

# ATTACKS ON JUSTICE – GUATEMALA

## *Highlights*

The independence and impartiality of the judiciary is severely threatened by the increasing politicization of the justice system and, in particular, of the members of the Constitutional Court, as demonstrated by its controversial July 2003 ruling, allowing former head of state General Efraín Ríos Montt to stand for the presidency. Cases of corruption and political interference by means of intimidation, budgetary policy and removal from office further undermine the principle of impartiality in the administration of justice. The role of the Supreme Court in administering the judiciary and the lack of transparency in its evaluation and disciplinary mechanisms, compromises the judiciary's internal independence. President Berger's removal of Prosecutor General de León in March 2004 was perceived to be part of a campaign to purge the Prosecutor's Office. The functioning of the under-resourced and poorly-trained prosecution service is further undermined by internal interference. The creation of the UN-backed Commission for the Investigation of Illegal Bodies and Clandestine Security Apparatus has been blocked since August 2004 when the Constitutional Court ruled that the agreement with the UN was unconstitutional. Prosecutors, judges and lawyers cannot exercise their profession free from threats and intimidation. There has been virtually no progress in ensuring accountability for past human rights abuses. Government payments to civil defence patrols (PAC), a former paramilitary group, have brought the authorities into serious conflict with victims' relatives. A decree has extended the powers of Justices of the Peace so that access to the courts for the rural population is improved. The functioning of the Public Penal Defense Institute is under threat due to lack of funding. Over the past two years, bilingual judicial staff have been recruited in order to promote access to justice for indigenous communities.

## BACKGROUND

Marked by the controversy over the candidature of former head of state General Efraín Ríos Montt (see below) for the then ruling party, Guatemalan Republic Front (*Frente Republicano Guatemalteco, FRG*), the national legislative and presidential elections held on 8 November 2003 took place in a climate of intense political confrontation and violence. Oscar Berger Pedroso of the National Grand Alliance (*Gran Alianza Nacional, GANA*) won the elections but his party failed to secure a majority in Congress. It was closely followed by the FRG and the National Hope Union (*Unión Nacional Esperanza, UNE*).

Compliance with the *1996 Peace Agreements* has progressed slowly and the achievements (see [Attacks on Justice 2002](#)) have been undermined by the deteriorating security situation. Over the past two years, criminal violence, organized

crime and drug trafficking, in some cases carried out by networks that were formerly engaged in the civil war, have increased. The civil defence patrols (*Patrullas de Autodefensa Civil, PAC*), paramilitary groups used by the army to fight the insurgents during the country's long civil war have reorganized themselves in order to demand compensation, which was awarded to them by the previous administration of President Portillo. The PACs used violence in order to put pressure on the government until it agreed to pay for their "services" during the civil war (for further information on the PACs, see [Amnesty International, September 2002, Guatemala - The Civil Defence Patrols Re-Emerge](#)). In August 2005, the Guatemalan Congress passed the *Peace Accords Framework Law (Ley Marco de los Acuerdos de Paz)*, which reaffirmed that the Peace Accords are a State commitment and set up the National Council for Implementation of the Peace Accords (*Consejo Nacional para el Cumplimiento de los Acuerdos de Paz*). The Council is charged with supervising and analyzing the progress made and difficulties encountered in implementing the accords and keeping in close contact with the different actors involved in order to formulate specific recommendations.

On 21 June 2004, the Constitutional Court ruled that the government's compensation payments to the former PACs were illegal because they had not been approved by Congress. Faced with the threat of roads being blocked by the PACs, Congress adopted an emergency decree authorizing the payments but they were suspended by the Constitutional Court pending its final decision on the constitutionality of the decree. Under intense pressure from former PAC members, on 3 November 2004 Congress adopted yet another emergency decree ([Decreto 28-04](#)) repealing the previous one and addressing some of its constitutional flaws. Resisting the pressure of demonstrations by former PAC members, the Constitutional Court further suspended the payments pending a decision on the decree's constitutionality. After discreetly deliberating on the matter due to threats issued by former PAC members, on 8 February 2005 the Constitutional Court declared the decree unconstitutional once and for all, on the grounds that it failed to specify where the funding for the payments would come from or the criteria for determining the beneficiaries, and because it recognized the PACs, which had been legally dissolved pursuant to the *1996 Peace Agreements*. However, threatened with coordinated action from former PAC members, the government reiterated its commitment to compensate them and promised to introduce a new bill to Congress. Human rights organizations opposed to the government's compensation plan reported that they were repeatedly threatened by former PAC members.

The State institutions responsible for maintaining public order lack the resources to respond adequately to the deteriorating security situation: the government continues to rely on the military to carry out functions of the National Civil Police (PNC) and favours the army when allocating budgets. On 13 August 2004, 90,000 Guatemalans participated in a march to protest against violence and insecurity in Guatemala City. Similar protests took place in 20 other cities.

The general human rights situation has worsened over the past four years and there have been no serious attempts to fight impunity, as most cases of human rights violations are not investigated. Punishment, be it under criminal or administrative law, is rare. Many retired army officers, such as General Ríos Montt, have joined political parties and continue to perform official duties. A positive development was

the adoption on 7 October 2002 of *Decree No. 57-2002* which makes discrimination a criminal offence. A Guatemalan court sentenced five FRG activists to three years and two months' imprisonment for verbally and physically assaulting the 1992 Nobel Peace Prize winner, Rigoberta Menchú Tum. It was the first ever conviction for discrimination in the country. ([US Department of State Country Reports on Human Rights Practices Guatemala](#) 2004; 14th report on the human rights situation by the United Nations Verification Mission in Guatemala)

Mandated to oversee compliance with the Peace Accords of 1996, the United Nations Verification Mission in Guatemala (MINUGUA) withdrew in November 2004 pursuant to *General Assembly resolution 58/238*. Human rights organizations pointed out that MINUGUA's departure was going to leave a gap in the monitoring and protection of human rights. A field office of the UN Office of the High Commissioner for Human Rights was opened in 2005 following lengthy negotiations to obtain agreement from Congress. The field office was entrusted with monitoring the human rights situation in the country and assisting the government in formulating and implementing policies related to human rights.

## **Recent Developments**

### **THE JUDICIARY**

#### **Independence**

Article 5 of the 1989 *Law on the Judiciary (Ley del Organismo Judicial)* states that no other authority apart from the Supreme Court and other courts shall intervene in the administration of justice. However, outside interference by the military, political parties, the government and the media still remains common, in particular in cases involving senior public officials (see *Instituto de Estudios Comparados en Ciencias Penales de Guatemala, IECCPG, "Monitoreo de Independencia Judicial y Asociacionismo, La Situación Guatemalteca, 2002"* for a detailed study of the issue of outside interference in the work of judges, prosecutors and defence lawyers in Guatemala, hereinafter *IECCPG Monitoreo*). Human rights organizations hoped that the change of government in January 2004 would lead to renewed attempts to strengthen the judiciary which suffers from politicization, corruption, inefficiency and intimidation.

During the last two years of the Portillo administration (2002-2003), the Constitutional Court (*Corte de Constitucionalidad, CC*), which is responsible for protecting the rule of law and respect of the Constitution, was often accused of being biased and politicized, in particular with regard to its controversial decision to allow General Efraín Ríos Montt to stand for President. As a result of irregularities in the procedure to appoint supplementary judges to the Constitutional Court and the apparent unconstitutionality of its decision in the case of General Ríos Montt, the impartiality and independence of the Constitutional Court was widely questioned. The UN Special Rapporteur on the Independence of Judges and Lawyers considered this decision to run counter to the recommendations he had made in his report following his mission to Guatemala in 1999, in particular those relating to impunity for past human rights abuses (see UN Special Rapporteur on the Independence of Judges and

Lawyers, Mission to Guatemala August 1999, [Report of 6 January 2001](#) and Follow-up Mission in May 2001, [Report of 21 December 2001](#)). After expressing his disbelief at the decision taken by the country's highest court, he said that it "call[ed] into question the Court's independence, impartiality and integrity".

In June 2003, the Citizens' Registration Office (*Registro de Ciudadanos de Guatemala*) refused to register Ríos Montt as a candidate of the Guatemalan Republican Front (*Frente Republicano Guatemalteco, FRG*) for the 2003 presidential elections. Invoking article 186(a) of the Constitution, which excludes anyone who has led a *coup d'état* or armed revolution or assumed government leadership after such events from the office of President or Vice-President, the Registration Office considered that the then President of Congress Ríos Montt should be barred from running for president. General Ríos Montt ruled the country from March 1982 until August 1983 after seizing power in a military coup, and is accused of having committed serious human rights violations during his tenure. After endorsing the Registration Office's decision on 12 June, the Supreme Electoral Court (*Tribunal Supremo Electoral, TSE*) confirmed that the former president could not run.

Ríos Montt appealed against this decision by submitting a *recurso de amparo* (a constitutional petition seeking the protection of fundamental rights) to the Supreme Court (*Corte Suprema de Justicia, CSJ*), which rejected it, illustrating an increasing tendency to use *recursos de amparo* to appeal decisions of the Supreme Court to the Constitutional Court.

After a series of petitions filed by Ríos Montt, the Constitutional Court, clearly dominated by the FRG and under pressure from FRG demonstrators, rejected a provisional *recurso de amparo* and ordered the TSE to proceed with Ríos Montt's registration. A group of lawyers filed an action for lack of constitutionality against the order to register Ríos Montt's candidacy but it was rejected by the Constitutional Court on 11 August. The issue was finally settled on 12 September when the Supreme Court closed two *recursos de amparo* requesting the withdrawal of Ríos Montt's candidacy on the orders of the Constitutional Court. Ríos Montt was eventually registered and participated in the November 2003 presidential elections ([Institute for Comparative Studies in Social and Criminal Sciences \(INECIP\), Report on Guatemala to the IACHR, March 2004, hereinafter INECIP March 2004 Report, and ASIES, Proceso de Modernización y Fortalecimiento del Sistema de Justicia: avances y dificultades, enero 2002-junio 2003, hereinafter ASIES, Proceso de Modernización, June 2003](#)).

The impartiality of the Constitutional Court remains highly dubious due to political manoeuvring in the appointment of judges and the impossibility of challenging its impartiality (article 170 of the *Ley de Amparo, Exhibición Personal y Constitucionalidad*). Numerous conflicts of interests have arisen in the Court. For example, Judge Guillermo Ruiz Wong, who was Minister of the Interior during the first six months of the Portillo administration, was then appointed to the Court. Judge Manuel Flores was also a government official (*Registrador de la Propiedad*).

The Constitutional Court was entirely re-appointed in 2006, amid suspicions of political manoeuvring and rigged appointments. The former Attorney General, who had only recently been appointed as such, was directly appointed to the Court by the

President. The election of a judge by the University of San Carlos was challenged by a number of students from that institution, who claimed that one of the delegates was not authorized to vote. The Constitutional Court declared Mario Pérez Guerra, who had won the original vote, to be the legitimate judge and ordered the Dean of the University to notify Congress of his appointment. After much speculation, including an initial refusal to ratify the judge (who was allegedly put forward by the FRG in order to keep a judge close to its interests in the Court as long as the controversy had not been resolved), Mr Pérez Guerra was sworn in as a Constitutional Court judge.

### **Threats against the judiciary**

The independence and impartiality of the judiciary have been further undermined by a climate of intimidation against judges resulting from the violent events that took place in the capital on 24 and 25 July 2003.

On 21 July 2003, during a press conference concerning the Supreme Court decision to disqualify him from standing as a presidential candidate, Ríos Montt accused the judges of carrying out a technical *coup d'état* and warned that the ruling might spark off protests by his supporters. Demonstrators, many of them equipped with firearms or machetes, arrived in the capital on 24 July to demonstrate in support of the FRG and Ríos Montt's candidacy. The security forces failed to intervene to prevent the demonstrators from surrounding public buildings, including the Supreme Court and the Constitutional Court, as well as the homes of the Constitutional Court judges who had voted against Ríos Montt. Journalists monitoring court proceedings were also assaulted and one of them died, apparently from a heart attack (Ríos Montt was acquitted of the charges brought against him and other FRG officials in relation to this case in 2006). The protests only stopped after Ríos Montt called on the demonstrators to go home. Several high-ranking FRG officials participated and allegedly directed the demonstrators ([MINUGUA report on the events of 24 and 25 July](#)).

While the Constitutional Court was deliberating on the appeals filed by Ríos Montt against the backdrop of these two days of demonstrations, the IACHR expressed concern that the ruling FRG was using violence to put pressure on the justice system ([IACHR report Justice and Social Inclusion: The Challenges facing Democracy in Guatemala](#)).

Throughout the period during 2004 and early 2005 when the Constitutional Court was deliberating on the constitutionality of the payments promised by the Portillo government to the PACs (see above), former PAC members repeatedly threatened judges and the Constitutional Court, being unable to sit in its usual place, had to meet in a secluded hotel for security reasons.

### **Security of tenure**

Articles 205 and 208 of the 1985 Constitution guarantee security of tenure for all judges. However, in practice, this is undermined by the terms of office of judges at different levels. The mandate of judges in the lower courts has to be renewed by the Supreme Court and that of senior judges by Congress. Only 20 per cent of judges in the lower courts reportedly get their mandates renewed for a second term (see

International Federation of Human Rights, March 2004, Report, in Spanish only: [Guatemala Violación flagrante al derecho a la justicia](#)).

After negotiations between the four strongest parties, on 28 September 2004 Congress elected the new members of the Supreme Court from a list of 26 candidates prepared by the Nominations Commission, consisting of, *inter alia*, representatives of the Bar Association and of judges.

### *Case*

After serving 21 years in the judiciary, Yolanda Pérez Ruiz was not re-elected by Congress on 7 October 2004 when it appointed judges to sit in the Courts of Appeal. During her last four years as an appeal judge, she ruled on many occasions against the interests of the FRG and Ríos Montt. She approved the preliminary proceedings (*antejuicio*) against Ríos Montt and other FRG delegates to strip them of their immunity as lawmakers for altering the tax law on alcoholic beverages. In 2001, she ruled against Ríos Montt's candidacy for president and, in spring 2004, agreed to him being held under house arrest.

Invoking article 54(d) of the *Law on the Judiciary (Ley del Organismo Judicial)*, the Supreme Court continues to remove judges from the lower courts. In its view, the later 1999 *Law on the Judicial Career (Ley de la Carrera Judicial)* does not override the *Law on the Judiciary*. On 30 May 2002, the Constitutional Court admitted a *recurso de amparo* submitted by a justice of the peace (*juez de paz*) removed by the Supreme Court in 2001. The Constitutional Court argued that article 47 of the 1999 *Law on the Judicial Career* had partially derogated from article 54(d) of the *Law on the Judiciary*, making the Supreme Court's authority to remove lower judges limited by the procedure established in the *Law on the Judicial Career* that requires the previous recommendation of the Judicial Disciplinary Body (*Junta de Disciplina Judicial*) before the Court can decide on the dismissal of a judge ((ICCPG, "Monitoreo" 2002, Part B).

### **Budget cuts**

Despite the weakness of the judiciary and repeated calls from civil society and the Inter-American Commission on Human Rights calling for increased resources to improve its functioning, the budget allocated to the judiciary has been severely cut for the past three years. In addition, the judiciary is unable to properly implement reform projects or ensure the protection of threatened judges.

### **Internal independence**

The dual role of the Supreme Court as both the country's highest court and the administrator of the judiciary has been criticized as undermining the internal independence of the judiciary, in particular in relation to the appointment of judges to the lower courts.

To guarantee the independence and impartiality of judges, the *1999 Law on the Judicial Career (Ley de la Carrera Judicial)* establishes a system of competitive public examination for those wishing to embark on a career in the judiciary, a

disciplinary mechanism and an assessment system based on objective criteria to determine penalties, removals and re-appointments. As the Law has been implemented in an erratic and non-transparent way, the IACHR has concluded that current implementation of the law amounts to a form of interference in the independence of the judiciary (see [IACHR report Justice and Social Inclusion: The Challenges facing Democracy in Guatemala](#) (in Spanish), [ASIES, proceso de Modernización June 2003](#), [ASIES, Estudio sobre avances y dificultades en la implementación de la ley de la carrera judicial, diciembre 1999- Agosto 2004](#), hereinafter "ASIES Implementation August 2004").

### *Appointments*

According to article 19 of the 1999 Law, candidates become eligible and are appointed by the Supreme Court after having successfully taken the exams organized by the Institutional Training Unit (*Unidad de Capacitación Institucional*). However, the Supreme Court has also used personal interviews as an additional, subjective criterion not provided for in the Law. One of the candidates who had obtained the best results during the third training program (2000-2001) challenged this practice by submitting a *recurso de amparo* to the Constitutional Court, arguing that fundamental rights and judicial security are violated if someone is barred from a career in the judiciary for no good reasons founded on law. After granting the *recurso de amparo*, the Constitutional Court ruled on 2 September 2002 that the Supreme Court should appoint as first instance judges the applicants who have complied with all the requirements laid down in law and achieved the best results, and that it should always give precedence to those who have obtained the best results, except in special, well-founded cases (see ICCPG, "Monitoreo de Independencia Judicial y Asociacionismo, la Situación de Guatemala 2002", Part B).

### *Evaluation*

In April 2002, the Judicial Career Council (*Consejo de la Carrera Judicial*), an organ created by the *Law on the Judicial Career* but dominated by the Supreme Court completed its first assessment of first instance judges to decide whether they should be re-appointed. The process was reportedly flawed by the lack of transparency and subjectivity of the assessment criteria, thereby contributing to an internal and external perception of being irregular and in breach of the law. Neither the *Law on the Judicial Career* nor the Council's *Regulations Relating to Performance Assessments* adopted on 19 March 2002 (*Acuerdo 1-2002, Reglamento de Evaluación de Desempeño*) provide for an appeals procedure. A 2002 evaluation revealed that over half the judges considered the current assessment system as amounting to interference and pressure. In March 2003, the Council issued a new set of rules (*Manual de Evaluación del Desempeño y Comportamiento Profesional de Jueces para su ingreso a la Carrera Judicial*) for carrying out assessments of justices of the peace that includes a procedure for challenging its decisions.

As for the judges (*magistrados*) who sit in the Court of Appeals, their assessment was blocked when the President of the Institute of Judges within the Judiciary (*Instituto de Magistrados del Organismo Judicial*) filed a petition before the Constitutional Court arguing that the provisions of the 1999 *Law on the Judicial Career* (articles 11, 22 and 32) relating to their assessment were unconstitutional. The Constitutional Court

provisionally suspended several articles relating to the assessment of judges in December 2003 and January 2004.

### *Disciplinary mechanisms*

In addition to the Judicial Disciplinary Body (*Junta de Disciplina Judicial*), established under the 1999 *Law on the Judicial Career*, the general supervision of courts, as established in the 1989 *Law on the Judiciary*, also plays an important role in overseeing discipline amongst judges at all levels. Since the person responsible for performing this role is also President of the Supreme Court, this procedure has been criticized as being a tool of the Supreme Court that is used to interfere in the work of judges from the lower courts. According to **local organizations**, a majority of judges considered that the supervision exercised by means of this procedure resulted in pressure and interference (ICCPG, “Monitoreo 2002”, Part B).

### **Politically-motivated trials**

The Guatemalan judiciary continues to be abused in order to harass human rights defenders and social activists, mainly by bringing defamation charges.

### *Case*

On 21 January 2004, criminal proceedings were opened against Bruce Harris, the director of the NGO Casa Alianza, which promotes children’s rights and provides rehabilitation programs for street children, after he accused senior public officials of being involved in illegal adoptions (see also Prosecutors - Internal independence below). He was acquitted on all charges on 30 January 2004.

### **Corruption**

In order to address the corruption that is rampant in all sectors of the judiciary and which contributes to the negative view of the justice system held by the general population, the Commission to Fight Corruption in the Justice Sector (*Comisión de Combate a la Corrupción del Sector Justicia*) was set up in October 2002. It consists of twelve representatives from the judiciary, the Public Prosecutor’s Office (*Ministerio Público*), the Ministry of the Interior (*Ministerio de Gobernación*) and the Institute of Public Criminal Defense (*Instituto de la Defensa Pública Penal*) and seeks to unify the policies and strategies to fight corruption in the justice system that are being pursued by different institutions.

### **Harassment**

Just like Guatemalan society in general, judges have been the victims of the increasingly violent atmosphere in the country. Like other judicial staff, witnesses and human rights defenders, they face terror and intimidation when trying to do their work and frequently fear for their physical safety. In February 2002, the National Commission for Monitoring and Support of the Strengthening of the Justice System (*Comisión Nacional para el Seguimiento y Apoyo al Fortalecimiento de la Justicia*) expressed concern about the violent intimidation being faced by judges, prosecutors and lawyers which, in its view, undermined judicial independence.



Although the Office of the Special Prosecutor for Offences against Justice Officials (*Fiscalía Especial de Delitos contra Operadores de Justicia*) was established in 2001, it has operated for years without any rules and regulations to determine how it should function. Its lack of human and financial resources is reflected in its poor performance. The IACHR reports that, even though over 150 cases had been referred to it during the first semester of 2002, only one case reached the courts resulting in a conviction on 29 December 2003 (see [IACHR report Justice and Social Inclusion: The Challenges facing Democracy in Guatemala](#); IECCPG, “Monitoreo 2002”, for an assessment of the performance of the Special Prosecutor’s Office). In 2005, the Unit was incorporated into the Office of the Special Prosecutor on Human Rights (*Fiscalía de Derechos Humanos*).

In addition, judges are increasingly threatened and, according to the Official report of the Judiciary, the number of cases doubled over the past two years from 61 in 2002 to 135 in 2003. In autumn 2004, the Guatemala Government set up a special Unit to Coordinate the Protection of Human Rights Defenders, Judicial Staff, Journalists and Social Communicators (*Unidad Coordinadora de Protección para Defensores de Derechos Humanos, Administradores y Operadores de Justicia, Periodistas y Comunicadores Sociales*).

Set up in March 2002, the Judiciary Security Unit (*Unidad de Seguridad del Organismo Judicial*) does not have the resources it needs to protect all judicial staff who are at risk and provides protection only in very serious cases.

## Cases

On **9 July 2002**, people from the town of Nebaj, Quiché, took judge **Griselda Yoc** hostage and demanded explanations from her about a case involving a member of their community. During a demonstration on 19 July asking to free a member of the community imprisoned by the judge, the court-house was damaged. On 23 July, the Supreme Court closed the court temporarily for 10 days and transferred the judges to other locations.

On **9 January 2003**, **Jackelin España**, a judge working on cases related to drug-trafficking, received death threats and subsequently survived an assassination attempt.

On **12 January 2003**, **Hector Mauricio Rodríguez Arguet**, a judge in the second chamber for administrative matters at the Supreme Court (*Sala Segunda de los Contencioso Administrativa de la Corte Suprema de Justicia*), which handles complaints against public officials, was shot dead. Police concluded that it was an attempted car-jacking and arrested five individuals.

On **14 June 2004**, the President of the Alta Verapaz Trial Court (*Tribunal de Sentencia Penal*) reported that unknown individuals had searched the courthouse. The court’s files include the case of 25 soldiers accused of murdering 13 farmers.

On **12 September 2004**, Federal Appeals Court judge **Julio Roberto Paredes** was murdered on a public bus. The motive for the murder was not clear.

On **30 October 2004**, judge **Oscar Beltrán Reyes** was taken hostage by the inhabitants of a village after he had ordered a woman who was under arrest to be transferred from the village to another detention facility. He was released by police the same day.

On **25 April 2005**, unidentified individuals shot dead judge **José Victor Bautista Orozco** as he was leaving his house. He worked at the Alto Impacto Trial Court which was dealing with cases of drug-trafficking and a robbery involving police officers.

## LEGAL PROFESSION

Established on 14 June 2004, the Guatemalan Association of Mayan Lawyers and Notaries (*Asociación de Abogados y Notarios Mayas de Guatemala*) promotes access to justice for indigenous communities and the elimination of racial discrimination from within the judiciary, while lobbying for more indigenous judges, compliance with the 1996 Peace Accords and the provision of reparations to the victims of the civil war. There is, however, one recognized Bar Association in Guatemala: the **Colegio de Abogados y Notarios de Guatemala**.

The frequent threats, intimidation and assaults faced by lawyers, in particular those working in the field of human rights, corruption and drug trafficking, mean that their ability to practice free from outside influences is severely hampered. Lawyers are frequently identified with their clients' cases and threatened, particularly when working on well-publicized cases.

### Cases

On **23 August 2002**, **Roberto Romero**, a lawyer at the Myrna Mack Foundation received repeated death threats and suffered an attack on his home shortly before he was due to reopen proceedings against the military officers accused of murdering Myrna Mack (see [Access to Justice](#) below). On 26 August 2002, the Inter-American Court of Human Rights issued [provisional measures](#) requesting the government to guarantee his security. The provisional measures have not yet been lifted as of today. On 3 September 2002, the ICJ [intervened](#) on his behalf by writing to the Guatemalan authorities to express its concern at the attacks and reminding the government of its international obligations.

On 2 December 2003, lawyer **Carlos Orlando Recinos Carranza** was shot dead.

In **December 2004**, in an apparent attempt to convince him to stop representing certain clients, lawyer **Armando Sánchez** was repeatedly threatened. Among others, Armando Sánchez represents individuals involved in labour and property rights disputes, as well as cases against drug traffickers and public officials accused of corruption. After being under 24-hour police protection for a week, he still receives police protection every night.

## PROSECUTORS

### Independence

Inadequate training and equipment and lack of financial, material and human resources hamper the investigations carried out by the Public Prosecutor's Office (*Ministerio Público*). During 2004 only about 3 per cent of the complaints filed were reportedly investigated. Corruption and intimidation further undermine the independence and impartiality of the prosecution system (see [US Department of State Country Reports on Human rights Practices Guatemala](#) 2004). Even though the 1994 *Law on the Public Prosecutor's Office* provides for public competitive examinations to enter the prosecution service, public prosecutors are reportedly still also being taken on a contractual basis (see [ASIES, proceso de Modernización June 2003](#)).

### Interference from the executive

In order to fulfil his election campaign promise to fight impunity and corruption, President Berger started to purge the Attorney-General's Office (*Fiscalía General*). After assuming office in January 2004, he publicly announced his intention to review the Attorney-General's work, in particular in relation to corruption cases involving former President Portillo. He threatened Attorney-General (*Fiscal General*) de León with dismissal if he did not comply and on 23 February 2004 asked him for information about alleged flaws in the investigation of three corruption cases. Accusing the President of violating the principle of the separation of powers, de León refused to comply and submitted a *recurso de amparo* to the Constitutional Court, which was rejected on 24 February 2004. Berger dismissed de León the same day for "inefficiency" and appointed Juan Luis Florido, a member of his own party, *Gran Alianza Nacional (GANNA)*, as the new Attorney-General.

According to the Constitution (article 251), the Attorney-General is appointed for a four-year term by the President from a list of six individuals compiled by the Nominations Commission. He can only be removed by the President for properly-established, justified reasons (*por causa justificada debidamente establecida*).

Several civil society organizations expressed concern that the removal of de León and the appointment of Florido were in breach of the procedure laid down in the Constitution. Arguing that Florido had not been chosen from a list prepared by the Nominations Commission as established in the Constitution, they challenged his appointment before the Constitutional Court. However, their complaint was rejected on 10 March 2004.

### Internal Independence

In May 2002, after the appointment of de León as Attorney-General, several prosecutors were removed or disciplined without good reason and in contravention of the *Organic Law on the Prosecutor's Office*. Many prosecutors have criticized disciplinary proceedings for lacking due process guarantees and consider that the penalties established in law are not applied. (ICCPG, "Monitoreo 2002", Part B).

There is no clear, objective and transparent assessment system. A majority of prosecutors consider the promotions system to be subjective and based on certain relationships rather than academic merit and professional experience (ICCPG, “Monitoreo de Independencia Judicial y Asociacionismo, la Situación de Guatemala 2002”, Part B).

In addition, prosecutors have allegedly been pressurized by their superiors to continue investigating certain cases even though evidence is lacking. For example, a regional prosecutor was allegedly instructed by the Attorney-General to bring criminal charges against individuals who had participated in peaceful demonstrations on 7 September 2004 at the Chixoy hydroelectric dam to protest against the failure to pay reparations to the families evicted 20 years ago in order to build the dam (see [Amnesty International, November 2004, Guatemala: Human rights defenders at risk](#)). Local human rights organizations have expressed concern about the increasing criminalization of social protest.

Corruption reportedly became institutionalized under the former (FRG) government and the judiciary has often failed to take action against corrupt public officials. The anti-corruption unit of the Prosecutor’s Office operates in the face of political pressure and interference, including alleged pressure from former Attorney-General Carlos de León. Two prosecutors from the unit resigned in March 2003 after de León allegedly ordered them to close a corruption case involving former President Portillo.

### **Commission for the Investigation of Illegal Groups and Clandestine Security Organizations**

In December 2003, the Portillo administration signed an agreement with the UN to set up a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations (*Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad, CICIACS*). The mandate of the Commission was to expose and prosecute those involved with clandestine security organizations, these being illegal, armed networks dating back to the civil war and allegedly linked to the most senior levels of the military and government. They are not only allegedly involved in drug-trafficking and organized crime but are also said to be responsible for attacking and threatening human rights defenders, justice officials and social activists. Given that the justice system is unable to cope with common crime, the government deemed it necessary to step up the legal battle against such clandestine groups by setting up the CICIACS. It was to be headed by a trio representing the UN, the OAS and the Guatemalan Government.

In May 2004, Congress refused to ratify the agreement on the grounds that it was unconstitutional. The Constitutional Court endorsed that position in an advisory opinion issued on 6 August 2004, arguing that the CICIACS would have investigative powers that the Constitution attributes solely to the Public Prosecutor’s Office. As a result of the ruling by the Constitutional Court, on 19 November 2004 the government submitted a revised proposal on the setting up of the CICIACS to the UN. At the time of writing, the government is still trying to rescue it.

## Cases of harassment of prosecutors

On **5 December 2002**, Attorney-General **Carlos de León** was attacked by unidentified individuals who fired six gunshots at his car.

On 23 January 2003, several cars followed prosecutor **Tatiana Morales Valdizon** as she returned from a visit to the village of Chocon where she had interviewed witnesses in the context of an investigation she was conducting into alleged human rights abuses by former members of an Anti-Narcotics Unit.

In **March 2003**, **Manuel de Jesus Baraquin Duran**, a prosecutor involved in several prominent extra-judicial killings received death threats. On 10 April 2003, a group of unidentified individuals shot at his car. The Guatemala Government informed the UN Special Rapporteur on the Independence of Judges and Lawyers that an investigation for attempted homicide was under way and that the prosecutor had resigned to take up the role of substitute delegate in Congress.

**Thelma de Lam**, a special prosecutor working on cases involving human rights defenders (*fiscal especial para los defensores de los derechos humanos*) was repeatedly threatened and harassed in **June 2003 and March 2004**. The Attorney-General had allegedly asked her to drop investigations into the issue of General Ríos Montt's presidential candidacy. On 30 March the ICJ sent a [letter to the Guatemalan Government](#) expressing concern at the harassment. In September 2004, Thelma de Lam was transferred to the Appeals Unit of the Public Prosecutor's Office (*Unidad de impugnaciones en el Ministerio Público*).

Staff at the **Human Rights Ombudsman's Office** (*Procuraduría de Derechos Humanos*) work in a climate of intimidation and aggression: on **5 June 2003**, its representative in Chimaltenango was murdered by unidentified gunmen. Two individuals who had been charged in connection with the incident in July 2003 were still in prison and awaiting trial at the end of 2004. In **August 2003**, staff at the Guatemala City office received phone calls threatening them with death unless they closed the case of a politician from the guerrilla organization Guatemalan National Revolutionary Unity (*Unidad Revolucionaria Nacional Guatemalteca, URNG*) who had sought the office's help after being intimidated and attacked. On 5 August 2004, staff at the Human Rights Ombudsman's Office in Coatepeque were threatened by armed men who asked for information about their investigation into the extrajudicial execution of the Mayor of Costa Cuca on 2 August.

On **17 November 2003**, gunmen fired at the pick-up truck normally used by the anti-corruption prosecutor **Lily Chinchilla**. After the incident, the prosecutor reported that she had recently received threats in connection with her work.

On **29 July 2004**, during a press conference, new Attorney-General **Juan Luis Florido** announced that his sister had been harassed that day by a group of armed men who had intercepted her car and forced her to get out.

On **27 April 2005**, prosecutor **Antonio Meléndez Sandoval** had to be treated in hospital following an assault. He was investigating several important cases involving drug trafficking, corruption and organized crime.

## ACCESS TO JUSTICE

Given the weaknesses in the justice system, a large majority of the population has no effective or prompt access to justice. Impunity tends to be the norm rather than the exception. The failure of the judiciary to ensure full and timely investigations and fair trials, as well as violations of the rights to due process and judicial protection, are still reportedly some of the most frequent human rights violations suffered in the country (see [UNDP, Guatemala Human Development Report 2003](#), in Spanish).

The Inter-American Commission on Human Rights (IACHR) has described the situation as one of structural impunity involving the responsibility of the state under international law. Among the factors causing structural impunity, the IACHR identifies the poor performance of the judiciary and, in particular, the National Civil Police (*Policía Nacional Civil, PNC*), the continuing influence of the military, lack of cooperation from some state bodies and the filing of numerous appeals and motions, such as *recursos de amparo*, in order to delay proceedings. The general public's lack of confidence in the judiciary is particularly acute among the indigenous communities who perceive judicial officials as being biased and prejudiced against them (see [IACHR report Justice and Social Inclusion: The Challenges facing Democracy in Guatemala](#)). In an effort to promote access to justice for indigenous communities, hundreds of bilingual judicial staff, including judges and translators, were recruited and trained in 2002 and 2003. Article 15 of the *2003 Law on National Languages (Ley de Idiomas Nacionales)*, states that, among other priorities such as education, the judiciary should be accessible to every language group in its own language.

In addition, first instance courts and magistrates' courts ( *juzgados de paz*) are located far away from indigenous communities (see UN Special Rapporteur on contemporary forms of racism, *Report on Mission to Guatemala*, March 2005 and [UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, report on Mission to Guatemala, February 2003](#) ). To improve this situation, three new Centres for the Administration of Justice (CAJ) were inaugurated in rural areas during 2002, raising the total number of CAJs to five. The centres are staffed by judicial officers, national police, public prosecutors and public defenders and include a centre for mediation and a public lawyers' office providing free legal aid. However, the efficiency of these centres is hampered by their lack of resources (see below; for more information see [ASIES, proceso de Modernización June 2003](#) and [IACHR report Justice and Social Inclusion: The Challenges facing Democracy in Guatemala](#), in Spanish)

In order to reduce the caseload of first instance judges and to improve the rural population's access to justice, on 23 September 2002 Congress adopted a decree (*Decreto 51-2002*) to partially amend the Code of Criminal Procedure to provide for the creation of mobile magistrates (*jueces de paz móvil*) and broaden their jurisdiction. In particular, the decree authorized sentencing magistrates (*jueces de paz de sentencia penal*) to deliver verdicts in cases incurring a maximum prison term of five years. Human rights organizations have criticized the extension of the jurisdiction of magistrates (*jueces de paz*), arguing that it jeopardizes certain procedural guarantees and violates the 1996 Peace Agreements which mandated the State to put forward legislation recognizing the right of indigenous communities to handle internal issues in accordance with their customary law. Moreover, the decree assumes that

there are public prosecutors and public defenders available in all the municipalities where magistrates operate, which is not the case given the limitations on resources.

The persistence of cases of lynching, particularly in rural areas where the justice system is least accessible, continues to be amongst the most worrying consequences of the judiciary's weakness, even if the number of cases has significantly decreased during the last two years, from 146 between 2000-2002 to 17 in 2004 (see, UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, *Report on Mission to Guatemala*, February 2003).

### **Gerardi case**

The criminal proceedings against three military officers and a priest accused of murdering Bishop Gerardi in April 1998 were paralyzed throughout most of the period under review due to various legal appeals. The Court of Appeals decided on 8 October 2002 to annul the sentence issued in June 2001 (see [Attacks on Justice 2002](#)) and ordered a new trial. Fearing that a new trial would significantly delay the case and jeopardize the possibility of elucidating the circumstances of Bishop Gerardi's death, the accusation filed a *recurso de amparo* to the Supreme Court, arguing that the Court of Appeals had exceeded its competences. On 19 December 2002 unidentified individuals shot at a prosecution witness. On 12 February 2003, the Supreme Court overruled the ruling of the Court of Appeals and ordered a new second instance trial. After the defence appealed this ruling, the Constitutional Court confirmed the Supreme Court's decision on 2 October 2003, sending the case back to the Court of Appeals. Two days later, a defence witness was murdered. The proceedings continued to be blocked since the prosecution requested the recusal of the Court of Appeals, arguing that since its judges had already issued a sentence on the case, a new Court should review the case. Upon request of the prosecution, the Supreme Court removed in August 2004 one of the judges for alleged lack of impartiality. After Congress elected new Supreme Court and Court of Appeals judges in October 2004, the prosecution's request that the court of Appeals be recused became moot since the court of Appeals judges had been replaced in the meantime. On 22 March 2005, the Court of Appeals reduced the sentence of the accused military officers from thirty to twenty years and changed their conviction from murder to accomplice to murder, without establishing who was responsible for the murder. Defense lawyers announced they would appeal to the Supreme Court.

### **Myrna Mack Case**

On 3 October 2002 a court convicted Colonel Juan Valencia Osorio to 30 years of prison for his role in planning the murder of anthropologist Myrna Mack in 1990 (see [Attacks on Justice 2002](#)) and acquitted two other high-ranking military officials. After the Colonel appealed, the Court of Appeals overturned the conviction. However, on 19 January 2004, the Supreme Court reaffirmed its previous conviction in a historic ruling: for the first time a high-ranking army official was convicted to a prison sentence. However, following the decision of the Court of Appeals, Osorio fled, allegedly with the help of the army. His whereabouts remain unknown.

In parallel to the national proceedings, Mack's sister filed a case to the IACHR for violations of the right to life and judicial protection. The IACHR referred the case to

the Inter-American Court of Human Rights which issued a [sentence](#) on 25 November 2003. It considered that the Guatemala government was responsible not only for the murder, but also for covering it up and impeding the investigations. The Inter-American Court severely criticized the Guatemalan judiciary for allowing the abuse of *recurso de amparo* to delay the case and for failing to clarify the facts and punish those involved.

As requested by the Inter-American Court, President Berger publicly acknowledged on 22 April 2004 Guatemala's role in the killing and subsequent denial of justice. Previously, on 25 February during a ceremony for the National Day of the Dignity of Victims from violence, President Berger had already apologized on behalf of the state for the human rights violations committed during the 36-year civil war. However, the reparations ordered by the Inter-American Court had not yet been paid as at the end of 2004.

### **Dos Erres case**

On 4 February 2005, it [became public](#) that the Constitutional Court had ordered in December 2004 the suspension of the proceedings against 16 military officers accused of having perpetrated the so called "Dos Erres Massacres" (referring to the killing of 226 unarmed civilians in the village of Dos Erres in 1982 during Guatemala's civil war). Arguing that their crimes were covered by the 1996 *Amnesty Law (Ley de Reconciliación Nacional)*, the Court ordered the cancellation of the arrest warrants of the fugitive suspects and suspended the judicial proceedings which had been under way since 1994. The case had been slowed down by 36 *recursos de amparo* filed by the defence. In a resolution issued on 10 February, the Court clarified that its sentence did not affect the validity of testimonies collected during the proceedings. Human rights organizations pointed out that crimes against humanity such as mass executions were exempted from the 1996 *Amnesty Law* and criticized the Court's sentence for fostering impunity for past human rights abuses by expanding the scope of the *Amnesty Law*.

### **Reparations**

After years of lack of progress regarding reparations for the victims of the civil war under the Portillo government, the National Commission of Redress (*Comisión Nacional de Resarcimiento*) was set up on 6 July 2004 when President Berger handed it over the first payment. On the same occasion, Berger accepted the state's responsibility and apologized for past human rights abuses committed by state agents. Composed of representatives of victims and human rights organizations, the Commission will implement a 13-year redress program which includes economic compensation, medical assistance, social and educational projects and investigations of disappearances. However, there is no guarantee that later governments will honour President Berger's commitment, since the Commission was not established by law.

### **Legal Aid**

Following a financial crisis (see [Attacks on Justice 2002](#)), the situation of the understaffed and under-resourced Institute of Public Penal Defense (IDPP) became very serious again. In March 2003, the Institute announced the suspension of several



important programs, such as the Assigned Council Defence Unit (private lawyers hired to defend individuals charged with minor crimes and specific cases) and the Defence Unit at Police Precincts. For lack of resources, it is feared that the Institute may have to close more programs, such as the Indigenous Criminal Defence Units (see [ASIES, proceso de Modernización June 2003](#)). The situation is expected to become worse with the latest reform of the *Criminal Procedure Code* (see above), as the Institute is expected to dispatch public defense lawyers to all the municipalities where Justices of the Peace had their competence enlarged, to try offences which do not carry more than a five-year prison term.

### LEGAL REFORMS DURING THE PERIOD

- September 2002:** *Criminal Procedure Code* partially reformed, broadening competences of Justices of the Peace.
- October 2002:** Adoption of *Decree No.57-2002*, criminalizing discrimination
- July 2003:** *Law on National Languages* adopted, access to justice for every linguistic community in their own language
- May 2003:** *Agreement No.13-2003* adopted by the Supreme Court in which regulates the functioning of the mobile Justices of the Peace.

## General Country Information

### a. Legal system overview

#### 1. Rule of Law and independence of the judiciary

The [1985 Constitution](#) (amended in 1993) states that Guatemala is a democratic and representative republic, and provides for the separation of powers of the executive, the legislative and the judiciary. The President of the Republic, who is the head of the Government and Chief of State, exercises executive power. The President is elected by universal and secret ballot for a non-renewable period of four years. A 158-deputy unicameral Congress exercises the legislative power. Deputies are elected for a renewable four-year period using a system of proportional representation through the election of 116 deputies from districts and 31 from a national list.

#### 2. Sources of law

The hierarchy of sources of law in the civil tradition, whose family the Guatemala legal system is part of, classifies, in descendent order of juridical force, the Constitution, legislation and regulations as sources of law.

### b. The judiciary

#### 1. Judicial Structure

The organization and functioning of the judiciary is governed by the Constitution, the 1989 *Law of the Judicial Organism (Ley del Organismo Judicial-Decree 2-89)* and the 1999 *Law on the Judicial Career (Ley de la Carrera Judicial – Decree 41-99 - LJC)*. The judiciary is composed of the Supreme Court, Courts of Appeal and lower courts, including the courts of peace (*Juzgados de Paz*) and the communal courts of peace (*Juzgados de Paz Comunitarios*). There are also specialised tribunals for juvenile and labour issues. The 13-member Supreme Court has both administrative and judicial competence. The courts of peace are composed of one judge (Juez de Paz) and deal usually with traffic infractions and, in emergency cases, with major offences only, subject to appeal to higher courts. The Communal Courts of Peace are composed of three judges who are elected by the local community. These courts are allowed to use alternative dispute resolution methods and so far only five have been established in the country on an experimental basis.

As for the Constitutional Court, its primary function is the defence of the constitutional system. It is composed of five magistrates, with one alternate each, who serve a term of five years. Each one of them is appointed respectively by the Supreme Court, by Congress, by the President of the Republic, by the University of San Carlos and by the Bar Association. The number of magistrates of the Constitutional Court has to be increased to seven in cases of disputes with the Supreme Court over constitutional issues. In such cases, the two additional magistrates are elected at random from among the alternates.

#### 2. The Judicial Council

The Council of Judicial Career (*Consejo de la Carrera Judicial*) began operating in July 2000. This Council is composed of the President of the Supreme Court, the Head

of the Human Resources Unit, the Head of the Unit of Institutional Training, a representative of the judges and a representative of the magistrates. The Council is competent to carry out public competitions based on merit for the positions of judges or magistrates, and review their performance (Article 5 and 6 LJC). One of the objectives of the Council is to incorporate all judges and magistrates into the judicial career system by the end of 2005.

### **3. Budget and Autonomy**

The Supreme Court manages the financial resources of the judiciary. It draws up the annual budget and directs its execution. The budget of the Constitutional Court must correspond to five per cent of the total allocated to the judiciary. However, the government has reduced the contribution to the judiciary.

Budget constraints have also affected the Public Ministry. Implementation of the *Law for the Protection of Individuals under Legal Process* requires a higher budget than the one at disposal of the judicial system, since the persons involved in penal processes are usually destitute and supporting a large family. The situation of the Institute of Public Penal Defence (IDPP) also remains critical. Due to lack of resources there is a shortage of staff lawyers, limited technological resources, absence of investigators, limited number of social workers and interpreters, little national coverage and scarce growth.

## **c. Judicial Actors**

### **c.1. Judges**

#### **1. Independence and Impartiality**

Article 203 of the Constitution ensures the independence of magistrates and judges who are subject solely to the Constitution and the laws. Whoever attempts to undermine the independence of the judiciary faces penalties set by the *Penal Code* and is barred from holding public office. The Guatemala Constitution provides guarantees for the judiciary such as functional and economic independence, the security of tenure of magistrates and first instance judges and the selection of its staff.

The UN Committee against Torture, which examined the third periodic report of Guatemala in 2000, expressed [concern](#) about the increase in acts of intimidation, harassment and death threats against judges, prosecutors, complainants, witnesses and members of human rights bodies and journalists organisations. The existence of parallel investigations tacitly authorized or agreed to by the State and conducted by Government bodies clandestinely was said to affect the autonomy and independence of the judiciary. The CAT concluded that this practice should be immediately prohibited. The Service for the Protection of Persons involved in Proceedings and Persons, connected with the Administration of Justice was considered to be inadequate and ineffective. The Committee also recommended the State modernise the system of administration of justice and strengthen its independence.

#### **2. Internal Independence**

The Inter-American Commission on Human Rights [reports](#) in 2003 that the Supreme Court had repeatedly issued direct instructions to the lower tribunals, in violation of

the requirements of internal independence. In June 2000, the Supreme Court issued a decree limiting the competence of tribunals to rule on requests of *habeas corpus* (*recursos de exhibición personal*) although the *Law on Amparo, Habeas Corpus and Constitutionality* ([Ley de Amparo, Exhibición Personal y Constitucionalidad](#)), enables all Courts of Appeals to rule on such requests. However, on 6 February 2002 the Constitutional Court ruled that the Supreme Court lacked the competence to modify the courts' jurisdiction as established by law.

### **3. Qualifications, Appointments and Training**

The 1999 *Law of Judicial Career* regulates the system of terms of office, income, promotion, training and discipline of all judges and magistrates, in order to guarantee their dignity, independence and professional competence.

Article 4 of the *Law establishes the Council of Judicial Career (Consejo de la Carrera Judicial)*, the Board of Judicial Discipline (*Junta de Disciplina Judicial*), the Nominations Commissions (*Comisiones de Postulación*) and the Institutional Training Unit (*Unidad de Capacitación Institucional*).

Articles 215 and 217 of the Constitution provide for the creation of Nominations Commissions, empowered to submit lists of candidates for positions of magistrates at the Supreme Court and Appeals Courts.

The Supreme Court magistrates are elected by the Congress for a five-year period from a list of 26 candidates proposed by one of the Nominations Commissions composed of representatives of sectors related to the administration of justice, such as universities, faculties of law, bar associations and lower tribunals.

Magistrates of the Courts of Appeal are elected by Congress for a five-year term from a list submitted by another Nominations Commission, which has a similar composition to that involved in the election of the magistrates of the Supreme Court, but with the Supreme Court also participating in the election of these magistrates.

Appointments of first instance judges and judges of Courts of Peace are carried out by the Supreme Court following the completion of a training course in the Unit of Institutional Judicial Training (*Unidad de Capacitación Institucional* - Articles 18-19 LJC). The Training Unit plans, executes and organizes the training of judges, magistrates and other judicial officers. Candidates have to apply through announcements in the official and the most widely circulated newspapers. The Unit evaluates the candidates, based on personal interviews and tests. Once the evaluation is over, the Unit numbers the eligible candidates according to their grades. Applicants considered eligible must follow at least a 6-month training course. The Supreme Court then appoints the successful candidates either as Judges of Peace or judges of first instance.

Effective and permanent training programmes for judges are difficult to establish, as judges cannot leave the courts for long periods of time, for lack of substitutes. A program called Virtual Classrooms was devised to address this problem. Currently, it is functioning as a pilot project in some of the municipalities of the department of Guatemala City. A critical problem is the lack of basic infrastructure, and some courts in rural areas have neither telephones nor computers.

The Special Rapporteur on the Independence of Judges and Lawyers recommended in 2000 that university education be reorganised in order to develop professional training programmes, prior to an admission exam to practice law. This proposal was widely rejected, especially from the Lawyer and Notaries Association of Guatemala, which considered it as one more obstacle to obtain a university degree.

The selection, promotion and disciplinary standards of the 1999 *Law on the Judicial Career* have neither been clearly defined nor implemented in a transparent manner. The Supreme Court has reportedly conducted its own interviews and not selected candidates exclusively on the basis of their merits.

#### **4. Security of Tenure**

Article 208 of the Constitution and Article 3 of the 1999 *Law on the Judicial Career* provide for security of tenure of judges and magistrates. Magistrates and first instance judges serve a five-year term. The former can be re-elected and the latter re-appointed. During that term they cannot be removed or suspended, except as provided by law (see below, Discipline, Suspension and Removal). The recommendations formulated by the Special Rapporteur on the Independence of Judges and Lawyers in 2000 and the IACHR that the terms of magistrates and of judges should be extended to ten years and that there should not be provisions for re-election have not been fulfilled. The current five-year period for judges and magistrates has been assessed by these international observers to be too short. The length of security of tenure of judges can only be changed through a constitutional amendment.

#### **5. Discipline, Suspension and Removal**

Sanctions against judges and magistrates can only be imposed after disciplinary proceedings, which must observe basic principles, such as the right to a hearing and the right to conduct their defence personally or with the help of legal counsel (Articles 47-53 LJC). Sanctions can be imposed for disciplinary offences defined as light, serious and very serious. They range from oral admonition to dismissal (Articles 37-46 LJC).

The 1999 *Law on the Judicial Career* established a Board of Judicial Discipline (*Junta de Disciplina Judicial*) competent to receive and investigate complaints about the conduct of judges and sanction misbehaviour. In very grave cases, it can recommend to Congress or to the Supreme Court the dismissal of judges. If deemed necessary, it can order the Judiciary's supervisor body (*Supervisión General de Tribunales*) to investigate the case. The terms of members of the disciplinary body (*Junta de Disciplina*) provided for in article 37 of the Law are limited to one year. All the four bodies during the last four years adopted their own bodies of rules, leading to criticism that the body lacks continuity and transparency and enjoys an excessive amount of discretion in violation of judges' judicial security.

The Board of Judicial Discipline (*Junta de Disciplina Judicial*) exercises disciplinary control over the judiciary, including through the imposition of sanctions. However, if the sanction imposed after disciplinary proceeding against a magistrate or judge is dismissal, the Board of Judicial Discipline can only recommend such measure to the authority that appointed the magistrate or judge (Congress in the case of Supreme Court and Courts of Appeal magistrates, and Supreme Court in the case of judges of

first instance and Judges of Peace (Article 8 LJC)). The Board consists of two magistrates of the Court of Appeals and a judge of the Court of First Instance appointed for a one-year term. A General Court of Supervision, is responsible for the investigation (Article 7 and 8 LJC). The Supreme Court has considered the possibility of amending the 1999 *Law on the Judicial Career*, deemed to be too weak and the source of slow proceedings.

## **6. Accountability and Corruption**

In response to the increasing incidents of corruption, the District Attorney's Office against Corruption was created in 1999 within the Public Ministry. Its mission is to investigate and prosecute offences of corruption involving officials or public employees. The Special Rapporteur on the Independence of Judges and Lawyers recommended that an independent enforcement agency, with powers to investigate complaints of corruption in public office, including the judiciary, and refer prosecutions should be set up. His recommendations have not been followed up. In 2001, the Inter-American Commission on Human Rights reiterated the Special Rapporteur's calls for the establishment of such an agency.

### **c.2. Prosecutors**

#### **1. Independence**

According to the Constitution, the Prosecutor's Office (*Ministerio Público*) collaborates in the administration of justice (Article 251, Constitution). The Attorney General is mandated to prosecute and investigate criminal offences. The President appoints the Attorney General for a four-year term from a list of six candidates proposed by a commission similar to that involved in the election of the magistrates of the Supreme Court.

### **d. Access to Justice**

#### **1. Access to Justice**

Since 1994, the Government has expanded the presence of the judiciary throughout the country. By the end of 2000, there were judges in more than 300 of the 331 municipalities in Guatemala. However, the judicial system has often failed to carry out fair trials because of inefficiency, corruption, insufficient personnel and funds, and intimidation of justice operators.

The Supreme Court has developed training and selection programmes for court assistants that included translators of Mayan languages in order to enhance access to justice for indigenous populations. The programmes provide for the dispatch of Judges of Peace around the country, who are assisted by bilingual judicial officers. However, judicial interpreters are not present in all regions of the country. In many instances, non-Spanish speakers are tried without the assistance of an interpreter. In 2001, the Inter-American Commission on Human Rights recommended that Guatemala intensify its efforts to provide interpretation services during trials involving indigenous peoples.

Members of the indigenous communities have asked the Government to incorporate indigenous customary law and law practices into the mainstream jurisprudence. The Special Rapporteur on the Independence of Judges and Lawyers cautioned that the inclusion of these procedural customs should be in keeping with internationally recognised principles of due process. For its part, in its [2001 report](#), the Inter-American Commission on Human Rights called upon the Government to take steps towards the respect of indigenous positive traditional practices regarding the resolution of disputes.