



GUATEMALA'S JUSTICE SYSTEM

Evaluating Capacity Building and
Judicial Independence

JUNE 2019



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INTRODUCTION

A crisis of insecurity and impunity has deeply affected the people in Guatemala, El Salvador, and Honduras over the past decade, making this region (known as the Central America Northern Triangle) one of the most violent corners of the world. High levels of violence, corruption, and impunity have eroded the capacity of the states to develop accessible and efficient institutions, and address the needs of their populations.

The lack of an effective response has eroded the population's trust in state institutions, leading to an alarming number of people who have been internally displaced or forced to migrate to other countries to escape violence and lack of economic opportunities.

In the face of this situation, the Washington Office on Latin American (WOLA), Guatemala's Myrna Mack Foundation (*Fundación Myrna Mack*, FMM), the Honduran University Institute on Democracy, Peace and Security (*Instituto Universitario en Democracia, Paz y Seguridad*, IUDPAS), and El Salvador's University Institute on Public Opinion (*Instituto Universitario de Opinión Pública*, IUDOP), developed a tool for monitoring and evaluating policies and strategies currently being implemented in El Salvador, Guatemala and Honduras to reduce insecurity and violence, strengthen the rule of law, improve transparency and accountability, protect human rights, and fight corruption. This initiative was made possible thanks to the support of the Swiss Agency for Development and Cooperation, the Tinker Foundation, the Seattle International Foundation, and the Moriah Fund.

THE CENTRAL AMERICA MONITOR

The Central America Monitor is based on the premise that accurate, objective, and complete data and information are necessary to reduce the high levels of violence and insecurity, and establish rule of law and governance in a democratic state. This will allow efforts to move beyond abstract discussions of reform to specific measures of change.

The Monitor is based on a series of more than 100 quantitative and qualitative indicators that allow a more profound level of analysis of the successes or setbacks made in 8 key areas in each of the three countries¹. More than a comprehensive list, the indicators seek to identify a way to examine and assess the level of progress of the three countries in strengthening the rule of law and democratic institutions. The indicators seek to identify the main challenges in each of the selected areas and examine how institutions are (or are not) being strengthened over time. The Monitor uses information from different sources, including official documents and statistics, surveys, interviews, information from emblematic cases, and analysis of existing laws and regulations.

The indicators were developed over several months in a process that included an extensive review of international standards and consultation with experts. The 8 areas analyzed by the Monitor include:

1. **Strengthening the capacity of the justice system;**
2. Cooperation with anti-impunity commissions;
3. Combatting corruption;
4. Tackling violence and organized crime;
5. Strengthening civilian police forces;
6. Limiting the role of the armed forces in public security activities;
7. Protecting human rights;
8. Improving transparency.

The Monitor reports are published by area and by country. The first series of reports will serve as the baseline for subsequent analysis, which will be updated annually. Each annual series of reports will be analyzed in comparison with reports from the previous year. This allows researchers, civil society organizations, and other actors to assess the level of

progress in strengthening the rule of law and reducing insecurity.

The first round of Monitor reports will primarily focus on data sets from an approximate 4-year time period; 2014 to 2017, in order to provide a snapshot of Central America's institutions before and after the 2015 launching of the multi-billion dollar Alliance for Prosperity.

The Monitor will serve as a tool for searchable, easy-to-comprehend data, delineating trends, progress, patterns, and gaps within and between the three countries of the Northern Triangle. The data, graphics, charts, and reports will be available on the Monitor's website.

ABOUT THE RESEARCH FOR THIS REPORT

The quantitative data contained in this report was obtained through Guatemala's Access to Public Information Law, which establishes a specific process for state agencies to receive and respond to requests for information. The decision to obtain primary data through this mechanism also serves as a way to evaluate the scope and implementation of transparency laws. The response rate and level of cooperation to requests varied for each of the judicial institutions involved.

The information received from the requests was analyzed to measure the quality of the data obtained. This, in itself, is a useful exercise. Gaps in data will affect policymakers' ability to implement more effective public policies, while the refusal to provide information may reveal a lack of compliance and/or transparency on the part of the state agency involved. This data will be included in the Monitor's upcoming report on transparency.

Qualitative data and information were also compiled from other sources, taking into account the possibility that some state agencies might not comply with information requests. Consequently, this report uses information from interviews with experts, surveys, and media coverage to complement official data and to provide context, with the expectation that qualitative data can help provide a more complete picture of the reality on the ground. Similarly, qualitative data helps identify possible disparities by comparing existing legal frameworks with what is actually happening in practice.

KEY FINDINGS

- Guatemala has seen some important advances in terms of strengthening and expanding the capacity of its judicial institutions. Over the approximate 4 year period examined by the Monitor, Guatemala's justice institutions, for the most part, expanded their reach across the country, opening new field offices and courts in underserved areas, while increasing the number of judges, prosecutors, and technical staff. However, there were still significant gaps in coverage, especially in some of the rural areas, and in some cases, there was a decrease in coverage that coincided with a reduction in personnel.
- By the end of the period under reviewed, the Public Prosecutor's Office only had offices in 20 percent of the country's municipalities and the ratio of prosecutors to citizens is low. On average, there were 6 judges for every 100,000 people in the country, well below the national global average of 17. The ratio of public defenders was equally low. While it is essential that each institution have adequate staffing levels, the qualitative aspect is even more important. Therefore it is critical that the selection of candidates for positions such as judges, prosecutors, public defenders, and experts, among others is based on the merits of each individual. Ongoing training is also necessary for each respective position.
- While important steps have been taken to improve gender equity in Guatemala's justice system, women continued to represent less than 50 percent of the staff in most institutions.
- While there have been some improvements, excessive caseloads continued to leave prosecutors, public defenders, forensic experts, and courts struggling. On average, in 2017 for example, Public Prosecutor's Office prosecutors were assigned 170 cases per year; forensic experts were assigned 664 annual cases, public defenders were assigned 119 cases per year, and judges assigned on average nearly 430 per year, according to the data received. This impacted efficiency in the justice system and contributed to high turnover and case backlog. Regardless, among Guatemala's primary judicial institutions, the Public Prosecutor's Office saw the biggest increase in efficiency between 2014-2017, compared to the National Institute of Forensic Sciences, the Judiciary, and the Institute of Criminal Public Defense.
- Guatemala saw a significant increase in the Justice System's public trust levels compared to previous years, specifically in the Public Prosecutor's Office. This rise in trust was due in large part to progress in the investigation of emblematic corruption cases and public debate surrounding proposals for constitutional reforms to improve judicial independence.
- The processes by which Guatemalan authorities selected candidates for top-level judicial positions—including the attorney general, Supreme Court judges, and Court of Appeals judges—were highly vulnerable to outsider influence and other forms of manipulation. Because the commissions responsible for selecting judicial nominees are allowed a significant degree of discretion in their decisions, this subsequently compromises the independence and integrity of the selection processes for Guatemala's most important judicial authorities. Even though the laws governing these selection processes are detailed rather than overly broad, they contain loopholes that complicate efforts to implement an independent, merit-based selection process for judicial candidates.

- During the period analyzed by this report, judges and prosecutors were the target of attacks, reprisals and intimidation, and mainstream and social media campaigns were used to discredit their work and spread false allegations. In some cases, judges were subjected to spurious complaints and the misuse of administrative procedures as a way of influencing their decisions. These attacks impact the justice system's ability to fulfill its obligations and act with impartiality.
- Data shows that Guatemala's primary justice institutions generally had a low rate of investigating and sanctioning justice operators accused of infractions despite important measures adopted to improve disciplinary and evaluation systems. Of the four institutions, the Public Prosecutor's Office demonstrated a relatively higher level of ability to effectively carry out disciplinary proceedings against public prosecutors and other employees during the 4-year period covered in this report. The other institutions showed little capacity to do so—for example, just under 14 percent of the complaints concerning judges and magistrates filed to the Judiciary disciplinary system ever resulted in a hearing. In the case of the Judiciary, the ineffectiveness of the disciplinary system was due in part to the frivolous and inappropriate use of career law procedures to delay or stall disciplinary cases and to the lack of an official board of appeals due to the Judicial Career Council's failure to draft needed bylaws. The inability to effectively investigate and sanction justice operators who commit abuses has deeply troubling implications for judicial independence and rule of law in Guatemala.
- The low level of resources provided to the Criminal Public Defense Institute (IDPP) during the four years covered by this report is worrisome. In 2017, for example, Congress only approved about half of the budget requested by the Institute of Criminal Public Defense. These restricted budget allocations hurt the ability of the institution to work more effectively. Likewise, the National Institute of Forensic Sciences (INACIF) registered a particularly low level of budget execution during the 4 years, even in 2017 when it received a budget increase.
- The four judicial institutions studied in this report were allocated an average of just over 5% of the national budget, with INACIF and IDPP receiving less than 1 percent of the national budget. In general, the four entities were given an amount less than what was requested, with the exception of the Public Prosecutor's Office, which was assigned a budget that was relatively greater than was requested in 2017.
- Of the four institutions, the Public Prosecutor's Office showed a higher level of execution of its budget. However, over the four years situations arose where the Office registered significant delays in disbursement of funds resulting in a deficiency in the institution's necessary resources. For example, at the end of 2015, this delay affected the capacity of the Public Prosecutor's Office to carry out its function during a time when the Office had a boom in criminal prosecution of high impact corruption cases.

THE JUSTICE SYSTEM IN GUATEMALA:

EVALUATING CAPACITY BUILDING AND JUDICIAL INDEPENDENCE

In a democratic state, an independent, efficient, transparent, and accessible justice system that serves all citizens regardless of their economic status is an essential requirement for the consolidation of effective rule of law. The 1996 Peace Accords outlined the transformation necessary for the Guatemalan justice system.

The section of the Accords that focused on the role of the armed forces in a democratic society and on strengthening civilian powers, signed in Mexico City on September 19, 1996, called for reforms in several areas. These included strengthening the judicial career system, separating administrative and judicial functions,² expanding access of the Judiciary and the Public Prosecutor's Office to the entire country,³ as well as creating the Public Defender's Office, among other changes.⁴

The reforms undertaken, however, ran into different obstacles and were constrained by individuals connected to criminal networks who infiltrated the judicial institutions. As a result, efforts to build strong, efficient and independent judicial institutions over the past few decades have faced opposition from powerful and influential stakeholders and sectors.⁵

This report examines the findings of the first area of the Central America Monitor, the strengthening of the justice system. The report is based on a set of qualitative and quantitative indicators used to assess the progress or setbacks in strengthening

Guatemala's justice institutions. It includes information on the Public Prosecutor's Office, the Judiciary, the National Institute of Forensic Science (INACIF), and the Institute of Criminal Public Defense (IDPP) from 2014 through 2017.

The report provides specific information and analysis in three main areas:

- The capacity of judicial institutions, including human resources, geographic distribution, workload, number of complaints filed and cases solved, and the level of public trust.
- Level of judicial independence, or the presence of independent and impartial justice operators who can act in strict observance of the law and international treaties. This includes the existence and implementation of rigorous and transparent merit-based selection processes based on international standards, as well as ongoing and effective performance evaluation and disciplinary mechanisms.
- External independence, understood as the allocation, distribution and utilization of financial resources by the institutions, and the mechanisms implemented to guarantee the safety of justice operators.



GUATEMALA'S JUSTICE SYSTEM

The justice system in Guatemala is made up of the Public Prosecutor's Office (*Ministerio Público*, MP), the Judiciary (*Organismo Judicial*, OJ), the National Institute of Forensic Sciences (*Instituto Nacional de Ciencias Forenses*, INACIF), and the Institute of

Criminal Public Defense (*Instituto de la Defensa Pública Penal*, IDPP). Below is a brief description of the four institutions and their respective roles and composition.

THE PUBLIC PROSECUTOR'S OFFICE (*MINISTERIO PÚBLICO*, MP):

According to Article 251 of the Guatemalan Constitution, the Public Prosecutor's Office is an auxiliary of the public administration and the courts. It is autonomous and its main function is to guarantee strict adherence to the laws of the country. In this capacity, the MP's role consists of presenting criminal charges in legal proceedings and legally representing the public interest based on the principles of unity, legality, hierarchy, and functional autonomy. This last point means that it is not subordinate to any other authority.

Article 2 of the Organic Law of the Public Prosecutor's Office (*Ley Orgánica del Ministerio Público*, LOMP) lays out the functions of the Public Prosecutor's Office, including the following (without prejudice of other functions that may be included in additional laws):

1. Investigate crimes corresponding to the public sphere, and facilitate their criminal prosecution before the courts based on the faculties granted by the Constitution and the country's laws, as well as international treaties and covenants.

2. Bring civil charges in the cases stipulated by law, and provide assistance to those who want to pursue legal action in private matters based on the provisions of the Penal Code.
3. Direct the police and other law enforcement bodies to investigate crimes.
4. Preserve the rule of law and respect for human rights by carrying out the necessary judicial proceedings before the courts.

The MP has three basic areas of action: prosecution, support, and administration.

Regarding its composition, Article 9 of the Organic Law of the Public Prosecutor's Office states that the MP is composed of the following offices: 1) the attorney general and director of the Public Prosecutor's Office; 2) regional prosecution offices; 3) district prosecution and section prosecution offices; 4) deputy district prosecution and deputy section prosecution offices; 5) investigative offices; and 6) assistant prosecution offices.

THE JUDICIARY (*ORGANISMO JUDICIAL*, OJ):

According to Article 203 of Guatemala's Constitution and other legal norms, the Judiciary has exclusive control over the administration of justice. In other words, the legal authority to judge and to enforce sentences corresponds exclusively to the courts of law, independent of all other powers.

Article 52 of the Judiciary Law stipulates that the OJ has jurisdictional and administrative functions, which should be carried out with absolute autonomy from any other authority. The jurisdictional functions correspond to the Supreme Court of Justice (*Corte Suprema de Justicia*, CSJ) and lower courts, while administrative functions correspond to the head of

the OJ and the bureaus and administrative units subordinate to that office.

It is worth pointing out that the Supreme Court's jurisdictional and administrative functions are inconsistent with international standards regarding judicial independence, because judges are only allowed a limited amount of time to devote to cases. Moreover, administrative controls can be used to exert pressure on judges.

The agreement on civilian power and the role of the armed forces in a democratic society included in Guatemala's 1996 Peace Accords made clear the need to modernize the justice system, including the separation of administrative and jurisdictional functions within the Judiciary.

In order to modernize the justice system, constitutional reforms are required. However, no real efforts of this kind have advanced in many years. While constitutional reforms that would have separated the CSJ's administrative and jurisdictional functions were proposed in 2016, the legislation is at a standstill in Congress and there appear to be no efforts to get the bill approved at this point.

Despite this setback, the Judicial Career Law approved in 2016 reassigned some of the CSJ's administrative functions to the Judicial Career Council (*Consejo de la Carrera Judicial*, CCJ), a body in charge of regulating the judicial careers of judges and magistrates. These functions include the appointment, transfer, promotion, removal, granting of leaves of absence, etc., of judges and auxiliary personnel; matters pertaining to the code of conduct applicable to judges; disciplinary measures or resolutions (sanctions), and supervision of court performance.

Guatemala's judiciary is comprised of the Supreme Court, the Court of Appeals and other bodies of similar stature, the Courts of First Instance (*Juzgados de Primera Instancia*), and Justices of the Peace (*Juzgados de Paz*). The Supreme Court is the highest-ranking court and is responsible for the OJ's administration, including its budget and human resources management.

THE NATIONAL INSTITUTE OF FORENSIC SCIENCES (*INSTITUTO NACIONAL DE CIENCIAS FORENSES*, INACIF):

Guatemala's Congress established the INACIF via Decree 23-2006, known as the Organic Law of the National Institute of Forensic Sciences and the institute started operating in July 2007. According to Article 1 of the INACIF Organic Law, INACIF is an auxiliary, independent institution within Guatemala's justice system, with a separate legal status and its own budget. The INACIF has nationwide jurisdiction and is responsible for providing forensic expert services.

INACIF's primary mission is to provide independent investigative services through technical-scientific reports based on the principles of objectivity, professionalism, respect for human dignity, interinstitutional coordination, and openness and transparency. The INACIF provides free services.

Article 29 of INACIF's Organic Law stipulates that it must provide services upon receiving requests from: 1) competent criminal judges or courts; 2) assistant

and senior prosecutors from the MP; 3) competent judges from other areas of justice administration; 4) the Institute of Criminal Public Defense (IDPP), private defenders and other stakeholders in the criminal process, through the MP or another competent jurisdictional body; 5) National Civilian Police conducting preliminary investigations in urgent cases that will be reported immediately to the MP, which should also receive the results of the report to begin its own investigation (under no circumstances can the police go directly to INACIF to request reports or expert opinions on evidence obtained in house searches, seizures, arrests or judicial sequestration) and, 6) individuals or agencies given the responsibility to conduct special investigative procedures.

According to Article 6 of the Organic Law, the INACIF's internal units include: the Directive Board; the General Directorate; a technical-scientific department; a financial-administrative department; and a training department. The INACIF Directive Board has the power to create additional units.

Agreement No. CD-INACIF-027-2012 approved the INACIF's organizational and operating regulations, which established the following hierarchy: 1) the Directive Board; 2) the General Directorate; 3) Advisory units to the General Directorate; 4) General Directorate staff; 5) departments; 6) department staff; 7) technical-scientific department areas; 8) units; 9) sections; 10) laboratory; and 11) sub-areas.

THE INSTITUTE OF CRIMINAL PUBLIC DEFENSE (*INSTITUTO DE LA DEFENSA PÚBLICA PENAL*, IDPP):

Guatemala's Congress created the IDPP through Decree 129-97, the Criminal Defense Public Service Law. Article 1 in the law states that the IDPP was created to administer public criminal defense services, providing free legal assistance to low-income individuals. The IDPP manages, administers and supervises lawyers who offer public legal defense services.

Article 4 states that the Institute of Criminal Public Defense is in charge of: 1) Providing legal representation to low-income individuals subject to criminal investigations from the moment in which

they are accused as possible authors or participants of criminal acts; 2) Offering legal assistance to any low-income individual who requests assistance when accused in criminal proceedings; 3) Providing legal defense when the accused individual does not have or has not named a legal representative.

The IDPP's staff includes: 1) the General Directorate; 2) Public defenders; 3) Auxiliary and administrative staff, and 4) Technical staff, including investigators and any other personnel required to ensure public legal defense.

CAPACITY OF THE JUSTICE SYSTEM

HUMAN RESOURCES

The presence and coverage of institutions in the justice system is key to guaranteeing access to justice for everyone in Guatemala. As a result, the ratio of judicial personnel per 100,000 Guatemalans is the first indicator used to measure capacity building in the country's justice sector. The following chart includes

data from the National Statistics Institute (*Instituto Nacional de Estadística*, INE) on the number of people in Guatemala during the period reviewed (2014 to 2017). They are the referential numbers used in the analysis of access provided by each institution:

PROJECTED POPULATION IN GUATEMALA, ACCORDING TO INE

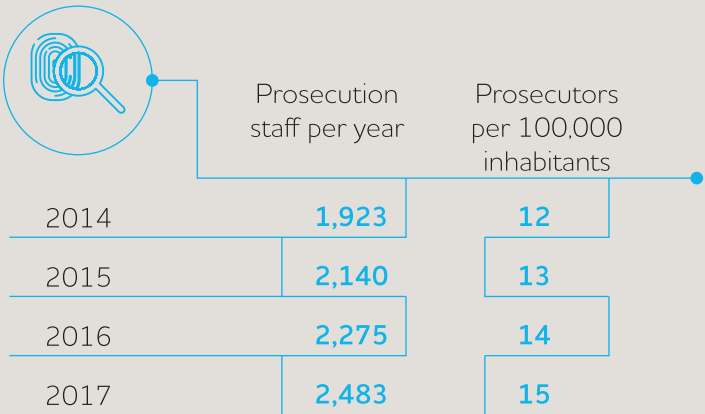
2014	2015	2016	2017
15,806,675	16,176,133	16,548,168	16,924,190

Source: Prepared by author using INE data

Using these numbers and the information provided by the **Public Prosecutor's Office** through its Access to Public Information Unit, we were able to determine

the ratio of prosecutors per 100,000 people, which is shown in the tables below.

NUMBER OF PROSECUTION STAFF, PER YEAR



Source: Prepared by the author using MP data

The prosecution staff is divided into section prosecutors, investigative officers and assistant

prosecutors. The following table represents staff in each category per 100,000 people:

NUMBER OF INVESTIGATIVE OFFICERS AND PROSECUTORS, PER YEAR

Year	Investigative Officers per 100,000	Assistant Prosecutors per 100,000	Section Prosecutors per 100,000
2014	2	9	0.3
2015	3	10	0.3
2016	3	11	0.3
2017	3	12	0.4


Source: Prepared by the author using MP data

The numbers show that even though more staff was added over the years, the ratios are still insufficient to address the needs of the population prosecutors should serve.

In the case of the **Judiciary**, the number of judges

and magistrates during the period analyzed was as follows: 933 in 2014; 1,046 in 2015; 1,083 in 2016; and 1,088 in 2017. As a result, the ratio of judges and magistrates per 100,000 inhabitants was 5.9 in 2014; 6.4 in 2015; 6.5 in 2016; and 6.4 in 2017: ⁶

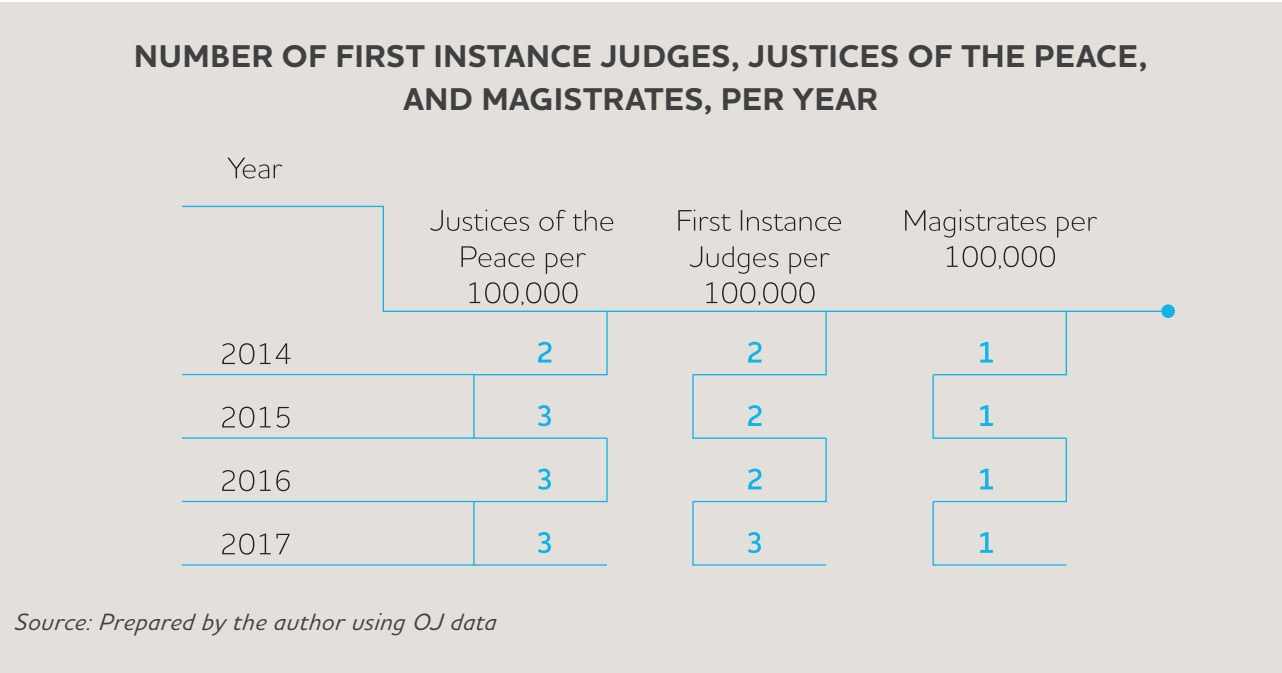
NUMBER OF JUDGES AND MAGISTRATES, PER YEAR



	Judges and Magistrates per year	Judges and Magistrates per 100,000
2014	933	5.9
2015	1046	6.4
2016	1083	6.5
2017	1088	6.4

Source: Prepared by the author using OJ data

The following chart breaks down the number of judges by justices of the peace, first instance judges and magistrates in a ratio per 100,000 people:



Only five departments in 2017 had a number of judges above the national average (6 judges per 100,000 inhabitants). They included Guatemala and Sacatepéquez, with 10; Zacapa with 9; Quetzaltenango and El Progreso with 8; and Sololá with 7. On the other end of the spectrum, the Alta Verapaz, Totonicapán and Quiché departments were below the national average, with barely 3 judges per 100,000 inhabitants.⁷

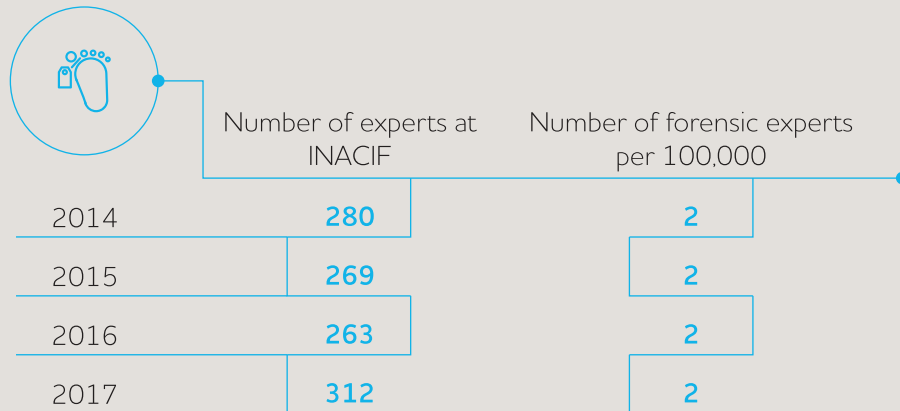
The figures presented above are not encouraging, particularly taking into account that the global average is 17 judges per 100,000 inhabitants. The numbers point to a delay in access to justice, which is a serious infringement on the right to a fair and timely trial, and can lead to impunity.

Indeed, the long delays in investigations and trials imply an investment in resources, as the longer cases take, the more expensive they become.

It is imperative to increase the number of judges and magistrates at the national level to reduce the backlog of cases. This should be done taking into account the population of each department and region, as well as the crime rate in each area.

Regarding the number of experts at the **National Institute of Forensic Sciences (INACIF)**, the information provided by the institution shows that the average number of experts has remained steady throughout the period under review, standing at 2 experts per 100,000 inhabitants.

NUMBER OF EXPERTS AND FORENSIC EXPERTS, BY YEAR

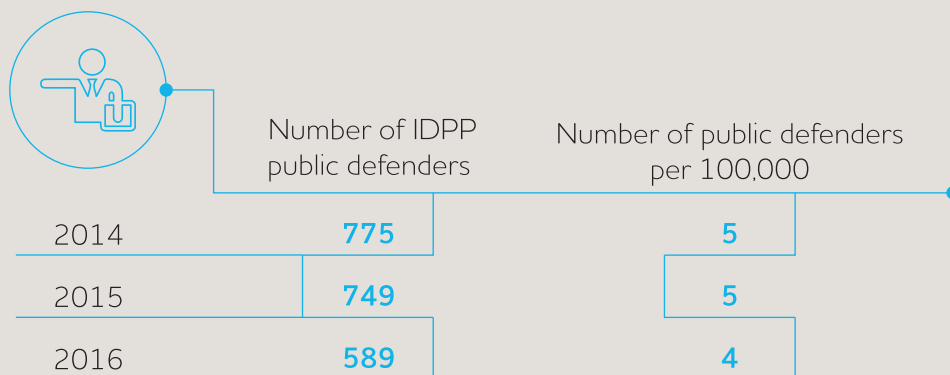


Source: Prepared by the author using INACIF data

The chart shows that there was a downward trend of personnel in two separate years because of budget constraints. This situation created serious problems for the institution, with insufficient personnel increasing workloads and leading even more experts to leave the INACIF.⁸

The final table includes numbers of public defenders at the **Institute of Criminal Public Defense (IDPP)**. Only three years are included, because the IDPP's Access to Public Information Unit said it did not have information for 2017. The table includes the number of public defenders and the ratio per 100,000 inhabitants:

NUMBER OF PUBLIC DEFENDERS, BY YEAR



Source: Prepared by the author using IDPP data

The table shows a significant decline in the number of public defenders. The numbers in the chart include primary staff members, public defenders in training and defenders working on active cases, but not all of them are part of the institution’s staff.

The public defense system administered by the IDPP is comprised of the following personnel: a) full-time defenders, who are part of the institute’s staff; b) defenders in training, who are private lawyers—they are not on the payroll and provide their professional services on a

contract basis; c) public defenders, who are not considered staff and who are paid a set fee. The institution also has legal counselors who provide services as interns.⁹

If only the number of full-time public defenders are considered, the institution did see an important increase between 2014 and 2017, with 73 additional staff members added. The number rose from 145 permanent defenders in 2014 to 218 in 2017.

NUMBER OF PERMANENT PUBLIC DEFENDERS BY YEAR

Staff	2014	2015	2016	2017
Permanent public defenders	145	147	139	218
% increase or decrease compared to previous year		+1.4%	-5.4%	+56.8%

Source: Prepared by the author using IDPP data

Budget constraints are a major concern in the IDPP, with a logical impact on the possibilities of public defenders to be promoted and obtain salary increases in accordance with their work and experience.¹⁰

In general, the figures presented show that there

is a need for significant improvements in each of the four institutions to increase their expert personnel in order to have a greater impact and improved effectiveness providing legal services to the population while keeping pace with the population growth.

GENDER PARITY IN JUDICIAL INSTITUTIONS

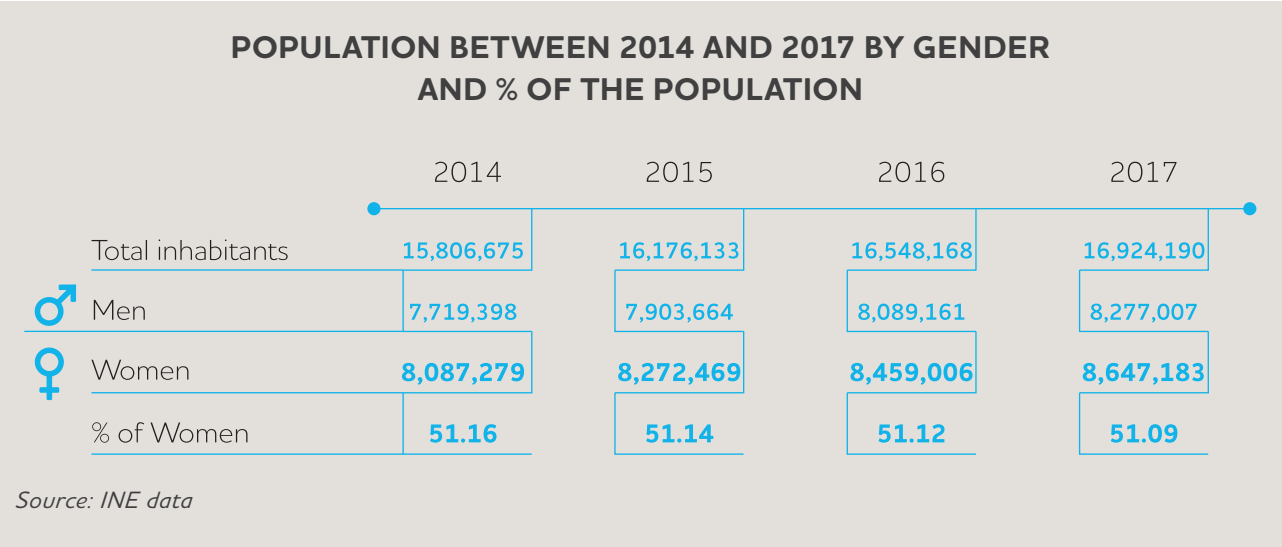
Historically, the public sector has been an important source of salaried employment for women, offering decent income, good working conditions, job security, and access to pension plans, which is linked to high levels of union membership and possibilities for collective bargaining. As a result, women working in the

public sector play an important role establishing and fostering policies for gender equality.¹¹

The increasing number of women working in the public sector can facilitate efforts aimed at increasing access to public services for women and girls. While numbers have increased,

women workers in the public sector tend to be concentrated in entry-level, low-wage positions, as well as in sectors that are generally seen as fields for women, such as education or health care.¹² It is important, therefore, to look at the number of women on staff in the institutions covered by the study.

A first step, however, is to look at the total composition of the Guatemalan population, where women represent more than 51 percent of the total, as the following chart demonstrates.

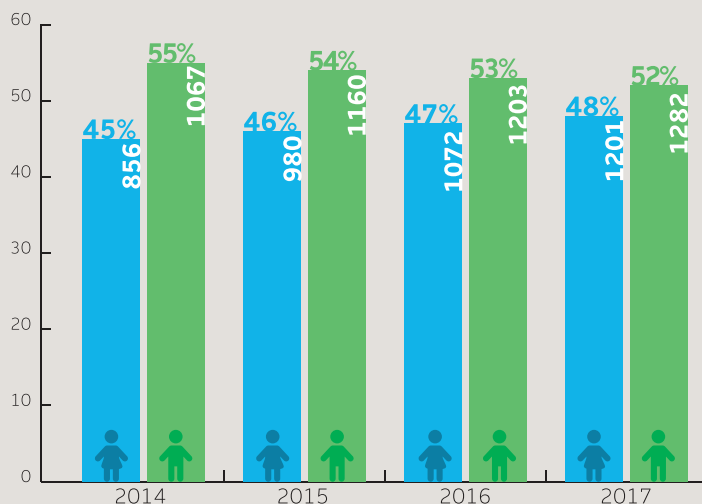


While women represent more than half of the population, they represent less than 50 percent of the personnel in most of the institutions included in this study.

A positive trend in the **Public Prosecutor’s Office (MP)** was the steady increase in the number of female prosecutors between 2014 and 2017, which can be seen in the following table.

Year	Total	Number of women	Percent of female prosecutors	Number of men	Percent of male prosecutors
2014	1923	856	45%	1067	55%
2015	2140	980	46%	1160	54%
2016	2275	1072	47%	1203	53%
2017	2483	1201	48%	1282	52%

GENDER DISTRIBUTION IN THE PUBLIC PROSECUTOR'S OFFICE, BY YEAR



Source: Prepared by author using MP data

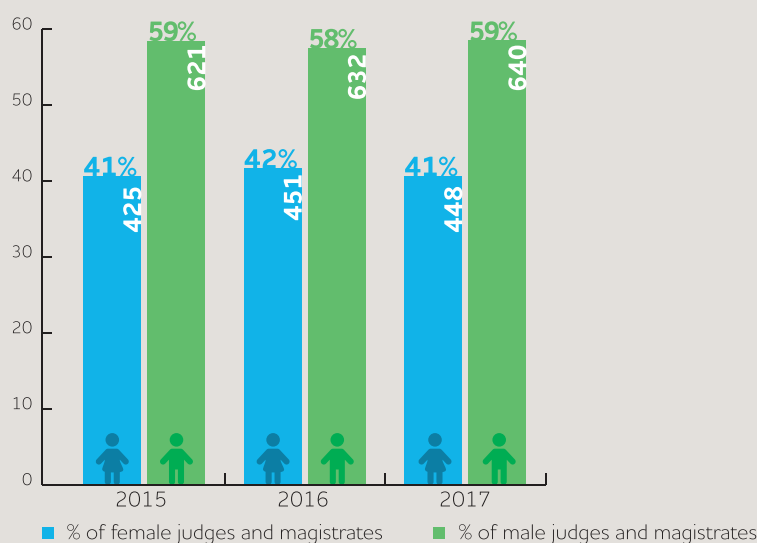
The figures corresponding to male and female judges and magistrates in the **Judiciary (OJ)** are shown in the following table. Numbers from 2014 are not included, because it was not possible to obtain data for that year.

Unlike the MP, the OJ does not show an increase in the number of female judges and magistrates

every year. While the percentages of men and women have remained stable, it would be

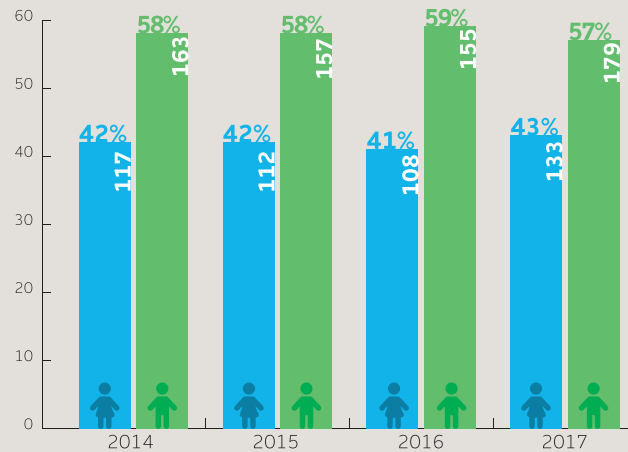
beneficial for the justice system in general if there were an equal number of professional men and women in the Judiciary.

GENDER DISTRIBUTION IN THE JUDICIARY, BY YEAR



Source: Prepared by the author using OJ data

GENDER DISTRIBUTION IN INACIF, BY YEAR



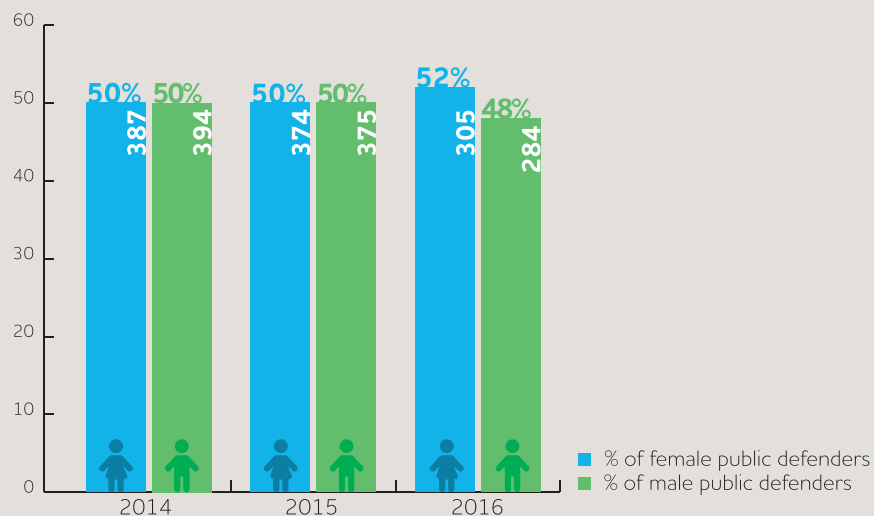
Source: Prepared by the author using INACIF data

The percentage of male and female forensic experts at **the National Institute of Forensic Sciences (INACIF)** is very similar to the OJ, as the table above shows.

It would be very useful to see an increase in the percentage of women in the INACIF, particularly during interactions with women who are victims

of sexual and other forms of violence that disproportionately affect women. It often helps having women in an investigative role when women are victims of violence, helping to obtain details of the attacks by removing the gender barrier.

GENDER DISTRIBUTION IN THE IDPP, BY YEAR



Source: Prepared by the author using IDPP data

The Institute of Criminal Public Defense (IDPP) has reached gender parity that has remained stable in 2014 and 2015,¹³ with women actually in the majority in 2016.

The data included in the charts is important given that more than 50 percent of the Guatemalan

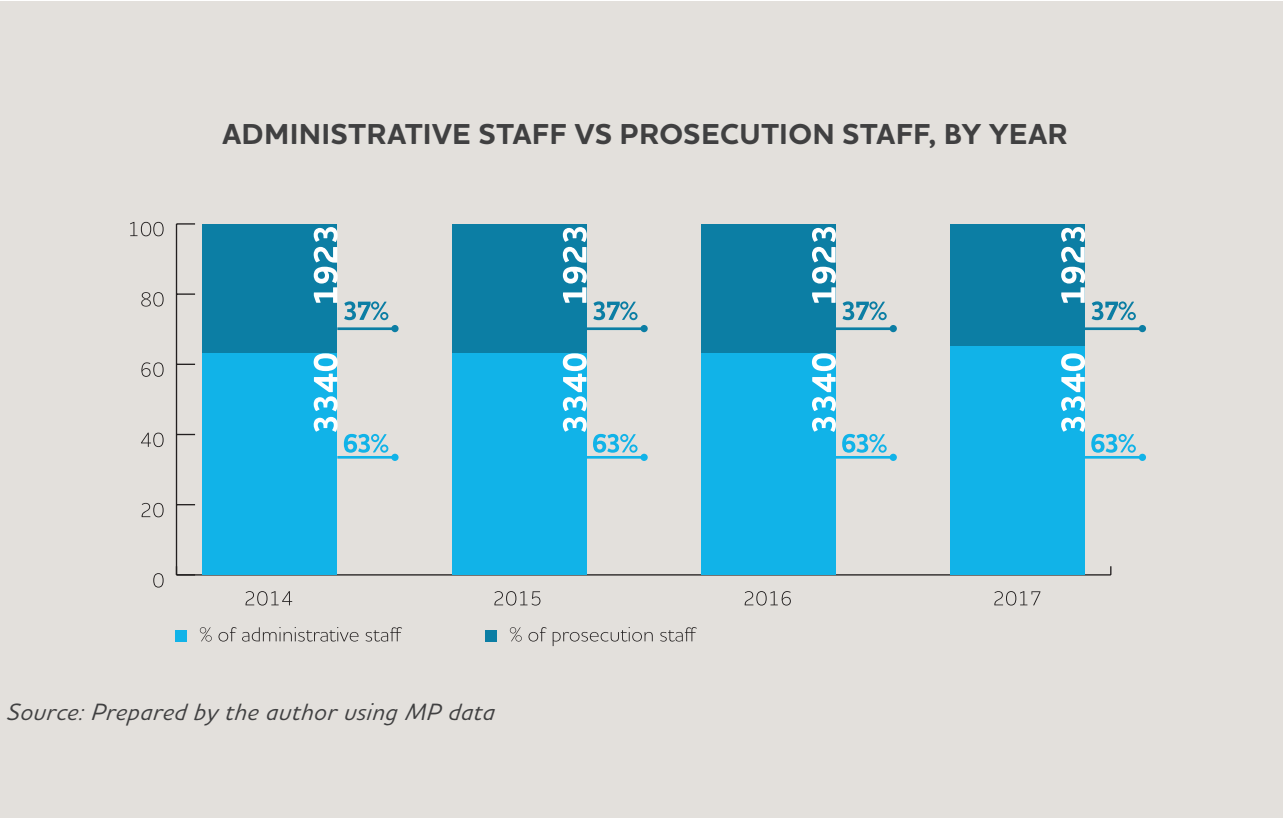
population is female. The high rates of violence against women, including femicide, are a legacy of machismo and deeply rooted patriarchal structures that can be partially addressed by increasing the number of women in the judiciary and deploying personnel who are aware of and trained in addressing these forms of violence.

SPECIALIZED JUSTICE PERSONNEL AND ADMINISTRATIVE STAFF

Another aspect of human resources within the judicial sector is the relationship between administrative staff and specialized personnel involved in legal defense, investigation or jurisdictional matters.

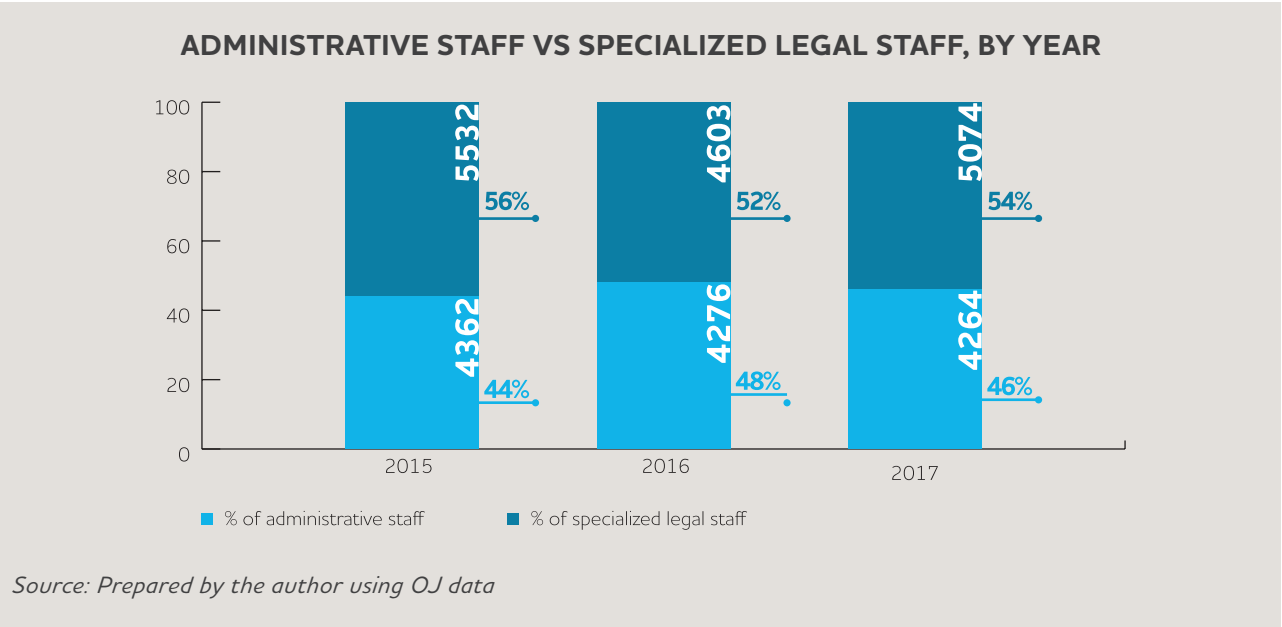
Administrative staff is necessary for any institution to function properly, but specialized staff is what allows an institution to provide the services that fulfill their respective mandate.

The following information received from the Public Prosecutor’s Office (MP) shows the percentages of administrative and prosecution staff as a reflection of total personnel.



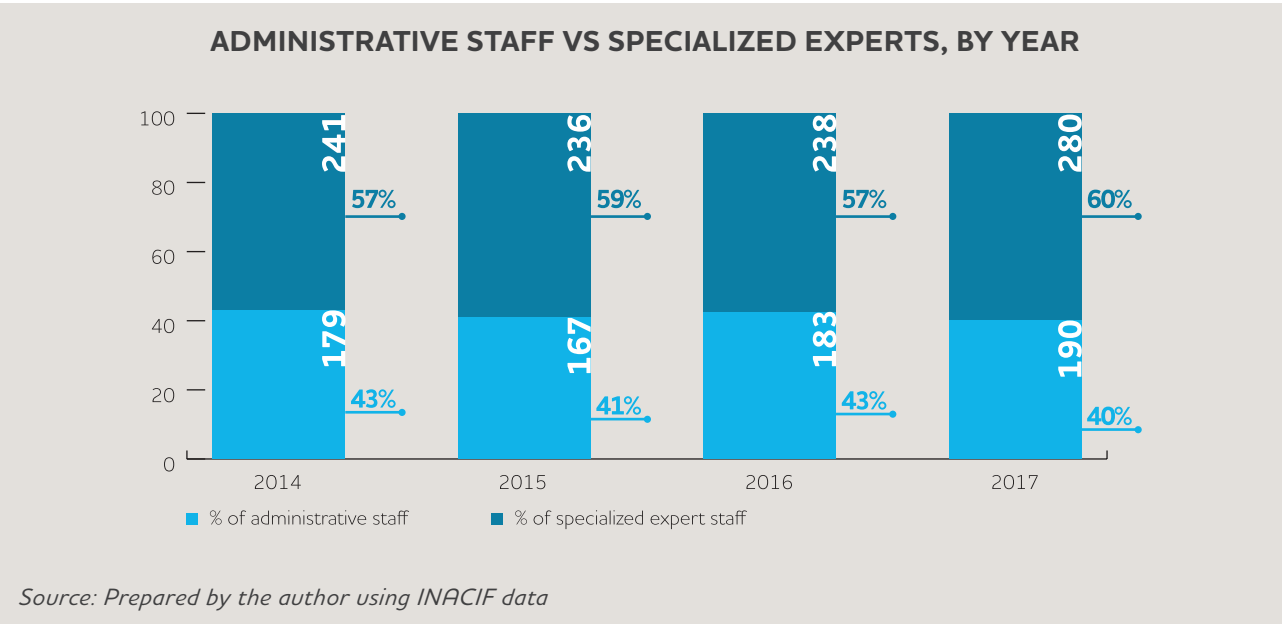
The following table shows administrative and legal personnel in the **Judiciary**, according to the annual statistics compiled by the Center for

Information, Development and Judicial Statistics (*Centro de Información, Desarrollo y Estadística Judicial, CIDEJ*).¹⁴



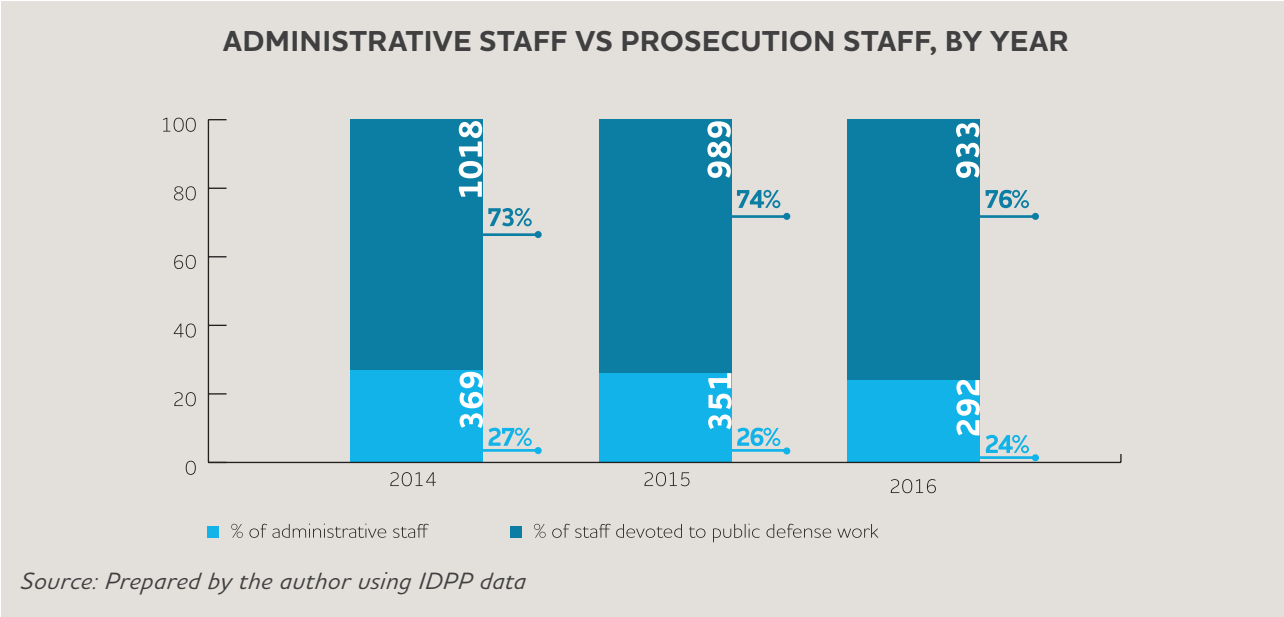
The National Institute of Forensic Sciences (INACIF), according to the information provided by the institution through its Access to Public Information Unit, has maintained a greater

number of specialized personnel (experts) in comparison with its personnel during the period under review.



In the case of the **Institute for Criminal Public Defense (IDPP)**, the table below compares the number of administrative staff and specialized staff according to the numbers provided by its Human Resources Information System. The numbers include full-time professional staff, public defenders in training, intern public defenders, legal counselors assigned to active cases, and technical staff providing support to public defenders.

The IDPP also has other professionals, such as social workers, psychologists and crime investigators, who are not part of the administrative or legal defense teams. They are not included in the following table.



The Access to Public Information Unit did not provide information corresponding to 2017 so the chart only covers three years.

The data obtained shows that administrative personnel in the MP far outnumber prosecution staff. The ratio is better in the OJ, but the percentage of administrative personnel relative to legal staff is still high. At INACIF, the

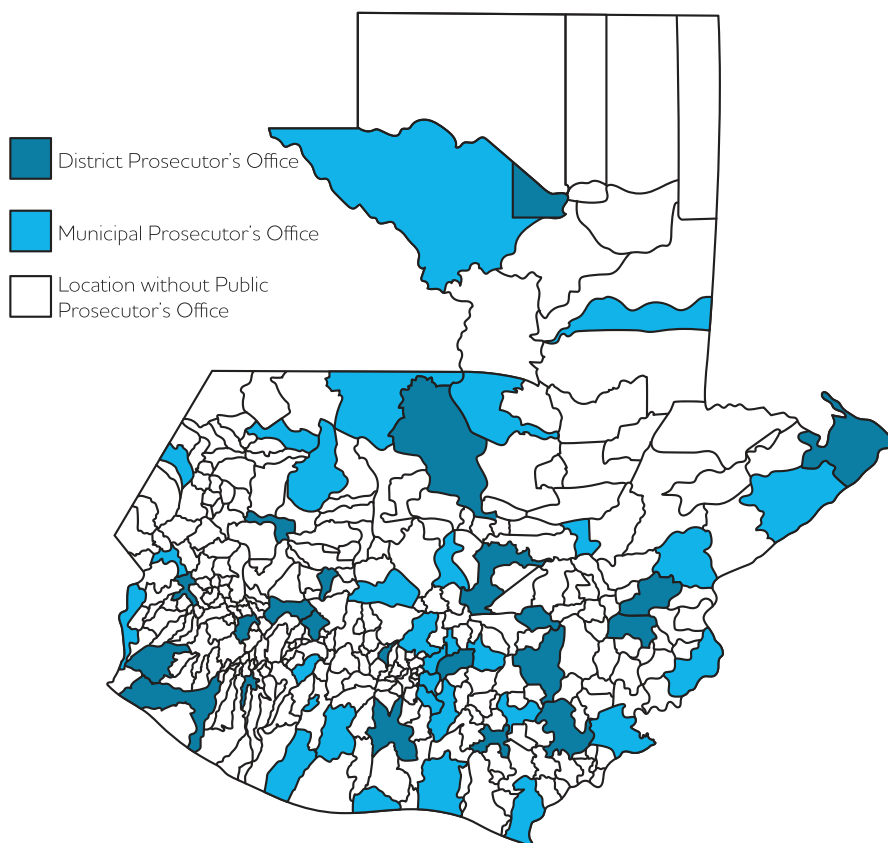
percentage of specialized experts is 55 percent and in the case of the IDPP, the percentage of public defenders averaged around 75 percent of total staff during the years examined.

GEOGRAPHIC COVERAGE

The **Public Prosecutor's Office** 2015-2019 Strategic Plan details the institution's geographic

presence at the time which can be seen in the following map.

GEOGRAPHIC DISTRIBUTION OF PROSECUTOR OFFICES 2014



Source: Public Prosecutor's Office. Strategic Plan of the Public Prosecutor's Office in Guatemala 2015-2019, pg. 34

While the strategic plan did not provide a specific number of prosecutor offices, studies done by the National Association for Social Science Research (*Asociación de Investigación y Estudios Sociales, ASIES*) found that the MP had a presence in 33 percent of the country in 2014. Two new specialized section offices were established in 2014, one focused on human trafficking and one on extortion.¹⁵

A similar trend was observed in the previous period, although not part of this analysis. The institutional priority in the 2011-2014 period focused on strengthening specialized units and not on increasing the number of offices. Consequently, Geographic coverage did not change significantly during that period.¹⁶

Prioritizing the focus on specialized offices not only included the creation of the two new units—human trafficking and extortion—but also the expansion of existing sections, such as the office dedicated to violence against women. This period also corresponds to the expansion of courts and tribunals dealing with cases of femicide and other acts of violence against women.¹⁷

The MP's coverage expanded slightly during the 2015-2016 period with the creation of 21 prosecution offices and branches. Of 21 new offices, 11 were at the municipal level with prosecutors focused on investigating and prosecuting public sector crimes committed in their respective jurisdictions.¹⁸

Access was expanded in the departments of Baja Verapaz, Suchitepéquez, Guatemala, Petén, Izabal, Jutiapa, Chiquimula, San Marcos, Huehuetenango and Quetzaltenango.¹⁹ At the same time, the MP also created special offices in several departments to deal with old cases as a way of reducing backlog. This measure, however, had a negative impact on the

population's perception of the MP's efficiency and effectiveness, because these special offices simply began dismissing cases that were in the system for more than three years.²⁰

Information was not provided for 2017, but the 2018–2023 Strategic Plan stated that as of June 2018 the MP was only present in 20.3 percent of the country's municipalities with 23 district attorneys' offices (one per department, except in Quetzaltenango where there were two: one in the department capital, also Quetzaltenango, and another in Coatepeque); 46 municipal prosecutor offices or agencies, and 22 section prosecutor offices. Each office has a specific jurisdiction and territorial coverage.²¹

An analysis of the MP also needs to include the high-profile cases presented since 2015 in conjunction with the International Commission against Impunity in Guatemala (*Comisión Internacional Contra la Impunidad en Guatemala, CICIG*). These cases, including La Línea, IGSS-Pisa, “phantom” jobs in Congress, health “traffickers,” Amatitlán Lake, among others,²² increased the workload throughout the justice system, particularly in the OJ.

An increase in personnel and the geographic coverage of the justice system is essential for increasing the justice system's efficiency and ability to process cases in a timely manner.

Studies show that Guatemalans do not trust the **Judiciary (OJ)** and see it as highly inefficient.²³ This is understandable given the institution's national coverage and human resources, which hinders its capacity to resolve cases. As seen in the following map, for the purposes of the judicial system, the country is divided into 8 judicial regions.

JUDICIARY'S REGIONAL DISTRIBUTION



Petén Region

- Petén



Northwestern Region

- Huehuetenango
- Quiché



Northern Region

- Alta Verapaz
- Baja Verapaz



Northeastern Region

- Zacapa
- Chiquimula
- El Progreso
- Izabal



Southwestern Region

- Totonicapán
- Quetzaltenango
- Suchitepéquez
- Retalhuleu
- San Marcos
- Sololá



Central Region

- Escuintla
- Chimaltenango
- Sacatepéquez



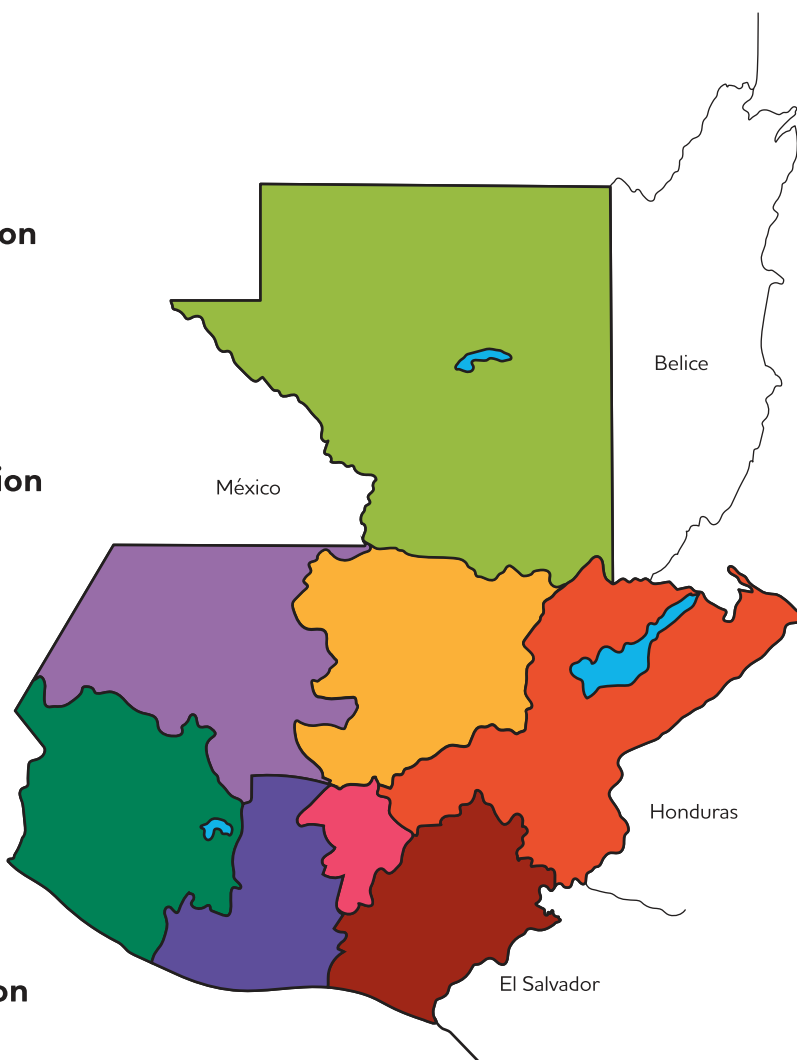
Metropolitan Region

- Guatemala



Northeastern Region

- Santa Rosa
- Jalapa
- Jutiapa



Source: Centro de Información, Desarrollo y Estadística Judicial (CIDEJ). Annual Statistic Report 2014. OJ. Guatemala 2015, pg. 13.

There were 680 courts distributed among the eight geographic regions in 2014, according to the OJ. The breakdown was as follows: 175 in the Southwestern Region; 164 in the Metropolitan Region; 78 in the Northwestern Region; 72 in the Central Region; 66 in the Northeastern Region; 57 in the Southeastern Region; 44 in the Northern Region; and 24 in Petén.²⁴

Of the 680 courts, 17 were created in 2014. The new courts were not distributed evenly throughout the country, with no new courts created in four of the 22 departments (Chimaltenango, Jutiapa, Retalhuleu and Totonicapán).²⁵

An access to justice ratio can be created based on the data above and the number of inhabitants per department, with El Progreso having the best ratio, with 7.81 courts per 100,000 inhabitants; while Totonicapán is last, with 2.30 courts per 100,000 people.²⁶

In addition, access to specialized courts (femicide and other forms of violence against women) reached a national average of 50 percent in 2014 with these courts found in the following departments: Guatemala, Chiquimula, Quetzaltenango, Alta Verapaz, Huehuetenango, Izabal, Petén, Sololá, Quiché, Escuintla and Chimaltenango.²⁷

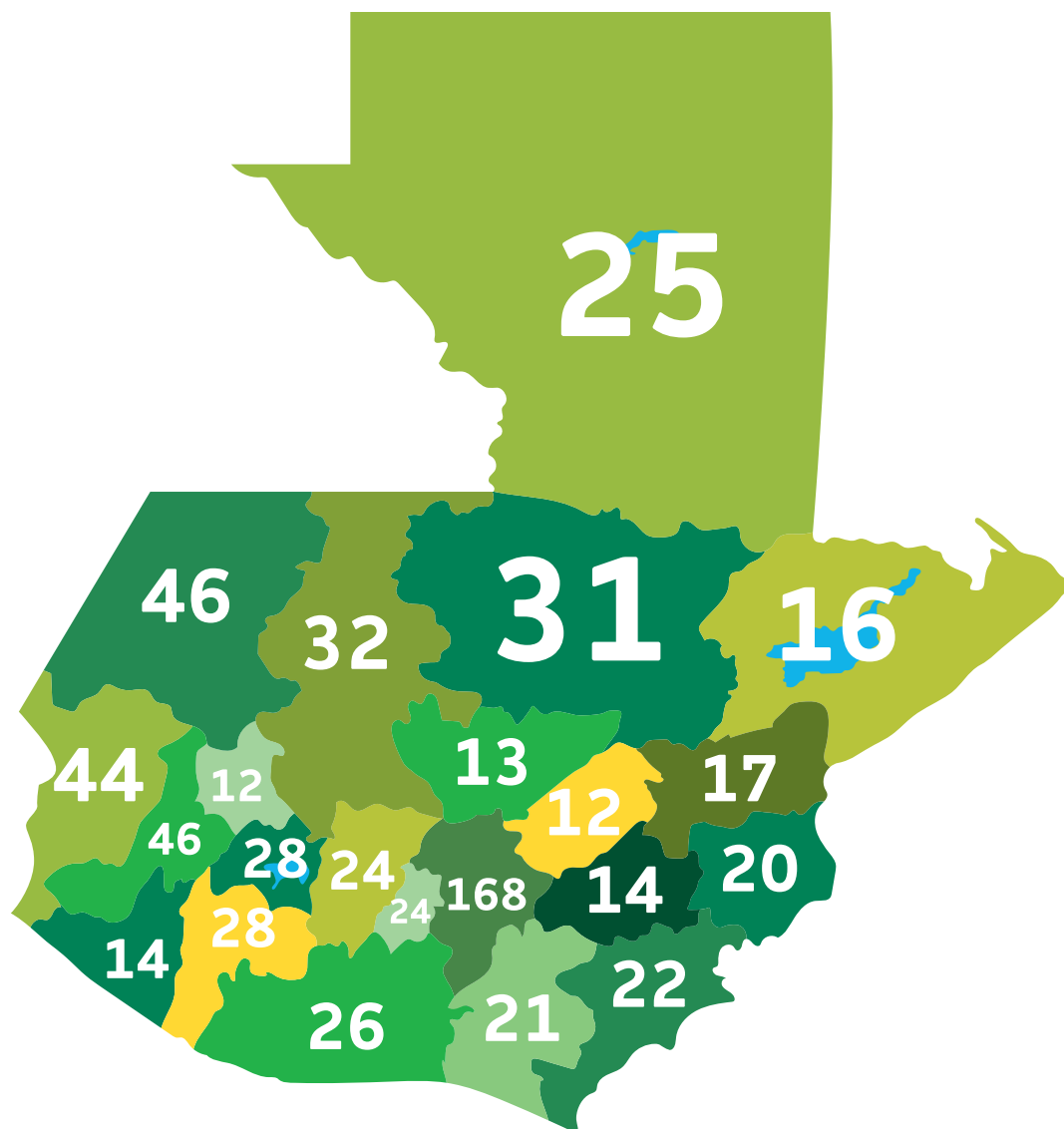
The OJ reported 673 courts nationwide in 2015 and 675 in 2016; however, the geographic scope of jurisdictional bodies actually underwent a decline during this time period compared to 2014.²⁸ This is because certain courts in the departments of Guatemala, El Progreso, Huehuetenango, Quetzaltenango and Suchitepéquez were closed.²⁹

Totonicapán remained the department with the lowest ratio during this two-year period, with 2.2 courts per 100,000 inhabitants, while Zacapa took the lead, with a ratio of 7.1 per 100,000 residents.³⁰ These numbers, however, aligned with crime rates. Totonicapán's 2017 homicide rate was 2.6 while it was 61.3 in Zacapa.³¹

The decision to create new courts should be based on a comprehensive approach that balances geographic coverage with population levels and crime rates, among other key factors.

The OJ reported a slight increase in 2017 with 683 courts, which can be seen in the map on the following page.

NUMBER OF COURTS BY DEPARTMENT IN 2017



Source: CIDEJ. 2017 Annual Statistic Report. OJ. Guatemala. 2018. pg. 197

While the **National Institute of Forensic Sciences (INACIF)** is the youngest institution within Guatemala's broader justice system, it reached full national coverage in 2008, one year after it was created. Not only is the INACIF present in all 22 departments, it has more than one office in four. In addition to the capital

cities in Quetzaltenango, Escuintla, San Marcos, and Petén, there are also secondary offices in the municipalities of Coatepeque, Tiquisate, Malacatán and San Benito, respectively. The following map shows the distribution of INACIF offices.

INACIF NATIONAL COVERAGE, DISTRIBUTED IN FOUR REGIONS.

REGION I

1. San Benito, Petén
2. Poptún, Petén
3. Puerto Barrios, Izabal
4. Cobán, Alta Verapaz
5. Salamá, Baja Verapaz

REGION II

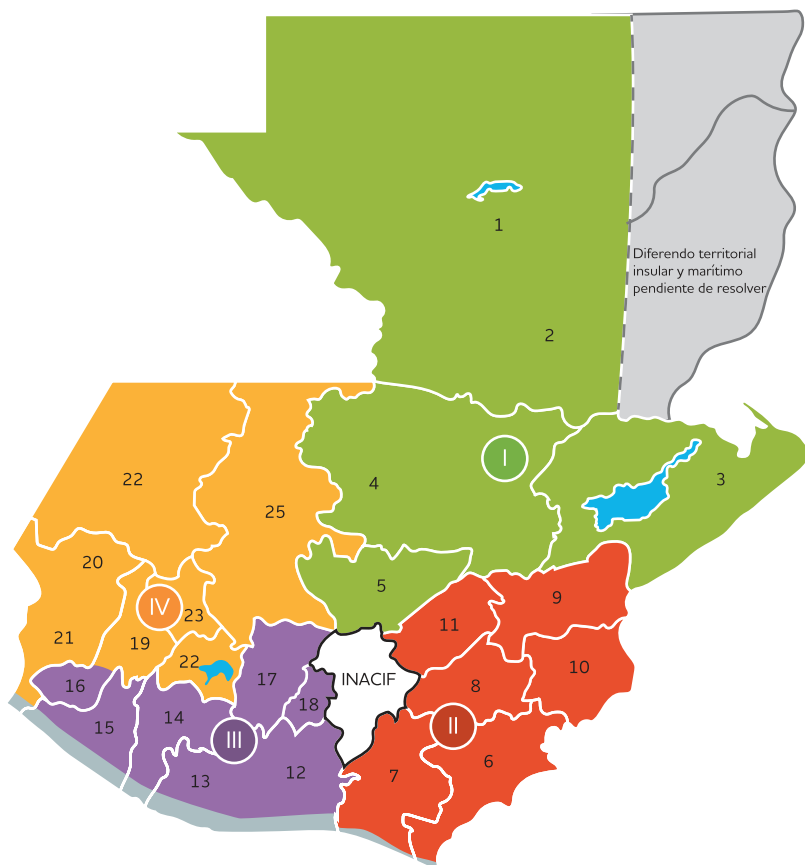
6. Jutiapa
7. Cuilapa, Santa Rosa
8. Jalapa
9. Zacapa
10. Chiquimula
11. El Progreso

REGION III

12. Escuintla
13. Tiquisate, Escuintla
14. Mazatenango, Suchitepéquez
15. Retalhuleu
16. Coatepeque, Quetzaltenango
17. Chimaltenango
18. Scatepéquez

REGION IV

19. Quetzaltenango
20. San Marcos
21. Malacatán, San Marcos
22. Huehuetenango
23. Totonicapán
24. Sololá
25. Quiché

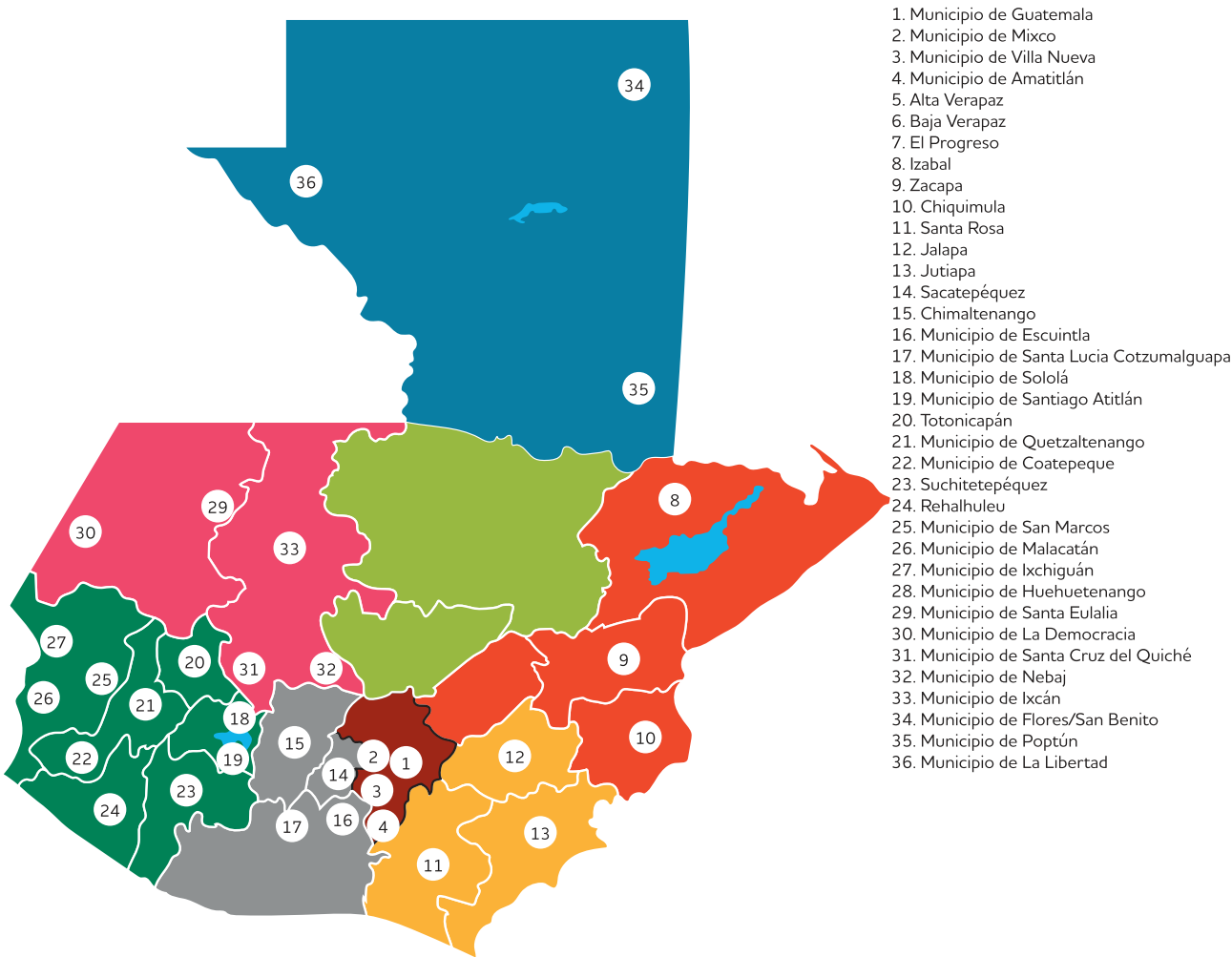


Source: Official INACIF website. Available at: <https://www.inacif.gob.gt/index.php/inacif/ubicaciones>

INACIF's national coverage was 7.94 percent, with 26 offices located in 26 of the country's 340 municipalities. The offices with the highest number of personnel are in Metropolitan Guatemala, Escuintla and Quetzaltenango.

The Institute of Criminal Public Defense (IDPP) had 22 department and 14 municipal offices in 2014, resulting in a geographic coverage of 10 percent. These numbers remained the same in 2017, as the following map shows.

IDPP NATIONAL COVERAGE



Source: Institute of Public Criminal Defense, 2017 Statistical Bulletin, p. 7

It's worth noting that the IDPP, in order to comply with its responsibility to defend youth in conflict with the law, oversees the National Coordinating Committee for Adolescents in Conflict with the Law in 21 locations. This number remained the same during the 2014-2016 period.³²

Since its creation in 1997, the IDPP has been adapting its operations to meet the standards required by new Guatemalan legislation on a variety of issues, including the Comprehensive Protection of Children and Adolescents; Femicides and Other Forms of Violence Against Women; Criminal Competence in High-Risk Cases; Confiscation of Property Used for Criminal Activities; and Reforms to the Criminal Code. Taking these changes into consideration, it is imperative that the IDPP's budget is increased so that it can adequately adapt to new circumstances, including more personnel and broader coverage to absorb the workload.³³

Criminal Code reforms contained in the Decrees 18-2010 and 7-2011 should have required adding personnel within the justice system to deal with an increased number of hearings. While no additional staff was hired, the IDPP partially addressed such gaps with administrative measures, such as procedural hearings for minor infractions.³⁴

The geographic coverage is an important indicator for the IDPP and is one with ample room for improvement. This is not only about justice for victims, but also guaranteeing that alleged offenders are entitled to a fair trial and adequate legal defense, even if they cannot afford it, which highlights the IDPP's key role. In other words, the availability of legal defense often determines the level of access to justice for individuals, which makes it crucial for institutions like the IDPP to have adequate human resource capacity and geographic coverage to meet the needs of the population.

Progress has been made in coverage and staffing levels in some of the institutions in the study, but the justice system cannot operate without growth and development that is consistent and evenly spread throughout its institutions. This growth must take into account population growth, crime rates, and related indicators. Results would also improve with better internal and interinstitutional coordination among agencies in the justice system.

The Central American Institute of Revenue Studies (*Instituto Centroamericano de Estudios Fiscales*, ICEFI) reported in late 2015 that only 1.5% of the gross domestic product was invested in the justice sector, resulting in insufficient services and almost negligible attention to victims.³⁵

An important consideration is the CICIG's proposal to create a tax that would strengthen the justice system and reduce the impunity levels, as well as bolster efforts to approve a constitutional reform focused on the justice sector. The tax proposal was not well received by Guatemala's business and industrial sectors, while the proposal for constitutional reform is stuck in Congress without any efforts at this time to secure its approval.

Finally, while adequate provision of personnel in each judicial institution is important, the qualitative aspect is even more critical. This is why the selection process for judges, prosecutors, public defenders, legal experts, etc., must be based on professional merits and qualifications. Another critical point is ensuring that all staff members receive ongoing training in their respective positions.

EFFICIENCY

In addition to geographic coverage and aspects related to human resources addressed in the previous section, other critical indicators of the level of efficiency include aspects such as the number of cases assigned to staff members, workload, and number of settled cases, among others.

This section offers a better picture of the results achieved by each institution, according to their respective mandates under Guatemalan law, and

provides a general idea about the capacity of the judicial system to manage judicial bottlenecks and case backlog.

Below are several tables with quantitative data provided by the institutions analyzed by the Monitor which portray important aspects of their level of responsiveness and efficiency.

AVERAGE OF NEW CASES/ COMPLAINTS ASSIGNED BY MP PROSECUTORS

Year	Complaints logged at the MP	Prosecution staff per year	Average of cases assigned per prosecutor
2014	397,887	1,923	207
2015	400,377	2,140	187
2016	418,916	2,275	184
2017	421,451	2,483	170

Source: Prepared by the author using MP data

The table above, which corresponds to the 2014-2017 period, shows a drop in the average number of cases assigned to each prosecutor at the **Public Prosecutor's Office (MP)**. However, the table does not include the number of cases that entered the system in prior years and which remain open and thus are still part of each prosecutor's workload.

It is also important to note that according to the MP's organic law, assistant prosecutors are the ones in charge of conducting preliminary investigations. Consequently, the allocation of new cases falls mainly on them. With this in mind, the table below shows the average number of cases assigned to assistant prosecutors in the period under review.

AVERAGE OF NEW CASES / NEW CASES IN PROPORTION TO NUMBER OF ASSISTANT PROSECUTORS

Year	Complaints logged at the MP	Prosecution staff per year	Average of cases assigned per prosecutor
2014	397,887	1441	276
2015	400,377	1593	251
2016	418,916	1685	249
2017	421,451	1859	227

Source: Prepared by the author using MP data

The ratio between the number of cases filed each year with the MP and the number of

prosecutions during the interval of the study also provides some useful information.

NUMBER OF COMPLAINTS FILED COMPARED TO TOTAL OF SENTENCES HANDED DOWN BY THE MP

Indicators	2014	2015	2016	2017
Complaints filed with the MP	397,887	400,377	418,916	421,451
Total of sentences handed down	8,343	9,414	9,652	9,450

Source: Prepared by the author using MP data

The table above also reveals that the number of complaints filed with the MP has increased each year, which in turn can be due to several factors: population growth, expansion of the institutional coverage, a spike in crime levels, or even an increase in the level of trust in the institution in charge of conducting criminal prosecutions.

However, it is important to understand that the number of sentences handed down annually does not necessarily constitute a clear efficiency indicator, because the number may well include cases presented during previous years. Given the backlog in the system, it is unlikely that a case is resolved the same year it is filed.

Moreover, the preliminary stage of an investigation begins once the MP receives a complaint and investigators gather evidence of probable cause. It is in this stage of the process in which decisions are made on whether or not the complaint justifies opening a case.

Article 310 of the Rules of Criminal Procedures stipulates that a complaint can be dismissed when the alleged criminal act does not constitute a crime or when it is not possible to be pursued. The accused and the victim must be notified of any decision, and they can object to the decision before a judge, who has the final say. This filter mechanism, however, does not mean that a complaint cannot be reopened if new circumstances warrant an investigation.

It is also important to keep in mind that not all criminal cases end up with a sentence. The law requires the MP to present a statement (*acto conclusivo*) before the judge in charge of the case once an investigation is finished. The judge then determines if there is probable cause to bring charges against the accused party. Cases, therefore, depend on the statement presented by the MP and the decision made by the corresponding judge.

The types of statement or *actos conclusivos* that can be presented in the intermediate stage based on Guatemalan law include: indictment and abbreviated procedure (the only two that can result in a sentence); alternative dispute resolution, including conciliation, mediation, conversion, and conditional suspension of criminal prosecution; and closing of a case, a dismissal without prejudice, or a dismissal with prejudice.

Sentences can only be handed down after a full criminal process, with the case proceeding through oral arguments after the indictment is presented or through an abbreviated procedure.

This means that the number of complaints filed with the MP will always be vastly different than the number of sentences handed down because not all complaints result in a sentence. It is also necessary to factor in the system's backlog, which skews the ratio of cases presented and sentences rendered in any given year.

In the case of the Judiciary (OJ), the first indicator includes a list of all cases filed in courts, compared to the number of judges and magistrates during the period under study.

AVERAGE OF CASES ASSIGNED PER JUDGE AND MAGISTRATE AT THE OJ

Year	Cases filed with the OJ	Judges and magistrates per year	Average of cases assigned per judge and magistrate
2014	322,082	933	345
2015	430,755	1046	412
2016	423,350	1083	391
2017	465,718	1088	428

SOURCE: Prepared by the author using OJ data

The figures in the table above show that during 2015 and 2016 there was an increase in the average number of cases assigned per judge and magistrate compared to the years 2014 and 2017. Even though there was an increase in the number of judges and magistrates each year, there was not a corresponding increase in the number of courts. The reduction in the number of courts happened precisely in 2015 and 2016, as is explained in the section on geographic coverage.

The specific mandate of each jurisdictional body needs to be taken into consideration, because

not all of them deal with criminal cases. While there is a close relationship between the work of the MP and the OJ, not all complaints filed with the MP become cases that are heard in court, since there are also cases derived from other sectors (civil courts, labor courts, family courts, etc.).

In the case of the National Institute of Forensic Sciences (INACIF), the table below shows the ratio of cases assigned to forensic experts in the institution during the period studied.

AVERAGE OF CASES ASSIGNED TO FORENSIC EXPERTS AT INACIF

Year	Number of examinations requested	Number of experts at INACIF	Average of assigned cases per forensic expert
2014	161,529	280	577
2015	166,958	269	621
2016	180,725	263	687
2017	207,032	312	664

SOURCE: Prepared by the author using INACIF data

The table shows a sustained increase throughout the period analyzed in the number of forensic examinations requested, which is closely linked to the number of complaints filed with the MP that also increased every year.

The number of forensic experts at the INACIF, however, did not match the increase in cases. In fact, the institute saw a reduction in forensic personnel in 2015 and 2016, which also explains the increase in the number of cases handled by each expert. The average number of cases per investigator decreased in 2017 thanks to the addition of new personnel.

The ratio of cases per forensic expert affects the speed of the MP's investigations, which are often based on the findings of the INACIF.

The following chart includes data on the number of examinations requested and examinations concluded, to determine the percentage of examinations that are incomplete each year. The highest percentage of incomplete reports was recorded in 2017. While the number of forensic experts increased that year, there was also a large spike in the number of examinations requested.

PERCENTAGE OF FORENSIC EXAMINATIONS THAT ARE NOT COMPLETED EACH YEAR AT INACIF

Year	Number of examinations requested	Examinations completed (reports issued)	% of examinations that are not completed
2014	161,529	136,184	16%
2015	166,958	136,219	18%
2016	180,725	159,954	11%
2017	207,032	144,574	30%

Source: Prepared by the author using INACIF data

AVERAGE OF CASES ASSIGNED TO PUBLIC DEFENDERS

Year	Number of cases and consultancies	Number of IDPP public defenders	Average of cases assigned per public defender
2014	84,567	781	108
2015	75,898	749	101
2016	70,236	589	119

Source: Prepared by the author using IDPP data

With respect to the Institute of **Criminal Public Defense (IDPP)**, the table above shows an estimate on the average number of cases assigned to each public defender between 2014 and 2016. The IDPP did not provide the data requested for 2017. The chart clearly shows a significant reduction in the number of public defenders in 2016, which increased the caseload of each public defender.³⁶

It is important to mention that the total number

of cases and consultancies not only includes criminal cases filed during that year, but also active cases filed in previous years. This is reflective of the backlog of cases, but is also dependent upon the way that the OJ schedules hearing which the public defenders must attend.

The IDPP also provides legal counseling to women who are victims of violence and their relatives and these cases are also included.

THE INTEGRATED JUSTICE SYSTEM

An Integrated Justice System (*Sistema Integrado de Justicia*, SIJ) was proposed in mid-2018 as a way of identifying the institutional mechanisms and modifications required to reduce impunity levels in Guatemala by monitoring the efficiency and effectiveness of the justice system, particularly in administering criminal law.

The Coalition for Citizen Security³⁷ recently presented its Flowchart of Criminal Justice in Guatemala, a tool that measures the global and institutional efficiency of the security and justice

system. The flowchart includes percentages of efficiency for each of the institutions included in this study, which were obtained based on the number of cases filed each year with each institution, the backlog of cases, and the number of cases solved. The following results were obtained for the years 2014 through 2017: ³⁸

TOTAL EFFICIENCY LEVELS OF INSTITUTIONS IN THE JUSTICE SYSTEM

	MP	Judiciary	INACIF	IDPP
2014	15.0%	21.9%	92.7%	98.2%
2015	25.3%	21.6%	95.2%	98.7%
2016	25.5%	21.6%	77.4%	88.7%
2017	29.8%	18.0%	89.2%	86.6%

Source: Prepared by the author based on data from the 2018 Flowchart of Criminal Justice

The table shows that the MP's level of efficiency increased annually, while the OJ either declined or was stagnant. Efficiency levels in the INACIF

and the IDPP varied, with the highest numbers in 2015 and substantial drops in 2016 (the INACIF by 17.8 points and the IDPP by 10 points).

PUBLIC TRUST

Vanderbilt University's 2014 LAPOP report found that the sector with the lowest level of confidence among the branches of government was the justice sector.³⁹

It's important to note that none of the countries in the ranking scored above 60 and many are ranked as mediocre, scoring between 40 and 49 points. Guatemala had a score of 43.9.⁴⁰

All institutions saw an improvement in scores in 2017, with the MP's score on the level of public trust increasing considerably.⁴¹ The MP received the highest score among the institutions within the justice system.⁴²

The number of Guatemalans who trusted that the judicial system would go after offenders nearly doubled in 2017 compared to 2014. The 2017 survey found that 27 percent of Guatemalans believe the justice system will dole out justice, while in 2014 this number was only 14 percent.⁴³

The population's trust in the Guatemalan justice system's ability to penalize offenders increased

substantially in the 2016/2017 LAPOP survey. Guatemala's score of 27.2 percent places it 17 out of the 29 countries surveyed in this area, including Costa Rica, Colombia, Canada, and the United States.

The MP scores highest among the institutions in the justice sector, averaging 57.8 points in a scale of 0-100.⁴⁴ The OJ's score was 43.6 points, significantly lower than the MP.⁴⁵ In fact, this figure has stayed stagnant since 2014.

The changes in public trust can be explained in part by the social context in Guatemala during this period. A series of events occurred in 2016 and 2017 that undoubtedly affected public opinion, including the debate on the proposed constitutional reforms, which on the surface enjoyed support from the three branches of government. This process was led by the Human Rights Ombudsman's office and the MP, with support from international agencies.⁴⁶

Another important factor was the indictment of representatives of important sectors, something previously unthinkable in Guatemala.⁴⁷

INTERNAL JUDICIAL INDEPENDENCE

Judicial independence is essential for guaranteeing the rule of law in a democratic state. It is both a guarantee of due process and respect for human rights. The capacity, impartiality, objectivity, and suitability of the officials employed by the justice system play a crucial role in ensuring its effectiveness and independence.

This section of the report offers a qualitative examination of the selection, evaluation, and disciplinary processes of the different institutions that make up Guatemala's justice system. The section includes a comparative analysis of international standards and existing legal frameworks and practices in Guatemala.

SELECTION PROCESSES

We can draw several important principles from various international instruments to guide the selection and appointment of justice system officials. These principles include guarantees that the selection processes be based on strict, clear, and objective criteria to evaluate the integrity, suitability and qualifications of the candidates; as well as guarantees that any selection process ensures there is equality among candidates, equal representation, and designations that are not based on predilections, prejudices, or other improprieties. These international mechanisms also underscore the need to guarantee that selection processes be inclusive, transparent, and ensure citizen participation.

Under Guatemala's Constitution, nominating commissions are responsible for handling several key judicial selection processes. For the purposes of this study, the Monitor primarily looks at the nominating commissions responsible for selecting: 1) the attorney general, 2) magistrates of the Supreme Court of Justice and Court of Appeals, and 3) the director of the Institute of Criminal Public Defense.⁴⁸

These nominating commissions are made up of representatives from academic and professional

sectors. The exact make-up of each commission varies, but generally speaking the members include university rectors, deans of law schools and social science institutions, the Association of Magistrates of the Supreme Court of Justice (*Asociación de Magistrados de la Corte Suprema de Justicia*), the Institute of Magistrates of the Chambers of Appeals (*Instituto de Magistrados de las Salas de Apelaciones*), and the Association of Lawyers and Notary Publics.

Under Guatemalan law, (specifically, Article 3 of the Law of Nominating Commissions, effective since 2009), Guatemala's Congress must convene the nominating commission in accordance to the specific law concerning the judicial position or four months before the term of the sitting judicial official ends. After Congress calls for the initiation of the commission conformation process, the commission must select their representatives, although the process varies depending on the position. For example, university rectors are chosen via lottery while deans of law or social science schools are automatically guaranteed a spot in the nominating commission. Meanwhile, commission representatives from the Association of Lawyers and Notary Publics, the Supreme Court, and the

Court of Appeals are chosen through internal elections.

Guatemalan law mandates that the nominating commissions do the following in evaluating and selecting candidates for top-tier judicial positions: establish candidate profiles, a timetable for the nomination process, and a table for assessing the merits of potential nominees. The law requires that this assessment table take into account certain essential parameters, including academic, ethical, and professional merits, as well as “human projection” (*proyección humana* in Spanish, this is meant to measure a candidate’s commitment to human rights and democracy). It also requires that the commissions operate transparently by making their agendas and meetings accessible to the public.

While the Law of Nominating Commissions is a relatively detailed regulation, it is not exhaustive. Various national and international experts have pointed out that the law contains various loopholes that have resulted in a less merit-based selection process for judicial candidates. For example, the text of the law is murky when it comes to how commission members determine the score for each area in their grading tables, or how they should use indicators to determine how many points a candidate may receive in assessing their qualifications. Moreover, each nominating commission is empowered to establish their own regulations creating inconsistencies across the various selection processes.

Another major area of concern is the fact that various interest groups—both those that operate through legal means (such as the government and the private sector) and those that act through illicit means—have permeated these commissions. Many legal experts maintain that certain law schools were established with the backing of special interest groups, who wanted to ensure they could place friendly candidates on the nominating commissions. This is evident if you examine the “boom” in law schools across Guatemala in recent years: five of the country’s 11 law schools are less than 15 years old. Of these, three institutions have never produced any graduates. Six of the 11 schools only graduated 0.8 percent of students between 2002 and 2014. Even though the academic pedigree of these law schools is highly questionable, under Guatemalan law their deans are still guaranteed an influential spot in the nominating commissions.

Both these factors—the undue discretion nominating commissions enjoy and their susceptibility to influence by powerful special interests—have compromised the independence and integrity of the selection processes for Guatemala’s highest judicial authorities.

NOMINATING PROCESSES CONDUCTED DURING THE STUDY PERIOD

Several nomination processes for high-level judicial positions were conducted during the time period covered by this study (2014-2017). These included: elections for attorney general, magistrates of the Supreme Court and the Court of Appeals all taking place in 2014. In 2016,

Congress elected a new head of the Institute of Criminal Public Defense (IDPP); while a new director of the National Institute of Forensic Sciences (INACIF) was elected in 2017.

Overall, this represented a significant “changing of the guard” in Guatemala’s justice system.⁴⁹ But while the selection, nominating, and confirmation of these new high-level justice officials had hugely important implications for the future of the rule of law in Guatemala, the

selection and election processes were marked by irregularities and controversies.⁵⁰

THE 2014 SELECTION PROCESS FOR THE ATTORNEY GENERAL

The attorney general, who heads the Public Prosecutor’s Office (*Ministerio Público*), is selected for a 4-year period. The nominating commission for the attorney general position is made up of the following: law school deans (there were 11 at the time of the 2014 selection process), the president of the Association of Lawyers and Notaries of Guatemala, the president of that association’s Court of Honor, and the president of the Supreme Court (who acts as head of the commission). The commission is responsible for delivering a list of six candidates for attorney general to the president, who selects the finalist. Until 2016, when a series of reforms were made, three other candidates from that list were elected by Congress to serve on the Council of the Public Prosecutor’s Office (this was an advisory body to the attorney general, with the power to appoint personnel and either ratify or modify decisions by the attorney general).⁵¹

The selection process took place from February to May 2014, prompting criticism from several national and international advocacy groups, as the Constitutional Court issued a ruling that reduced the mandate of then-Attorney General Claudia Paz y Paz, what was deemed a violation of Guatemala’s obligations under international law.⁵²

Several other irregularities and controversies took place during the 2014 process. These included critiques about the lack of clarity around

the nominating commission’s criteria for selecting candidates. As defined under Guatemalan law—specifically, Article 12 of the Law of Nominating Commissions—the commission must establish a profile that any and all potential candidates are required to meet, in order to end up on the list of official nominees. To assess whether candidates meet that profile, Guatemalan law requires that the nominating commission develop a grading table, ranking the candidate’s ethical, academic, professional, and other qualities (including any demonstrated interest or experience in human rights and democracy work, under the *proyección humana* category) from a scale of 1 to 100 points. However, instead of placing greater value on other qualities, the grading process was biased towards those candidates who’d spent more years working in their respective professions and who’d earned a higher number of academic degrees. Other indicators were assessed primarily based on paperwork, rather than being based on detailed research of the candidate’s professional history or rigorous questioning during in-person interviews—this affected the selection process in terms of assessing candidates’ professional efficacy and leadership skills.

Even as public institutions in Guatemala flagged problems with the 2014 attorney general selection process, the nominating commission failed to establish how these concerns would be investigated. Notably, some of the other

problems that were identified included short time slots for interviews (20 minutes, compared to the 45 minutes required during the 2010 attorney general selection process), as well as the interviewers' lack of preparation (no official script with questions were prepared beforehand). These issues significantly limited the effectiveness of candidate interviews in terms of screening out possible ethical concerns or other red flags concerning candidate qualifications.

Other notable problems included poor time management by the nominating commission—despite their having established a formal schedule meant to guide the selection process—and additional delays in releasing relevant documents to the public, which severely limited civil society's ability to properly audit the process.

THE 2014 SELECTION PROCESS FOR MAGISTRATES OF THE SUPREME COURT OF JUSTICE AND THE COURT OF APPEALS

The nomination process to appoint judges to the Supreme Court and to the Court of Appeals was one of the most controversial judicial selection processes in recent years. According to Guatemala's Constitution, those eligible to be nominated as judges for lower-level courts only need to meet a basic set of requirements, primarily concerning one's career track. Whereas, potential nominees for the Supreme Court and the Court of Appeals must be selected via the nominating commissions and Congress.

The 2014 selection process for Supreme Court and Court of Appeals judges took place between July and September, via a 34-member nominating commission. Commission members included law school deans, judges⁵³, and members of the Guatemalan Association of Lawyers and Notary Publics, who were elected by their peers.⁵⁴

The commission is chaired by the rector of a university (who is selected via a university peer vote). After drafting a list of candidates (the total was the number of available positions, doubled), the committee submitted the list to Congress.⁵⁵

In order to properly assess the 2014 selection process for high-level court judges, Articles 10,

16, 17 and 22 of Guatemala's Judicial Career Law (*Ley de Carrera Judicial*) are relevant for our analysis.⁵⁶

Article 10 establishes how the Judicial Career Council (the administrative body in charge of regulations concerning judges and magistrates) prepares and presents its official dossiers and other reports used during the selection process. This is meant to ensure transparency, as well as an adequate assessment of the candidates' personal and professional merits.

Article 16 empowers the Judicial Career Council to convoke the selection process for judges and magistrates. The call for candidates has to be published three times in Guatemala's official government gazette and twice in other major newspapers at least 20 days before the selection process formal start date.

Article 17 requires the Judicial Career Council to prepare a list of all applicants and verify that each one complies with the requirements as stipulated by law. Once the information is verified, the Council drafts a list of qualified candidates and notifies the parties involved. The list of qualified candidates is then remitted to the nominating committees; it must also be

published in the official government gazette and in at least two major newspapers.

Article 22 stipulates that sitting judges on the Supreme Court of Justice and Court of Appeals can be reelected if they comply with the relevant requirements and follow the legal procedures. If their performance has been satisfactory, judges on the Supreme Court and Court of Appeals are automatically included in the lists prepared by the Judicial Career Council for the respective nominating commission. They also receive a boosted score when their professional experience is assessed in accordance to the Council's rating system.

During the 2014 selection process, the Judicial Career Council did not comply with its role as stipulated in Guatemala's Judicial Career Law. This means it would be fair to infer that the 2014 selection process did not abide by the norms meant to regulate it.

Similar to what took place during the attorney general selection process that same year, the selection process for Supreme Court and Court of Appeals magistrates did not fully examine the candidates' qualifications. There was an almost exclusive focus on seniority rather than professional excellence. Great emphasis was placed on the official paperwork presented in the candidate's applications, rather than other evaluations or in-person interviews. And while the candidates' academic backgrounds also formed part of the formal assessments, the competence, suitability, and honesty of the candidates were not effectively evaluated.

Another issue was the lack of clear evaluation parameters for candidates. At times, this led to an uneven and insufficiently transparent evaluation process. Indeed, there were some cases in which applicant scores did not correspond to the established evaluation criteria. Other aspects of the evaluation parameters had a discriminatory effect. For example, the grading table developed

for candidates for the Court of Appeals assessed one's justice sector experience as separate from one's legal practice experience. This essentially placed "career magistrates" at a disadvantage, as by law they cannot actively be practicing law while simultaneously serving as judge. Another shortcoming was that the evaluation process failed to include a proper examination of information about the candidates provided by public institutions and civil society organizations. Nor was a proper evaluation conducted regarding the candidate's "honorability" (*honorabilidad*) as required under Guatemalan law.

An overall lack of transparency meant that it was never clearly established precisely how the nominating commissions responsible for picking the finalists were conducting their evaluations. Restricted access to their official meetings made it difficult for Guatemalan media and civil society to confirm what was being discussed. There was also a general lack of justification and explanation at the time of the vote. Indeed, in both processes the nominating commissions limited themselves to voting by block for candidates. When certain qualified applicants who complied with all of the constitutional requirements failed to make the list of official nominees, the only explanation offered by the commissions for why these candidates didn't make the second round was "there were other options."

Moreover, as the observatory of judicial independence underscores, the law enables the undue influence of the legislative body in the judicial sector by making members of congress elect Supreme Court and Appeals Court magistrates. This makes the process susceptible to political negotiations.⁵⁷

THE 2015-2016 SELECTION PROCESS FOR THE DIRECTOR OF THE INSTITUTE FOR PUBLIC CRIMINAL DEFENSE

Guatemala's Congress is responsible for selecting the director of the Institute for Public Criminal Defense (IDPP). The director is selected by either an absolute or simple majority vote. The director of the institute serves for a 5-year period and may also be re-elected for a second term. Similarly to the judicial selection processes described in the previous sections, the 2015 selection process for the IDPP director also suffered from serious anomalies and controversies.

Under Guatemalan law (more specifically, the Public Service Law of Criminal Public Defense), an IDPP leadership body, known as the IDPP Council (*Consejo del IDPP*), is responsible for calling on Congress to convene and create a nominating committee to handle the IDPP director selection process. The IDPP Council acts as a nominating commission and is required to deliver a list of candidate nominees to Congress; Congress then votes on who is made director. The IDPP Council is made up of the following: the president of the Supreme Court of Justice, a representative of the Association of Lawyers and Notary Publics, a representative of the law school deans, and a representative of the IDPP.

In 2014, Congress failed to appoint a new IDPP director by the August deadline, as mandated by the law. In order for Congress to have met this deadline, they should have formally initiated the nominating process by April 2014—this would have allowed for enough time to select a new IDPP director, before sitting director Blanca Stalling's term ended that August. However, the process faced serious delays, compounded by the IDPP Council's failure to formally call on Congress to convene the nominating commission in a timely manner and Congress' failure to convene the commission *ex officio*.⁵⁸

Stalling, an attorney who was first elected to the IDPP in 2004, was re-elected to a second 5-year term in December 2010. Stalling argued that her tenure ended in 2015 and not in 2014 as required by law. Congress sided with Stalling's interpretation and opted against convening the commission. This interpretation differed from the one that prevailed in the election process for attorney general in which the date of taking office was not taken as the starting point, but rather the term during which the public function was exercised in accordance with the law.

In late 2014, the Constitutional Court ordered Congress to initiate the nominating process and ruled that the IDPP director's term is institutional and thus whoever is elected should not be in office beyond August 2019.

Congress initiated the selection process for a new IDPP director in January 2015. Legislators received a list of three nominees, but failed to select a finalist before the August 2015 deadline. It wasn't until February 2016 that another Constitutional Court intervention prompted Congress to re-initiate the selection process, resulting in the election of a new IDPP director in April 2016.

Altogether, these delays in the IDPP director selection process means that Congress has effectively reduced the term of a key justice sector official. Because the new IDPP director is now serving a shorter term as a result of these delays, this could negatively impact the IDPP's efficiency and internal management.

Another troubling issue was the nominating commission's failure to fully assess candidates' "honorability" (*honorabilidad*), as is required under Guatemalan law. The nominating commission did comply with Guatemalan law in the sense that they drafted a short statement to justify

the selection of the 16 finalists for the IDPP director role. However, the statement failed to provide an in-depth analysis of the candidates' merits in terms of "honorability." This means they were only "complying" with the law in the most superficial sense of the word.

In comparison with the other selection processes for high-level justice positions that took place during 2014, the nominating commission's work in selecting IDPP director candidates was relatively more independent and merit-based in terms of how they handled the candidate scorecard, the casting of the votes, and participation in public debate. Arguably, the commission's smaller size—just four people—made it easier for the selection process to be more transparent and independent. In addition, the commission also required candidates to

undergo psychometric and other knowledge-based tests, while also requesting that each applicant's current and former employers (in both the public and private sector) share any and all information relevant to the applicant. It bears pointing out, however, that this was not necessarily a guarantee that candidates with more troubled professional backgrounds would fail to rank highly on the nominating committee's scorecard.

Generally speaking, the selection process for the IDPP director was transparent, public, and open, as is mandated under Guatemalan law. However, this doesn't mean that the process was free from outside influence by special interest groups. There was also limited civil society participation in the selection process.

THE 2017 SELECTION PROCESS FOR THE DIRECTOR OF THE NATIONAL INSTITUTE OF FORENSIC SCIENCES (INACIF)

In contrast to the selection processes previously described, the head of the National Institute of Forensic Sciences (INACIF) is not carried out by a nominating commission. The Board of Directors of the institute handles selecting the new head every five years. Under Guatemalan law, the board is made up of the following: the president of the Supreme Court of Justice, the minister of the interior, the attorney general, the director of the Institute of Criminal Public Defense (IDPP), the president of the Board of Directors of the College of Physicians and Surgeons, the president of the Board of Directors of the College of Chemists and Pharmacists, and the president of the Board of Directors of the Association of Lawyers and Notary Publics.

The INACIF Board of Directors initiated the selection process in March 2017; it lasted approximately three months, with the new director elected by July 2017. Similarly to past

selection processes, 24 candidates ended up applying; the full list of candidates was published in the official government gazette as required by Guatemalan law.

One critique of the INACIF selection process was the failure to produce a profile of the ideal candidate's qualifications. Guatemala's Constitutional Court made clear that said profile must be clearly defined in order to guide the evaluation process. However, during the 2017 selection process, the INACIF board never produced nor defined an ideal candidate profile. While the board did agree on how they would evaluate applicants in accordance to a pre-determined scorecard, they did not specifically define the precise qualities under evaluation.

There were other issues concerning accountability and transparency in the evaluation process. Members of the INACIF

board were assigned applications to evaluate at random. These applications were only ever viewed by one member of the board; board members would accept their peer's assessment without ever questioning or challenging the findings. The applicant's final score in the INACIF evaluations were made public; but the nature of the content within the applications was never revealed. Nor was it ever made clear how members of the INACIF board were verifying applicant information; nor did they ever explain their reasoning behind their assessments. Several legal experts have said that given the relatively small pool of applicants (24), there is no justification for why the selection process proceeded in this manner.

Similarly to the selection processes described in previous sections, the selection process for INACIF director also attracted questions over how the candidates' "honorability" was being evaluated. The INACIF board never made any public statements on this matter, as is required under Guatemalan law. The "honorability" of candidates should be treated as a matter of great importance in any selection process for

high-level judicial officials; but this criteria was entirely absent in the 2017 selection process for INACIF director.

In terms of strengthening judicial independence in Guatemala, significant challenges remain. These include: 1) The imminent danger that nomination commission members back candidates who serve interests other than the common good; 2) a significant problem caused by the Judicial Career Council's failure to draft effective by-laws for the Judicial Career Law code (this includes the failure to establish effective assessment procedures for evaluating compliance with this law); all of which can have a negative impact on the nomination process; 3) the possibility that commission members fail to properly follow the provisions outlined in the Nominating Commission Law or the Judicial Career Law; and 4) the decision of some members of the Guatemalan Congress to make justice sector-related decisions that are based on ulterior motives, rather than a concern for the common good.

EVALUATION SYSTEMS AND DISCIPLINARY PROCEDURES

DISCIPLINARY PROCEDURES AT THE PUBLIC PROSECUTOR'S OFFICE (MP)

The MP's disciplinary system for professional staff members is regulated by the principles described in Article 60 of the Organic Law of the Public Prosecutor (*Ley Orgánica del Ministerio Público*, LOMP). These principles are: 1) legality; 2) non bis in idem; 3) independence from disciplinary procedure; 4) the right to defense; and 5) proportionality.

Article 62 of the LOMP lists punishable infractions under the MP, without prejudice of criminal and civil liabilities that may be applicable

to each case. The law stipulates that minor offenses are sanctioned with verbal and written warning, serious offenses are sanctioned by suspension without pay for up to 20 days, and very serious offenses receive a sanction of 90 days without pay or dismissal. (See Annex 1: Infractions identified in the Organic Law of the Public Prosecutor's Office).

Infractions expire according to the following rules:

1. Disciplinary action expires in six months for minor infractions, in one year for serious infractions, and in two years for very serious infractions. In all cases, the term begins on the date the infraction was committed (for infractions already consummated), and on the date the last infraction was committed (for those of a permanent or ongoing nature).
2. When several infractions are decided upon in one single procedure, the expiration of the infractions is independent for each of them.
3. Disciplinary penalties expire in five years, beginning at the date of enforcement of the ruling.

Sustained and unsustained charges are documented in the records of disciplinary bodies in the Public Prosecutor's Office, without prejudice of existing labor rights.

The MP's General Oversight Board is responsible for investigating administrative infractions and, if applicable, issuing the corresponding penalties. As a unit under the attorney general, it acts on instructions from the attorney general or ex officio. It is empowered to conduct general or specific oversight on the performance of the institution. It must be autonomous when exercising its functions.

As commissioned by the attorney general, the General Oversight Board can conduct general or specific inquiries in reviewing the work of the Public Prosecutor's Office. No disciplinary process existed prior to the 2016 reform of the LOMP; instead, presumed violators were simply transferred elsewhere, which resulted in serious problems.⁵⁹

A regionalization process of the General Oversight Board was undertaken during the 4-year period analyzed in this report. The MP created five regions—Central, Eastern, Northern, Southern and Western.⁶⁰

The regionalization process was meant to provide citizens a safe space to file a complaint if they were unsatisfied with the processing of criminal files by institution staff; likewise, when staff members felt affected by the behavior of their colleagues or superiors.

Moreover, the process was also meant to allow personnel in charge of administrative investigations to expedite complaints in order to provide a prompt response. Delegating a certain territory to each office gives citizens more immediate access to the prosecutors' offices where the events under their purview took place.⁶¹

The 2016 reforms to the LOMP established three different disciplinary procedures: a) disciplinary procedure for the prosecutorial area; b) disciplinary procedure for the administrative, technical and support areas; and c) disciplinary procedure for secretaries, deputy-secretaries, general supervisors, and heads of the administrative, technical, and support areas.

The first procedure required the creation of disciplinary boards to act as guarantors on the part of the MP, guaranteeing that investigations were objective and that the rights of the personnel were upheld. The boards replaced the Council of the Public Prosecutor's Office.

The disciplinary boards are regulated by internal guidelines—specifically, Agreement 44-2016, issued by the attorney general.

When exercising their duties, board members must observe constitutional, procedural, and specific principles of the MP disciplinary system as set out under Guatemalan law, as well as procedural principles concerning the use of oral procedures, immediacy, concentration, economy, contradiction, and justification of their rulings.

Disciplinary boards are in charge of hearing, processing, and adjudicating complaints and, if applicable, enforcing penalties for minor, serious, and very serious infractions (as determined by the LOMP) for regional prosecutors, district prosecutors, district investigative prosecutors, section investigative prosecutors, assistant prosecutors, special cases prosecutors, auxiliary prosecutors, and personnel of the Department of Forensic Investigation.

The disciplinary boards must address pertinent issues related to complaints filed within 24 hours, unless the law stipulates a different timeline. The requirements for the settlement of claims include: a) configuration of the disciplinary board; b) identification of plaintiff and defendant; c) determination of the incident reported; d) summoning the defendant, warning them that the claim will proceed in absentia if needed; e) informing the defendant about their right to present a material and technical defense by

themselves or naming a lawyer; and f) set the time and place for a hearing.

The disciplinary board must convene a hearing within the 10 days upon receipt of a complaint; the MP General Oversight Board and the official or staff member under investigation will attend the hearing. The disciplinary board can also convene the plaintiff and the victim, who may participate in the hearing as well.

The disciplinary board's decision must determine if the claim is warranted or unwarranted, taking into account proven evidence, constitutional principles, and disciplinary system principles, as well as the classification of infractions and penalties determined in the LOMP.

The following penalties were issued during the 4-year time period covered by this report:

PENALTIES ISSUED IN THE MP DURING THE 2014-2017 PERIOD

Indicator	2014	2015	2016	2017
Disciplinary process based on international standards			Yes	Yes
Regulation of sexual harassment as an infraction				
Number of suspensions	26	43	19	32
Number of dismissals	2	2	1	4
Verbal warnings	20	10	4	45
Written warnings	8	5	1	22

Source: MP data

Unlike the OJ, the MP has dismissed personnel for very serious infractions. Before the 2016 reform,—when the Council of the Public Prosecutor’s Office was in force—securing dismissals was very difficult. The main problem was that it was difficult to formally convene the Council of the Public Prosecutor’s Office Council, as many potential members of the

Council would refuse to make an appearance, and finding replacements was a challenge.

Suspensions have also been issued for serious infractions, as well as both verbal and written warnings for minor infractions, as stipulated by the law.

DISCIPLINARY PROCEDURES WITHIN THE JUDICIARY (OJ)

The Judicial Career Law (*Ley de Carrera Judicial*, LCJ)—established by Legislative Decree 32-2016 (which repealed Legislative Decree 41-99, the legal framework for the previous Judicial Career Law)—regulates the evaluation system

and the disciplinary processes for judges and magistrates. The new LCJ include the following highlights:

Judicial Career Law (Legislative Decree 32-2016)
1. The council will annually assess the professional performance of judges and magistrates.
2. Infractions can be minor, serious, or very serious. The maximum penalty is dismissal.
3. The council will convene a competitive process when appointing judges, based on a prior assessment. The council will send information on all candidates to the Judicial Studies Institute (Escuela de Estudios Judiciales). The candidates who exceed the requirements will be considered eligible.
4. The Justices of the Peace and First Instance Judges are appointed by the Supreme Court, while members of the Supreme Court and the Court of Appeals are selected via a public process.
5. Judges who want to re-enter the OJ must sign up for refresher courses taught at the Judicial Studies Institute, as well as undergo special evaluations.
6. The council will also be responsible for convening the processes for candidates interested in a judicial career.
7. Judges and magistrates should be guaranteed stability so they can perform their duties in an ongoing and exclusive manner.

One of the main reasons behind the 2016 Judicial Career Law reforms was the desire to enhance the use and effectiveness of the judiciary’s disciplinary system. In 2014, when

Legislative Decree 41-99 was still in effect, only 9 percent of the 617 complaints to the disciplinary board resulted in a hearing. Of those 9 percent, only 7 judges or magistrates had

been penalized for a minor infraction, and only one was found guilty of a serious infraction. No judges or magistrates were dismissed or penalized for committing serious infractions, as stipulated by the disciplinary system prior to the 2016 reforms. While no judge or magistrate has been dismissed since the new system was adopted, there has been an increase in the number of hearings and other penalties besides dismissal.

The 2016 Judicial Career Law also incorporated international standards on judicial independence, previously lacking in Guatemala. These included basic principles of judicial independence;⁶² the Bangalore Principles on Judicial Conduct; and the Statute of the Ibero-American Judge, among others of similar importance.⁶³

These standards are reflected in the Judicial Career Law text. For example, Article 2 regulates the principles that should guide judicial careers, including independence, aptitude, ability, objectivity, integrity, and stability. In addition, Article 27 establishes the rights of judges and magistrates, while Article 28 stipulates their duties.

When processing administrative infractions, the principles of legality, officiousness, independence, fairness, favorability, motivation, presumption of innocence, right to defense, due process, orality, disclosure, concentration, promptness, probatory freedom, *Audi alteram partem*, the right to a hearing, objectivity, correspondence, transparency and disclosure, and the right of the parties to access corresponding resolutions

must be observed, as stipulated by Article 48 of the Judicial Career Law.

The disciplinary measures stipulated in the Judicial Career Law must be enforced by the disciplinary board or the board of appeals as required, except in the case of dismissal, in which case the disciplinary measures would be enforced by the Judicial Career Council and implemented by the Supreme Court or Congress, depending on whether the individual is a judge or a magistrate and based on the recommendation of the Judicial Discipline Board.


Disciplinary procedures for judges and magistrates will initiate upon submission of a verbal or written complaint. When an individual files a verbal complaint before any OJ judicial or administrative officer, the minutes of the meeting need to include details of the events and the alleged infraction. This document forms the first step of a complaint and must be remitted immediately to the Judicial Discipline Board.

The individual directly affected by the alleged infraction committed by a judge or magistrate, or whoever filed the complaint for the infraction, has the option of filing the disciplinary proceeding as a third party. The official handling the disciplinary procedure is required to inform the plaintiff of this right and ask if they intend to exert it, and must document the response in the minutes. The following electronic complaint form can be found on the public information section in the OJ's webpage displayed on the following page.

ONLINE ELECTRONIC COMPLAINT FORM:



Organismo Judicial, República de Guatemala, C.A.
Recepción de Denuncias y Quejas
Formulario de Registro de Denuncia



**CAMPANA DE
PREVENCIÓN DEL ACOSO
LABORAL Y
SEXUAL**

Número Denuncia

jueves, 20 de junio de 2019

Instrucciones: Por favor llene las casillas que se le presentan a continuación

Persona Denunciante	
Nombre Completo:	<input style="width: 90%;" type="text"/>
Dirección:	<input style="width: 90%;" type="text"/>
Teléfono:	<input style="width: 40%;" type="text"/> Correo Electrónico: <input style="width: 55%;" type="text"/>
Persona Denunciada	
Nombre Completo:	<input style="width: 90%;" type="text"/>
Dependencia:	<input style="width: 90%;" type="text"/>
Puesto	<input type="checkbox"/> Juez/Jueza o Magistrada/Magistrado <input type="checkbox"/> Apoyo Judicial o Administrativo
Debe Seleccionar el Puesto de la Persona Denunciada	
Tipo de la Denuncia	
Otros ⌵	
Motivo de la Denuncia	

Siga su queja o denuncia llamando a:

Junta de Disciplina Judicial Tel: 2290-5158	Unidad de Régimen Disciplinario Tel. 2290-5157
Supervisión de Tribunales Tel. 2290-5993	Auditoría Interna Tel. 2290-3394

Generar

[Descargar Formulario](#)

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Should the plaintiff decide to withdraw a complaint, this does not end the possibility of disciplinary action. A complaint must be filed as soon as the General Oversight Tribunal (*Supervisión General de Tribunales*), the Professional Performance Assessment Unit (*Unidad de Evaluación del Desempeño Profesional*), or any other judicial official is made aware of a possible Judicial Career Law infraction by a judge or magistrate.

Two norms were in effect to regulate the disciplinary system during the period covered by the report (Legislative Decrees 41-99 and 32-2016). The later came into effect in late November 2016. A Supreme Court ruling—specifically, Ruling 22-2013—provided supplementary norms regarding the behavior of judicial officials.

The Judicial Career Law reform of 2016 carried over a few provisions that existed under the previous disciplinary framework—these included the Judicial Disciplinary Board and the General Oversight Tribunals. Changes enacted by the Judicial Career Law reform of 2016 included new regulations for the disciplinary procedures, and an improved and more detailed procedure before the judicial discipline board.

The ability to appeal disciplinary board rulings still exists under Judicial Career Law provisions. Appeals must be filed to a special appeals board, which has not yet been established.

Both the Judicial Career Law reform of 2016 and its predecessor stipulate three tiers of infractions (minor, serious and very serious) and corresponding penalties. But while these regulations exist on paper, in practice dismissal of a judge or magistrate is extremely difficult to enforce as a result of the multiple stakeholders involved in the process. Article 49 of the Judicial Career Law states that dismissals must be imposed by the Judicial Career Council and executed by the Supreme Court or Congress, depending on whether the person in question is a judge or a magistrate, and based on the recommendations of the Judicial Discipline Board. But as can be seen in the statistics on disciplinary proceedings gathered for this report, these norms have very rarely been enforced.

Data shows a striking gap in the number of complaints filed and hearings conducted between 2014 and 2017. Even more telling is the comparison between complaints filed and penalties applied for minor, serious, and very serious infractions.

THE OJ'S DISCIPLINARY SYSTEM, 2014-2017

Indicator	2014	2015	2016	2017
Disciplinary process based on international standards			Yes	Yes
Regulation of sexual harassment as an infraction			Yes	Yes
Number of complaints filed, men and women	617	933	933	573
Number of hearings conducted, men and women	56	74	138	156
Number of minor infractions, men and women	7	18	19	17
Number of serious infractions, men and women	1	8	0	16
Number of very serious infractions, men and women	0	1	0	2
Number of dismissals, men and women	0	0	0	0

Source: OJ data

No judge or magistrate was subjected to dismissal during the period analyzed in this report, and very serious infractions were almost nonexistent (one in 2015, two in 2017). This reveals a significant gap between the number of complaints and the number of penalties handed down during the 4-year period that was analyzed. Out of 3,056 complaints filed during this time period, only 424 hearings were conducted. These hearings ended with 61 minor infractions, 25 serious infractions, 3 very serious infractions, and no dismissals. Looked at a different way, the number of complaints led to a 13.87 percent rate in terms of disciplinary hearings, and a 2.91 percent rate of penalties handed down during the 4-year period.

This data could be the result of several factors. One of them is, without a doubt, the frivolous

and inappropriate use of Judicial Career Law resources and procedures. An example of this involves the 2017 complaint filed by the Myrna Mack Foundation against Supreme Court Judge Silvia Patricia Valdés Quezada for violation of several articles of the OJ's ethical behavior code. The violations, if recognized, would constitute a serious infraction. Valdés made spurious use of the appeals process, prompting the Judicial Discipline Board to rule that such a motion was unfounded. Valdés then filed a protection measure (*amparo*), as stipulated under the Guatemalan Constitution. This motion was accepted by the Court of Appeals, which eventually ruled in favor of Valdés.

Valdés was able to use the *amparo* measure—which was blatantly inappropriate in her case—to stall her case for over a year. It took an appeal

to the Constitutional Court to overturn the amparo allowing the Judicial Discipline Board to continue processing the case.

The comportment of the OJ oversight tribunal in the Valdés case was also striking. Even though the oversight tribunal had acted aggressively in previous disciplinary procedures—such as those against several of the First Instance Judges Miguel Angel Galvez and Erika Aifan (two judges presiding over the country’s emblematic corruption cases)—in this instance, the tribunal sided with Valdés. Valdés isn’t the only instance when the tribunal has issued a lax and bias ruling—as also happened in the case of Mynor Moto, a judge accused by the Public Prosecutor’s Office and the International Commission against Impunity in Guatemala of delaying and perverting the course of justice.

There are other factors that could explain the low rate of penalties issued against magistrates and judges in the 4-year period covered in this report. These include: dismissals by the Judicial Discipline Board, recommendations from the oversight tribunal to suspend processing complaints, and a large administrative backlog. Another major problem is the lack of an official board of appeals to ensure that the process to appeal disciplinary complaints is not abused. However, it is currently impossible to enact the administrative processes needed to establish an appeals board, as the Judicial Career Council has failed to draft essential Judicial Career Law bylaws. (For further details on the infractions identified by the Judicial Career Law, consult Annex 2).

DISCIPLINARY PROCEDURES AT THE NATIONAL INSTITUTE OF FORENSIC SCIENCES (INACIF)

The INACIF’s disciplinary norms consist of a series of provisions—including several found in the INACIF Organic Law—and a number of other regulations as enacted by the INACIF Board of Directors.

INACIF disciplinary regulations empower the head of the INACIF Human Resources Unit to hear and resolve disciplinary procedures. As with other judicial institutions in Guatemala, the INACIF has a three-tier system for categorizing infractions and the resulting penalties. Under this system, warnings are issued for minor

infractions, suspensions for serious infractions, and dismissals for very serious infractions. The General Director makes decisions regarding infractions that require dismissal.

According to the available data, during the 4-year period covered by this report, the INACIF did not issue any disciplinary penalties until 2017. The majority of these penalties—eight—consisted of suspensions; that year also saw two dismissals and two warnings issued.

PENALTIES ISSUED IN THE INACIF DURING THE 2014-2017 PERIOD

Indicador	2014	2015	2016	2017
Disciplinary process based on international standards			Yes	Yes
Regulation of sexual harassment as an infraction				
Number of suspensions, men and women	0	0	0	8
Number of dismissals, men and women	0	0	0	3
Number of warnings, men and women	0	0	0	2

Source: INACIF data

DISCIPLINARY PROCEDURES AT THE INSTITUTE OF CRIMINAL PUBLIC DEFENSE (IDPP)

The IDPP's disciplinary code is handled by the IDPP's General Oversight Unit. The oversight unit answers to the IDPP's General Directorate and has neither institutional nor financial autonomy (this may impact the independence of the unit's work and rulings).

The IDPP General Oversight Unit is responsible for the planning, organization, coordination, and execution of supervision activities in administrative, operational, and disciplinary areas. In addition to reviewing the administrative efficiency and technical performance of public defenders, one of the unit's most important functions is the investigation of possible improprieties. Disciplinary procedures are outlined in internal IDPP regulations (specifically, Agreement 2-2000, issued by IDPP leadership body the IDPP Council), as consistent with Guatemala's Criminal Defense Public Service Law (Decree 129-97, approved by Congress).

These disciplinary norms are applicable to IDPP officials, permanent public defenders, assistant defenders, and administrative staff. In the case of permanent public defenders, Agreement 4-2008—approved by the IDPP Council—established public defense regulations that distinguish between the nature, rights, and obligations inherent in a contractual relationship with the IDPP versus a permanent employment relationship.

According to IDPP regulations, the disciplinary procedures are initiated at the request of a party or ex officio. The procedure by ex officio may be initiated by the director, a supervisor, and an administrative assistant director against any official or employee, upon having knowledge of any action that may constitute an infraction. In the case of a very serious infraction, the sanctioned employee may file an appeal with the IDPP Board. Once finalized, the Human Resources Administration Department is

responsible for executing any penalty. In other words, there is no specific body that judges and applies penalties. Instead, these responsibilities fall on the IDPP director.

IDPP Council Agreement 5-2014 is the regulation that lay outs evaluation procedures of contractual obligations for “029” personnel, compared to the proper disciplinary system applicable to “011” and “022” personnel.

Article 99 of the IDPP disciplinary regulations states that infractions can be minor, serious, or very serious. Articles 100 through 102 specify what constitutes an infraction and its severity. Article 41 of the Criminal Public Defense Service Law—as well as Article 103 of the IDPP disciplinary regulations—establish

that penalties include: verbal warning, written warning, suspension without pay for up to three months, and dismissal.

During the 4-year period covered by this report, 19 cases were initiated ex officio concerning possible infractions. In addition, the General Oversight Unit reported having received a total of 273 complaints of alleged infractions during the study period. Most of these complaints were dismissed and then archived. According to reports, this is due to the fact that many of the complaints originated from defendants who were unhappy with their issued sentences. The high number of dismissals could also be the result of people preferring to drop their complaints rather than continuing to pursue disciplinary procedures.

PENALTIES ISSUED BY THE IDPP, 2014-2017

Indicator	2014	2015	2016	2017
Disciplinary process based on international standards			Yes	Yes
Regulation of sexual harassment as an infraction				
Number of suspensions, men	1	2	1	1
Number of suspensions, women	0	0	0	1
Total number of dismissals	0	0	0	2
Total number of dismissals, men	0	0	0	2
Total number of dismissals, women	0	0	0	0
Total number of warnings	2	2	4	8

Source: Prepared by the author based on data provided by the IDPP

As with Guatemala’s Judiciary, the IDPP follows a three-tier system for classifying the severity of its penalties. Procedures for implementing the penalties are outlined in IDPP internal regulations, which also establish the measures for filing an appeal. As can be seen in the above

table, the IDPP issued penalties every year between 2014 - 2017. However, 2017 was the only year in which disciplinary proceedings ended with a dismissal. Overall, the number of sanctions issued by the IDPP is manifestly low.

EXTERNAL JUDICIAL INDEPENDENCE

An essential component to guaranteeing judicial independence is adequate budget allocation; this allows the justice system to fulfill its obligations and act impartially. External independence also requires the state to take the necessary measures to guarantee the security

and protection of justice sector officials and to investigate, prosecute, and promptly punish any act that violates the independence of the judicial system.

BUDGETARY AUTONOMY

The quality, efficiency, and impartiality of the judicial institutions examined in this report depend in part on their degree of economic independence. Access to an adequate financial budget, as well as the necessary mechanisms for executing that budget, affects the capacity of judicial institutions to effectively fulfill their obligations. Guatemala’s Congress is in charge of allocating the annual national budget for government institutions; the Ministry of Finance is in charge of delivering the funds. This setup means the legislative branch can sometimes use the budget allocation process as a means to unduly pressure judicial institutions through the reduction or retention of funds.

In total, the four institutions that form the focus of this report (the Public Prosecutor’s Office, the Judiciary, the National Institute of Forensic Sciences (INACIF), and the Institute of Criminal Public Defense (IDPP)) were allocated some 3 billion quetzales (about USD\$390 million) in 2014, representing 4.8 percent of the national budget. In 2015 they were allocated some 2.9 billion quetzales (about USD\$377 million), equivalent to approximately 4.4 percent of the national budget, which represented a 0.4 percent reduction in comparison to the previous year. For 2016 they were allocated 5 percent and in 2017 the equivalent of 6.2 percent of the national budget. It should be noted that the INACIF and the IDPP were allocated much less than 1 percent of the national budget.

ASSIGNED BUDGETS (2014-2017)

Institution	2014	2015	2016	2017
MP	Q1,000,000,000	Q1,005,000,000	Q1,500,729,997	Q1,842,000,000
OJ	Q1,890,348,895	Q1,800,757,378	Q1,750,943,332	Q2,528,932,250
INACIF	Q203,500,000	Q185,500,000	Q180,000,000	Q240,000,000
IDPP	Q126,000,000	Q140,350,000	Q135,115,951	Q205,922,602

Source: Prepared by the author based on data provided by the MP, OJ, INACIF, IDPP

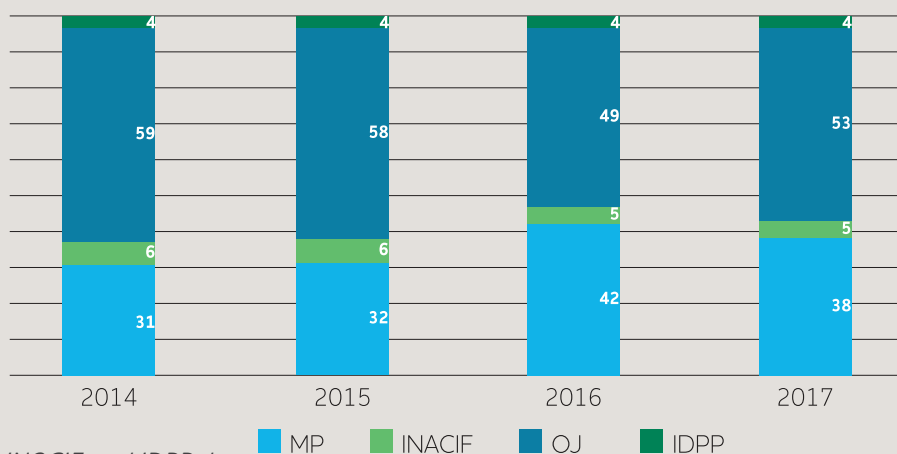
GENERAL BUDGET OF NATIONAL INCOME AND EXPENDITURES BY FISCAL YEAR

2014	2015	2016	2017
Q66,985,000,000	Q70,600,000,000	Q70,796,000,000	Q77,309,000,000

Of the total budget initially allocated to the four institutions in this report in 2014 (Q3.22 billion, about USD\$390 million), the largest allocation of funds were assigned to the Judiciary (59%), followed by the Public Prosecutor's Office (31%). The INACIF and the IDPP were assigned significantly smaller amounts—6% and 4% respectively.

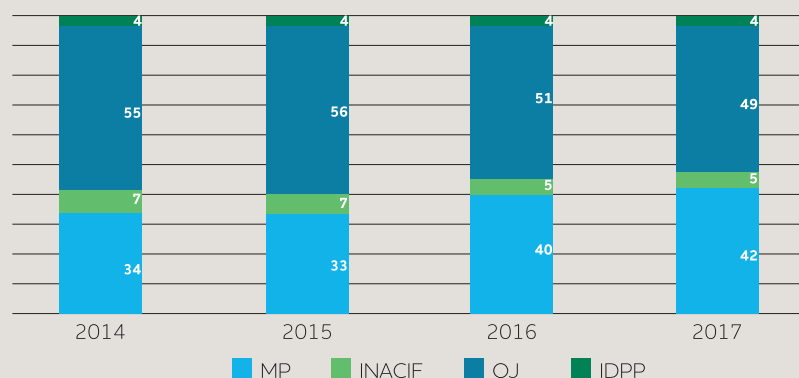
This trend was maintained during the following years and with respect to the active budget as reflected in the graph below.

PERCENTAGE OF BUDGET ALLOCATION TO GUATEMALA JUDICIAL INSTITUTIONS, COMPARED TO THE TOTAL BUDGET 2014-2017



Source: MP, OJ, INACIF, and IDPP data

PERCENTAGE OF THE ACTUAL BUDGET 2014-2017

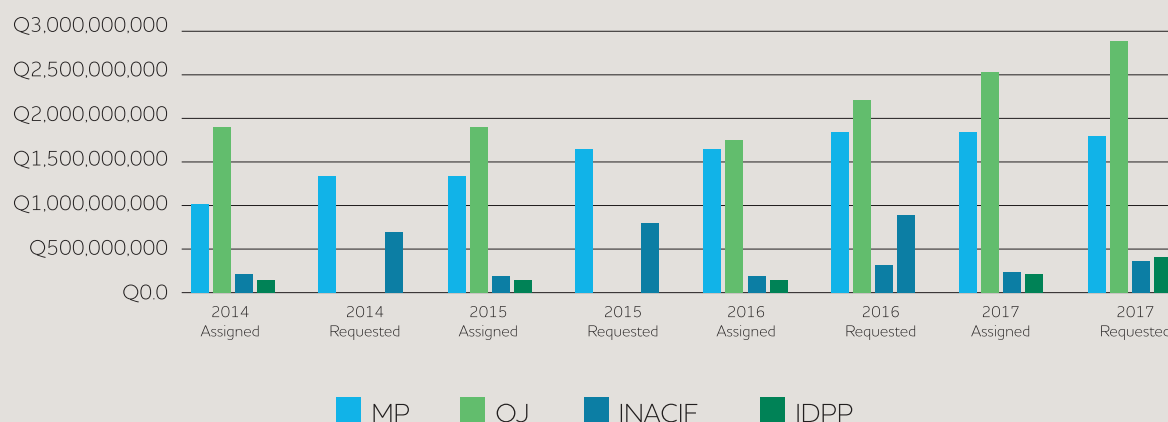


Source: MP, OJ, INACIF, and IDPP data

The requested and assigned budget show important differences, as can be seen in the graph below. In the case of the Public Prosecutor's Office, 75 percent of what was requested was authorized in 2014. This allocation decreased in 2015 and then increased in the next two years, resulting in a budget 3 percent higher than the amount requested in 2017. In the case of the Judiciary, based on the data received, 80 percent of what was requested was allocated in 2016 and reached an increase of 7 percent in its

allocation for 2017. INACIF was barely allocated 58 percent of its requested budget in 2014, which amounted to 66 percent the following year. The most worrying financial situation is the IDPP. In 2014 and 2015, only 18 percent of what was requested was allocated and decreased to 15 percent in 2016. In 2017, the IDPP achieved a significant increase in the approved allocation compared to previous years, although this was only 51 percent of the budget requested.

BUDGET REQUESTED VS ASSIGNED



Source: MP, OJ, INACIF, and IDPP data

PERCENTAGE OF THE AUTHORIZED REQUESTED BUDGET

Institution	2014	2015	2016	2017
MP	75%	61%	82%	103%
OJ			80%	87%
INACIF			58%	66%
IDPP	18%	18%	15%	51%

Source: MP, OJ, INACIF, and IDPP data

Bearing in mind that the IDPP—like the Public Prosecutor’s Office and the Judiciary—must guarantee access to justice throughout the entire country, the budgetary conditions facing this institution are unfavorable. The same budgetary conditions are seen with the INACIF. This is concerning given how the country’s

justice institutions—which already have a low level of institutional presence nationwide—are expected to meet a high demand for services, especially in areas with high rates of violence, crime, and victimization of vulnerable populations.

BUDGET OF THE PUBLIC PROSECUTOR’S OFFICE (MP)

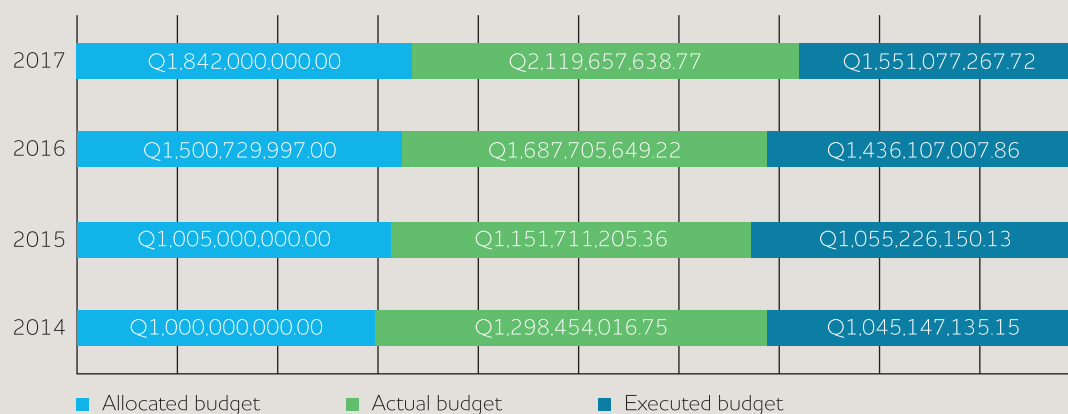
The figures corresponding to the MP’s budget execution show that the budget increased during the three years when information was provided

(data for 2017 was unavailable). The MP received 397 million quetzals (about USD\$51 million) more in 2016 than it did in 2014.

ALLOCATED, ACTUAL, AND EXECUTED BUDGET

PUBLIC PROSECUTOR’S OFFICE

2014-2017



Source: MP data

The capacity for budget execution also increased annually, with the Public Prosecutor's Office using 381 million quetzals (about USD\$49

million) more in 2016 than in 2014. This means that more funds are being invested annually in criminal prosecutions and investigations.

PERCENTAGE OF BUDGET EXECUTION THE PUBLIC PROSECUTOR'S OFFICE

Budget Type	2014	2015	2016	2017
% of execution	80%	92%	85%	73%

Source: MP data

Based on the average of the percentage of budget execution in the past four years, we can infer that the Public Prosecutor's Office is executing its budget efficiently. The highest level of budget execution was registered in 2015, but in the consecutive years saw a decrease. The lowest percentage of budget execution was in 2017.

A 2015 Public Prosecutor's Office report stated that the Treasury had not complied with the expected transfer of funds. This was

particularly true in the final four months of that year; this subsequently affected the capacity of the Public Prosecutor's Office to meet its goals and objectives, including the investigation and resolution of certain crimes, impacting Guatemala's justice system as a whole. When examining the numbers related to the executed budget of the Public Prosecutor's Office, we can infer that the failure to more fully execute the budget impacts overall efficiency levels, as well as the objectives of sub-units within the Office.

CRIMINAL ANALYSIS UNITS AND SPECIAL INVESTIGATION METHODS

Within the MP, the Criminal Analysis Units (*Análisis Criminal*, AC) and Special Investigative

Methods (MEI) units require a special mention.

CRIMINAL ANALYSIS UNITS (AC)

Budget Type	2015	2016	2017
Allocated budget	Q18,746,701.00	Q25,137,922.00	Q31,648,872.00
Actual budget	Q24,075,884.59	Q29,887,634.43	-
Executed budget	Q24,026,599.92	Q26,119,462.30	-
% of budget execution	100%	87%	-

Source: MP data

SPECIAL INVESTIGATION METHODS (MEI)

Budget Type	2015	2016	2017
Allocated budget	Q4,791,556.00	Q7,609,688.00	Q9,702,088.00
Actual budget	Q12,993,224.91	Q21,048,490.85	-
Executed budget	Q6,918,782.08	Q10,320,698.60	-
% of budget execution	53%	49%	-

Source: MP data

It can be seen that the Public Prosecutor's Office provided information for a three-year period, from 2015 to 2017 (in 2017, it only provided assigned budget data).

It should be noted that the budget allocated was higher each year in both units. For the AC, the increase between 2014 and 2017 was 59 percent; for the MEI, the increase was 49 percent. For both the AC and MEI, the current budget in both cases was much higher than the one allocated in previous years (2015 and 2016) that information was available. Overall the AC has a high level of budget execution, reaching an

average of 94%; the MEI is less efficient at 51%, meaning about half of its budget over this time period was left unused.

This situation has a direct impact on the technical and specialized capacities of the Public Prosecutor's Office. These two units have played a key role in criminal investigation and prosecution. Thus, the fact that the MEI failed to spend about half its actual budget over a two-year period is a missed opportunity for Guatemala in terms of increasing the effectiveness of its judicial institutions.

THE JUDICIARY BUDGET (OJ)

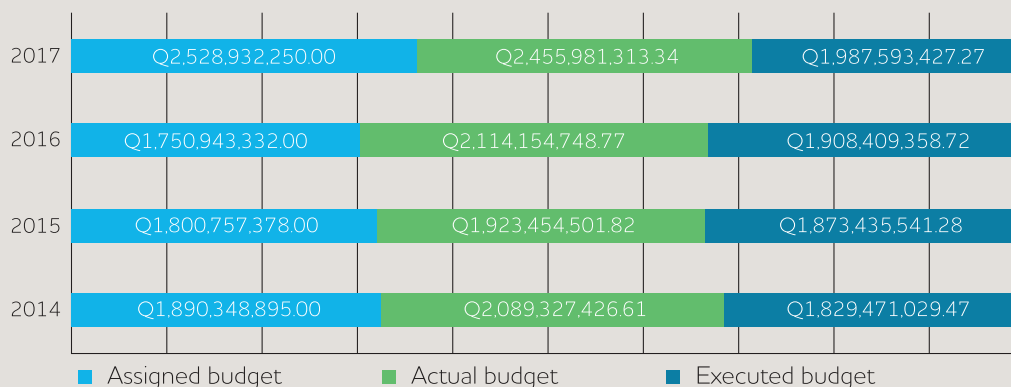
Over the 4-year period covered by this report, Guatemala's Congress allocated differing amounts to the Judiciary.

In 2014, the OJ was allocated Q1.89 billion (about USD\$246 million). In 2015 this decreased to Q1.8 billion (about USD\$234 million) a net budget cut of Q9 million (about USD\$12 million). In 2016 Congress allocated a budget of Q1.75 billion (about USD\$228 million)—a second consecutive budget cut, this time by Q139.4

million (about USD\$6 million).

The 2017 budget was Q2.527 billion (about USD\$349 million), an increase of Q636.6 million (about \$82 million) compared to 2014.

ALLOCATED, ACTUAL AND EXECUTED BUDGET FOR THE JUDICIARY 2014-2017



Source: Prepared by the author using OJ data

The actual budget exceeded the assigned budget every year during this time period, with the exception of 2017, in which the OJ received an actual budget smaller than its allocated budget.

As for its annual budget execution capacity, the OJ reached an average of 89 percent, which is acceptable.

Budget Type	2014	2015	2016	2017
% of execution	88%	97%	90%	81%

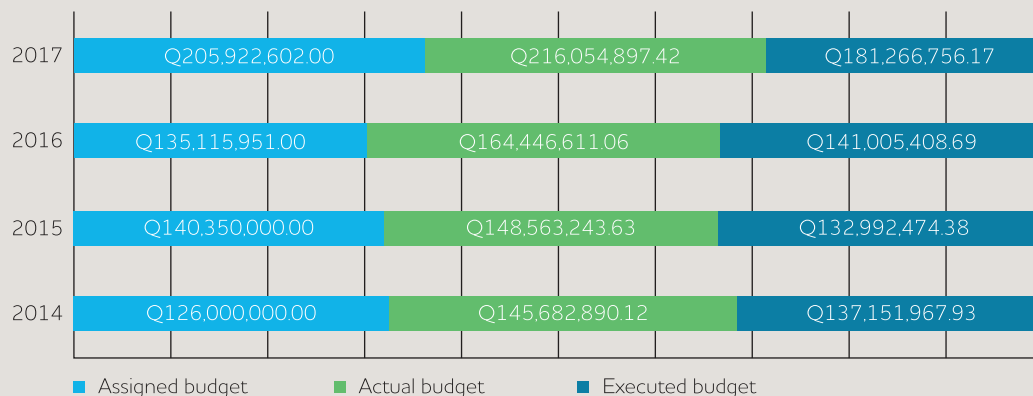
However, analyzing the OJ's budget execution each year, we can make the following observations: a) There was an increase between 2014 and 2015 of Q43.9 million (about USD\$5.7 million); b) Budget execution decreased in 2016 compared to the previous year by Q35 million (about USD\$4 million); c) In 2017, budget execution decreased further with a difference from the previous year of Q79.2 million (about USD\$10 million). This is a concerning decline in the capacity of the OJ to effectively utilize the resources received, as can be seen in the chart.

This decrease arguably highlights reduced investment in Guatemala's justice sector, which affects the overall efficiency of the administration of justice in the country. Simple logic dictates that if the state is providing the resources, the OJ should have the institutional capacity to expand on this investment and more fully utilize the resources available.

BUDGET OF THE INSTITUTE FOR CRIMINAL PUBLIC DEFENSE (IDPP)

ALLOCATED, ACTUAL AND EXECUTED BUDGET FOR THE INSTITUTE FOR CRIMINAL PUBLIC DEFENSE

2014-2017



Source: IDPP

The Institute for Criminal Public Defense (*Instituto de la Defensa Pública Penal*, IDPP) maintained a relatively steady increase in its allocated budget throughout the 4-year period examined in this report, with the exception of 2016. It is worth noting that compared to the previous year, in 2017 there was a recorded increase of 70 million quetzals (about USD\$9 million), a 65 percent budget increase from 2016.

Regarding the amount of funds that the Ministry of Finance made available, from 2014 to 2017 the actual amount was greater than what was allocated by Congress; every year under review.

The executed budget—that is, what the IDPP was able to invest or spend—was 137 million quetzals (about USD\$17 million) in 2014, 132.9 million quetzals in 2015, 141 million quetzals (about USD\$17.4 million) in 2016 and 181.2 million quetzals (about USD\$23 million) in 2017. The execution capacity was 94 percent in 2014, 90 percent in 2015, 86 percent in 2016, and 84 percent in 2017. On average, the budget execution over this 4-year period reached about 88 percent; a high level of execution capacity in terms of being able to invest in public defense. However, the level of execution was lower in the final year of study (2017) compared to the previous three years, which implies that in 2014 the IDPP had a higher budget execution capacity than in 2017.

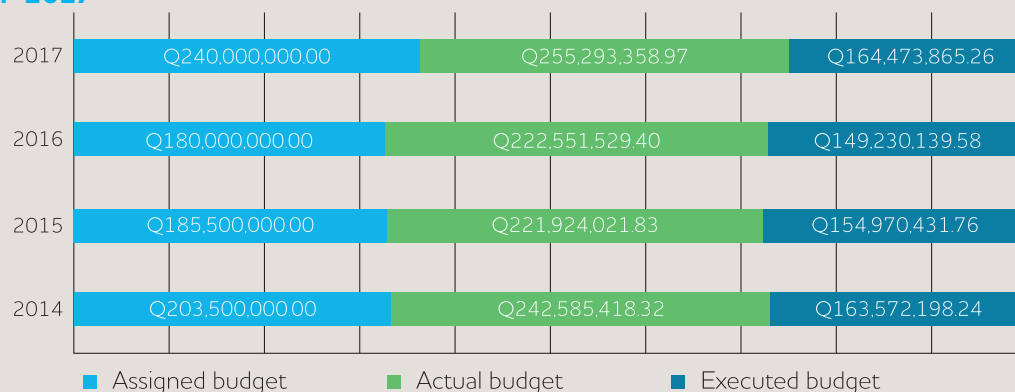
PERCENTAGE OF BUDGET EXECUTION OF THE IDPP

Budget Type	2014	2015	2016	2017
% of budget	94%	90%	86%	84%

Source: IDPP

BUDGET OF THE NATIONAL INSTITUTE OF FORENSIC SCIENCES (INACIF)

ALLOCATED, ACTUAL AND EXECUTED BUDGET FOR THE THE NATIONAL INSTITUTE OF FORENSIC SCIENCES 2014-2017



Source: INACIF data

The allocated budget for the INACIF registered inconsistencies during the time period covered by this report. For example, in 2014 the allocated budget was higher than in 2015 and 2016, but in 2017 the institute was allocated the highest budget of the entire 4-year period. In 2014, the INACIF allocated budget was Q203.5 million (about \$USD26 million) while in 2017 it was Q240 million (about \$USD31 million). From 2016 to 2017, the increase consisted of Q60 million (about \$USD\$7.8 million).

Regarding the institute's actual budget, it is worth noting that this figure was greater than the allocated budget throughout the 4-year period covered in this report. For example, in

2017, Q240 million was allocated, while the actual budget was Q255 million. However, it should be noted that, as with the allocated budget, there was an irregular pattern from 2014–2016. This was also the case with Judiciary's (Organismo Judicial, OJ) actual budget, implying that in 2015 and 2016 there were resources available to invest in the courts and forensic investigations.

Regarding the executed budget—that is, the INACIF's financial capacity to carry out its functions—the trend was also inconsistent. In 2014, its execution capacity was 67 percent, 70 percent in 2015, 67 percent in 2016, and 64 percent in 2017; for an average of 67 percent over the 4-year period.

PERCENTAGE OF BUDGET EXECUTION OF THE INACIF

Budget Type	2014	2015	2016	2017
% of execution	67%	70%	67%	64%

Source: INACIF data

It should be noted that overall, the INACIF has a low budget execution capacity; 2017 was actually the lowest out of the 4-year period covered by this report. This low budget execution could be due to several reasons. Firstly, it could be a sign of administrative and financial weakness; that is, an inability to effectively increase the level of execution. Another (more unlikely) reason could be that more funds are being allocated than what the INACIF actually needs.

In any case, an examination of the budget figures shows that in 2017, Congress allocated a budget of Q240 million (about USD\$31 million) to the INACIF; the Ministry of Finance transferred Q255 million (about USD\$33.2 million) to the institution, but in the end the INACIF was only able to execute Q164 million (about USD\$21 million)—that is, 64 percent of the funds transferred by the Ministry of Finance. All in

all, the INACIF's low level of budget execution points to a lack of capacity for further investing in forensic science, a crucial pillar for effective criminal prosecutions and investigations.

Compared to the three other institutions that form the focus of this report, the INACIF has the least geographical presence across Guatemala, which is arguably partly due to the fact that it is the youngest of the four. Should the INACIF expand its territorial presence, it's possible that its budgetary execution capacity will be more likely to increase rather than decrease.

Same as the MP, the INACIF has several internal units that merit a special mention in this analysis due to their level of importance within the institution: the Criminal Analysis (AC) and the Forensic Analysis (AF) units.

Criminal Analysis of INACIF

Budget Type	2014	2015	2016	2017
Allocated Budget	Q30,040,368.00	Q34,300,539.00	Q30,424,958.00	Q29,880,518.00
Actual Budget	Q40,310,042.15	Q40,924,720.00	Q49,746,159.22	Q51,173,982.66
Executed Budget	Q32,223,698.75	Q30,832,411.95	Q29,759,255.21	Q32,158,510.32
% of execution	80%	75%	60%	63%

Forensic Analysis of INACIF

Budget Type	2014	2015	2016	2017
Allocated Budget	Q109,580,605.00	Q88,657,056.00	Q74,964,499.00	Q93,798,038.00
Actual Budget	Q132,452,832.17	Q117,536,619.98	Q102,677,823.56	Q117,851,777.00
Executed Budget	Q70,920,972.64	Q70,267,079.77	Q67,300,441.04	Q72,748,847.72
% of execution	54%	60%	66%	62%

Source: INACIF data

The trend for budget allocation in the AC's case was not consistent. 2014 saw the highest budget allocation figure of the 4-year period; in 2017 this number had significantly decreased. The AF unit also experienced inconsistent budgetary trends. 2015 saw a lower budget allocation than in 2014, with a difference of Q20.9 million (about USD\$2.7 million). 2016 registered the lowest budget allocation of the 4-year period; between 2017 and 2016, budget allocation actually increased by Q18.8 million (about USD\$2.4 million). As is the case for the allocated budget, the AF actual budget reached its highest level in 2014 compared to 2015-2017.

In terms of the AC's budget execution capacity, in 2014 it was 80 percent, 75 percent in 2015, 60 percent in 2016 and almost 63 percent in 2017 (it is worth noting its low level of budget execution capacity in 2016-2017). In the AF's case, the execution capacity for 2014 was 54 percent, 60 percent for 2015, 66 percent in 2016, and around 62 percent in 2017, a small decline in what was otherwise a steady increase in execution capacity over the 4-year period. It's also worth noting that while the AF had a higher allocated budget in 2014, that same year it registered its lowest-ever percentage of budget execution. This could be interpreted as revealing that the INACIF, a young institution, has not yet developed its potential to execute a large budget properly.

PROTECTION AND SECURITY

According to the information made available for this report, Guatemalan judicial independence was affected by various attacks and threats made against several judges, prosecutors and other justice operators from 2014-2017. These included armed attacks, such as those reported in 2015, against the Chimaltenango Court for Children and Adolescents in Conflict with Penal Law (*Juzgado de la Niñez y Adolescencia y de Adolescentes en Conflicto con la ley Pernal de Chimaltenango*), and the Coatepeque Civil and Coercive Economic First Instance Court (*Juzgado de Primera Instancia Civil y Económico Coactivo de Coatepeque*). There were also media and social media campaigns aimed at discrediting the work of several judges and prosecutors, and spreading false allegations.

Attacks and pressures not only came from outside the justice sector. Over the 4-year period covered by this report, pressures were also reported from within the justice system. Some judges denounced being subjected to spurious complaints before internal disciplinary bodies; others were transferred to different

jurisdictions without a guarantee of due process or without transparent and objective measures. Those affected considered these transfers and complaints to be veiled political reprisals.

Based on the information gathered for this report, we found that the Inter-American Commission on Human Rights (IACHR) granted three petitions for precautionary measures for Guatemalan justice operators—one in 2014 for a magistrate of the Court of Appeals and two requests in 2016 for the attorney general and a magistrate of a High Risk Court. In its resolutions, the IACHR requested that the Guatemalan state adopt the necessary measures to preserve the life and integrity of the petitioners and provide measures so that they may carry out their activities without being subjected to intimidation, threats or harassment. The IDPP or INACIF staff did not register any precautionary measures during the time period covered in this report. According to the information made available to their report, it was not possible to verify the Guatemalan state's level of compliance with the IACHR measures.

ANNEX 1:

PENALTIES ESTABLISHED IN THE ORGANIC LAW OF THE PUBLIC PROSECUTOR'S OFFICE

Infraction	Behavior subject to punishment	Penalty
Minor	<ul style="list-style-type: none"> a. Failing to comply with established working hours without justifiable cause if it does not imply a more serious infraction according to this Law. b. Showing disrespect for the public, colleagues and subordinates when conducting their activities, as well as for the victim, the accused, judicial officials, representatives from other bodies of the judicial system, members of the Public Prosecutor's Office, the Institute for Criminal Public Defense, and the participating lawyers. c. Failing to comply with the functions inherent to their position if the infraction does not constitute a serious or very serious infraction. d. Improper use of OJ facilities, assets or property. 	Verbal and written warning
Serious	<ul style="list-style-type: none"> a. Registering unjustified absences or leaving work, or repeated disregard for established working hours, or unjustified absences from their working space. b. Failing to maintain due promptness in the procedures, and incurring in delays and unjustified oversight in proceeding with the cases. c. Failing to maintain due reserve in matters that require confidentiality in compliance with applicable norms and regulations, or given their delicate nature, thus causing grave harm to the process. d. Failing to abide by general or specific norms or guidelines issued by the investigations overseeing authority, thus causing grave harm to the process. e. Concealing public documents or information from the litigant parties, without prejudice of other liabilities stipulated by the law. f. Showing up for work under the influence of alcohol or drugs. g. Using slander and false accusations, or physically attacking senior authorities, officials and representatives of the Public Prosecutor's Office, or any other staff member. h. Intentionally causing harm to the MP assets or property, or using them for their own benefit, or for the benefit of third parties. i. Conducting partisan or political activities during working hours or in the facilities of the MP. j. Delegating to subordinate staffers functions that are inherent to the their role. k. Omitting to inform the victim about the result of investigations conducted, except in cases when the law stipulates that confidentiality must be maintained, or omitting to notify the resolution issued by the judge to end a process. l. Making accusations, petitions, conclusions or reports and rulings without legal base. m. Failing to register or updating information on the progress of investigations in the official MP data system, in the cases when it does not constitute a very serious infraction. 	Suspension for up to twenty (20) days without pay

Infraction	Behavior subject to punishment	Penalty
Very Serious	<ul style="list-style-type: none"> a. Performing other paid jobs or positions (except teaching) simultaneously to their jurisdictional role, or providing any type of professional service. b. Interfering with the functions of other state institutions, their agents or representatives, or allowing interference of any other organization, institution or individual who threatens the role of the Public Prosecutor's Office. c. Committing any form of harassment, coercion or abuse, especially of sexual or work nature. d. Requesting or accepting favors, loans, perks or gifts in cash or in kind, directly or indirectly, in connection with any procedure. e. Failing to register or updating information on the progress of investigations in the official MP information system, thus blocking judicial processes or a professional performance evaluation. f. Failing to comply with the timelines of the process, thus causing the expiration of the process. g. Blocking or affecting the justification of a proper budget request for the Public Prosecutor's Office, either by act or by omission. h. Introducing evidence through illegal means; or removing, destroying, altering or misplacing evidence; also, altering reports and rulings. i. Resorting to illegal methods during the investigation phase. j. Making accusations, petitions, conclusions or rulings based on patently false events. k. Refusing in an explicit manner to abide by general or specific norms or guidelines issued by the overseeing authority in cases under their purview. l. Hindering or blocking the opposing parties' free exercise of their rights in any procedure, providing them with faulty information, or concealing information that is not deemed confidential. m. Revealing or providing confidential information they have learned through their jurisdictional role. n. Failing to comply with confidentiality norms related to witnesses, informants, victims and litigants under protection of the Public Prosecutor's Office. o. Carrying any type of weapons during working hours, except when required by the nature of their work. p. Intervening in any process despite knowing of a reason why they should be excused from participating, or a claim of incompatibility or prohibition stipulated by law. q. Straying from the truth in a process involving hiring, performance evaluation or promotion, by declaring qualifications, academic or disciplinary background, professional experience, requirements or knowledge they do not possess, without prejudice of applicable criminal liabilities. Concealing the truth or presenting false information cannot be amended or exhausted due to time. r. Conducting any action deemed prohibitive by the Organic Law of the MP, except when it constitutes a specific infraction. s. Incurring in discriminatory behavior or treatment against the personnel in the institution, the litigants and their lawyers, or the general public, including uttering insults or derogatory words based on race, ethnicity, cultural practice, religion, gender, sex, age, language or other status or condition, while exercising their jurisdictional duties. t. Performing as a lawyer when litigating particular business, by themselves or through proxies. u. Removing files and documents away from the office where they belong or from the PM facilities – exception made in the cases where the law stipulates the removal. 	<p>Suspension for up to (21) to (90) calendar days without pay</p>

ANNEX 2:

INFRACTIONS IDENTIFIED IN THE JUDICIAL CAREER LAW

Infraction	Behavior subject to punishment	Penalty
Minor (art. 40)	<ul style="list-style-type: none"> a Failure to comply with established working hours without justifiable cause; b Failure to comply with duties of the position as stipulated by law, when this failure does not constitute a serious or very serious infraction; c Failure to comply with administrative provisions. 	Verbal and written warning
Serious (art. 41)	<ul style="list-style-type: none"> a Giving interviews to the media and releasing ahead of time decisions or opinions on cases currently under their purview; b Unjustified absence or leaving work for one day; c Failure to comply with due promptness when processing cases, and incurring in unjustified delays and neglect in processing cases and/or handing down decisions; d Failure to maintain due reserve in matters that require confidentiality in compliance with applicable norms and regulations, or given their delicate nature; e Failure to abide by provisions contained in jurisdictional regulations and agreements; f Failure to abide by ethical norms of the OJ; g Showing up for work under the influence of alcohol or drugs, or in any similar state, except for substances consumed following medical prescription; h Insulting or physically abusing the public, the litigants, court officers and personnel, or any other individuals with whom the judge or magistrate has interactions as part of their work; i Damaging in an intentional manner OJ physical assets; j Using or allowing others to use OJ assets, equipment, supplies, emblems or identification badges in an improper way; k Registering unjustified absence or failure to attend scheduled public hearings and proceedings; l Deviating from procedural format and sequence; m Conducting partisan or religious activities while performing official duties or inside the OJ facilities; n Delegating to subordinate staff members functions that are inherent to a judge's role; o Lying to apply for a leave, transfer, clearance, allowance, per diem or any other economic support or benefit; p Committing a second minor infraction within a year, when the first one was also penalized; q Promoting or allowing the conduction of activities that affect the provision of services during working hours, including for profit activities; and, r Disrespecting the public, the litigants, judicial officials and personnel, or any other individuals with whom the judge or magistrate have interactions as part of their work. 	Suspension for up to twenty (20) days without pay

Infraction	Behavior subject to punishment	Penalty
<p>Very Serious (Art. 42)</p>	<ul style="list-style-type: none"> a Registering an unjustified absence from work for two or more consecutive days, or for three days within the same month; b Performing, simultaneously to their jurisdictional role, in a public or private position or gainful job of any kind, managing or advising political organizations, unions or agencies that receive, administer or manage public resources or state assets, or that fall into the state-run sphere, or with other politically-oriented bodies. An exception is made of teaching positions, granted that they do not interfere with the working schedule at the OJ; c Being a minister of any religion or confession; d Practicing and conducting activities as a lawyer or a notary, e Accepting or performing the role of executors, judicial custodians, trustees, guardians, or enduring guardians, except for their spouse or live-in partner de jure or de facto, or relatives within the degrees stipulated by law; f Entering into contracts of any kind with litigants before their court; g Acting as an arbitrator, liquidator or partitioner; h Interfering with the functions of other state institutions, their agents or representatives; i Allowing the interference of any agency, institution or individual who poses a threat to the OJ; j Concealing any impediment, or abstaining from informing about ex-post motives, that should keep them from playing their jurisdictional functions; k Concealing public information or documentation to the opposing parties; l Exerting or trying to exert influence on other judges or magistrates in cases they process within the framework of their respective competencies; m Submitting to the influence from other judges, magistrates or OJ staff members in cases they process within the framework of their respective competencies; n Interfering in the discernment of judges in lower courts regarding the interpretation or application of the law on specific cases, except through legally established mechanisms; o Engaging in any form of harassment or coercion, particularly of sexual or work nature; p Requesting or accepting favors, loans, perks or gifts in cash or in kind, directly or indirectly, in connection with any procedure or their jurisdictional role; q Removing, destroying, altering or misplacing evidence or official documents; r Condoning or allowing the use of extralegal methods to obtain evidence, or granting probatory value to exhibits that are patently illegitimate; s Hindering or blocking the opposing parties' free exercise of their rights in any procedure, providing them with faulty information, or concealing information that is not deemed confidential; t Revealing or providing confidential information they come across through their jurisdictional role, when this action is detrimental to the process or to any individual; u Failing to comply with confidentiality norms related to witnesses, 	<p>Suspension for up to (21) to (90) calendar days without pay</p> <p>Dismissal and disqualification from holding positions in the OJ</p>

Infraction	Behavior subject to punishment	Penalty
<p>Very Serious (Art. 42)</p>	<p>informants, victims and litigants, as stipulated in the Constitution and other domestic laws;</p> <ul style="list-style-type: none"> v Wielding weapons of any kind, as defined by the Criminal Code, during working hours; w Straying from the truth in a process to enter the judicial career, a performance evaluation or a promotion, by declaring qualifications, academic background, professional experience, requirements or knowledge they do not possess. Concealing the truth or presenting false information cannot be amended or exhausted due to time; x Discriminatory behavior or treatment against the personnel in the institution, the litigants and their lawyers, or the general public, including uttering insults or derogatory terms based on race, ethnicity, cultural practice, religion, gender, sex, age, language or other status or condition, while exercising their jurisdictional duties; y Removing files and documents away from the office where they belong or from the OJ facilities – an exception is made in the cases where the law stipulates the removal; z Altering electronic or other records stored in the OJ facilities, or tolerating that staff members under their purview make those modifications in the records; aa Granting precautionary measures in the cases where the law dictates their abstention, when their lack of jurisdiction is evident; bb Committing a second serious infraction within a year, when the first one has been penalized; cc Releasing their decisions or opinions to the litigants before an official decision has been announced; dd Holding private meetings with one of the litigant parties or their representatives, excluding the other party and the other people involved in the process; ee Abusing the position of a judge or magistrate to receive a favorable and unfair treatment of any kind from professionals, authorities and public officials; and, ff Omitting to report actions that can constitute infractions, committed by judicial agents and ancillary staffers. 	<p>Suspension for up to (21) to (90) calendar days without pay</p> <p>Dismissal and disqualification from holding positions in the OJ</p>

NOTES

¹ A detailed list of indicators is available at www.wola.org/cam

² The separation between administrative and jurisdictional functions was attempted through the drafting and enactment of Legislative Decree 32-2016, the Judicial Career Law. Since November 2016, a series of appeals against the law on the grounds of unconstitutionality were filed by associations of judges and magistrates, revealing contempt of its application.

³ By December 2018, the PM provided institutional coverage to approximately 41% of the total national territory. In the case of the Judiciary, in 2016 there were 675 jurisdictional bodies throughout Guatemala.

⁴ VThe Criminal Public Defense Institute was created in 1997 through Legislative Decree 129-97, the Criminal Public Defense Service Law.

⁵ See “Vulneración de la independencia judicial en Guatemala, 2015” [Infringement of judicial independence in Guatemala, 2015], by MMF and DPLF, on the application process for the 2014-2019 constitutional term.

⁶ Data retrieved from the Yearly Statistic Records of the Judiciary, corresponding to 2014, 2015, 2016 and 2017, and prepared by the Centro de Información, Desarrollo y Estadística Judicial (CIDEJ).

⁷ Organismo Judicial. Indicadores de Acceso a la Justicia año 2017 [2017 Access to Justice Indicators]. Guatemala. 2017. Available at: <http://oj.gob.gt/estadisticas/Indicadores%20de%20Acceso%20a%20la%20Justicia.pdf> [Accessed on March 25, 2019].

⁸ Asociación de Investigación y Estudios Sociales (ASIES). Departamento de Análisis Jurídico. Desafíos actuales de la justicia penal. Proceso de fortalecimiento del sistema de justicia, avances y debilidades, 2015 – 2016 [Current challenges of criminal justice. Process of strengthening the justice system, progress and weaknesses, 2015 – 2016]. Tenth Study / Escobar Noriega, Lorena et. al. Guatemala. ASIES. 2018. p. 119.

⁹ Asociación de Investigación y Estudios Sociales (ASIES) 2018, op.cit., pp. 53-54

¹⁰ Asociación de Investigación y Estudios Sociales (ASIES) 2018, op. cit., p. 110.

¹¹ UN Women. El progreso de las mujeres en el mundo 2015–2016: Transformar las economías para realizar los derechos [Progress of the world’s women 2015–2016: Transforming economies, realizing rights]. UN Women. United States of America. 2015, p. 114. Available at: <http://unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/poww-2015-2016-es.pdf?la=es&vs=0> [Accessed on April 9, 2019].

¹² UN Women. El progreso de las mujeres en el mundo 2015–2016: Transformar las economías para realizar los derechos [Progress of the world’s women 2015–2016: Transforming economies, realizing rights]. UN Women. United States of America. 2015, p. 114.

¹³ The figures corresponding to 2017 are not included because

the Access to Public Information Unit at the IDPP did not provide data on the number of public defenders assigned to active cases.

¹⁴ The number of administrative personnel was not included in the 2014 annual report so our table only shows data corresponding to the 2015-2017 period.

¹⁵ Asociación de Investigación y Estudios Sociales (ASIES), op. cit., 2015, pp. 83-84.

¹⁶ Ibid., pp. 83-85, y 116.

¹⁷ Loc.cit.

¹⁸ Agreement No. 125-2016 signed by the General Attorney and Head of the Public Ministry. Asociación de Investigación y Estudios Sociales (ASIES), op. cit., 2018, pp. 56-58.

¹⁹ Loc. cit.

²⁰ Ibid., p. 60

²¹ Ministerio Público de Guatemala. Plan Estratégico del Ministerio Público. Período 2018–2023 [Strategic Plan of the Public Ministry. 2018–2023 Term]. Serviprensa. Guatemala. January 2019, pp. 18 and 69.

²² Asociación de Investigación y Estudios Sociales (ASIES), op. cit. 2018, pp. 53-54.

²³ Azpuru, Dinora and Zechmeister, Elizabeth J. Cultura política de la democracia en Guatemala y en las Américas, 2014: Gobernabilidad democrática a través de 10 años del Barómetro de las Américas [Political culture of democracy in Guatemala and the Americas, 2014: Democratic governance through a decade of the Americas Barometer]. Guatemala, Universidad Rafael Landívar, LAPOP, Vanderbilt University, USAID. 2015, p. 32.

²⁴ Centro de Información, Desarrollo y Estadística Judicial (CIDEJ). Anuario Estadístico 2014 [Annual Statistic Report 2014]. Organismo Judicial. Guatemala. 2015. p. 14.

²⁵ Asociación de Investigación y Estudios Sociales (ASIES), op. cit. 2015, pp. 17 and 63.

²⁶ Centro de Información, Desarrollo y Estadística Judicial (CIDEJ), op. cit., p. 16.

²⁷ Asociación de Investigación y Estudios Sociales (ASIES), op. cit., 2015, p. 48.

²⁸ According to the 2016 Annual Statistic Report prepared by CIDEJ, the total number of courts in 2016 was 676.

²⁹ Asociación de Investigación y Estudios Sociales (ASIES), op. cit., 2018, p. 29.

³⁰ Centro de Información, Desarrollo y Estadística Judicial (CIDEJ). Anuario Estadístico 2015 [Annual Statistic Report 2015]. Organismo Judicial. Guatemala. 2016, p. 11.

³¹ Research team from Observatory on Violence. Informe Anual sobre la Violencia Homicida en Guatemala durante el año 2017 [Annual Report on Homicidal Violence in Guatemala during 2017]. Diálogos. Guatemala. 2018, p. 8. Availability and access: <http://dialogos.org.gt/wp-content/uploads/2018/03/Informe-Anual-sobre-la-Violencia->

- Homicida-en-Guatemala-2017-DIALOGOS-6mar2018-revisado.pdf
- ³² Asociación de Investigación y Estudios Sociales (ASIES), op. cit., 2018, pp. 93-94.
- ³³ Ibid., p. 91.
- ³⁴ Ibid., p. 96.
- ³⁵ ICEFI. Proponen un nuevo modelo de gestión e inversión en seguridad y justicia [New management and investment model in security and justice is proposed]. Instituto Centroamericano de Estudios Fiscales. Guatemala. November 9, 2015. Availability and access: <https://icefi.org/comunicados/proponen-un-nuevo-modelo-de-gestion-e-inversion-en-seguridad-y-justicia> [Accessed on: April 10, 2019].
- ³⁶ The data corresponding to 2017 was not included because the IDPP's Access to Public Information Unit did not provide the specific number of public defenders assigned to active cases.
- ³⁷ A coalition of working groups that arose from the National Assembly of Businesspeople (in Spanish, Encuentro Nacional de Empresarios, ENADE) in 2014, where representatives from the private and public sectors meet to discuss issues of security and justice.
- ³⁸ Coalición por la Seguridad Ciudadana. Presentación Flujograma de la Justicia Criminal 2018 [Presentation of the 2018 Flowchart of Criminal Justice]. Presentation on April 4, 2019 in Guatemala City. Availability and access: <https://cien.org.gt/wp-content/uploads/2019/04/Presentacion-Flujograma-2018-vf.pdf> [Accessed on April 5, 2019].
- ³⁹ Azpuru, Dinora and Zechmeister, Elizabeth J. Cultura política de la democracia en Guatemala y en las Américas, 2014: Gobernabilidad democrática a través de 10 años del Barómetro de las Américas [Political culture of democracy in Guatemala and the Americas, 2014: Democratic governance through a decade of the Americas Barometer]. Guatemala, Universidad Rafael Landívar, LAPOP, Vanderbilt University, USAID. 2015, p. 117.
- ⁴⁰ Ibid., p. 119.
- ⁴¹ Azpuru, Dinora et al. Cultura política de la democracia en Guatemala y en las Américas, 2016/17 [Political culture of democracy in Guatemala and in the Americas, 2016/17]. Guatemala, USAID, LAPOP, ASIES, 2018, p. 105.
- ⁴² Loc. cit.
- ⁴³ Azpuru, Dinora et al, op. cit. p. 106.
- ⁴⁴ Ibid., p. 117.
- ⁴⁵ Loc. cit.
- ⁴⁶ Mack, Luis Fernando. La reforma constitucional, en perspectiva histórica [Constitutional reform in a historic perspective]. Guatemala, Dialogo, FLACSO Guatemala. Availability and access: <http://flacso.edu.gt/dialogo/?p=1641>. This proposal in 2016 was promoted by CICIG, the MP, the PDH, the ACNUDH and the PNUD, presented by heads of the three state powers, and was contained in the Bill No. 5179 presented to Congress.
- ⁴⁷ The corporation Aceros de Guatemala S.A., leading company producing steel bars for construction, was accused of tax evasion of over 255 million Quetzal (approximately USQ 33.5 million) and improperly receiving a tax credit for exports (paid by the state to the corporation) for 11.8 million Quetzal (approximately USQ 1.5 million). All this was done in collusion with external agents and the highest-ranking officials at the Tax Authority (SAT) such as the General Superintendent and the heads of the legal and auditing departments. The case became known as "impunidad y defraudación" [impunity and tax evasion]. Availability and access: https://cicig.org/info_casos/medios-destacan-detalles-del-caso-impunidad-y-defraudacion/
- ⁴⁸ In the case of the National Institute of Forensic Sciences (INACIF), its leadership is elected by the Board of Directors of the institution.
- ⁴⁹ Para un diagnóstico sobre la situación de la independencia y transparencia judiciales en Guatemala, ver, Fundación para el Debido Proceso (DPLF). (2013). Ley vs. realidad. Independencia y transparencia de la justicia en Centroamérica y Panamá. Informe de Guatemala. Washington, D.C.: DPLF. Disponible en http://dplf.org/sites/default/files/guatemala_v05.pdf
- ⁵⁰ Postema, M. El proceso de selección de la Fiscal General en Guatemala: más regulación no significa menos arbitrariedad. Washington, D.C.: DPLF. Disponible en http://www.dplf.org/sites/default/files/seleccion_fg_en_guatemala_mpostema.pdf
- ⁵¹ http://www.dplf.org/sites/default/files/seleccion_fg_en_guatemala_mpostema.pdf
- ⁵² <http://dplf.org/en/news/decision-de-corte-de-constitucionalidad-de-destituir-la-fiscal-general-viola-obligaciones>. On February 5, 2014, the Constitutional Court decided to shorten the term of office of the Attorney General, basing its decision on the transitory articles of the Constitution and ordered Congress to convene the Nominating Committee to elect a new Attorney General. Several groups questioned the decision arguing that the then Prosecutor had been appointed in December 2010, after the election of her predecessor had been declared null by the Constitutionality Court itself and therefore that appointment legally did not exist so the period of the then Attorney General ended in December 2014. Constitutional Court of Guatemala, Resolution 461-2014, available at: <http://www.cc.gob.gt/DocumentosCC/ResolucionesIntPub/461-2014%20Sentencia.pdf>.
- ⁵³ In the case of the selection of the CSJ, 11 people are elected by a vote from their peers from the Magistrates Institute of the court of appeals; in the case of the selection of courts magistrates, they are 11 out of the 13 members of the CSJ, chosen by their peers.
- ⁵⁴ See, Postema, M. El proceso de selección de la Fiscal General en Guatemala: más regulación no significa menos arbitrariedad [The selection process to nominate Guatemala's General Attorney: More regulation does not mean less arbitrariness]. Washington, D.C.: DPLF. Available at http://dplf.org/sites/default/files/seleccion_fg_en_guatemala_mpostema.pdf
- ⁵⁵ Loc. cit.
- ⁵⁶ We must keep in mind that the LCJ in force during the nomination process in 2014 was the legislative decree 41-99, which was repealed by the legislative decree 32-2016.

⁵⁷ Impunity Watch. Justicia en Riesgo: Obstáculos a la independencia judicial en Guatemala. Guatemala. Noviembre 2017. Pág. 5.

⁵⁸ Movimiento Pro Justicia. Informe de monitoreo, proceso de postulación de candidatos y elección del Director del Instituto de la Defensa Pública Penal 2014-2019 [Monitoring report, process to nominate candidates and elect the Director of the Criminal Public Defense Institute for the 2014-2019 term]. Guatemala, 2016, p. 2.

⁵⁹ Garavano, G., Fandiño, M. and González, L. Evaluación del impacto del nuevo modelo de gestión fiscal del Ministerio Público de Guatemala [Impact assessment of the new prosecutorial management model in Guatemala's Public Ministry]. Centro de Estudios de Justicia de las Américas, Open Society, 2014, p. 33.

⁶⁰ Asociación de Investigación y Estudios Sociales (ASIES), 2018, op. cit., p. 89.

⁶¹ Loc.cit.

⁶² Adopted by the VII United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from August 26 to September 6, 1985 and endorsed by General Assembly resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985.

⁶³ 6th Ibero-American Summit of Heads of Supreme Courts and Supreme Justice Court, held in Santa Cruz de Tenerife, Canarias, Spain, on May 23-25, 2001.

ABOUT THE ORGANIZATIONS

THE MYRNA MACK FOUNDATION is a Guatemalan nongovernmental organization that develops and produces research and policy proposals aimed at furthering the fight against impunity, strengthening the rule of law, and consolidating peace and democracy in Guatemala.

THE WASHINGTON OFFICE ON LATIN AMERICA (WOLA) is a leading research and advocacy organization advancing human rights in the Americas. We envision a future where public policies protect human rights and recognize human dignity, and where justice overcomes violence.

ABOUT THE PROJECT

The Central American Monitor is a sub-regional project that seeks to assess the level of progress being made by the governments of Guatemala, Honduras and El Salvador in the areas of strengthening the rule of law, reducing violence, combating corruption and organized crime, and protection of human rights through the use of a series of indicators. The project also monitors and analyzes the international cooperation programs in the mentioned areas.

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