

LEGAL SYSTEMS OF THE WORLD

A POLITICAL, SOCIAL,
AND CULTURAL ENCYCLOPEDIA

Volume II: E-L

Edited by Herbert M. Kritzer

2002

Guatemala

A B C  C L I O

SANTA BARBARA, CALIFORNIA · DENVER, COLORADO · OXFORD, ENGLAND

ity for decisions of the Superior Court. The Supreme Court of Guam now has this responsibility, leaving the Federal District Court of Guam with the same jurisdiction as a federal district court created under article 3 of the U.S. Constitution. It is staffed by presidential appointment with confirmation by the U.S. Senate. There is one authorized judgeship for the Federal District Court of Guam. The judge appointed to the district court serves a ten-year term of office. This district court, like those of the U.S. Virgin Islands and the Northern Mariana Islands, is considered a legislative court because it is created by Congress under article 1 rather than established under article 3.

Appeals from the Federal District Court of Guam and the Supreme Court of Guam are heard by the Ninth Circuit of the Court of Appeals, which, in addition to Guam, includes Alaska, Arizona, California, Hawai'i, Idaho, Montana, Nevada, Oregon, Washington, and the Northern Mariana Islands. The Ninth Circuit's appellate jurisdiction over the Supreme Court of Guam is temporary. Congressional amendments to the Organic Act provided for the Ninth Circuit to maintain judicial overview of the Supreme Court of Guam for the first fifteen years of its operation owing to its familiarity with cases arising under the laws of Guam. At the conclusion of the fifteen-year period, in 2011, appeals from the Supreme Court of Guam will be treated as equivalent to appeals from any state supreme court and will go directly to the U.S. Supreme Court.

The most significant U.S. Supreme Court case dealing with Guam is the 1977 case *Guam v. Olsen* (431 U.S. 195). When the Guam legislature originally created the Supreme Court of Guam and transferred the Federal District Court of Guam's appellate jurisdiction to it by the Court Reorganization Act of 1974, the resulting arrangement meant there was no provision for review of Supreme Court of Guam decisions by the federal courts. A criminal defendant convicted in the Superior Court of Guam appealed his conviction to the Federal District Court of Guam, but that court dismissed the appeal on account of lack of jurisdiction in accordance with the Court Reorganization Act. The Ninth Circuit reversed the Federal District Court of Guam's dismissal, citing its interpretation of the Organic Act. It held that Guam could not transfer the district court's appellate jurisdiction to the Supreme Court of Guam without congressional approval. The U.S. Supreme Court agreed with the Ninth Circuit's reasoning, and the essential result was to invalidate the Supreme Court of Guam. Congress subsequently authorized the creation of a Supreme Court of Guam with the appellate jurisdiction of the Federal District Court of Guam.

Wendy L. Martinek

See also Appellate Courts; Micronesia, Federated States of; Small Claims Courts; Spain; The Spanish Empire and the Laws of the Indies; Trial Courts; Virgin Islands, U.S.

References and further reading

- Cunningham, Lawrence J., and Janice J. Beaty. 2001. *A History of Guam*. Honolulu: Bess Press.
- Department of Chamorro Affairs. 1994. *Governing Guam before and after the Wars*. Hågatña: Political Status Education Coordinating Committee.
- Leibowitz, Arnold H. 1989. *Defining Status: A Comprehensive Analysis of United States Territorial Relations*. Norwell, MA: Kluwer Academic Publishers.
- Lutz, William. 1987. *Guam*. Broomall, PA: Chelsea House Publishers.
- Skinner, Carlton. 1997. *After Three Centuries: Representative Democracy and Civil Government for Guam*. Marblehead, MA: Macduff Press.
- Thompson, Laura. 1970. *Guam and Its People*. Westport, CT: Greenwood Publishing Group.
- Wuerch, William L., and Kirk Anthony. 1994. *Historical Dictionary of Guam and Micronesia*. Lanham, MD: Scarecrow Press.
- Wuerch, William L., Lee D. Carter, and Rosa R. Carter. 1997. *Guam History Perspectives*. Mangilao: University of Guam Press.

GUATEMALA

GENERAL INFORMATION

Guatemala is the northernmost country in Central America, bordering Mexico to the north, the Pacific Ocean to the west, the Caribbean Sea and Belize to the east, and El Salvador and Honduras to the south. Within Guatemala's 42,000 square miles are volcanoes and mountains, tropical plains, lowland jungles, beautiful plateaus, and arid river valleys. The country's 10.1 million citizens are a complex mix of indigenous ethnic groups (from the Maya civilization), persons of European ancestry, and the Garifunas (descendants of African origin). Indigenous groups account for about half the population. About 42 percent of the population are under the age of fifteen. Literacy rates have been disappointing, estimated at approximately 56 percent. Despite this, Guatemala's economy remains the biggest in Central America, with a gross domestic product (GDP) of about \$14.7 billion. The capital, Guatemala City, is home to more than two million inhabitants. The country is majority Catholic, with a sizable representation of Protestant groups, about 30 to 40 percent of the population being Pentecostals or Evangelicals. Traditional Mayan religious practices are also found. About two-thirds of Guatemalans live in poverty. Of the country's indigenous population, about 90 percent are in poverty, 80 percent in extreme poverty. The country's legal system is based on European civil law. While Spanish is the official national language, there are more than twenty indigenous languages spoken throughout the country. Guatemala enjoys a dry season from October to May, and a rainy season



from May to September. The climate is mild, with little variation in temperature throughout the year, ranging from about 55 to 77 degrees Fahrenheit.

HISTORY

The ancient Mayan civilizations ruled what is today Guatemala and parts of El Salvador, Honduras, Belize, and southern Mexico for more than a thousand years before the Spanish arrived. During that time, a complex oral legal tradition emerged in Guatemala, in which traditional Mayan authority resolved conflicts. Guatemala became a Spanish colony in 1524 and remained so until 1821. While Spanish law governed disputes among those of European ancestry, customary indigenous law remained in use among most of the population. Afterward, Guatemala was briefly part of Mexico, then a member of the United States of Central America. By 1839, Guatemala had become an independent republic, which it remains to this day.

With independence, Guatemala carried over much of its Spanish law tradition. In 1875 the dictator Justo Rufino Barrios established a commission to consider legal

reform. This began a process referred to as the liberal "reform." Like many Latin American countries, Guatemala was greatly influenced by the French Civil Code, adopted in 1804, the French Commercial Code of 1807, and the 1811 Austrian Civil Code. Guatemala's first civil and commercial codes were adopted in 1877. Other codes, such as the criminal code, followed. In general, there is a great deal of the European law tradition in Guatemala, borrowing especially from the French Napoleonic or Civil Law system. The current version of the Guatemalan Civil Code dates from 1963, and the present Commercial Code from 1970.

Guatemala got its first taste of modern democratic governance in 1944, when the long-standing dictatorship of Jorge Ubico came to a close with the election of a liberal government. In 1954 a coup toppled the government of President Jacobo Arbenz, and since then Guatemala has had a range of authoritarian, democratic, and military governments. The nation returned to civilian rule for good with a new constitution in 1986. In 1993 President Jorge Serrano Elías tried to assume dictatorial control, but he was instead removed from office and replaced by

Ramiro de León Carpio, who had been the human rights ombudsman. Since then, Guatemala has had stable and peaceful transitions of power. Despite repeated attempts since the 1870s to impose the European Civil Law system on all citizens, indigenous customary practices for dispute resolution have continued.

Even with the return to civilian rule in 1986, a long-standing civil war continued to simmer. Pressure for peace first came from the Contadora Group (Colombia, Mexico, Panama, and Venezuela). Later, Costa Rican president Oscar Arias Sánchez, together with the other Central American presidents, began a process in Esquipulas, Guatemala, in 1986 to end the various civil wars in Central America. After an impasse in negotiation, the Oslo Process began to slowly move the parties together. With the failure of President Serrano's attempted takeover, Ramiro de León stepped to the presidency, unencumbered by links to political parties, with renewed commitment to human rights, and feeling great pressure from the international community. The Guatemalan government renewed efforts with the guerrillas and in January 1994 reached a framework agreement for resumption of negotiation. In August 1994 the United Nations passed a resolution to establish the UN Mission for the Verification of Human Rights and Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA). After additional mediation by the United Nations in 1995 and 1996, the parties moved closer together. On December 29, 1996, the Guatemalan government and rebels known as the Guatemalan National Revolutionary Unit (URNG) signed the last of a set of peace accords, putting an end to Guatemala's thirty-six-year internal conflict. Those accords established not only terms for the peace but also a long-term development plan for the country to restore the rule of law, instill respect for human rights, and foster a more inclusive economic and social system. New plans for education, health care, agricultural reform, and citizen participation were also included in the accords. Also embraced by the accords were traditional forms of dispute resolution. Guatemala became a signatory to the International Labor Organization (ILO) Agreement Number 169, which mandates respect for indigenous cultures and requires that indigenous people be consulted before any changes to legislation that may affect their interests.

The peace accords called for a number of reforms that required changes to the constitution. In May 1999, a referendum was held that would amend the constitution to allow for the use of indigenous law. The referendum also proposed limiting the military's role to national security questions, restructuring the administration of the judicial branch, allowing for re-election of the president, and other changes. All the proposed reforms failed at the ballot box. It is interesting to note that in departments in

which the indigenous population was a majority, the referendum swung in favor of the constitutional reform. In departments in which citizens were largely nonindigenous, the amendments were defeated. Interesting as well were voters' perspectives of the government's performance overall: those that viewed the government's performance favorably tended to vote in favor of the reforms, while those who had a low opinion of the government voted against the package. In this sense, the referendum was a precursor to the official party's defeat later that year in the presidential and congressional elections.

It is important to note that the peace accords represent the political commitment of the signatories. They do not bind the legal system and are not considered legislation. Therefore, their value is persuasive rather than mandatory. Nevertheless, they do spell out a development agenda, and they have become, in effect, a yardstick for the international community by which to judge the progress of the Guatemalan government.

As recognized by the peace accords and other documents, administration of justice in Guatemala is difficult for a number of reasons. Budgetary constraints have historically hampered development. Interinstitutional coordination was nonexistent until very recently. (A new coordination committee has emerged, including the president of the court, director of the public defense, attorney general, and interior minister, known as the *Instancia Coordinadora*. A Justice Strengthening Commission also exists, which includes members from the formal justice sector and from the larger civil society, to make recommendations for improving the system, based on the peace accords.) Roads and communication systems do not allow for easy exchange of information between field offices and the capital. Poverty means that few can afford an attorney.

LEGAL CONCEPTS

As in most countries, Guatemala's supreme law is found in its constitution. That document provides for separation of powers into executive, legislative, and judicial branches of government. It also provides for basic and fundamental human rights, including free speech, presumption of innocence, the right to an attorney in criminal matters, rights to bilingual education, health care, and adoption, guarantees of private property, and so on. Interestingly, the constitution explicitly recognizes the rights of people and communities to their own cultural identity in accordance with local values, languages, and customs. Spanish is the official language, although the constitution recognizes that the indigenous languages form part of the national patrimony.

Article 2 of the Judicial Branch Law states that legislation is the only source of law. Precedence can complement it. This being the case, custom applies only when

there is no applicable law, and only when not contrary to public order or morality. To use customary practice as a rule, the practice must first be proven. This provision is very controversial in a country with an extensive history of customary indigenous law and practice. Proposed constitutional reforms in 1999 would have changed that. However, with the failure of those reforms, custom remains a secondary source for law.

The president and the unicameral Congress both serve a term of four years concurrently. The current president, Alfonso Portillo, assumed office in January 2000, at the same time that a new Congress was sworn in. The Supreme Court serves a five-year term, with all magistrates elected at the same time, and all serving for the exact same period. The current membership on the court was established in November 1999. Legislation is passed in Congress by majority vote. The president has the power of veto, but not a line-item veto. The president's veto can be overridden by Congress with a two-thirds majority vote. The Supreme Court is the final arbiter of disputes.

Election of the president requires a majority of the popular votes cast. If there are multiple candidates, as is usual in Guatemala, and no candidate receives a majority, then the top two vote-getters are picked for a second round runoff, limited to those two candidates. The constitution forbids a sitting president from being reelected. One of the more controversial aspects of the 1986 Constitution is the prohibition on anyone previously involved in a coup from becoming president. General Efraín Ríos Montt served as president in the early 1980s, after assuming power in a coup. He remains a popular figure in Guatemalan politics and has served most recently as president of the Congress. There are occasional movements to amend the constitution to allow General Ríos to run for office again. To date, this constitutional change has not been made. In the event that the president cannot serve out his term, the vice president takes over. If the vice president is unable to continue, Congress makes a selection with a two-thirds majority vote.

Nomination to the Supreme Court is a participatory process, as foreseen in the constitution. University rectors, deans of the various law schools, sitting judges, and representatives of the bar association all participate on a nomination committee. Candidates need two-thirds of the support of all commission members to make an initial list of twenty-six candidates. The list is forwarded to the Congress, which then selects thirteen. The chief justice—or president of the court, as the figure is known in Guatemala—is selected by internal vote of the new court. The presidency requires two-thirds support of the various members, and the period of the presidency is one year. During a magistrate's time on the court, he or she cannot be president more than once.

A separate Constitutional Court with five members, plus alternates, reviews matters of unconstitutionality in actions against the Supreme Court, the Congress, and the president or vice president. Members are assigned to the constitutional courts by various entities, with each one getting to pick one member for the body. The institutions that each pick one member include the bar association, the Supreme Court, Congress, the San Carlos University, and the president. Members can be reelected.

A separate Supreme Electoral Tribunal is the highest legal court for deciding matters of elections. For membership on this court, a nomination committee proposes thirty candidates, from which Congress selects five (by a two-thirds majority vote), with an additional five as alternates. The members serve a six-year term.

The attorney general presides over the Public Ministry and supervises all criminal prosecutions. The attorney general is independent of the executive branch and serves a four-year term. The attorney general can be removed by the president only for just cause. As with nomination to the Supreme Court, there is a nomination committee. In the case of the attorney general, this committee is composed of representatives from the law schools, bar association, and the president of the court. The president picks from a nomination list of six presented by the commission. To date, no attorney general has ever served out a full term, leading to accusations by some that there is no true tenure or independence for this position, despite the constitutional guarantees.

The constitution also creates a human rights ombudsman. Again, this individual is independent of the executive branch of government. The ombudsman serves a five-year term and is considered to be a commissioner of the Congress, named by the Congress to defend constitutional human rights. The human rights ombudsman produces advisory opinions, public censures, and investigations, and enjoys the same privileges and immunities as a member of Congress.

By special constitutional provision, international treaties or conventions in the area of human rights govern over ordinary law. Guatemala is a signatory to the Universal Declaration of Human Rights; the International Pact on Economic, Social and Cultural Rights; the International Pact on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhumane or Degrading Punishments or Treatments; the Convention on the Rights of Children; the Inter-American Convention to Prevent, Sanction and Eradicate Violence against Women; and the American Convention on Human Rights, among others.

Labor rights are of special concern in the Guatemalan

Constitution, as they are in many countries in Latin America. There is a specific guarantee of equal pay for equal work. Vacations and sick leave are constitutionally guaranteed. Pregnant women have additional rights to paid leave for thirty days prior to giving birth, and for forty-five days following delivery. There are no corresponding rights for fathers. During lactation, women must receive rest periods during the day for nursing. Specific legislation guarantees a minimum wage of approximately U.S.\$3 per day. Despite these guarantees, human rights observers have complained about the existence of sweatshops (known locally as *maquilas*) that exploit workers, especially women, paying them less than the minimum wage for long hours of work in unsafe conditions.

In 1994, Guatemala legislated a radical reform of its Criminal Procedure Code. The new code is a first of its kind in Latin America. It does away with the civil law "inquisitorial system," a document-based system originating with French law, in favor of an oral process and a new adversarial system. Major features of the new code are shortened pretrial detentions, plea bargaining, introduction of evidence through oral proceedings, the presumption of innocence and a right to defense, a right to use one's native language, and changes in appeal processes. Most striking is the advancement of community understanding of and participation in the criminal justice system because of the new oral process. Under the old inquisitorial system, judges supervised prosecution, criminal investigation, and public defense, in addition to performing their functions as judge. The new system separates roles: public defenders defend, prosecutors prosecute, and judges judge, each being independent of the other, as in the U.S. system.

While Guatemala has abandoned the civil law tradition in the criminal procedure area, it has so far retained the European approach in other areas of the law. The peace accords and recommendations of the Justice Strengthening Commission both call for increasing "oralization" of all areas of the law. The tendency is thus toward a more adversarial, hearing-based system. Limited reform to "oralize" some aspects of family law proceedings has already advanced. We can expect to see further reforms in the future, similar to those in the Criminal Procedure Code.

According to a 1997 study, 88 percent of Guatemalans believe that the administration of justice in Guatemala is inadequate. According to a 1999 survey, in terms of the public's support for democratic systems, only two public institutions have a greater than 50 percent confidence level with the citizens. Municipalities receive a mark of 51 percent, while police get a positive rating from 50 percent of the population. The Elections Tribunal and the courts both receive a confidence rating of 46 percent. The **human rights ombudsman and the military score 45 per-**

cent, with the Public Ministry (prosecutors' office) at 44 percent. Congress follows at 41 percent. Lower in the rankings were public officials (38 percent) and political parties (29 percent). These scores contrast with the 96 percent of the population who claim to be proud of being Guatemalan.

The Supreme Court's Modernization Plan cites a number of concerns. Inefficiency, corruption, and lack of access to justice are commonly named as complaints about the justice system. The quality of work and the employees themselves are also questioned by the plan. Women, the poor, and the indigenous are especially disenfranchised by the foregoing problems. After a genocidal civil conflict, the need is clear for establishing the rule of law. However, the candor of analysis in the court's plan reflects a new willingness to be frank about the problems and to address concerns directly. The court's plan thus can be seen as part of the broader framework under the peace accords to bring new approaches to the way the government is run.

To address these concerns, Guatemala has developed a new operational model—the Justice Center, with support from the U.S. Agency for International Development (USAID). This structure brings together police, prosecutors, judges, public defenders, local civil society, and private law practitioners to solve problems in a collaborative framework. The core ingredient of the Justice Centers is people coming together in a voluntary effort to break with traditional structures. In a nutshell, the centers are designed to make the justice system actually work in a given location. Key elements of the Justice Centers are (1) organizational and administrative structures that reduce delay, minimize exposure to corruption, and create accountability; (2) improved functioning of key actors in their assigned roles, and management structures and techniques that promote team approaches; (3) use of standardized, user-friendly forms; (4) user-friendly case management and records systems that reduce opportunities for corruption, improve the quality of case supervision, and generate accurate statistics; (5) interpreters and culturally appropriate outreach and education programs in local languages to make the system truly accessible to non-native Spanish speakers; and (6) promotion of alternative dispute resolution, plea bargaining, stay of prosecution, and other mechanisms to settle cases identified through improved case intake and diversion programs.

Results so far are impressive. The Justice Centers show improved customer service, access to justice, and quality of service, all with enhanced transparency. This, in turn, has advanced procedural due process and human rights. Today, Justice Centers in various stages of development are found in Zacapa, Escuintla, Quetzaltenango, San Benito (Petén), Santa Eulalia (Huehuetenango), Nebaj (El Quiché), and Santa Cruz. In addition to USAID support,

MINUGUA has collaborated in Santa Eulalia and Nebaj. More centers are planned for the coming years. The World Bank and the Inter-American Development Bank (IDB) will likely join the effort.

CURRENT COURT SYSTEM STRUCTURE

The Supreme Court is the highest body within the judicial branch, serving not only as the forum of last resort but also as the administrative and budgetary oversight institution for all courts. A special office of Court Supervision serves under the president of the court to ensure compliance with established norms. In addition to the Supreme Court, there are the following tribunals in Guatemala, among others:

- courts of appeals (primarily for reviews from trial courts)
- children's courts (for juvenile crime)
- administrative courts (to provide judicial oversight to administrative decisions and dispute resolution)
- the Appeals Court for Financial Accounts (for review of governmental accounting processes)
- military courts (limited to military crimes by military officials)
- trial courts (the ordinary courts, which have civil or criminal subject matter jurisdictions)
- family law courts (divorces, custody, alimony issues)
- justices of the peace (for small claims)
- community courts (located in indigenous areas with streamlined procedures for small claims)

In general, litigants must be represented by a qualified attorney, except in particular labor matters. The state provides public defenders for criminal cases. However, no such service is provided in civil matters. Attorneys have an ethical duty to represent the poor, but that duty is not enforced. Student law clinics run by universities offer legal aid, but while that assistance does help thousands, it does not come close to meeting demand. There is also a concern by some over the quality of legal assistance from students, as opposed to service from professional lawyers. The Criminal Procedure Code was changed in 1994 to provide that only qualified lawyers may represent the poor in criminal matters.

Article 219 of the constitution provides for military tribunals for crimes or misdemeanors committed by members of the army. The Guatemalan Army is unified into a single command, which includes naval, army, and air forces. No civilian can be judged by the military courts. According to the Criminal Procedure Code, the Public Ministry (not the military) will be in charge of any prosecution involving nonmilitary crimes. In such cases, the Military Court would proceed as if it were a normal civilian court. Military courts are part of the Judicial

Branch and fall under the jurisdictional oversight of the Supreme Court. The peace accords called for military justice reform. One of the proposed constitutional amendments in 1999 would have changed this structure. However, with the failure at the ballot box of the proposed amendment, the current structure remains.

In administrative matters, the various ministries can resolve conflicts with citizens or employees directly through a formal administrative appeals process. However, unlike the French model, which delegates the ability to decide administrative cases to the administration, Guatemalan courts retain their ability to oversee administrative decisions. Consequently, if a citizen is dissatisfied with the administration's resolution of an administrative concern, there is recourse to the court system with specialized administrative courts. These courts fall under the judicial branch of government. Specialized administrative procedures exist for tax and labor conflicts, among others.

Private dispute resolution systems have only recently come into existence to deal with issues such as injury compensation, property transfers, and debt collection. The peace accord on indigenous rights obligates the government of Guatemala to cultivate legal mechanisms that recognize more applicable Mayan or customary law practiced within indigenous communities. The accord requires the recognition of traditional local authorities, so long as the policies of those authorities do not contradict national or international human rights. The Justice Strengthening Commission calls for an increase in the use of mediation as a means to advance access to justice. Since 1998, with assistance from the U.S. Agency for International Development (USAID), nine new community-level mediation centers have opened: two in the Zacapa Department, two in Sololá, and the rest in the Quetzaltenango Department. The mediation effort enables citizens to obtain more equitable and accessible justice, while maintaining a sense of respect for local leadership and customary law. This program emphasizes institutional mechanisms that citizens can use to resolve conflicts. Officials can utilize these practices to incorporate aspects of local customary law into the local administration of justice and the resolution of disputes.

In the community mediation program, 480 Guatemalan mediators were trained, 153 of whom became active mediators in the nine community-level mediation centers. During the first year, May 1998 to May 1999, 733 cases were mediated at the various mediation centers. While the centers resolved 74 percent of all cases, the parties dropped or abandoned another 8 percent and left only 14 percent unresolved. These mediated cases included criminal, civil, family, and labor issues. If participants choose, they may have the local court validate the mediation to provide it with legal backing. Every center provides free access to justice for the underprivileged, in-

Legal Professionals in Guatemala

Title	Number of Positions Authorized	Women	Men	Total Actual
Supreme Court Magistrates	13	2	11	13
Appeals Court Magistrates	70	13	55	68
Alternate Magistrates for the Court of Appeals	66	8	43	51
Substitute Trial Judges	16	2	10	12
Criminal Sentencing Judges	2	0	2	2
Presidents of the Criminal Trial Courts in Guatemala City	14	3	11	14
Other Judges in Criminal Trial Courts in Guatemala City	28	19	9	28
Criminal Probable Cause Judge (Liquid)	1	0	1	1
Criminal Probable Cause Judges for criminal, narcotics, and environmental crime (Guatemala City)	14	8	6	14
Probable Cause Judges for tax crimes	1	0	1	1
Family Court Judges (Guatemala City)	6	3	3	6
Civil Court Judges (Guatemala City)	10	4	6	10
Children's Court Judges (Guatemala City)	5	4	1	5
Trial Court for Government Accounts (Guatemala City)	1	0	1	1
Labor Court Judges (Guatemala City)	7	1	6	7
Economic Fraud Judges (Guatemala City)	2	1	1	2
Justices of the Peace (Criminal matters — Guatemala City)	11	n/a	n/a	n/a
Justices of the Peace (Civil matters — Guatemala City)	8	4	4	8
Justices of the Peace (Criminal matters, morning shift — Guatemala City)	9	1	6	7
Justices of the Peace (alternate, back-up — Guatemala City)	4	0	3	3
Justices of the Peace (Municipal — Guatemala City)	17	5	12	17
Presidents of the Criminal Trial Courts in the Departments (outside Guatemala City)	23	5	18	23
Other Judges in Criminal Trial Courts in the Departments (outside Guatemala City)	44	15	29	44
Criminal Probable Cause Judges for criminal, narcotics, and environmental crime (outside Guatemala City)	25	8	15	23
Family Court Judges (outside Guatemala City)	2	1	1	2
Labor Court Judges (outside Guatemala City)	2	2	0	2
Judges for Both Family and Labor Matters (Outside Guatemala City)	21	7	12	19
Civil Court Judges (outside Guatemala City)	1	0	1	1
Economic Fraud Judges (outside Guatemala City)	20	7	6	13
Children's Court Judges (outside Guatemala City)	6	2	4	6
Justices of the Peace (Criminal, Civil, Family, and Labor matters, outside Guatemala City)	296	35	243	278
Community Criminal Justices of the Peace	15	1	14	15
TOTALS	720	161	535	696

Source: Statistics from 1999 from the Personnel Department of the Court System, as published in *El Observador Judicial*, No. 10, Year 2, Aug. 1999, page 5. iccp@quik.guate.com.

cluding women, children, and indigenous people. With UN assistance and World Bank financing, the Guatemalan Supreme Court initiated a parallel program in August 1998 to create court-annexed mediation and conciliation centers in urban areas throughout Guatemala. Plea bargaining is also available to resolve disputes outside the courts, but the procedures are drastically underused, even when appropriate.

SPECIALIZED JUDICIAL BODIES

In the 1980s, Guatemala had specialized courts that were used to try alleged guerrillas for crimes. These courts did not respect due process and were largely used to justify governmental action violating human rights. As a result, specialized tribunals were greatly discredited and were eventually outlawed by the 1986 Constitution.

While specialized courts no longer exist, specialized bodies carrying out human rights investigations have continued. Prior to the conclusion of the peace process, in a project entitled "Recovery of the Historic Memory (REMHI)," the Catholic Church began work gathering together data on the atrocities committed during the civil war, under the leadership of Bishop Juan Girardi. The result was a four-volume publication entitled *Guatemala: Never Again*. The work proved monumental in terms of its documentation and description of the tragic events in Guatemala's recent past. Within a week of the release of the publication, Bishop Girardi was murdered in his home under suspicious circumstances, creating outrage among human rights groups both in Guatemala and internationally. The fact that, after an extensive investigation, the government's prime suspect for a significant time was a crippled dog did little to calm fears or restore respect for the government's prosecution team.

As a result of the peace accords, the Commission for Historical Clarification was set up to clarify human rights violations and acts of violence connected with the armed conflict, building on the earlier work of the Catholic Church. The commission was not established to judge but rather to clarify the facts of more than three decades of conflict. Its task was to make the truth public. In 1999 that commission produced a report that placed on record Guatemala's recent, bloody past. It documented massacres that eliminated entire Mayan rural communities, the persecution of the urban political opposition, trade union leaders, priests, and catechists. Of the approximately 200,000 dead from the conflict, the commission concluded that 93 percent of all human rights violations were committed by state forces and related paramilitary groups, with the balance of the responsibility attributed to either the guerrillas or unknown perpetrators. The rape of women during torture or before being murdered was named as a common practice, the majority of rape victims being Mayan women.

Legal Structure of Guatemala Courts

Supreme Court		
Chamber for Constitutional Relief, Immunities, and Administrative Duties	Criminal Law Chamber	Civil Law Chamber

Courts of Appeal				
Criminal	Civil	Family	Labor	Minors
	Accounts	Administrative	Jurisdiction	

Trial Courts

Justices of the Peace
and Community Courts

The commission adopted a legal framework for its analysis based on the Convention on the Prevention and Punishment of the Crime of Genocide, as adopted by the United Nations on December 9, 1948, and ratified in Guatemala on November 30, 1949. The commission concluded that the repeated destructive acts, directed systematically against groups of the Mayan population, demonstrated that the only common denominator for all the victims was the fact that they belonged to a specific ethnic group. The commission concluded that these acts were committed with the intent to destroy, in whole or in part, those groups. In so finding, the commission further concluded that the Guatemalan government was guilty of genocide between the years 1981 and 1983, as defined by the convention.

The findings of the REMHI Project and the Historical Clarification Commission are not themselves legally binding. However, the efforts do present substantial data that can be tested in ordinary courts. The coming years may witness public or private actions against some of the prime actors deemed responsible for genocidal acts. In 2000, Nobel Peace Prize-winner Rigoberta Menchú presented a criminal complaint against General Efraín Ríos Montt in Spanish courts for alleged acts committed while serving in the military and while serving as president during the early 1980s. The use of Spanish courts to resolve alleged acts in Guatemala proved controversial in the Guatemalan press.

STAFFING

There is no exact statistic for the number of practicing attorneys in Guatemala. Registration in the bar association is required for the active practice of law. Currently, the

Structure of Guatemalan Courts

Court	Branch	Members	Total
Supreme Court	a. Criminal Chamber b. Civil Chamber c. Constitutional and Probable Cause Chamber	Each Chamber has 3 to 4 members. There are a total of 13 Supreme Court Magistrates.	13
Chambers of the Court of Appeals	a. Civil b. Criminal c. Labor and Family d. Administrative e. Accounts f. Jurisdictional Conflicts g. Minors	Each Chamber or Court has three Magistrates, one of whom functions as the President of the Chamber.	72
Trial Courts — Criminal	Each Trial Court has three judges, one of whom functions as the President	12 courts in the capital, 30 courts in the interior of the Republic	126
Probable Cause Judges	Civil	1 judge per court	10
Probable Cause Judges — Capital City	Criminal	1 judge per court	12
Probable Cause Judges — Interior	Criminal	1 judge per court	25
Probable Cause Judges supervising the punishment phase	Criminal	1 judge per court	2
Probable Cause Judges	Family	1 judge per court	6
Probable Cause Judges — Interior	Family and Labor	1 judge per court	20
Probable Cause Judges — Interior	Civil, Commercial Fraud, and Family	1 judge per court	5
Probable Cause Judge	Minors	1 judge per court	10
Probable Cause Judges — Accounts	Accounts	1 judge per court	1
Probable Cause Judges	Economic Fraud	1 judge per court	23
Probable Cause Judges	Labor	1 judge per court	7
Justices of the Peace	Civil	1 judge per court	8
Justices of the Peace — Capital City	Criminal	1 judge per court	12
Justices of the Peace	Rotating Assignments	1 judge per court	9
Municipal Justices of the Peace	Minor civil matters	1 judge per court	18
Justices of the Peace — Interior of the Republic	Civil and Criminal	1 judge per court	
Total Number of Judges			709

Note: In addition to the figures above, there are 57 substitute judges available, composed of 35 Substitute Magistrates, 19 Substitute Probable Cause Judges, and 3 Substitute Justices of the Peace.
Information in this chart is from September 2001.

judicial branch of government has approximately 497 judges plus support staff.

As of November 1999, the Public Ministry had 22 district attorneys, 6 adjunct district attorneys, 8 section attorneys, 119 assistant attorneys, and 440 additional support attorneys on staff. Of these, 240 had been hired via competitive hiring practices. The Public Defense Service had 91 full-time staff attorneys, with 67 employees as administrative staff and 60 assistants. An additional 103 attorneys (78 in the capital, 25 in the interior) work as outside contracted attorneys on specific cases.

Article 210 of the 1986 Constitution calls for a civil service law to cover judicial branch employees. Such a law was finally enacted in December 1999. The law now guarantees that judges cannot be removed, suspended, transferred, or moved into retirement except in limited circumstances, as noted by law. In this sense, there is a legal concept of tenure and judicial independence.

In terms of training, Guatemala's bar association has one of the few continuing legal education programs in the hemisphere. Although still in the first stages of institutionalization, it already enjoys a permanent, paid, professional staff and is working on issues of decentralization and program delivery outside the capital city. A new Judicial Career Law has fortified a Judicial School for judicial branch employees, including judges at all levels. Similar training units exist for the public defenders and prosecutors within their respective institutions. All are in the early stages of development.

In terms of the selection of judges, the new Judicial Career Law specifies that selection must be competitive. Once selected, candidates must go through a training course at the Judicial School. Only those that pass this course can be hired as judges. Once hired, the Judicial School has the task of performing continuing evaluations of performance against objective criteria, rating judges' performance. At the appeals level, judges (or "magistrates," as they are referred to in Guatemala) are selected through a participatory process similar to that of the Supreme Court. According to the Judicial Career Law, all judges have tenure and independence. Prosecutors are selected through a competitive process, as contemplated in the Organic Law of the Public Ministry. All prosecutors enter at the bottom of the organizational structure and have to work their way to the top. They too enjoy tenure and can be fired only for just cause. At the Public Defense, a relatively new institution, there are still no rules concerning competitive hiring.

Guatemala has five law schools, with about twenty thousand law students in total, and about 280 law school faculty. Of the five, clearly the largest faculty is that of the San Carlos University, established more than three hundred years ago, the fourth oldest university in the hemi-

Republic, Mexico, and Peru). The vast majority of judges, prosecutors, and public defenders are graduates of the San Carlos University. Of the other four universities, all private, the largest is Mariano Galvez University, with eleven law school campuses.

IMPACT OF LAW

The Guatemalan justice administration system is one of the fundamental institutions in society. Through law, it guarantees the peaceful coexistence of the country's citizens in an organized, harmonious community. Perhaps because of the civil war, development of a rule of law was not given in past decades the prominence that the subject enjoys today. During the civil conflict, the state did not resort to the courts, but rather executed those suspected of wrongdoing, as documented in the REMHI, Historical Clarification Commission, and peace accord documents. Also today, with the emergence of market integration, a rule of law is seen as essential legal infrastructure for attracting investment in a competitive regional market. As a result, the theme has quickly emerged as one of the top political subjects. Private citizens rank family economic concerns and citizen security as their top worries. The peace accords lay out an agenda for reform. The Judicial Branch Modernization Plan and the recommendations of the Justice Strengthening Commission also point to the need for change and modernization. It is clear that reform will be a long-term process. Whether Guatemala can stick to the path remains the challenge.

Steven E. Hendrix

See also Adversarial System; Alternative Dispute Resolution; Civil Law; Constitutional Law; Criminal Law; Criminal Procedures; Customary Law; Human Rights Law; Indigenous and Folk Legal Systems; Labor Law; Mediation; Napoleonic Code

References and further reading

- Colegio de Abogados y Notarios de Guatemala. 1998. *Reformas a la Constitución Política de la República de Guatemala comparadas con la constitución vigente*. Guatemala City.
- Comisión de Fortalecimiento de la Justicia. 1998. *Una nueva justicia para la paz*. Guatemala City.
- Comisión para el Esclarecimiento Histórico. 1998. *Guatemala: Memoria del Silencio*. Guatemala City.
- Corte Suprema de Justicia. 1997. *Plan de Modernización del Organismo Judicial 1997-2002*. Guatemala City.
- Development Associates, Inc., University of Pittsburgh, and Asociación de Investigación y Estudios Sociales (ASIES). 2000. *La cultura democrática de los guatemaltecos*. Guatemala City.
- Proyecto de Recuperación de la Memoria Histórica (REMHI), Oficina de los Derechos Humanos—Arzobispado de Guatemala. 1997. *Guatemala: Nunca Más*. Guatemala City.
- United Nations. 1998. *The Guatemala Peace Agreements*.