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**Analysis/Background:**

Article 61 of the MP Organic Law establishes that the following acts and omissions are subject to disciplinary penalties:

- Frequent job absences without justified cause, frequent tardiness or not remaining at work for the duration of the office hours set by superiors. Exceptions apply when the work performed needs to be done out of the office;
- Performing acts or incurring omissions in any matter that result in losing the proceedings, or create difficulties or delays in the exercise of the parties’ rights or those of the institution;
- Offending the victim, the defendant, the litigators or any other person that goes to the MP offices or court hearings seeking justice or information on the status of matters;
- Removing files and documents from the offices where they are to be kept or from the MP offices, or revealing confidential information to third parties, except as allowed by law;
- Negligence in the process of gathering evidence needed to file appropriate charges or necessary for proceedings before the court;
- Filing charges, motions, rendering conclusions or judgments on the basis of clearly false facts, or that lack a legal foundation;
- Omitting advising the victim of the result of the investigations or omitting notifying the judge’s decision that concludes the legal action, when the victim has not joined as a complementary prosecutor;
- Hiding information or providing wrong information to the parties, as long as confidentiality of the proceedings has not been imposed pursuant to the terms and conditions established in the Criminal Procedural Code.
Hierarchical superiors who initiate the disciplinary proceedings are responsible for imposing the disciplinary penalties. Possible disciplinary actions include verbal reprimand; written reprimand; job or post suspension without pay for up to fifteen days; and removal from post or job. MP ORGANIC LAW art. 60. These penalties are also based on article 112 of the Regulations for the Organization and Operations of the MP Administrative Area (Agreement No. 12-2007). The Department for Disciplinary Administrative Procedures maintains statistics on penalties imposed. District or Section Prosecutors and heads of MP departments shall impose reprimands to their officers and employees after a two-day hearing with the participation of the interested parties during which they can present their arguments and evidence, and which ensures they are afforded their right to defense. The ruling shall be in writing, within five days of the conclusion of the hearing. See MP ORGANIC LAW art. 62.

The entity in charge of disciplinary proceedings is the General Review Office. MP regulations, in Agreement 37-2004 (Aug. 25, 2004), define the General Review Office’s operational regulations as the entity in charge of the planning, organization, management, supervision, execution and assessment of the activities related to the disciplinary administrative proceedings that are imposed on MP staff members, answering legal questions on the issues and preparing the applicable rulings.

The General Review Office is composed of 16 persons grouped into four divisions. Though fully staffed, the office of 16 personnel share use of the two available laptops for their daily responsibilities. The personnel do not have the rank of agents. They are lawyers and notaries public who perform the following activities of administrative investigation in four main areas:

- Regular Administrative Investigations or Investigations Resulting from Administrative Complaints (where a report is prepared, concluding whether the complaint is justified, justified with recommendation, unjustified, unjustified with recommendation, legal issue and/or Archive*).
- General and specific reviews, scheduled and unscheduled visits to different institutional areas: prosecution, investigation, administration and other technical and support services.
- Counseling in areas of its jurisdiction – user services.
- Presentation of evidence at disciplinary proceedings.

Pursuant to the Collective Agreement on Job Conditions subscribed between the MP and the MP Workers Union, the General Review Office must collect any evidence both for and against the alleged disciplinary violation within 48 hours after receiving the file. It then submits its findings to the appropriate authority for a ruling.

The General Review Office’s statistics for 2010 are the following:

- Regular administrative investigations or those resulting from complaints by external and/or internal individuals for which reports were submitted (justified, justified with recommendation, unjustified, unjustified with recommendation, legal situation, archives);

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30 Justified report: establishes administrative responsibility by the worker subject of the complaint and initiation of disciplinary proceedings is appropriate.
31 Justified report with recommendation: establishes administrative responsibility by the worker subject of the complaint and initiation of disciplinary proceedings is appropriate; includes any recommendations considered relevant.
32 Unjustified Report: there is no evidence of administrative responsibility, and therefore initiation of disciplinary proceedings is not appropriate.
• General reviews and/or scheduled and unscheduled visits for which merit reports are submitted; and
• Collection of evidence in disciplinary proceedings, for 2009 and 2010, through December 10.

In 2010, a total of 652 complaints were filed, of which 223 were not entered in the system because they did not merit an administrative proceeding. In the same year, complaints were received for a total of 817 workers.

Usually, people submit their complaints before the PDH so that this entity can file it with the General Review Office in order to obtain information on the investigations being performed in a case; for example, if there are raids, arrest warrants or some other proceeding.

The difference between the disciplinary proceeding initiated at the General Review Office and the crime reports handled by the Unit of Internal Affairs at the Prosecutor’s Office for Administrative Crimes, is that they are not legally binding. The Prosecutor’s Office for Administrative Crimes investigates and prosecutes alleged crimes committed by public officials while the General Review Office is in charge of the internal discipline at the MP. See Factor 14 above.

According to the General Review Office, the disciplinary proceeding starts when a complaint is received. During the administrative phase, the General Review Office determines whether the cause is justified (report that declares that the complaint is valid), and submits it to the employee’s hierarchical superior who must then prepare the administrative record containing information on the act subject of the complaint (day, time, manner), evidence, and work rule violated pursuant to the Collective Agreement on Job Conditions, MP Organic Law or Labor Code. The employee’s superior is the one who determines the violation. See MP Organic law art. 62.

Next, a 2-day hearing is granted to the parties and the General Review Office gathers the evidence within 3 days. See Agreement 37-2004 of the PG art. 8. The General Review Office then submits all to the Chief to issue a decision, and the penalty can be a verbal or written reprimand. If the penalty is suspension or removal, the PG must issue the decision. MP ORGANIC LAW art. 62.

An appeal must be filed before the employee’s superior or the MP Advisory Board within three days, who confirms or modifies the penalty. See MP ORGANIC LAW art. 63. Finally, the case can be brought before the Court of First Instance for Labor and Social Security.

According to the information provided by the staff of the General Review Office, UNICAP needs to know how the process works to help MP staff understand disciplinary proceedings.

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33 Unjustified report with recommendation: there is no evidence of administrative responsibility, and therefore initiation of disciplinary proceedings is not appropriate; includes any recommendations considered relevant.
34 Legal situation report: includes all reports where, because of the nature of the investigation involved, it is only appropriate to establish the Legal Situation of the File under Review; and Archive, when it is established that despite the complaint or petition, there is no evidence of administrative acts susceptible of an administrative investigation, as long as there is no evidence of breach of service.
35 It is noted that the right to be heard by the Board was affected by the Constitutional Court’s February 1, 2011 ruling in which the Board’s role ratifying, modifying or cancelling the general or special instructions by the PG was declared unconstitutional.
According to the prosecutors interviewed, disciplinary proceedings are slow, complex, bureaucratic and uncertain and the process could last seven or eight months. The MP Advisory Board usually reinstates the workers whenever the penalties are suspension or removal. Experience has shown that when disciplinary proceedings are initiated, since it is the boss who imposes the penalty, the situation results in hostility from the staff since the employees subject to disciplinary actions continue performing their job. According to a prosecutor, although there is an established disciplinary process, there could be other preliminary ways of handling complaints against an auxiliary prosecutor before the formal process is initiated; for example, the prosecutor confronts the auxiliary prosecutor with the complainant and, depending on what happens, the case may be referred to the General Review Office for formal proceedings.

On the other hand, the directors of the prosecutors’ offices argue that if among the personnel under their supervision there is one undisciplined individual, it complicates interpersonal relations and even the work dynamic because it creates a negative environment for all the staff.

Similarly, the Prosecutor’s Office for Administrative Crimes expressed that there were two specific cases related to disciplinary proceedings where the PDH submitted the complaint, but the head of the Unit did not feel it was justified. On the other hand, disciplinary proceedings were initiated against an agency prosecutor for a serious violation, considered cause for dismissal. But the MP Advisory Board revoked the decision on appeal. This agency prosecutor has a history of job problems at all the agencies where he has worked. An interviewee stated that the disciplinary process only generates interpersonal problems.

The heads of the prosecutors’ offices expressed that the MP needs to have an internal unit that looks after the rights of the workers regardless of the existing MP Worker Union that can provide support with disciplinary proceedings against staff members who, even if not members, can receive legal advice from it.

Other prosecutors said that there should be a control mechanism for corrupt and lazy personnel, regardless of the fact that the Human Resources Unit can verify the record of each worker in the personnel files. They argue that it may be possible to work with lazy officers, but not with corrupt ones, as the latter end up affecting the internal work of the units. For example, a disciplinary proceeding was initiated against a corrupt person who was charging a fee to dollars to file a request to return vehicles. He was removed to another unit while the disciplinary process went on. The main problem is the lack of collaboration of those who have paid the money because they do not want to name the auxiliary prosecutor who received or solicited the money.

According to a prosecutor interviewed, whenever there is a complaint against his staff, depending on the situation, he verifies the violation in the file or requests that the General Review Office review the file. If a violation is established, he drafts the required record to initiate the administrative proceeding. District prosecutors have the authority to transfer personnel within their own jurisdiction. If the transfer is to other units, the prosecutor must authorize it. Staff members that retire must hand over to the new person the furniture and other effects under his responsibility.
V. Interaction with Criminal Justice Actors

Factor 20: Interaction with Judges

Public prosecutors safeguard the independence of the judicial and prosecutorial functions. Prosecutors treat judges with candor and respect for their office, and cooperate with them in the fair and timely administration of justice.

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<th>Conclusion</th>
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<td>Interactions between prosecutors and judges are largely professional and courteous. However, judges expressed concern about the poor quality of prosecutors’ investigations, drafting of charges, and trial skills. Interviewees, including some judges, believed that is not unusual for judges to ignore weaknesses in investigations or charges and permit cases to move forward even when the case is not properly substantiated. Judges believed that they are unfairly blamed for dismissing cases, when the dismissals are due to prosecutorial deficiencies.</td>
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Analysis/Background:

The judiciary is an independent branch of government with the authority to judge matters and to carry out judgments. CONST. art. 203. It includes the Supreme Court of Justice, Court of Appeals, First Instance Courts, Trial Courts, and Justices of the Peace. See generally JUDICIAL ORGANIC LAW arts. 74–107 (Decree No. 2-89 adopted Jan. 10, 1999); CRIM. PROC. CODE.

The Criminal Procedure Code describes the relationship between prosecutors and the different types of judges. Prosecutors have the most interaction with two types of first instance courts: investigative courts and trial courts. Investigative courts, or justices of the peace in areas where there are no investigative courts, support the investigation and issue orders for procedures and coercive or precautionary measures as allowed by law. CRIM. PROC. CODE art. 308. Investigative courts also rule on archival and dismissal of the case at the investigative stage, and on opening the case and allowing charges to be filed. Id. arts. 310, 325, 324, 332(bis); see Factor 10 above. Once charges are filed, the trial court has jurisdiction over the case and determine the relevance of any conclusive act. CRIM. PROC. CODE art. 328 y 331. This includes holding hearings on objections and motions; reviewing evidence; hearing arguments and testimony; and issuing the sentence. Id. arts. 346–353, 368–382, 383–397. Additionally, both parties can appeal judicial orders before appellate courts and, after the appellate court rules, certain orders may be appealed to the Supreme Court of Justice. Id. arts. 404, 406, 423-434.

Judges reported that prosecutors treat them with respect and generally comply with judicial orders. However, judges expressed grave concerns regarding the skills and preparation of prosecutors to carry out investigations and trials. Investigative judges indicated that in the vast majority of cases, the investigations are extremely deficient and do not support the filing of charges. Charging documents often lack crucial information, such as the information substantiating the charges requested or the correct date and time of the offense. Judges believed that this was due in part to the inability of agency prosecutors to adequately supervisor auxiliary prosecutors, who supervise investigations and draft the charges, even though the agency prosecutor is ultimately responsible for the case. Trial judges also reported that prosecutors’ skills at questioning witnesses and forming legal arguments are extremely deficient. However, most judges noted that the oral system is relatively new in Guatemala and has not been fully implemented throughout the country; they believed that prosecutors’ oral skills are improving with time.
Judges reported that prosecutors do not always communicate with the courts, in particular in cases where the prosecutor has received threats. However, judges stated that the majority of prosecutors are professional and courteous in their interactions with judges.

Some interviewees believed that judicial corruption is common, and that judges fail to objectively adjudicate cases, particularly those involving organized crime or drugs. However, other interviewees perceived a prosecutorial bias, especially in lower-impact cases. Some prosecutors expressed the idea that judges should act in favor of the prosecution, because of the need to combat impunity; these prosecutors clearly did not view the judiciary as a neutral and independent institution. However, this view was not widespread.

In many areas, defense attorneys believed *ex parte* communications between judges and prosecutors to be common. Defense attorneys believed that it is common for judges to rubberstamp motions submitted by prosecutors during the evidence stage and issue orders not substantiated by the evidence presented by the prosecution, including the filing of unsubstantiated charges. However, prosecutors and civil society representatives believed the opposite was true; one civil society interviewee believed that judges “pad their wallets” with bribes paid by private defense lawyers. Many interviewees suspected high levels of judicial corruption, particularly in the interior of the country, but interviewees did not agree on whom the purported corruption might favor and did not cite specific cases.

Some judges, reported that they always order dismissal in cases where the charges are not supported by the investigation, and they complained that the media and society unfairly blames judges for dismissing cases when in reality they must protect due process by dismissing the charges. However, in one city, trial judges uniformly reported that they ignore technical and due process concerns and convict defendants whom they believe to be guilty, even if the charges are not properly substantiated or are not in the proper form, for example when the identity of the defendant has not been established according to the legally-required procedure; they stated that to do otherwise would lead to an even higher level of impunity. These judges believed that this practice is widespread.

**Factor 21: Interaction with Police and Other Investigative Agencies**

*In order to ensure the fairness and effectiveness of prosecutions, prosecutors cooperate with the police and other investigative agencies in conducting the criminal investigation and preparing cases for trial, and monitor the observance of human rights by investigators.*

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<th>Conclusion</th>
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<td>Interviewees uniformly reported that the investigation is the stage at which cases normally fall apart, directly contributing to Guatemala’s high impunity rate. Prosecutors lack the skills to adequately supervise investigations, and frequently fail to coordinate among the various bodies involved in investigating a case. Forensic evidence is an area of particular weakness, as the independent agency responsible for forensics reportedly regularly mishandles or loses crucial evidence.</td>
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**Analysis/Background:**

In Guatemala, the MP, as the body responsible for criminal prosecution, is responsible for supervising investigations of crimes, and auxiliary prosecutors are charged with carrying out the
investigation and preparatory proceedings. CRIM. PROC. CODE art. 107; MP ORGANIC LAW art. 45. Once a report is filed with the MP, the prosecutor is legally required to carry out an investigation. Id. art. 309. The prosecutor is assisted in the investigation by the PNC and DICRI, and may request forensics tests from INACIF.

Crimes may be reported to the police, to the MP, or to a court. Id. art. 297. If a crime is reported to the police, the police must immediately inform the MP of the report. CRIM. PROC. CODE art. 304. The police may only carry out investigations on their own to urgently gather or safeguard the elements needed for conviction and avoid the flight or hiding of the suspects, and must inform the MP of their actions within 24 hours. Id. art. 304; MP ORGANIC LAW art. 51. The police are required to follow orders made by prosecutors, and must account for any investigations they carry out. Police carry out their work under the orders and the direct supervision of the MP, including their work assisting in investigations. The Attorney General, District Prosecutor, or Section Prosecutor name the police officers who will assist in the investigation. MP ORGANIC LAW art. 51. In 2007, the Attorney General issued an instruction on coordinating the work of the MP and PNC, which was intended to strengthen coordination and cooperation between the two bodies at crime scenes, apprehension of suspects, and searches; however, this instruction apparently was not implemented in the interior of the country. See GENERAL INSTRUCTION OF THE ATTORNEY GENERAL no. 05-2007 (Aug. 2, 2007).

In areas where there is no MP office or police, a Justice of the Peace may also carry out an urgent preliminary investigation, but the MP must still be notified within 24 hours. Id. arts 304, 305.

DICRI, which is part of the MP, is responsible for planning, controlling and carrying out the investigation and collecting evidence to substantiate the case being investigated by prosecutors. DICRI provides technical support for investigations, compiles and processes information in support of the investigation, proposes expert witnesses and research to assist in the investigation, carries out relevant and useful actions to clarify the facts of the case; assists in jurisdictional proceedings, and carries out other functions as assigned, all under the supervision of the prosecutor in charge of the case. See MP WEBSITE, AREA OF INVESTIGATIONS at http://www.mp.gob.gt/index.php?option=com_content&view=article&id=60&Itemid=71; MP ORGANIC LAW art. 40. DICRI has teams of crime scene technicians based in 56 MP offices nationwide, and teams of field investigators in 14 MP offices. In some areas, DICRI staff and PNC investigators work together on investigative teams, including in the sections for crimes against women, organized crime, and drug trafficking.

Forensic evidence is processed by INACIF. INACIF is an independent institution assisting in the administration of justice. ORGANIC LAW OF INACIF art. 1 (Decree No. 32-2006, Aug. 31, 2006). INACIF’s objective is to provide scientific investigation services and issue technical, scientific reports. Id. art. 2. INACIF provides its services at the request of the courts, prosecutors, defense lawyers, PNC, or persons in charge of special investigations. Id. art. 29. INACIF is primarily used for DNA and ballistics tests. Prosecutors do not exercise any supervisory authority over the work of INACIF, as INACIF is an autonomous, expert entity.

Interviewees uniformly reported that the investigation is the stage at which cases normally fall apart. Investigative judges reported that the MP fails to diligently conduct investigations and does not supervise the investigations carried out by the PNC and DICRI as required by law. Investigative judges reported that it is not uncommon for investigations by DICRI, the PNC and the auxiliary prosecutor to each reach a different conclusion. Many interviewees reported cases in which the MP, including DICRI and the responsible prosecutors, arrived on the scene hours after the crime occurred, such that the scene has already been contaminated by emergency personnel, media, and passersby. However, other interviewees reported that investigators generally arrive promptly, taking into consideration that investigators may be responsible for
multiple crime scenes, and noted that the PNC will confirm the existence of a crime scene prior to the arrival of investigators. Representatives of several CSOs reported that it is common for evidence to be lost or mishandled during the investigative stage, and that they believed that investigators sometimes falsely conclude that no crime happened so that the case can be easily dropped. Interviewees believed that the lack of competence in investigations is a direct cause of the high rate of impunity in Guatemala. See Factor 12 above.

Police interviewees agreed with the assessment offered by investigative judges. One high-ranking interviewee within the PNC mentioned that the auxiliary prosecutors are not trained or prepared to supervise investigations. Police interviewees believed that the MP does not coordinate well with other institutions and that prosecutors do not receive sufficient training on carrying out investigations, both in law school and after being hired by the MP. Police interviewees pointed out that investigative skills are generally learned on the job over a period of time, and auxiliary prosecutors often did not have enough on-the-job experience to adequately direct investigations. However, this varied within the different Section Prosecutors. The Prosecutor for Crimes against Life has dedicated police investigators assigned to work with it, and police reported receiving very good support from the Prosecutor for Organized Crime.

Interviewees within DICRI pointed to similar problems with coordination and supervision. Reportedly, auxiliary prosecutors are not skilled at directing investigations, and often make irrelevant requests of investigators which take up DICRI’s limited resources or make complicated last-minute requests because of a failure to plan ahead properly. However, in practice although not in law, DICRI is able to refuse prosecutors’ requests. DICRI has no control over its budget and reportedly lacks adequate resources to carry out its mandate. DICRI is reportedly understaffed in many regions; for example, in el Petén, there is only one DICRI investigator despite a high volume of crimes against national patrimony in the region. DICRI interviewees also pointed out security concerns, indicating that no security is provided for investigators even though there have been attacks against them, as they are recognizable and drive MP vehicles to crime scenes. Additionally, interviewees reported that DICRI staff do not receive continuous education and many staff need review of and training on topics such as tracking, surveillance, and operating methods.

MP staff and civil society alike pointed out serious problems related to forensic investigations. Forensic medical examinations are not available in many areas; in areas with a District Prosecutor’s Office, INACIF staff are available from 7:00am to 7:00pm and may be on call during night hours, and in Guatemala City INACIF staff perform examinations 24 hours a day. Crime victims in areas without INACIF staff must submit to a forensic medical exam in a local hospital, where it will be carried out by staff with no training in forensics or in working with crime victims. Hospital staff reportedly sometimes refuses to carry out forensic exams because they do not want to have to later testify at a trial, and hospitals frequently lose or mishandle evidence gathered during an exam. Even if evidence is properly gathered, the quality of forensic evidence is shaky at best; all samples currently must be sent to a lab in Guatemala City, which often delays a case 6 months or more. Forensics labs routinely do not guard the chain of custody, resulting in the exclusion of the evidence from use at trial. Until recently, INACIF lacked equipment to process DNA testing, so all forensics samples had to be sent to Spain (which funded the pilot forensics program) or Costa Rica for testing, delaying cases even longer, reportedly as much as a year.

Due to what interviewees believed was sloppiness or negligence on the part of INACIF, forensic evidence is often useless. Many prosecutors and civil society representatives reported cases in which the incorrect DNA sample was tested. Interviewees told of cases where a body had to be exhumed multiple times for the same testing because it was improperly carried out, and of cases where crucial facts, such as whether penetration occurred in a rape case or the cause of death in a homicide, were omitted from INACIF’s reports.
Prosecutors acknowledged weaknesses in the investigative process, but reported that this was due to overwhelming workloads and victims’ and witnesses’ refusal to cooperate. Some prosecutors reported that they ask victims to immediately submit to forensic examinations, so that at least they will have forensic evidence if the victim later declines to cooperate; of course, given the problems with forensic evidence, this strategy is not always effective. Some interviewees also believed that the quota requirements lead prosecutors to focus on less serious, easier to investigate crimes, to the detriment of cases requiring more complex, longer-lasting investigations. See Factor 10 above.

Factor 22: Interaction with Representatives of the Accused

Public prosecutors respect the independence of the defense function. In order to ensure the fairness and effectiveness of prosecutions, prosecutors satisfy their legal and ethical obligations towards the representative of the defendant.

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<td>Prosecutors and defense attorneys generally enjoy a professional and cordial relationship, although communication between the MP and the defense bar has lessened in areas where Justice Centers were recently closed. Prosecutors and victims’ rights advocates believed that defense attorneys generally have more resources and training than prosecutors. One particular problem noted by many interviewees is prosecutors’ failure to investigate or share exculpatory evidence with the defense.</td>
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Analysis/Background:

The Constitution guarantees every person the right to a defense. CONST. art. 12. The right to a defense is inviolable during the criminal justice process, and no one may be sentenced without having been participated in a pre-established procedure before a competent court in which all legal guarantees were observed. CRIM. PROC. CODE art. 20. The accused has the right to choose his own defense attorney or have one appointed by the court prior to making his first statement; defendants may act as their own attorneys only when this will not be detrimental to the efficacy of the procedure. Id. art. 92. Only fully licensed attorneys may serve as defense attorneys. Id. art. 93. Defense attorneys must be given immediate access by the police, MP, and courts. Id. art. 94. Multiple defendants in the same case must each have their own attorney, except when the competent court or the MP finds that there is manifestly no incompatibility with having one attorney represent the multiple defendants. Id. art. 95. Defendants may be represented by no more than two attorneys, and it is sufficient to send notification to only one of the attorneys. Id. art. 96. In cases where the defendant is deprived of liberty, any person may assign him an attorney by doing so in writing to the police or authorities responsible for his detention, or orally before the MP or court. The defendant must be notified immediately that he has been assigned an attorney. Id. art. 98.

The defense attorney is independent and must follow the defendant's instructions, but also must carry out his role using legal means. Id. art. 100. Both the defense attorney and the defendant have the right to make requests, motions, and interventions in proceedings, in the format set forth in law. Id. art. 101. Defense attorneys may resign from the case, except during hearings and arguments, in which case the MP or court must allow the defendant a set period of time to find a new attorney. Id. art. 102. Defense attorneys may also assign a substitute attorney, with the consent of the defendant. Id. art. 97. If the defense attorney abandons the case without justification, a replacement must immediately be named and arguments may be delayed or
suspended for up to five days. *Id.* art. 103. Defense attorneys are prohibited from disclosing any information detrimental to the defendant, regardless of how they came to learn that information. *Id.* art. 104.

The Public Criminal Defense Institute is the public defender agency of Guatemala. The Institute is an autonomous public entity providing free services to guarantee the right to a defense and assure the full application of due process guarantees. See Public Criminal Defense Institute, Who are we? at http://www.idpp.gob.gt/Info_quienes_somos/Quienes.aspx. The Institute has at least one office in each of Guatemala’s 22 departamentos.

Interviewees offered a mixed assessment of prosecutors’ interaction with defense representatives. Prosecutors uniformly reported having an open and cordial relationship with both private and public defense attorneys. Most defense attorneys agreed that they have a cordial and professional relationship with prosecutors and stated that prosecutors generally act in good faith in their interactions with the defense. In areas where there were previously Justice Centers, which facilitated dialogue among criminal justice actors, prosecutors and defense attorneys alike reported that the closure of the centers in late 2010 led to less coordination and conversation between the MP and defense bar, to the detriment of the relationship between prosecutors and defense lawyers.

Many prosecutors lamented that defense attorneys, especially public defenders, are actually better equipped than prosecutors; prosecutors believed that they have more training, more resources, and a lower case load. Public defense offices generally have translators or bilingual staff available, unlike the MP. See Factor 4 above. Victims’ rights advocates believed that too much respect is given to the defense function, complaining that defense attorneys are given greater access than victims’ advocates to evidence and information, which many victims’ rights advocates felt was unfair, particularly given the low rate of charging and even lower rate of convictions in Guatemala. In some areas, interviewees reported that public defenders had a policy against negotiating on cases and insisted that every case goes to trial, causing the MP to expend resources on trials for relatively minor matters that the MP or victims would prefer to settle without trial.

The prosecutor is obliged not only to investigate evidence that shows the defendant’s guilt, but also exculpatory evidence. CRIM. PROC. CODE art. 290. However, defense attorneys reported that prosecutors almost never share evidence with them and that they only become aware of evidence that is presented before the investigative court; they believed that prosecutors ignore exculpatory evidence and fail to include it in the official case file or present it to the court. Judges and defense lawyers alike believed that prosecutors were unlikely to investigate any exculpatory evidence, due to a lack of resources as well as a lack of impartiality.
Factor 23: Interaction with the Public/Media

In their contacts with the media (and other elements of civil society), prosecutors provide appropriate and accurate information wherever possible, within their discretion.

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<td>The MP has systems in place to provide information to the media, and many prosecutors work with journalists on an individual level. However, both prosecutors and journalists reported a lack of openness and trust. Guatemala has a large number of CSOs providing direct services to victims, joining cases as criminal plaintiffs, advocating for victims’ rights and against impunity, and providing training and other assistance to the MP. Although the relationship between the MP and CSOs is largely a good one, some CSOs reported encountering obstacles in working with the MP to advocate for victims’ rights.</td>
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Analysis/Background:

As discussed in factor 5 above, prosecutors’ right to freedom of expression is restricted as regards discussion of pending cases. Prosecutors may discuss investigations only insofar as this does not violate the presumption of innocence. MP ORGANIC LAW art. 7. The MP must inform victims of the results of investigations and of the resolution of a case. Id. art. 8.

The MP’s Office of Information and Press exists to provide the public with information on the MP’s work. It provides a link between the prosecutors and the media, issuing press releases and organizing press conferences as well as connecting media representatives with individual prosecutors who wish to discuss a case at the request of either the media or the prosecutor. The Office also puts news stories and photos up on the MP’s website at www.mp.gob.gt. The Office also provides information on the MP to the general public upon request to their office in the capital, including copies of the MP’s annual reports, relevant regulations and laws, and information on particular cases, through its access to information unit. At the time of interviews for this report, the Office was without a director.

Prosecutors also are able to work directly with the media without going through the Office of Information and Press. Many prosecutors regularly exchange information with journalists, both for the benefit of the journalist and the prosecutor. Although prosecutors reported mostly good relations with the press, many prosecutors pointed out that reporters frequently contaminate crime scenes and damage evidence while they are trying to report a story. Defense attorneys complained that the media often publishes stories that fail to respect the presumption of innocence, including by publishing the names and photos of suspects; prosecutors, for their part, believed that journalists frequently disclose too much information in their stories and can prejudice the case, for example by giving a suspect advance notice that he is under suspicion or by harassing the victim of a crime. Journalists acknowledged that these are occasional problems, but stated that as a practice they try to respect the integrity of the investigation and the rights of suspects. Journalists reported that they are sometimes refused access to crime scenes, even though they have the right to report on them.

Interviewees reported that there is generally not a relationship of trust between the media and prosecutors. Although prosecutors recognize that the media has a right to receive information on cases of public import, in practice, they often fail to cultivate relationships with journalists and do not trust them to accurately report cases. Journalists complained that some prosecutors are uncooperative or withhold information on cases, and that other prosecutors attempt to manipulate journalists by giving them incomplete or biased information. Journalists reported having better
relationships with police and investigators; however, prosecutors indicated that police and investigators sometimes share too much information with journalists, leading to the problems mentioned above. Interviewees also reported occasional problems with obtaining information from the Office of Information and Press, particularly since the office closes early in the afternoon and staff are not available to answer requests outside of business hours. Some interviewees believed that covering the MP is not a desirable assignment for reporters, and that inexperienced reporters are often assigned to the MP.

Guatemala has an extraordinarily active civil society, and a number of civil society groups exist to advocate for victims’ rights and against impunity. The MP interacts with civil society groups both in an official and unofficial capacity. As discussed in factor 12 above, some civil society groups formally join cases as a criminal plaintiff. Of particular note, the NGO International Justice Mission (IJM) has a special agreement with the MP by which it investigates child sexual abuse cases on behalf of the MP, provides the necessary information for arrests, and constitutes itself as a criminal plaintiff in child sexual abuse cases in order to provide substantive support for the prosecution. Two notable NGOs advocating against impunity include the Survivors Foundation and the Myrna Mack Foundation. These NGOs are extremely active in monitoring criminality and impunity in the country, and often follow cases closely, even visiting crime scenes and providing direct assistance to victims. Both had their roots seeking justice for victims in the aftermath of the Guatemalan civil armed conflict. Additionally, a number of smaller CSOs exist to provide direct services to victims, including local CSOs that provide housing and assistance for victims of interfAMILY violence.

The relationship between the MP and CSOs varies. IJM reported having a very close and professional working relationship with the MP, particularly the Section Prosecutor for Women, Child and Adolescence Unit. However, interviewees pointed out that IJM is essentially fulfilling a crucial state function; if IJM did not assist in child sexual abuse cases, these cases would likely never be investigated. Interviewees believed that this model is unsustainable, as IJM and other CSOs rely on private funding and private expertise, while carrying out prosecutions is an essential duty of the state. Many large CSOs also provide training and technical assistance to the MP; prosecutors appreciated the support of CSOs and stated that the assistance provided was crucial, but again expressed concerns about the long-term sustainability of their efforts.

The relationship between local CSOs providing direct services for victims is also reportedly good, as the MP provides referrals to these CSOs. Large advocacy CSOs reported more troubled relationships with the MP. Such CSOs are often quick to identify deficiencies in the MP’s work, and as a result, feel that they are often not given access to case information or respected by prosecutors. They reported difficulties working with investigators on behalf of victims, particularly as regards the proper handling of evidence and quality of investigation reports. In some cases, CSOs reported that prosecutors flat-out refuse to work with civil society, even when a CSO has formally joined a case.
Factor 24: International Cooperation

*In accordance with the law and in a spirit of cooperation, prosecutors provide international assistance to the prosecutorial services of other jurisdictions.*

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<td>In 2009, the Specialized Unit for International Affairs was created to handle international mutual legal assistance requests and assist in extraditions. The Specialized Unit is severely understaffed and lacks resources and training to carry out its mandate. Despite these challenges, the Specialized Unit has provided international mutual legal assistance in a timely and thorough manner and diligently carries out extradition procedures.</td>
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Analysis/Background:

International mutual legal assistance requests are handled by the Specialized Unit for International Affairs, which was administratively created in 2009. The procedures for international mutual legal assistance in criminal matters were set forth in an attorney general instruction. See General Instruction of the Attorney General no. 01-2007 (Jan. 25, 2007). However, these procedures have been modified since the creation of the Specialized Unit for International Affairs. The instruction defines active mutual legal assistance requests as requests made by Guatemala to other countries, and passive mutual legal assistance requests as ones made by other countries to Guatemala.

Prior to the Specialized Unit's creation, agency prosecutors who require mutual legal assistance submitted a written request to the Analysis Unit, which, upon approval, passed it on to the Attorney General. Passive requests received by the Attorney General were passed on to the Analysis Unit, which determined whether the request complies with international and domestic legal requirements, and then to the competent section or district prosecutor, who was required to provide the required information within 30 days. *Id.*

Currently, all mutual legal assistance requests are handled by the Specialized Unit for International Affairs. Prosecutors who require mutual legal assistance send the request to the Specialized Unit, which carries out the request to the relevant country. When mutual legal assistance is requested by another country, the Specialized Unit is responsible for providing the information. With only two staff members, the Specialized Unit reported an overwhelming workload; they received and completed 58 requests in both 2009 and 421 in 2010, and as of mid-February 2011 had already received 27 requests. Prior to the Specialized Unit’s creation, in 2007 Guatemala completed 398 requests for mutual legal assistance; in 2008, 475 requests were completed; and in the portion of 2009 prior to the Specialized Unit's creation, 363 requests were completed. The Specialized Unit is responsible for completing requests for mutual legal assistance nationwide and on all topics.

The MP must formulate requests for extradition before the Supreme Court of Justice, which remits them to the Ministry of Foreign Relations, which presents them to the corresponding state. *Law Regulating the Procedure for Extradition* art. 9 (Decree No. 28-2008, adopted Apr. 23, 2008). The MP also must carry out requests for extradition from other states, which are referred to the MP by the Ministry of Foreign Relations. *Id.* The prosecutors directly responsible for a case carry out requests for extradition to Guatemala, because the Specialized Unit does not have sufficient staff to handle these requests. The Specialized Unit is responsible for carrying out the proceedings relevant to requests for extradition from Guatemala.
The Specialized Unit reportedly has generally good relations both with other prosecutors and with the Ministry of Foreign Relations. However, some problems reportedly arise related to the timeline for completing extradition requests. According to MP administrative procedure, extradition requests must be presented to a judge within 48 hours of being received by the Guatemalan government, but the Specialized Unit reportedly often does not receive promptly, leaving them very short on time to file the request. Often requests made by other countries do not include the necessary information including the suspect's full four names, identification number, and location, which is required for a judge to order the suspect's arrest. The MP does not have the capacity to investigate extradition requests and provide this information.

The Specialized Unit is also severely understaffed, with only one section prosecutor assisted by an auxiliary prosecutor, and has no budget or vehicles for use to gather information relevant to extradition requests. Staff of the Specialized Unit receive no specialized training. Despite these challenges, interviewees reported no problems with the substance of the work carried out by the Specialized Unit. Staff of the Specialized Unit work diligently to carry out their overwhelming caseload and maintain good relations with other MP and government bodies.
VI. Finances and Resources

Factor 25: Budgetary Input

*States provide an adequate budget for the prosecutor’s office, which is established with input from representatives of the prosecutor’s office.*

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<td>There is an established procedure for the development of the MP annual budget, which during the last three years has received between 40% to 50% of the funds requested. These funds are insufficient and do not allow for the expansion of services to keep up with the increase in demand.</td>
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**Analysis/Background:**

The MP shall have an annual budgetary line in the General Budget of the Nation and shall manage its resources autonomously depending on its own requirements. See MP ORGANIC LAW art. 3. The allocation of the MP budget is based on articles 237 and 241 of the Constitution, which govern the general budget of revenues and expenses of the State; the Budgetary Regime of Decentralized and Autonomous Entities of the ORGANIC LAW OF THE BUDGET OF REVENUES AND EXPENSES OF THE STATE (Decree-law No. 101-97, Oct. 16, 1997) and its Regulations (Apr. 28, 1998) [hereinafter BUDGET LAW]; and Government Agreement No. 240-98.

The budget bill for the MP shall be sent every year to the Executive for its knowledge and to Congress for its approval and incorporation into the General Budget of the Nation. The execution of the budget will be subject to controls and monitoring from the corresponding State entities, pursuant to article 237 of the Political Constitution of the Republic. Its general agreements of expenditures shall be signed by the PG and the MP Treasurer. MP ORGANIC LAW art. 54. According to the procedure for the development of the MP Budget, the Executive shall make modifications to the budget proposal presented by the MP when it is submitted to the Technical Administration for Budgets of the Ministry of Public Finances. During the last three years, the budget allocated has been 40% or 50% of the amount requested by the MP.

The control and auditing of the budget is done by the Ministry of Public Finances and it is exercised by the Comptroller’s Office. The MP records its financial operations through the Financial Administration and Government Control System (SIAF-SAG)\(^{36}\), in the SICOIN\(^{37}\) Website. The system requires an institution-wide set of parameters that apply the criteria of the programs, sub-programs and activities to allow for a detailed and transparent analysis and control of the budget.

The MP Planning Office develops an Annual Operational Plan [hereinafter POA] with each MP unit pursuant to the Handbook on Guidelines and Procedures on the basis of the Strategic Plan,

\(^{36}\) The Integrated System for Financial Administration (SIAF) is the set of rules, procedures and computing tools that govern the budgetary system, governmental integrated accounts, treasury and public credit.

\(^{37}\) The Integrated Accounting System (SICOIN) is the computing tool that keeps control of the budgetary execution, recording revenues and expenses made by the programs and projects as needed, automatically generating with each record the State Accounting and the process for payment. It also includes a record of goals, performance indicators and entry of the Annual Operational Plan of each institution.

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approximately in April, and submits a copy to the following institutions: a) Comptroller General; b) Technical Administration for Budgets of the Ministry of Public Finances; and c) the Presidency’s General Secretariat for Planning and Programming [hereinafter SEGEPLAN], which is the planning entity of the State, created as a support institution to the Presidency of the Republic. The Executive, through the Ministry of Public Finances submits draft budget bills, attaching the operational plans.

The Executive submits the general budget draft bill to Congress in September of the prior year. By mid-year, the Technical Administration for Budgets of the Ministry of Public Finances makes modifications and sets the MP budget, which in the last 3 years has been between 40% to 50% of what the MP requested. If the general budget is not approved by the beginning of the following fiscal period, the budget of the previous period shall be in force and may be modified or adjusted by Congress. **Budget Organic Law art. 24 (as amended by amendment 71-98)**

In 2010, the budget had been approved for GTQ611.5 million (USD79.8 million). Due to the pressure applied by women’s organizations for the creation of the Prosecutor’s Office for Women, the budget was increased. To that end, the Technical Administration for Budgets of the Ministry of Public Finances stated that a percentage of what was requested would be absorbed by the institution and the difference would be covered by the State. For 2011, a total budget of GTQ 613.5 million (USD80.1 million) was approved. As a result, a minimum budgetary increase for operations was achieved in comparison to the previous year.

Regarding the budget for the last three years (2008, 2009, and 2010) and according to the annual report, there was no variation on revenues and therefore the budget allocated did not allow for an expansion of services or improvement of infrastructure and equipment needed to address the growing levels of conflict.

**MP BUDGET 2008**

<table>
<thead>
<tr>
<th>Source of Funding</th>
<th>Budget In Effect</th>
<th>Revenues Received</th>
<th>Expenses Accrued</th>
<th>Percentage Spent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GTQ</td>
<td>USD</td>
<td>GTQ</td>
<td>USD</td>
</tr>
<tr>
<td>Central Government</td>
<td>599,899,277.32</td>
<td>78,315,832.55</td>
<td>599,899,277.32</td>
<td>78,315,832.55</td>
</tr>
<tr>
<td>Internal Revenues</td>
<td>10,500,000.00</td>
<td>1,370,757.18</td>
<td>11,420,162.25</td>
<td>1,490,882.80</td>
</tr>
<tr>
<td>Current Grants</td>
<td>118,019.84</td>
<td>15,407.29</td>
<td>30,000.00</td>
<td>3,916.45</td>
</tr>
<tr>
<td>Transfers of Capital</td>
<td>104,500,000.00</td>
<td>13,642,297.65</td>
<td>104,500,000.00</td>
<td>13,642,297.65</td>
</tr>
<tr>
<td>Reduction of other Financial Assets</td>
<td>78,202,754.31</td>
<td>10,209,236.86</td>
<td>78,202,754.31</td>
<td>10,209,236.86</td>
</tr>
<tr>
<td>TOTAL</td>
<td>793,220,051.47</td>
<td>103,553,531.52</td>
<td>794,052,193.88</td>
<td>103,662,166.30</td>
</tr>
</tbody>
</table>

**Source:** 2008 Annual Report
### MP BUDGET 2009

<table>
<thead>
<tr>
<th>Source of Funding</th>
<th>Budget In Effect</th>
<th>Revenues Received</th>
<th>Expenses Accrued</th>
<th>Percentage Spent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GTQ</td>
<td>USD</td>
<td>GTQ</td>
<td>USD</td>
</tr>
<tr>
<td>Central Government</td>
<td>572,024,999.00</td>
<td>74,676,892.82</td>
<td>572,024,999.00</td>
<td>74,676,892.82</td>
</tr>
<tr>
<td>Internal Revenues</td>
<td>10,468,500.00</td>
<td>1,366,644.91</td>
<td>9,332,059.51</td>
<td>1,218,284.53</td>
</tr>
<tr>
<td>Current Grants</td>
<td>50,000,000.00</td>
<td>6,527,415.14</td>
<td>50,000,000.00</td>
<td>6,527,415.14</td>
</tr>
<tr>
<td>Reduction of other Financial Assets</td>
<td>122,054,130.00</td>
<td>15,933,959.53</td>
<td>122,054,130.10</td>
<td>15,933,959.54</td>
</tr>
<tr>
<td>TOTAL</td>
<td>754,547,629.10</td>
<td>98,504,912.42</td>
<td>753,411,188.61</td>
<td>98,356,552.04</td>
</tr>
</tbody>
</table>


### MP BUDGET 2010

<table>
<thead>
<tr>
<th>Source of Funding</th>
<th>Budget In Effect</th>
<th>Revenues Received</th>
<th>Expenses Accrued</th>
<th>Percentage Spent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GTQ</td>
<td>USD</td>
<td>GTQ</td>
<td>USD</td>
</tr>
<tr>
<td>Gobierno Central</td>
<td>611,500,000.00</td>
<td>79,830,287.21</td>
<td>611,500,000.00</td>
<td>79,830,287.21</td>
</tr>
<tr>
<td>Internal Revenues</td>
<td>9,500,000</td>
<td>1,240,208.88</td>
<td>7,207,617.53</td>
<td>940,942.24</td>
</tr>
<tr>
<td>Current Grants</td>
<td>100,000,000.00</td>
<td>13,054,830.29</td>
<td>100,000,000.00</td>
<td>13,054,830.29</td>
</tr>
<tr>
<td>Reduction of other Financial Assets</td>
<td>72,224,302.12</td>
<td>9,428,760.07</td>
<td>72,224,302.12</td>
<td>9,428,760.07</td>
</tr>
<tr>
<td>TOTAL</td>
<td>793,224,402.12</td>
<td>103,554,099.49</td>
<td>790,931,919.65</td>
<td>103,254,819.80</td>
</tr>
</tbody>
</table>

Source: Information provided by the MP.

According to a congressman interviewed, none of the budgets allocated are sufficient and therefore the MP must prioritize its budget to ensure quality in their spending. According to the budgetary lines, several priority areas are set to ensure that the budget is as efficient as possible, such as health, education and construction.
The Department for Planning and Analysis [hereinafter DPA] has three divisions: planning, institutional development and technology and computing. DPA’s director is the representative before the technical planning board, which is responsible for all the projects in the justice sector. The DPA interacts with Finance, SEGEPLAN and the Comptroller’s Office, which ensures transparency.

A DPA interviewee stated that the budgetary programming developed by the PG is short by GTQ120 million to enable the MP to operate with budgetary freedom. Therefore, it is impossible to plan a decentralization of the budget. Regarding monitoring of the budget, the Comptroller’s Office supervises that everything is done pursuant to the law and monitors the prosecutors’ offices to ensure their compliance with budgetary regulations.

A judge interviewed said that the budget is poorly distributed since 20% goes to the administrative area and its effect is innocuous. Furthermore, the PG is appointed by the Executive but if the budget is not good enough, achieving autonomy is difficult. Currently, the budget must be managed correctly, there are expenses that could be cut or managed better.

Recent budgetary reductions have forced the leadership of the justice sector to publicly denounce the reduction of their corresponding budgets. They have stated that if the situation does not change, the justice sector could collapse in the last quarter of 2011. The media have reported that “the MP received [t]wo hundred million less this year. The budget cuts affect directly the operations of the MP, and could lead to cuts in personnel” and “the MP’s budget is GTQ600 million but needs GTQ200 million more, and a request for a budget increase has already been submitted to Congress.” Justice may come to a halt without more funding (Justicia se paralizaría si no les dan más recursos), PRENSA LIBRE, Feb. 4, 2011; and Prosecutor submits 4-year work plan (Fiscal Presenta plan de trabajo para cuatro años), PRENSA LIBRE, Feb. 11, 2011. Civil society, in particular organizations that work for women’s rights, believe that if there is no budget increase for the MP, there will be no expansion of services.

Factor 26: Resources and Infrastructure

*States provide adequate funding, conditions, and resources to guarantee the proper functioning of the prosecutor’s office.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>The low budget allocated to the MP during the last years has restricted the institution’s performance and has affected the development of human resources and improvements in technology and infrastructure. Although the MP building in the capital is modern spacious, MP offices in the rest of Guatemala frequently lack adequate office and meeting space and technology.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Agreement 12-2007 of March 12, 2008, which contains the MP Administrative Area’s organizational and operational regulations, establishes that the Office of the Chief of Administration is responsible for the definition, management, and evaluation of the execution of the policies and strategies in the areas of human resources, administrative resources, analysis and planning. This office is composed of the Human Resources Department, the Administration Department and the Analysis and Planning Department.
The Human Resources Department includes the sections for Recruitment and Selection of Personnel, Personnel Operations, Classification of Positions and Salaries, Personal Development, Safety and Hygiene at Work, Performance Evaluation and Payroll, each with the following duties:

- Recruitment and Selection of Personnel. Responsible for planning, organizing, directing, supervising, executing and assessing activities related to the design or application of procedures aimed at the efficient recruitment and selection of personnel.
- Personnel Operations. Charged with planning, organizing, directing, supervising, executing and assessing activities related to the design and application of procedures for appointments, assistance and timeliness records, and other personnel actions.
- Classification of Positions and Salaries. Responsible for planning, organizing, directing, supervising, executing and assessing activities related to the classification of positions and salaries of the personnel working for the MP.
- Payroll. Responsible for planning, organizing, directing, supervising, executing and assessing activities related to the design and application of the Performance Evaluation Program in order to foster an efficient job performance by all MP staff members.

The Administration Department is in charge of executing administrative policies and strategies, and defining administrative procedures and activities for the operations of the MP. It includes the following sections:

- Department of Design and Construction. Organizes, directs, supervises, executes and assesses procedures and activities related to construction and remodeling of MP buildings.
- Maintenance Unit. Directs, supervises, executes and assesses procedures and activities related to the maintenance of MP buildings. Hierarchically, it is under the Department of Design and Construction.
- General Services Section. Plans, organizes directs, supervises, executes, and assesses procedures and activities related to the provision of messenger, transportation, telecommunications and janitorial services.
- Warehouse Section. Plans, organizes, directs, supervises, executes and assesses procedures and activities related to receiving, registration, storage and later distribution of supplies to the various prosecutors’ offices.
- Purchasing Section. Plans, organizes, directs, supervises, executes and assesses procedures and activities related to the purchasing of materials, supplies and services.
- Estimates and Bids Section. Plans, organizes, directs, supervises, executes and assesses procedures and activities related to the purchasing of materials and supplies, construction and remodeling of facilities and contracting of services for the regular operations of the MP departments of over GTQ30,000.00 (USD3,916).
- General Archive of Files. Organizes, directs, supervises, executes and assesses procedures and activities related to the receiving, recording, filing, custody and preservation of files and other related documents.

The Office of the Chief of Administration reported that, generally, the MP infrastructure is in good condition. The appearance of the buildings needs to be improved and 80% should be painted, and there is also the urgent need to relocate some prosecutors’ offices due to issues of overcrowding and security, as is the case of the Municipal Auxiliary Prosecutor’s Office of Mixco.
The MP owns 15 buildings. MP, INVENTORIES UNIT, GROUP SUMMARY OF ITEMS, as of Feb. 28, 2011. However, there is much that needs to improve in this area. Demands from the prosecutors and the population for their own buildings in the interior of the country are becoming a priority since 62 buildings are leased. MP, ADMINISTRATION DEPARTMENT, LIST OF LEASED BUILDINGS USED BY THE MP FOR ADMINISTRATIVE OFFICES, PROSECUTORS’ OFFICES, WAREHOUSES AND PARKING DURING 2009.

MP Headquarters, located at Barrio Gerona in Zone 1 of Guatemala City, is a modern building with large contemporary offices, equipped with advanced electronic equipment and visually attractive. However, District Prosecutors’ Offices are sometimes in dire conditions and do not have sufficient resources or equipment. Outside the capital, many prosecutors do not have adequate workspaces, interview rooms, and information technology (including access to the internet), and some MP buildings are in a state of disrepair. According to the Administration Department, negotiations are under way to acquire land and financial resources for construction. Usually, grants in the form of land and money are received to build and remodel buildings, such as for the District and Municipal Prosecutor’s Offices of Escuintla, Amatitlán, La Tinta Alta Verapaz, Gualán, Sololá, and Coatepeque.

Building maintenance and janitorial services in Guatemala City is subcontracted, whereas there is a janitor on staff for the buildings located in other parts of the country. To date, there have been no requests to increase the personnel for these duties.

The Administration Department stated that the budget is not enough. They have not been able to increase the budget for vehicle maintenance, to purchase new vehicles, guns, and filing cabinets. This also implies that in the last few years, the MP has been unable to boost its presence in municipalities where conflict has increased.

All MP staff has access to a computer in order to record their actions in the case files. Each District and Section Prosecutor’s Office has at least one photocopier, one fax machine and one vehicle that prosecutors can use. However, prosecutors’ offices staff members say they need more up-to-date office equipment as well as access to Internet and databases to increase the efficiency of their investigations.

Factor 27: Efficiency

Prosecutors perform their functions expeditiously, in order to achieve the best possible use of available resources.

Prosecutors’ offices have a written organizational plan to facilitate such efficiency. The prosecutor’s office has written guidelines, principles, and criteria for the implementation of criminal justice.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
</table>

The MP measures efficiency based solely upon the number of cases resolved in a year, primarily using a computerized case management system. Despite efforts to improve efficiency, only a very low percentage of cases reach a resolution, reportedly due to high case loads and low staffing and institutional capacity. A reorganization of the prosecutor's office in Quetzaltenango has increased efficiency somewhat, and similar reorganizations are planned throughout the country.
Analysis/Background:

Article 105 of the Regulations for the Organization and Operations of the MP Administrative Area establishes that the MP Department for Computerized Case Management Systems is the office in charge of planning, organizing, directing, supervising, executing, and assessing the procedures and activities related to the management of the MP computerized case management information system, and performing those tasks related to technical support, software development, installation and maintenance of equipment and software, as well as training MP units working on criminal prosecution. The database, also called SICOMP, allows prosecutors and their personnel to collect, maintain and follow up on information related to defendants, crimes, victims, witnesses and the actions concerning the investigation. SICOMP is the official management system used to develop statistics that are communicated to the population and which serve as the basis to evaluate the implementation of criminal prosecution and decision-making policies.

SICOMP makes it possible to verify the actions taken on cases by the 289 agency prosecutors and 64 district and section prosecutors posts to comply with the general instructions and the guidelines established by the criminal prosecution policies, as well as to verify compliance with handbooks and protocols on how to prioritize and process cases. One of the main problems has been ensuring that MP personnel maintain up-to-date the information in the database on each file worked on, which hinders evaluations and the efficiency of the personnel.

According to the interviewees, evaluating prosecutorial efficiency is uneven, since staff at the prosecutors’ offices consider that evaluations should not be based only on number of cases processed during the year, but that factors like quality and professionalism processing the cases should also be taken into account for job performance evaluations. There are constant complaints that the work performed by the Performance Evaluation Unit developing prosecutorial performance indicators is largely unknown.

Civil society organizations have also highlighted a series of factors regarding the efficiency of the MP in criminal prosecutions, such as:

- Services provided to victims are not specialized, resulting in secondary victimization during the entire process, especially in the case of vulnerable victims (children, seniors, indigenous individuals and women).
- The prosecutors’ offices do not have enough investigators, which results in victims having to provide contact information that helps collect evidence in the investigation.
- Lack of coordination with other State institutions (INACIF, PGN, PNC, among others) results in a lack of coordination regarding effective scientific investigation activities in criminal prosecutions.
- The MP personnel do not have continuous and frequent trainings that promote their effectiveness. For example, the lack of forensic skills in a rape case resulted in the loss of the evidence at the Prosecutor’s Office of Villa Nueva; in another case, the body of the victim had to be exhumed three times because the cause of death was not listed in the forensic report.
- The lack of resources of the personnel working in the interior of the country results in prosecutors having to prioritize which cases they will follow up on, among other things.

According to the information provided regarding the effectiveness of the MP, standardized reports on the most basic parts of prosecutorial actions are prepared from 24 Section Prosecutor’s Offices and 40 District and Municipal Prosecutor’s Offices in order to gauge the effectiveness of the MP.
The MP develops reports containing information to determine the effectiveness of each prosecutor’s office, starting with the number of cases that come into each prosecutor’s office. The universe of cases to which effectiveness criteria are applied results from subtracting the number of dismissed cases (51,497 in 2010), which are the cases that enter the institution but are not considered crimes. It is also necessary to subtract the number of cases that entered a prosecutor’s office but were transferred to another prosecutor’s office because of jurisdiction, to avoid duplication of data. The result of these operations is the number of effective cases to which the institutional criteria are applied in order to measure the activity of criminal prosecution by prosecutors on cases while investigating and performing other jurisdictional activities. During the period analyzed, a total of 204,988 cases were registered at a national level.

In order to obtain indicators of effectiveness based on the data provided by the MP, the following evaluation of data was made: to obtain the number of positive outcomes, according to the criteria of the MP, the conclusive acts and the alternative outcomes or alternative measures were added. The index of effectiveness is the ratio between the effective cases and the positive outcomes, disregarding the number of judgments. Excluding the number of judgments from the effectiveness percentage affects the objective analysis of the effectiveness of the work in criminal prosecutions.

### CASE DISPOSITIONS 2010

<table>
<thead>
<tr>
<th>Cases</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases Filed</td>
<td>260,296</td>
</tr>
<tr>
<td>Dismissed</td>
<td>(51,497)</td>
</tr>
<tr>
<td>Transferred</td>
<td>(3,611)</td>
</tr>
<tr>
<td>Total Cases Pursued</td>
<td>204,988</td>
</tr>
</tbody>
</table>

### Positive Outcomes

<table>
<thead>
<tr>
<th>Alternatives to Prosecution</th>
<th>10,354</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waiver of Prosecution</td>
<td>9,783</td>
</tr>
<tr>
<td>Conversion</td>
<td>23</td>
</tr>
<tr>
<td>Suspension of Prosecution</td>
<td>548</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Conclusive Acts</th>
<th>14,942</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular Procedure</td>
<td>12,595</td>
</tr>
<tr>
<td>Abbreviated Procedure</td>
<td>2,347</td>
</tr>
<tr>
<td>Dismissal/Closure</td>
<td>6,140</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total of Positive Outcomes</th>
<th>25,296</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases Pursued</td>
<td>204,988</td>
</tr>
</tbody>
</table>

| Total Effectiveness       | 12.34% |
| (positive outcomes as a percentage of effective cases) |        |

### Judgments

<table>
<thead>
<tr>
<th>Judgments</th>
<th>4,463</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular Procedure</td>
<td>2,416</td>
</tr>
<tr>
<td>Abbreviated</td>
<td>2,047</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Verdicts</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty</td>
<td>4,063</td>
</tr>
<tr>
<td>Not Guilty</td>
<td>688</td>
</tr>
</tbody>
</table>

The types of outcome taken into account to measure prosecutors’ effectiveness are alternatives to prosecution and conclusive acts. Alternatives to prosecution are, pursuant to the CPP, types of resolution in criminal cases that occur before filing a conclusive act. During the period evaluated, 10,354 alternatives to prosecution were registered. The waiver of prosecution is the most frequent type of outcome used according to the data provided.
The total number of conclusive acts during 2010 was 21,082. However, according to article 46 of the CPP, the acts used to measure prosecutors’ effectiveness are the charges filed in regular procedures and abbreviated procedures, which total 14,942. The other conclusive acts during the period evaluated were dismissals and closure of cases pursuant to article 325 of the CPP. There were 6,140 closures.

Additionally, the 2010 data shows there were 4,463 judgments via regular procedures and abbreviated procedures. The data provided does not allow for a distinction between number of convictions and acquittals since the data could be confused with the number of persons convicted and acquitted, which is not equal to the number of judgments. The records use different criteria to note down the total number of cases ruled on, and the total number of persons where a judgment was issued, that is, in one case there could be more than one person for which a judgment was issued.

The MP in Quetzaltenango provided the following information, comparing the number of cases resolved under the pre-2009 organization with the number of cases resolved under the pilot reorganization of the MP in Quetzaltenango that has been in effect since 2009:

### CASES RESOLVED IN QUETZALTENANGO MP, 2007–2010

<table>
<thead>
<tr>
<th>Year</th>
<th>Dismissals</th>
<th>Removed from Judicial Process (Diversion)</th>
<th>Charges filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>1,929</td>
<td>108</td>
<td>118</td>
</tr>
<tr>
<td>2008</td>
<td>3,691</td>
<td>420</td>
<td>486</td>
</tr>
<tr>
<td>2008 (new model)</td>
<td>9,083</td>
<td>2,245</td>
<td>625</td>
</tr>
<tr>
<td>2010</td>
<td>11,350</td>
<td>2,811</td>
<td>732</td>
</tr>
</tbody>
</table>

Source: Information provided by the MP in Quetzaltenango

Due to the increase in efficiency and case resolution under the pilot reorganization in Quetzaltenango, the MP plans to implement a similar reorganization in the Section Prosecutor’s Office for Crimes against Life in Guatemala City.

The prosecutors frequently mention the increase in the number of cases that come in every month. Criminal prosecution policies have included criteria to maximize resources through the use of diversion in cases that are not so serious. For example, from January to December 2010, the reorganized District Prosecutor’s Office of Quetzaltenango added an Early Decision Unit. Of 15,281 cases filed, 6,052 were dismissed (39.60%), out of which 102 (0.67%) were transferred to other prosecutor’s offices for various reasons. In that year, 2,752 waivers of prosecution and 57 conditional dismissals were petitioned, and there were a total of 110 judgments (89 based on regular procedure and 65 on abbreviated procedure). By comparison, at the Section Prosecutor’s Office for Diversion (in Guatemala City), of the 14,709 cases filed, 9,688 (65.86%) were dismissed. In that year, 33 waivers of prosecution and two conversions were petitioned, and there were a total of 6 judgments (one based on regular procedure and five on abbreviated procedure). This data shows that although a District Prosecutor’s Office and a Section Prosecutor’s Office in Guatemala City may have comparable number of cases coming in, one applies diversion options more frequently than the other. This situation casts doubt on whether general instructions are implemented consistently.
Factor 28: Compensation and Benefits

Prosecutors have reasonable compensation and benefits established by law, such as remuneration and pension, proportionate with their role in the administration of justice.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutors have compensation and benefits that are proportional to the general financial situation found at all of Guatemala’s institutions.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The MP personnel salaries are as follows:

<table>
<thead>
<tr>
<th>ANNUAL BASIC SALARIES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>District and section</td>
</tr>
<tr>
<td>prosecutors</td>
</tr>
<tr>
<td>195,242.40</td>
</tr>
<tr>
<td>AGENT PROSECUTORS</td>
</tr>
<tr>
<td>168,409.44</td>
</tr>
<tr>
<td>AUXILIARY PROSECUTORS II</td>
</tr>
<tr>
<td>168,409.44</td>
</tr>
<tr>
<td>AUXILIARY PROSECUTORS I</td>
</tr>
<tr>
<td>91,100.76</td>
</tr>
</tbody>
</table>

Source: Information provided by the MP.

Regarding the salaries for MP personnel, in effect up to April 28, 2010, the monthly salary of agency prosecutors was GTQ13,649.12 (USD1,781.87), a little less than the salary for justices of the peace, which is GTQ14,500.00 (USD1,892.94). There is a salary inequality evidenced when comparing the duties of agency prosecutors, who perform criminal investigations, and those of justices of the peace, who hear the violations and other actions related to security measures.

Likewise, district and section prosecutors earn similar monthly salaries for their duties, even when the section prosecutors specialize in the crimes they handle and have personnel under their supervision. Investigative judges and trial judges earn GTQ24,166.68 (USD3,154.92). There is also a difference between the Guatemala City Prosecutor, who earns GTQ19,718.48 (USD2,574.21), and the Specialized Section Prosecutor, who earns GTQ20,197.64 (USD2,636.77). Interviewees stated that this salary can cover the basic needs of a prosecutor.

In addition to their salaries, MP personnel enjoy the benefits included in the Labor Code, as well as benefits achieved through the collective job agreement. Those benefits include holidays, paid and unpaid leave, the right to review their own employment files, severance and job benefits, pregnancy rights for women and for breast-feeding period, health care for staff, funerary expenses, group life insurance, cafeteria, medical insurance, per diems, bonuses based on job performance, seniority, vacations and merits, and retirement fund. Prosecutors currently receive a Christmas bonus, Bonus 14, vacation bonus and other benefits, such as prosecutorial career, life insurance, medical insurance, 20 working days of paid vacation, universal severance, bonuses based on job performance, seniority bonus and ongoing training, plus a prosecutor bonus (not applicable to Auxiliary Prosecutors I and II) and investment fund.

During interviews with district and section prosecutors, they reported other nonfinancial benefits used to motivate their staff. For example, when someone contributes and works more hours than their regular work schedule, a number of personal leaves are authorized. Nevertheless, some
staff members believe that the financial benefits of district prosecutors could be extended to certain personnel based on merit.
List of Acronyms

ABA   American Bar Association
CAV   Department of Coordination of Victims’ Services
CEDAW UN Convention for the Elimination of Discrimination against Women
CEH   Historical Clarification Commission
CEPS  Advisory Board on Private Higher Education
CICIG International Commission on Impunity in Guatemala
CSO   Civil Society Organization
DEMI  Office of Defense for Indigenous Women
DICRI Office of Criminal Investigations
GTQ   Guatemalan Quetzales
IDPP  Institute for Public Criminal Defense
IJM   International Justice Mission
INACIF National Institute of Forensic Sciences of Guatemala
JRI   Judicial Reform Index
LPRI  Legal Profession Reform Index
MP    Public Ministry (Public Prosecutor’s Office)
NGO   Non-Governmental Organization
OAP   Office of Continuous Assistance
OAV   Office of Victims’ Services
PDH   Human Rights Ombudsman
PNC   National Civil Police
PRI   Prosecutorial Reform Index
SICOMP Public Ministry Case Control and Management System
SPC   Criminal Policy Secretariat
URL   Rafael Landivar University
USAC  San Carlos de Guatemala University
USAID United States Agency for International Development
USD   United States Dollars