

# GUATEMALA<sup>1</sup>

## General Information

Guatemala is a unitary state divided into twenty-two administrative *departamentos*. In 2003 the country's population was 12,300,000, with an average annual growth rate of 2.6% over the past five years.<sup>2</sup> The country has a population density of 103 inhabitants per sq. km., and 39.9% of all inhabitants live in urban areas.<sup>3</sup> The country's illiteracy rate is 28.9%.<sup>4</sup> In regard to the age distribution of the population, 43.5% is between the ages of 0 and 14; 34.4% between 15 and 34; 12.1% between 35 and 49; 6.4% between 60 and 64; and 3.6% of the population is over the age of 65.<sup>5</sup> Life expectancy at birth is 65.9 years,<sup>6</sup> and 52% of Guatemalans live in poverty, 26% in extreme poverty.<sup>7</sup> GDP growth slowed from 3.8% in 1999 to 2.1% in 2003.<sup>8</sup> In 2003 per capita income was US\$1,910.<sup>9</sup> Lastly, the average unemployment rate in the country was 35% in 2003.<sup>10</sup>

## Judicial System Highlights

- Guatemala's total fiscal budget for 2005 was 32,385,158,029 *quetzales*, or US\$4,184,128,944,<sup>11</sup> 4.22% of which was allocated to the country's judicial system.<sup>12</sup>
- The mobile peace courts ( *juzgados de paz móviles*) were introduced in mid-2003 and are the first of their kind in Central America. The mission of these units is to hear and resolve minor cases in areas with limited access to judicial services.
- In 2003 the Supreme Court established new courts for: children and adolescents ( *juzgados de la niñez y la adolescencia*); youth offenders; oversight measures for youth offenders; and the Youth Chamber of the Court of Appeal (*Sala de la Corte de Apelaciones de la Niñez y la Adolescencia*), thereby narrowing the focus of the prior youth courts and Chamber.
- The Justice Sector Anti-Corruption Commission was launched in October, 2003. The Commission is composed of representatives of the Judicial Branch (*Organismo Judicial*), Public Prosecutor's Office (*Ministerio Público*), Ministry of Government, Criminal Public Defense Institute (*Instituto de la Defensa Pública Penal*) and the Guatemalan Chamber of Journalism (*Cámara Guatemalteca de Periodismo*).
- In 2004 the Public Prosecutor's Office received a budget of 500,613,694 *quetzales*, or US\$63,368,822. This represents a 38.5%

increase over the 2003 allocation of 361,272,243 *quetzales*, or US\$45,730,663.

- In 2004 the country had 137 public defenders, 42.7% more than in 2002.

## 1. Institutions

The key institutions of the Guatemalan judicial system are the Judicial Branch, Constitutional Court, Attorney General's Office, Institute for Public Criminal Defense, and the Human Rights Ombudsman's Office. Other agencies that support the work of these include the National Civil Police, the General Directorship of the Prison System and the Judicial Career Council. The country's 6,600 attorneys also play an important role in the functioning of the justice system.

### Judicial Branch

The Guatemalan government is organized into institutions called *organismos*. The Judicial Branch is called the *Organismo Judicial* and is composed of the following bodies:

- Supreme Court and its Chambers
- Court of Appeal
- Coordinating Bench (*Magistratura Coordinadora*), with jurisdiction over minors and the juvenile courts
- Contentious-Administrative Court

<sup>1</sup> This chapter is based mainly on responses to the JSCA questionnaire that were submitted by the *Organismo Judicial*, *Ministerio Público*, *Procuraduría General de la Nación* and CENADOJ. The authors also used a variety of documents including the *Informe sobre la situación de alternativas a la privación de libertad en Guatemala*, which was generated by the Instituto de Estudios Comparados en Ciencias Penales de Guatemala and the *Segundo Informe sobre Desarrollo Humano en Centroamérica y Panamá: Capítulo de Fortalecimiento de la Democracia y Administración de la Justicia en Guatemala*, developed by UNDP. Lastly, information was adapted from the websites of various justice sector institutions.

- Second Instance Court of Accounts (*Tribunal de segunda instancia de cuentas*)
- First instance courts
- Juvenile courts
- Peace courts (*juzgados de paz*)

Congress elects Supreme Court justices<sup>13</sup> from a list of twenty-six candidates who are proposed by a commission composed of university chancellors; law school or legal and social sciences school deans from each of the country's universities; an equivalent number of representatives elected by the General Assembly of the Bar and Notaries of Guatemala (*Asamblea General del Colegio de Abogados y Notarios de Guatemala*); and an equal number of representatives elected by tenured justices of the Court of Appeal and other courts as outlined in Article 217 of the Constitution. In order to be elected the candidate must receive votes from at least two-thirds of the commission's members.

The Chief Justice serves for a period of one year after being elected by the Supreme Court plenary by a two-thirds majority vote. Supreme Court justices serve five-year terms.

Magistrates and judges operate independently and are only subject to the Constitution and laws. The Constitution guarantees the Judicial Branch the following:

- Operational independence
- Financial independence
- Tenure for justices and first instance judges except in cases established by the law
- Staff selection

According to Judicial Branch statistics, Guatemala had 557 courts in 2001.

Table 1  
Number of Courts by Level (1997-2001)

Body	1997	2001	% Increase
Chambers of the Court of Appeals	21	24	3
Courts of original jurisdiction and sentencing	104	173	69
Peace courts	242	360	118
<b>Total</b>	<b>367</b>	<b>557</b>	<b>190</b>

The number of courts in Guatemala increased by 51.7% between 1997 and 2001.

The following sections provide a more detailed description of the courts:

### Supreme Court

This is the highest court in the Judicial Branch. It is a collegiate tribunal responsible for both jurisdictional and administrative tasks. The Supreme Court is composed of thirteen justices, each of whom serves for a period of five years. The Court has specialized Chambers for civil, criminal, and protection matters, as well as one for *antejuicio* (a special form of impeachment proceedings for official misconduct held before the trial itself).<sup>14</sup>

### Court of Appeal

The Court of Appeal is a court of second instance, though it also oversees and disciplines judges. It is a collegiate tribunal that operates in chambers established by the Supreme Court, which also determines the matters, headquarters and territorial jurisdiction of the Court of Appeal.<sup>15</sup> The court has separate chambers for hearing criminal, civil, contentious-administrative, family law, youth and other cases.<sup>16</sup>

### First Instance Courts

According to the Judicial Branch Law, Article 95, the first instance courts are responsible for all matters brought before them as established by the Supreme Court; they also have certain administrative and disciplinary faculties.<sup>17</sup>

Specialized first instance courts operate in the following areas: criminal law, family law, labor law and social security, children and adolescents, accounting and co-active economic law. There are four types of courts for criminal matters: a financial crimes court; criminal instance, drug and environmental courts; criminal sentencing courts; and sentence enforcement courts. There are also two types of courts that hear matters related to children and youth: the juvenile courts and the youth offenders' courts.<sup>18</sup>

### Peace Courts (*Juzgados de Paz*)

According to the Judicial Branch website, "Youth courts shall be called peace courts unless the law or Supreme Court grants them another title in view of their special nature. The Supreme Court will establish youth courts in the number and locations that it deems appropriate for the proper administration of justice. (*Los juzgados de menores se denominan juzgados de paz, a menos que por su especial naturaleza la ley o la Corte Suprema de Justicia les dé distinta denominación.*)"

*La Corte Suprema de Justicia establecerá los juzgados menores en el número y en los lugares que considere convenientes a la buena administración de la justicia.*)”<sup>19</sup>

Article 102 of the Judicial Branch Law establishes that “each *departemento*’s headquarters should have at least one peace court. In regard to municipalities, the Supreme Court may extend the territorial jurisdiction of the peace courts to more than one municipality to suit the distance and number of inhabitants. (*que en cada cabecera departamental debe haber por lo menos un juzgado de paz. En lo que respecta a los municipios, la Corte Suprema de Justicia cuando lo considere conveniente, puede, atendiendo a la distancia y al número de habitantes, extender la jurisdicción territorial de los juzgados de paz a más de un municipio.*)”

On August 27, 2004 the Supreme Court established the General Court Regulation granting peace courts the same attributes as first instance courts.<sup>20</sup> According to Judicial Branch data, these courts address civil, criminal, labor and family law matters. There are currently 341 peace courts in Guatemala.<sup>21</sup>

#### *Mobile Peace Courts (Juzgados de Paz Móviles)*

The purpose of these courts, which were introduced in mid-2003, is to hear and resolve minor cases in areas with limited access to judicial services. They promote the use of conciliation and mediation.<sup>22</sup> There are currently two mobile peace courts, one in Guatemala City and one in the capital of the department of Quetzaltenango.<sup>23</sup>

#### *Community Peace Courts (Juzgados de Paz Comunitarios)*

These courts were created to enable members of the community to participate in the administration of justice. The country currently has five community peace courts.<sup>24</sup>

#### *Justice Administration Centers (Centros de Administración de Justicia -CAJ)*

These centers physically and functionally concentrate justice sector institutions. Their purpose is to allow for efficient geographic and cultural access to justice. Each CAJ has interpreters, representatives of the various justice sector institutions and a conciliation center. There are currently five CAJs in Guatemala.<sup>25</sup>

#### *Judicial Career Council (Consejo de la Carrera Judicial)*

This council is charged with administration of the judicial career. Its members are:

- The President of the Judicial Branch, who may be represented by a Supreme Court justice appointed by the President as his substitute
- The tenured head of the Judicial Branch Human Resources Unit or his/her delegate
- The tenured head of the Judicial Branch Institutional Training Unit or his/her delegate
- A representative and an alternate, elected by the Assembly of Judges
- A representative and an alternate, elected by the Assembly of Magistrates

In accordance with the Rules of the Judicial Career Law (*Reglamento de la Ley de Carrera Judicial*), the President of the Judicial Branch is Chair of this Council. In his or her absence, a Supreme Court justice is appointed as acting Chair.

#### *Human Resources*

Guatemala had 731 judges in 2004, a rate of 6 judges per 100,000 inhabitants. It is important to note that women held 238 of these positions.

There are 646 first instance, peace court and investigative judges; seventeen second instance judges; and thirteen Supreme Court justices.

Table 2  
Judges by Institutional Level

Level	2003	2004
First Instance, Peace and Investigative Judges	635	646
Courts of Appeal Judges	89	72
Supreme Court Justices	13	13
Total	737	731

A total of 3,616 court support staff work in Judicial Branch offices, as well as 1,234 administrative staff, for a total of 5,581 Judicial Branch employees.

#### *Budget*<sup>26</sup>

The Judicial Branch budget was 680,099,961 *quetzales*, or US\$87,868,212 in 2005.

Year	Budget in Current Quetzales	Budget in Current US\$
2005	680,099,961	87,868,212
2003	704,987,653	91,319,644
2001	494,541,880	64,309,737

The 2005 budget allocation represents a 36% increase over the amount allocated in 2001, but is 3% lower than the 2003 budget.<sup>27</sup>

### *Important Legal or Institutional Changes in Recent Years*

The following initiatives bear mention:

- *Mobile Peace Courts.* These institutions were introduced in mid-2003 as the first experience of this kind in Central America. Their mission is to hear and resolve less serious cases in areas with limited access to judicial services. The mobile peace courts are located in specially equipped vehicles and promote mediation and conciliation as alternative dispute resolution methods. There are two such courts, one in the capital and the other in Quetzaltenango. In their first year of operation they served 1,564 users. They have heard matters involving cases of domestic violence, divorce, extra-judicial agreements, orders of protection for minors, child support and labor disputes involving payment for services rendered.<sup>28</sup>
- *Courts for Children and Adolescents.* The Supreme Court established courts for children and adolescents, courts for youth offenders, adolescent offender oversight measures, and the Youth Chamber of the Court of Appeals through Agreements 29, 30 and 31 of 2003. Each of these instances became specialized courts for cases involving minors under a restructuring plan mandated in Congressional Decree 27-2003 on the Law on the Comprehensive Protection of Children and Adolescents.<sup>29</sup>
- *The Justice Sector Anti-Corruption Commission* was introduced in October 2003. Its members are the Judicial Branch, Public Prosecutor's Office, Ministry of Government, Criminal Public Defense Institute and the Guatemalan Chamber of Journalism. During its first year in operation the Commission held nineteen workshops in which more than 1,200 people participated.<sup>30</sup>

### ***Constitutional Court (Corte de Constitucionalidad)***

This is a standing court with exclusive jurisdiction whose main duty is to defend the constitutional order. The Constitutional Court

acts as a collective tribunal and is independent of other government bodies.

It is composed of five tenured magistrates, each with their respective alternate. When hearing matters of unconstitutionality against the Supreme Court, Congress, or the President or Vice-President of the Republic, the number of magistrates is increased to seven, with the additional members chosen by lottery from among the alternates.

The office of President of this Court is held by a tenured magistrate for a period of one year on a rotating schedule, beginning with the senior-most judge and descending by age.

Constitutional Court magistrates hold office for a period of five years and are appointed as follows:

- One by the Supreme Court
- One by Congress
- One by the President of the Republic in cabinet
- One by the Superior University Council of the Universidad de San Carlos
- One by the Guatemala Bar Association

The 2005 Constitutional Court was 40,000,000 *quetzales*, or US\$5,167,958.<sup>31</sup>

Table 3  
**Constitutional Court Budget 2001-2005**

Year	Budget in Current <i>Quetzales</i>	Budget in Current Dollars
2005	40,000,000	5,167,958
2003	36,887,424	4,778,163
2001	9,364,355	1,217,731

As the above graph shows, the 2005 budget is 8% greater than the one assigned in 2003 and 324% greater than the 2001 budget.<sup>32</sup>

### ***Attorney General's Office (Procuraduría General de la Nación)***

The Attorney General's Office represents the Guatemalan government and advises government agencies as provided for in Article 252 of the Constitution.

It acts independently and is not subject to any other authority, following the criteria of legality, impartiality, objectivity and faithfulness to the goals of the State.

It provides legal counsel to the Guatemalan government in the following areas:

- Representing and upholding the laws of the nation in all trials to which it is a party, as instructed by the Executive, and promoting the timely enforcement of sentences handed down in such trials.
- Negotiating, when ordered by the Executive and under its instructions, to formalize acts and enter into contracts of national interest on behalf of the State.
- Fulfilling any additional duties stipulated in other laws.

The Attorney General exercises direct legal representation of the State and is empowered to delegate this responsibility in certain cases. Other duties of the office include:

- Temporarily representing absent parties, minors, and the handicapped, when these have no legitimate legal representative.
- Acting before the courts in all matters as required under the law.
- Promoting the appropriate and timely administration of justice.
- Officially investigating any business in the national interest and receiving and investigating complaints regarding such matters
- Submitting reports on matters in which he/she is involved whenever called to do so by the Executive.

#### Structure

The institution is led by the Office of the Attorney General (*Despacho del Procurador General de la Nación*), which oversees the Attorney General's Section, the Consulting Section, Advocacy in the Civil Arena, Advocacy in the Penal Arena, Constitutional Affairs, the Contentious-Administrative Section, the Labor Section, the Environmental Section, the Youth Section, the Women's Section, the Senior Citizens Section, the General Secretariat, the Administrative Directorate and Internal Affairs.

The Attorney General's Office has delegations throughout the country's regions and departments. These offices are led by an attorney and include administrative support staff whose number varies according to the caseload. As the representatives of this institution in their jurisdiction, regional or departmental attorneys must maintain contact with the different sections of the Office located in the capital.

#### Budget

The institution's 2005 budget was 34,025,926 *quetzales*, or US\$4,396,114.<sup>33</sup>

Table 4  
Budget 2001-2005

Year	Budget in Current <i>Quetzales</i>	Budget in Current Dollars
2005	34,025,926	4,396,114
2003	36,636,054	4,745,602
2001	20,876,214	2,714,722

The 2005 budget represents a 61% increase over the amount allocated in 2001 and a 7% decrease over the 2003 budget.<sup>34</sup>

#### Public Prosecutor's Office

The *Ministerio Público* is responsible for public criminal prosecution in Guatemala. Under the Constitution, it is not subordinate to any branch of government. Its organization at the national level is hierarchical, with the Public Prosecutor (*Fiscal General de la República*) at its head. This person is appointed by the President of the Republic from a list of six candidates submitted by a candidacy commission composed of the Supreme Court President, as Chair; the Deans of Law or Legal and Social Science Faculties of the country's universities; the Executive Board President of the Guatemalan Bar and Notaries Association; and the Chair of the *Tribunal de Honor* of the same Association.

The Public Prosecutor's Office Planning Unit is in charge of managing and planning the institution's activities and has two departments (methods and organization, and computer services) and two sections (projects and technical cooperation).

The Public Prosecutor's Office also has a Council<sup>35</sup> that is responsible for the prosecutorial career and for monitoring and advising the Public Prosecutor. The Council has seven members: the Public Prosecutor, as Chair; three prosecutors elected in a general assembly of prosecutors; and three members elected by the Legislative Branch.

The Prosecutor's Office has two areas: the administrative area comes under the purview of the Chief Administrator, while the technical area is composed of a hierarchy of prosecutors

charged with public criminal prosecution. The technical section (*Fiscalía*) is supported in turn by two bodies: the Criminal Investigation Department (*Dirección de Investigaciones Criminalísticas*) and the Office for the Protection of Procedural Subjects in Criminal Matters (*Oficina de Protección de Sujetos Procesales en Materia Penal*).<sup>36</sup>

The country has forty-five Public Prosecutor's Offices. Ten are Municipal Offices and nine are Section Offices.<sup>37</sup> There are also three Special Offices, one for crimes against journalists and union members, one for crimes against justice system operators and one for crimes against human rights activists.

All are organized in similar fashion to the central Prosecutor's Office, with administrative and technical/prosecuting departments and Prosecuting Agencies each with its own Prosecutor who is supported by three or four assistant prosecutors and two or three staff.<sup>38</sup>

#### *Human Resources*

The country had 847 prosecutors in 2004, or 6.9 per 100,000 inhabitants.

Table 5  
Number of Prosecutors 2002- 2004

Year	2002	2003	2004
No. of Prosecutors	724	780	847

The number of prosecutors in Guatemala increased 17% between 2002 and 2004. 9.8% of them are women.

#### *Budget*<sup>39</sup>

This institution's 2005 budget was 435,581,894 *quetzales*, or US\$56,276,730.

Table 6  
Public Prosecutor's Office Budget

Year	Budget in Current <i>Quetzales</i>	Budget in Current Dollars
2005	435,581,894	56,276,730
2003	398,789,180	51,656,629
2001	271,413,162	35,294,299

The institution's 2005 budget represents an 8% increase over the 2003 allocation and a 59% increase over 2001.<sup>40</sup>

### ***Public Criminal Defense Institute***

The *Instituto de la Defensa Pública Penal* is responsible for public defense in Guatemala. It was created in 1997 as one of the government's commitments under the Peace Accords, which established the need for an autonomous body to assume citizen defense. Previously the role of public defense had been performed only by the *Bufetes Populares* (People's Law Firms) in the country's universities.<sup>41</sup>

Its main responsibilities include:

- Providing free legal representation to individuals of limited means who are subject to criminal process on the basis of their possible authorship or involvement in a punishable offense;
- Assisting any person of limited means who requests legal advice when that person feels that he or she may become involved in a criminal procedure; and
- Offering technical defense to clients who can and are willing to pay the appropriate fees.

Congress elects the General Director from a list of three candidates submitted by the Institute's Board,<sup>42</sup> which is composed of the President of the Judiciary Council; the Human Rights Ombudsman; a representative of the Bar and Public Notaries Association; a representative of the deans of the country's law schools; and a representative of the staff defenders, elected in assembly.

The Public Criminal Defense Institute also has sections in each of the country's *departamentos*. These have a maximum of three staff defenders, one of whom is appointed by the General Director as Departmental Coordinator.<sup>43</sup> The Departmental Coordinator must act under orders of the Director and within his or her legal faculties. Above all, he or she must supervise the work of the staff defenders,<sup>44</sup> who are in charge of the practical defense of defendants who cannot afford a private attorney. The Coordinators also receive and assign cases among staff defenders, and exercise the duties of office as well as those assigned by the General Director.

The Institute also has a Metropolitan Section with a coordinator and four assistant coordinators. It is composed of twenty-five public defenders, twenty of whom are permanent staff members who focus on public interest cases. This section has special units, including a Youth Defense Unit, an Enforcement Unit, a Notifications Unit, and a Gender Defense

Unit. Finally, there are six Indigenous Defense Offices, each of which is staffed by a public defender, an assistant and an interpreter.

Defense services are provided through a mixed system, where on staff public defenders working permanently in the institute and private attorneys are hired to defend individuals accused of less serious crimes and in other specific cases.

The country had a total of 137 public defenders in 2004, which represents a 42.7% increase over the number reported in 2002. There are fifty female public defenders.

#### *Budget*<sup>45</sup>

The unit's 2005 budget was 70,115,750 *quetzales*, or US\$9,058,882.

Table 7  
Public Defense Budget

Year	Budget in Current <i>Quetzales</i>	Budget in Current Dollars
2005	70,115,750	9,058,882
2003	57,194,683	7,408,637
2001	50,077,174	6,511,986

The 2005 budget represents a 22% increase over the 2003 budget and a 39% increase over that of 2001.<sup>46</sup>

#### *Human Rights Ombudsman's Office*

This Congressional commission focuses on defending the human rights enshrined in the country's Constitution. It is independent of all other institutions and authorities. One of its duties is to supervise the Public Administration.

In regard to its structure, Congress appoints a Human Rights Commission composed of a representative of political party. The commission proposes a list of three candidates for the position of Ombudsman. A vote is then held in Congress (in order to win the candidate must receive a two thirds of all possible votes during a session held for this purpose). The Ombudsman must meet the same eligibility requirements as Supreme Court justices and enjoys the same immunities and prerogatives as members of Congress.<sup>47</sup>

The Ombudsman must submit a report to Congress each year.

#### *National Civil Police*

This institution's mission is to ensure public safety in accordance with the country's Constitution and laws.

All National Civil Police force members are trained at the Policy Academy, which oversees entry to the police career, promotions and training.

There are currently six district headquarters (*jefaturas de distrito*), twenty-seven precincts, 127 police stations and 343 sub-stations throughout the country. There are also eight mobile units that are dispatched to critical points in the capital.<sup>48</sup>

According to the General Directorate of the National Civil Police, there were approximately 20,000 members of the police force in 2004, or 171 per 100,000 inhabitants.

In 2005 the institution received a budget of 1,331,248,857 *quetzales*, or US\$171,995,976.<sup>49</sup>

## 2. Procedure

#### *Criminal Cases*

Guatemala's new Criminal Procedural Code came into force in 1994, establishing an adversarial criminal procedure based on a preparatory or investigative stage carried out by the Public Prosecutor's Office; an intermediate procedural stage; and a trial, which in turn is divided into preparatory and public oral contentious stages.<sup>50</sup>

- *Preparatory stage, also called criminal investigation:* This stage begins with introductory proceedings (accusation, complaint, prevention, police). Its aim is to investigate a punishable offense. The Public Prosecutor's Office oversees this stage and the police investigation during the criminal process.
- *Intermediate stage:* In this stage the court must weigh and rule on the findings presented by the Public Prosecutor's Office during the preliminary investigation. The judge's main duty is to determine if there are sufficient grounds to try the accused.
- *Oral trial stage:* This is the central stage of the criminal process, wherein all parties discuss the charges in one continuous public act.
- *Appeal Stage:* The affected parties may exercise their lawful right to modify a ruling that they consider to be unjust or illegal, by lodging an appeal before the tribunal or court that passed the sentence, or before a higher court, as appropriate.

- *Enforcement stage:* This stage is conducted by a specialized judge whose role is to enforce the sentence or imprisonment. His or her responsibilities include ensuring that prisons are inspected, attending to the problems faced by released prisoners, and establishing adequate security and correction measures.

Criminal cases in Guatemala last an average of 367 days.<sup>51</sup>

In 2003 57,143 cases were resolved through alternative sentences (plea bargains, dismissals, cases struck, filings and closures). In addition, 7,448 cases were referred to other agencies.<sup>52</sup>

Although Guatemalan procedural law employs a common procedural model applicable to most cases, specific procedures are also provided for, as follows:

- Shortened procedures
- Special verification procedures
- Process for private criminal prosecution
- Trial for exclusive application of security and corrective measures
- Misdemeanor trials

### *Civil Suits*<sup>53</sup>

Civil procedure in Guatemala is mainly written, and its basic stages are those of debate, which is initiated by the filing of the suit, the presentation of evidence, arguments, court orders to improve the verdict, and sentencing. Parties may appeal the verdict, where appropriate. Appeals of definitive sentences issued by first instance courts are allowed in order to confirm, revoke or modify the judge's decision.

The option of cassation is only allowed for sentences issued by courts of appeal, and the grounds must be procedural or substantive defects. Annulment sentences lay down jurisprudence and as such are the most important, as much for their form as for their inherent value. The effects of such rulings are different for cases in which appeals are accepted on procedural grounds than for those allowed because of infringement of a law. In the first case, when a second instance sentence is annulled, all actions are reinstated up to the moment the infringement was committed. On the other hand, if the petition is based on a substantive legal challenge and the Tribunal allows the appeal, the sentence is annulled and a new ruling is passed according to the law.

## 3. Case Volume and Movement

The following table shows the number of files that were placed before the courts in 2004 for all subject matters and instances.<sup>54</sup>

Table 8  
Number of Matters Admitted 2002- 2004

Year	2002	2003	2004
Number of matters admitted	325,570	327,976	251,410

As the above table shows, there was a 23% decrease in the number of cases submitted to the Judicial Branch between 2004 and 2003. The rate of litigiousness was 2,151 cases per 100,000 inhabitants in 2004.

### *Cases Disposed*

The number of cases disposed by the Judicial Branch in all subject areas and matters increased significantly in 2004.<sup>55</sup>

Table 9  
Cases Disposed by the Judicial Branch 2002- 2004

Year	2002	2003	2004
Number of cases disposed	252,974	249,084	425,755

There was a 71% increase in the number of cases disposed between 2003 and 2004. The clearance rate for 2004 was 169%.

## 4. Crime Rates

According to data from the National Center for Judicial Analysis and Documentation (*Centro Nacional de Análisis y Documentación Judicial*), which forms part of the Judicial Branch, 48,181 crimes of high social impact were committed in Guatemala in 2004. This represents a 5.15% decrease over the previous year.

Table 10  
Crimes (by type) 2003- 2004

Crime	2003	2004
Homicide	3,875	4,202
Serious Injury	1,482	1,259
Minor Injury	7,530	6,983
Rape	2,634	2,770
Kidnapping	466	440
Robbery	10,791	9,887
Theft	20,276	19,291
Fraud	3,747	3,349
Total	50,801	48,181

Taking the total number of these crimes (48,181) produces a rate of 412 per 100,000 inhabitants in 2004. Specifically, there are 36 homicides and 165 robberies per 100,000 inhabitants, making the latter the most frequently reported crime.

## 5. Prison Population

According to Article 19 of Guatemala’s Constitution, the aim of the prison system is to provide social reintegration and reeducation services to inmates in a context that respects their human rights.<sup>56</sup>

The General Directorate of the Prison System is charged with the administration of the country’s prisons and ensuring that inmates and those charged with crimes receive adequate attention and care.

In April 2003 there were 8,307 inmates in Guatemala, or 71 per 100,000 inhabitants.<sup>57</sup>

Most inmates (approximately 90%) are men, are in pretrial custody, have not finished grade school and are between the ages of eighteen and thirty-five.

Inmates held without sentence vastly outnumber those serving sentence. Only 39% of all inmates, or 3,256 prisoners, have been sentenced, while 61% are in pretrial custody.

The percentage of inmates who have been charged but not convicted has varied significantly over the past few years, moving from 74% in 1996 to 64% in 1999, and 47% in 2002 to 61% in 2003.

There are seventeen prisons in Guatemala, all of which house those in pretrial custody and convicted prisoners. The system has a total holding capacity of 6,824 inmates. As there are 8,307 inmates, there is an overcrowding rate of 22%.

The prison system has 1,650 staff members including both employees and officials. Of these, 917 are guards and the rest are administrative and professional staff.

The system also has twenty-two doctors, twenty-seven nurses and two dentists who attend the prison population, each of whom works two hours per day twice a week.

The 2005 budget was 141,626, 033 *quetzales*, or US\$18,297,937.<sup>58</sup>

Table 11  
Prison System Budget

Year	Budget in Current <i>Quetzales</i>	Budget in Current Dollars
2005	141,626,033	18,297,937
2001	102,969,647	13,390,071

The prison administration budget increased 36% between 2001 and 2005.

## 6. Related Areas

### Alternative Dispute Resolution (ADR)

Guatemalan legislation provides for mediation, conciliation and arbitration in the resolution of disputes. Arbitration and conciliation are used in the area of administrative law; conciliation in agrarian law; mediation and conciliation in criminal law; conciliation in civil law; negotiation, neutral professional evaluation, conciliation, mediation and arbitration in commercial law; and conciliation and arbitration in labor law.

The most important development in this area in the past few years was the creation of the Judicial Branch Alternative Dispute Resolution Unit. Founded in 2002, its main role is to coordinate the country’s twenty-three mediation centers. An estimated 34,000 people were attended in such centers between 2002 and 2004.<sup>59</sup>

Mediation and conciliation can be carried out both within and outside of the court system in criminal cases. As part of the judicial system, ADR is carried out through alternatives to common procedure (plea bargain, conditional suspension of prosecution, abbreviated procedures, conversion) and through small claims trials and trials for private crimes.

The purpose of the mediation and conciliation centers is to minimize the courts’ involvement by allowing parties to resolve their disputes through agreements. However, cases continue to be judicial in nature and as such require the authorization of the Public Prosecutor’s Office or municipal association, as well as verification of the agreement.

Parties may legally resolve disputes regarding private crimes out of court. This may lead to the dismissal of the charges or a decision not to prosecute.

The implementation of these mechanisms has affected several aspects of Guatemala’s legal system:

- It has lessened the workload of justice system agencies, particularly the Public Prosecutor’s Office, allowing them to focus on crimes of high social impact;
- It minimizes the State’s intervention in disputes that can be resolved directly by parties in keeping with the principle of rationality;
- It economizes the use of procedure and human resources; and
- Reparations that resolve disputes increase the credibility of justice agencies.

An ADR system was implemented for labor disputes by the Ministry of Labor and Social Security and the IDB in 2004. Ministry officials received training to strengthen their communication and conflict management skills through negotiation and mediation techniques.<sup>60</sup>

Other agencies that promote the use of ADR methods include the Judicial Branch Mediation and Conciliation Center, the Chamber of Industry's Dispute Resolution Commission and the Center for Reports for Conciliation and Arbitration.

### ***Gender and Justice Administration***

JSCA recently conducted a critical analysis of the effect of the criminal justice reform on crimes that usually affect women. The authors found that in victims of sexual violence in Guatemala who wished to file a complaint were often channeled away from the criminal justice system, either by a negative or inadequate response to their complaint or by exposing complainants to acts of revictimization, such as having to recount their experience in front of many people. This type of selective expulsion contributes to the persistence of impunity, reinforces the cycles of violence against women and results in their revictimization. In the case of sex crimes, institutional expulsion leads victims to abandon their efforts to seek reparation through the justice system.<sup>61</sup>

### ***Race and Justice Administration***

A JSCA study on indigenous communities and criminal procedure reform analyzed the effects of the reform's implementation on justice administration and aboriginal ethnicities. The Mayan community plays an important role in this context.

The study concluded that Guatemala has made progress in adopting the provisions of international instruments that have led to increased respect for indigenous rights in judicial rulings. It has also created new institutions such as public defense services for indigenous communities and community peace courts, and has become more open to recognizing the right of different cultures to live together. While these advances in themselves do not define a policy of increased inclusion, exchange and joint effort, they bear mention nonetheless.<sup>62</sup>

### ***Legal Profession***

According to Judicial Branch figures, there were approximately 6,640 attorneys practicing in Guatemala in 2003, equal to a rate of 57 per 100,000 inhabitants.

In 2002 seven universities offered law programs, including the public Universidad de San Carlos.<sup>63</sup>

That same year there were 21,000 law students (180 per 100,000 inhabitants), 15,000 of whom studied at the Universidad de San Carlos.<sup>64</sup>

Article 90 of Guatemala's Constitution establishes that all professionals must belong to the appropriate professional organization.

Guatemala's Bar and Notary Association represents all law professionals.<sup>65</sup>

The Association's Honor Tribunal is responsible for disciplinary matters.

## **7. Judicial Reform and International Cooperation Projects Underway**

### ***International Cooperation Projects***

Over the past decade Guatemala has developed various projects linked to the modernization of the justice sector that have been financed by international cooperation agencies. The most recent initiative to be approved was the Guatemala Rule of Law Program, which will be implemented between 2004 and 2009. The objectives of this program include promoting the use of oral procedures in the criminal justice system; strengthening the Public Prosecutor's Office; and promoting the use of mediation and other alternative dispute resolution mechanisms.<sup>66</sup> USAID has allocated US\$5 million for 2005-2006.<sup>67</sup> It also financed the *Guatemala Justice Program*, which was undertaken between 1999 and 2004.<sup>68</sup>

The country's Judicial Branch has also implemented a judicial reform project, which was approved in 1998 and is scheduled to run through December 2006. The project was financed by a World Bank loan valued at US\$33 million, and seeks to increase the judicial system's effectiveness and accessibility.<sup>69</sup>

Another important project aimed at strengthening the country's judicial system is being funded by an IDB loan valued at US\$25 million.<sup>70</sup>

## 8. Websites

### Judicial Branch (*Organismo Judicial*)

[www.organismojudicial.gob.gt](http://www.organismojudicial.gob.gt)

The official website of the Guatemalan Judicial Branch contains information on the judicial reform process and provides access to the criminal procedure code, other laws and important news as well as a listing of courts and information on where to make online complaints and suggestions. Available in English and Spanish.

### Public Prosecutor's Office (*Ministerio Público*)

[www.mp.lex.gob.gt](http://www.mp.lex.gob.gt)

The official website of the Guatemalan *Ministerio Público* explains the mission, vision, organization, and function of this office. It also offers case statistics for different sectors of the population, a directory and news. Available in Spanish and English.

### Government of Guatemala (*Gobierno de Guatemala*)

<http://www.guatemala.gob.gt>

This site contains information on Executive Branch departments, ministries, and other decentralized, independent public agencies. It also has links to a wide array of websites of interest. Spanish-language only.

### Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG) (*Guatemalan Institute of Comparative Criminal Sciences*)

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

ICCPG is an academic institution focusing on criminal justice. It was set up to foster the creation of a criminal-political model that respects human rights. The website offers access to an online library containing general information on research projects and publications in criminal law, criminal procedural law, human rights, criminology, penal law, alternative dispute resolution, legal philosophy, administration of justice, constitutional law, gender, international law, and indigenous rights. Users may also consult back issues of the journal *Observador Judicial*. Spanish-language only. ICCPG is a member of the *Red de Organizaciones de la Sociedad Civil de Justicia de las Américas* (Red OSC).

## 9. Basic Directory

### Organismo Judicial

Address: Gerencia de Comunicación Social  
Edificio de la Corte Suprema de Justicia, 1er. Nivel  
21 calle 7-70 Zona 1  
Ciudad de Guatemala  
PBX: 221-2525 ext. 4043  
Phone: (502) 230-4902  
Fax: (502) 220-0156  
Website: [www.organismojudicial.gob.gt](http://www.organismojudicial.gob.gt)

### Corte Suprema de Justicia

Address: 21 calle 7-70 Zona 1  
Ciudad de Guatemala  
Phone: (502) 221-2585  
Website: [www.organismojudicial.gob.gt](http://www.organismojudicial.gob.gt)

### Procuraduría General de la Nación

Address: 15 Avenida 9-69, Zona 13  
Ciudad de Guatemala  
Phone: (502) 331-1006  
Fax: (502) 334-8465

### Ministerio Público

Address: 8ª Avenida 10-67, Zona 1  
Ciudad de Guatemala  
Phone: (502) 2232 4651  
Website: [www.mp.lex.gob.gt](http://www.mp.lex.gob.gt)

### Instituto de la Defensa Pública Penal

Address: 7ª Avenida 3-67, Zona 2  
Ciudad de Guatemala  
Phone: (502) 230-2035  
Fax: (502) 230-2035

### Dirección General del Sistema Penitenciario

Address: 7ª calle, entre 11 y 10 Avenida, Zona 1  
Ciudad de Guatemala  
Phone: (502) 253-4420  
Fax: (502) 253-4401

### Colegio de Abogados y Notarios de Guatemala

Address: 0 Calle 15-46, Zona 15 01015.  
Ciudad de Guatemala  
Phone/PBX: 369-7936  
Fax: 369-3714  
Website: [www.infovia.com.gt/cang/](http://www.infovia.com.gt/cang/)

### Universidad de San Carlos de Guatemala

Website: [www.usac.edu.gt/exp.html](http://www.usac.edu.gt/exp.html)

## Notes

- <sup>2</sup> World Bank, *World Development Indicators*.
- <sup>3</sup> ECLAC, *Anuario Estadístico de América Latina y el Caribe 2003*, "Primera Parte: Indicadores del Desarrollo Socioeconómico de América Latina y el Caribe."
- <sup>4</sup> Instituto Nacional de Estadísticas.
- <sup>5</sup> ECLAC, *Op. cit.*
- <sup>6</sup> ECLAC, *Op. cit.*
- <sup>7</sup> ECLAC, *Op. cit.*
- <sup>8</sup> World Bank, *World Development Indicators*.
- <sup>9</sup> *Ibid.*
- <sup>10</sup> Centro de Estudios de Guatemala.

- <sup>11</sup> Decreto Nro. 35-04. Ley de Presupuesto General de Ingresos y Egresos del Estado para el Ejercicio Fiscal 2005.
- <sup>12</sup> Ibid. In order to arrive at this amount we added up the budgetary allocations of the *Organismo Judicial, Ministerio Público, Instituto de la Defensa Penal Pública, Corte de Constitucionalidad* and the prison system.
- <sup>13</sup> Constitution, Article 215.
- <sup>14</sup> Judicial Branch. See <http://www.organismojudicial.gob.gt/>. Accessed on June 20, 2005.
- <sup>15</sup> Decreto 2-89, Ley del Organismo Judicial, Artículos 86 a 93.
- <sup>16</sup> Judicial Branch. See [www.organismojudicial.gob.gt](http://www.organismojudicial.gob.gt/).
- <sup>17</sup> This was established in the *Reglamento de Tribunales*, acuerdo 36-2004, artículo 42.
- <sup>18</sup> See <http://www.organismojudicial.gob.gt/>.
- <sup>19</sup> *Reglamento General de Tribunales*, artículo 101.
- <sup>20</sup> *Reglamento General de Tribunales*, acuerdo 36-2004, artículo 45.
- <sup>21</sup> EQUIPO NIZKOR, *Informe para el Relator Especial de Naciones Unidas sobre Independencia de Jueces y Abogados*, 22 de marzo de 2004, p. 23.
- <sup>22</sup> JSCA, *Report on Judicial Systems in the Americas 2002-2003*.
- <sup>23</sup> EQUIPO NIZKOR, p.24.
- <sup>24</sup> Ibid.
- <sup>25</sup> Ibid, pp. 24-25.
- <sup>26</sup> These statistics were obtained from Decree No. 85-2000 (which contains the budgetary law for 2001), Decree No. 75-2002 (which contains the budgetary law for 2003) and Decree No. 35-04 (which contains the budgetary law for 2005).
- <sup>27</sup> Calculation based on the amount in dollars.
- <sup>28</sup> See [www.organismojudicial.gob.gt](http://www.organismojudicial.gob.gt/).
- <sup>29</sup> Ibid.
- <sup>30</sup> Ibid.
- <sup>31</sup> These statistics were obtained from Decree No. 85-2000 (which contains the budgetary law for 2001), Decree No. 75-2002 (which contains the budgetary law for 2003) and Decree No. 35-04 (which contains the budgetary law for 2005).
- <sup>32</sup> Calculation based on the amount in dollars.
- <sup>33</sup> These statistics were obtained from Decree No. 85-2000 (which contains the budgetary law for 2001), Decree No. 75-2002 (which contains the budgetary law for 2003) and Decree No. 35-04 (which contains the budgetary law for 2005).
- <sup>34</sup> Calculation based on amounts in dollars.
- <sup>35</sup> *Ley Orgánica del Ministerio Público (Charter Law of the Public Prosecutor's Office)*, Articles 9.2, 17, 18, 72 and 77.
- <sup>36</sup> *Ley Orgánica del Ministerio Público, Articles 40 and 41*.
- <sup>37</sup> They are: the Office for Constitutional Affairs, Protection and Personal Exhibitions; the Anti-Corruption Office; the Anti-Organized Crime Office; the Environmental Crimes Office; the Crimes against Intellectual Property Office; the Drug-Trafficking Office; the Sentence Enforcement Office; the Youth offenders Office and the Women's Affairs Office.
- <sup>38</sup> Ramírez, 2003, *Op. cit.*
- <sup>39</sup> These statistics were obtained from Decree No. 85-2000 (which contains the budgetary law for 2001), Decree No. 75-2002 (which contains the budgetary law for 2003) and Decree No. 35-04 (which contains the budgetary law for 2005).
- <sup>40</sup> Calculation based on amount in dollars.
- <sup>41</sup> Ibid.
- <sup>42</sup> *Ley del Servicio Público de la Defensa Penal (Law of the Public Service of Criminal Defense)*, Article 9.
- <sup>43</sup> This must be a permanent or full-time public defender.
- <sup>44</sup> *Ley del Servicio Público de la Defensa Penal*, Article 18.
- <sup>45</sup> These statistics were obtained from Decree No. 85-2000 (which contains the budgetary law for 2001), Decree No. 75-2002 (which contains the budgetary law for 2003) and Decree No. 35-04 (which contains the budgetary law for 2005).
- <sup>46</sup> Calculation based on amounts in dollars.
- <sup>47</sup> *Ley de la Comisión de Derechos Humanos y del Procurador*.
- <sup>48</sup> See [http://www.pnc.gob.gt](http://www.pnc.gob.gt/).
- <sup>49</sup> This information was obtained from Decreto Nro. 35-04 (which contains the budgetary law for 2005).
- <sup>50</sup> *Código Procesal Penal de Guatemala*.
- <sup>51</sup> Instituto de Estudios Comparados en Ciencias Penales de Guatemala, *Informe sobre la situación de alternativas a la privación de libertad en Guatemala*, extract of a study carried out for Reforma Penal Internacional, Guatemala, April 2003.
- <sup>52</sup> Judicial Branch.
- <sup>53</sup> Mario Aguirre Godoy, *Derecho Procesal Civil*. Volume I, Editorial Académica Centroamericana, Guatemala, 1982, pp. 264, 278, 279, 779. See also Mario Estuardo Gordill, *Derecho Procesal Civil Guatemalteco. Aspectos Generales de los Procesos de Conocimiento*, Impresos Praxis, Guatemala, n.d., p. 4.
- <sup>54</sup> Judicial Branch.
- <sup>55</sup> Ibid.
- <sup>56</sup> There is no prison law in Guatemala. The regulatory instrument that is used for prisons is the "Reglamento para los Centros de Detención de la República de Guatemala," Acuerdo Gubernativo 975-84.
- <sup>57</sup> Instituto de Estudios Comparados en Ciencias Penales de Guatemala, *Informe sobre la situación de alternativas a la privación de libertad en Guatemala, Op.cit.*
- <sup>58</sup> These statistics were obtained from Decree No. 85-2000 (which contains the budgetary law for 2001), Decree No. 75-2002 (which contains the budgetary law for 2003) and Decree No. 35-04 (which contains the budgetary law for 2005).
- <sup>59</sup> See [http://www.organismojudicial.gob.gt](http://www.organismojudicial.gob.gt/).
- <sup>60</sup> See [http://www.sieca.org.gt/Publico/Doctos\\_y\\_Publicaciones/Publicaciones/Boletin\\_Informativo/BOLETINNo19ANO6.htm](http://www.sieca.org.gt/Publico/Doctos_y_Publicaciones/Publicaciones/Boletin_Informativo/BOLETINNo19ANO6.htm).
- <sup>61</sup> JSCA, *Género y Reformas a la Justicia Procesal Penal*. A full text version of this document is available in the Research Section at [www.cejamerica.org](http://www.cejamerica.org).
- <sup>62</sup> JSCA, *Pueblos Indígenas y Reformas a la Justicia Procesal Penal*. A full text version of this project is available in the Research Area section at [www.cejamerica.org](http://www.cejamerica.org).
- <sup>63</sup> JSCA, *Report on Judicial Systems in the Americas 2002-2003*.
- <sup>64</sup> See <http://www.aals.org/2000international/english/guatemala.htm>.
- <sup>65</sup> See [www.infovia.com.gt/cang/](http://www.infovia.com.gt/cang/).
- <sup>66</sup> See [http://www.chechiconsulting.com/Guatemala\\_Justice\\_Program](http://www.chechiconsulting.com/Guatemala_Justice_Program).
- <sup>67</sup> See <http://www.usaid.gov/policy/budget/cbj2006/lac/pdf/gt520-021.pdf>.
- <sup>68</sup> See [http://www.dec.org/pdf\\_docs/PDACD072.pdf](http://www.dec.org/pdf_docs/PDACD072.pdf).
- <sup>69</sup> See <http://web.worldbank.org/external/projects/main?pagePK=104231&piPK=73230&theSitePK=40941&menuPK=228424&Projectid=P047039>.
- <sup>70</sup> See <http://www.iadb.org/exr/doc98/apr/gu1120e.pdf>.