



## Flaws in the selection and appointment process of high courts in Guatemala

This report is a contribution to the fourth cycle of the Universal Periodic Review of Guatemala submitted by Cyrus R. Vance Center for International Justice, American Jewish World Service, the Center for Justice and International Law (CEJIL), Guatemala Human Rights Commission/USA, Impunity Watch, Latin America Working Group Education Fund, Washington Office on Latin America (WOLA), Protection International Mesoamerica, Due Process Foundation (DPLF), International Platform Against Impunity (ICI), ACTuando Juntas Jotay Program, and Robert F. Kennedy Human Rights (RFKHR).<sup>1</sup> Information is presented on **the selection and appointment processes of high court magistrates in the country** and their impact on human rights, specifically the guarantees of judicial independence in accordance with the obligations of the State of Guatemala established in article 14 of the International Covenant on Civil and Political Rights (ICCPR). This document has been prepared based on the review and monitoring of current legislation, policies and practices implemented or omitted by the State of Guatemala in relation to its obligation to respect and guarantee the rights associated with judicial independence, as well as based on the monitoring of organizations working on the issue, and members of civil society, in addition to the monitoring of the implementation of the recommendations made in the framework of the third cycle of the Universal Periodic Review of Guatemala.

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1. This report documents the violation of two principles: **Right to opt for public jobs or positions under equal conditions, and the principle of the independence of the Judiciary and the power to judge.** The people whose rights are violated are first and foremost those who seek to apply for positions in the administration of justice, both in the Supreme Court of Justice and in the country's Courts of Appeal. However, Guatemalan society as a whole is also being violated, in the sense that the rule of law in the country is being undermined. One of the cornerstones of an effective and robust rule of law is an independent administration of justice that makes impartial decisions. The State has an obligation to guarantee the exercise of an equal judiciary, free from undue interference, that is circumscribed by the law and applicable international standards and norms. In Guatemala, it is essential to transform the process of appointing judges and magistrates in order to guarantee transparency, publicity and the involvement of society to legitimize it.
2. The first principle considered to have been violated is the right to choose public posts and positions, as established in article 113 of the Constitution, which states that Guatemalans have the right to choose public posts and positions and that, for the granting of such posts and positions, only reasons based on **merits of capacity, suitability and honesty** shall be taken into account.<sup>2</sup> *Everyone has the right to take part in the government of his country, directly or through freely chosen representatives*" and *"Everyone has the right of equal access to public service in his country"*.<sup>3</sup> In addition, in Article 20 of the American Declaration of the Rights and Duties of Man, on the right to vote and to participate in government.<sup>4</sup> And in Article 25 of the International Covenant on Civil and Political Rights.<sup>5</sup> And Article 23 of the American Convention on Human Rights.
3. The second principle that has been violated is that which guarantees judicial independence, which is established in Article 203 of the Constitution of the Republic of Guatemala, which states that *"...magistrates and judges are independent in the exercise of their functions and are subject only to the Constitution of the Republic and the laws..."*<sup>6</sup> At the international level, the standards related to the principle of judicial independence are set out in the UN Basic Principles on the Independence of the Judiciary, Article 14.1 of the PIDCYP, which guarantees every person a trial before an independent, competent and impartial tribunal, and for the specific case of Guatemala, the reports of the *Lawyers Council for Civil and Economic Rights* of the Vance Center for International Justice were used as input: *"Accompanying the Appointment Process of the Lawyers Council for Civil and Economic Rights to Guatemala for the Appointment Process of Magistrates of the Supreme Court of Justice and Court of Appeals, July 2019"*<sup>7</sup> ; *"Accompaniment of the Process of Appointment of Magistrates of the Supreme Court of Justice and Court of Appeals of Guatemala and Report of the Visit August 5-6, 2019"*<sup>8</sup> ; and *"Follow-up of the Process of Appointment of Magistrates of the Supreme Court of Justice and Court of Appeals of Guatemala, June 18, 2020."*<sup>9</sup> Also, this information is complemented by regional human rights instruments to which Guatemala is a party such as the American Convention on Human Rights and all the pronouncements on judicial independence of the Inter-American Human Rights System.<sup>10</sup>

4. Judicial independence is not guaranteed solely through the process of appointing and shaping courts and tribunals. In fact, it requires a coherent institutional framework, in which the appointment process ensures that judges are suitable and impartial for their judicial function and in which all other institutional arrangements such as promotions, disciplinary processes, working conditions work together to ensure the proper functioning of the judiciary. Principle 10 of the Basic Principles on the Independence of the Judiciary states that "*persons selected for judicial office shall be persons of integrity and ability and shall have appropriate legal training or qualifications*"; and that "*any method used for the selection of judicial personnel shall ensure that they are not appointed for improper motives.*"<sup>11</sup>

### **Current cut integration system**

5. According to Articles 214 and 215 of the Constitution, the Supreme Court is composed of thirteen justices elected by Congress for a five-year term from a list of twenty-six candidates proposed by a Nominating Committee.<sup>12</sup> The judges of the Court of Appeals are also elected by Congress from a list containing twice the number of judges to be elected, proposed by a Nominating Commission.<sup>13</sup> The Court of Appeals is made up of 135 regular magistrates and 90 alternate magistrates, distributed in 45 Chambers of the Court of Appeals. This process is of utmost importance due to the hierarchy of the magistrates and judges of these judicial bodies, in addition to the specific powers of the Supreme Court of Justice, which is in charge of determining whether there is a criminal case against the deputies, a crucial process in the framework of the separation of powers and the necessary public controls.<sup>14</sup>
6. To elect the judges of the CSJ and the Court of Appeals, two Nominating Commissions are formed. The Commission for the CSJ is made up of: 1) A representative of the rectors of the country's universities, who presides. 2) Twelve deans of the faculties of Law or Legal and Social Sciences. 3) Twelve representatives of magistrates of the Court of Appeals, who must be elected by means of a call from the Magistrates Institute of the Court of Appeals. 4) Twelve representatives of the Bar Association, to be elected through elections by the Bar Association. The commission for the Court of Appeals is composed of: 1) A representative of the rectors of the country's universities, who presides; 2) Twelve deans of the faculties of law or legal and social sciences; 3) Twelve representatives of the magistrates of the Court of Appeals; 4) Twelve representatives of the Bar Association, elected through elections by that body. (3) Twelve representatives of the magistrates of the Supreme Court of Justice. 4) Twelve representatives of the Bar Association, elected by the Bar Association.
7. The requirements to be a magistrate are: to be Guatemalan by origin, of recognized honorability, to be in the enjoyment of their citizenship rights and to be a member of the bar. In the case of the Court of Appeals, one must be over 35 years of age and have been a first instance judge or have practiced law for more than five years. To be elected as a CSJ magistrate, one must also be over 40 years of age and have served a full term as a magistrate

of the Court of Appeals or collegiate courts with the same status, or have practiced law for more than 10 years.<sup>15</sup>

8. The Law on Nominating Commissions, Decree 19-2009, establishes the mechanisms and procedures for the composition of the nominating commissions and for the selection of candidates for the positions. The process begins with a call from Congress to form the nominating commissions, and then the professional associations elect their representatives. The requirements to be a member of the commissions include having five years of professional practice, not being disqualified from holding public office, not having been sanctioned by the respective professional association and having a police and criminal record.<sup>16</sup> Once the nominating commission is formed, the president of the commission calls its members to meet.<sup>17</sup> The law establishes that the meetings of the commission must be public with unrestricted access to the media and any observing institution, and decisions require the favorable vote of two thirds of the members.
9. Regarding the profile of the candidates, the Nominating Commissions Act states that the members of the commission shall draw up a profile for the candidates to be nominated using the parameters of: (i) **ethics**, which includes the number of years of professional practice, police, criminal and disciplinary records, among others, (ii) **academic**, which includes university teaching, academic degrees, studies and publications, (iii) **professional**, on compliance with the requirements established in the Constitution for the position to which one aspires and (iv) **human projection** that relates to the vocation of service and leadership. Likewise, the commission shall draw up a grading table to numerically evaluate the applicants. The lists of participants are defined after a public call for applications. The commissions may conduct interviews and must verify compliance with the requirements.
10. In 2016, the Judicial Career Law was amended and it was established that the list of candidates for the CSJ and the Courts of Appeals should preferably be made up of members of the judicial career who have served as judges and magistrates, considering the specialty. It was also established that the nominating commissions should take into account the evaluation of the professional performance of the judges of first instance and magistrates, among other modifications.<sup>18</sup>
11. The law also provides for mechanisms to guarantee the transparency and publicity of the process, such as public announcements, publication of lists and unrestricted access to meetings for the media and observers of various kinds, as well as selection criteria based on scores and ethical evaluations. In addition, the Constitutional Court has established jurisprudence on the aspects that should be taken into account to assess the capacity, suitability, honesty and honourability of candidates for office.
12. Civil society organizations have highlighted the problems of each commission establishing its own rules, the profile of the candidates, the grading table and other issues, which generates inconsistencies between one nomination process and another.<sup>19</sup> In recent years, reforms to the Law on Nominating Commissions have been proposed to improve the

mechanism for integrating the commissions, the role of the universities, the timeframe for the commissions' work, and the mechanisms for evaluating the candidates, among other issues. However, these initiatives have not prospered in the Congress of the Republic.<sup>20</sup>

### **Problems in the current election process**

13. Unfortunately, with the passage of time, the system of postulation commissions has been distorted and has been penetrated by power groups and corruption networks with particular interests in justice. Universities have been created with law schools without curricula or students for the sole purpose of participating in the nominating commissions. The process of electing representatives of the Bar Association and Notaries to the nominating commissions has been politicized through media campaigns, gifts and offers to voters to elect certain candidates. It has even been documented that lawyers working in public institutions arrive in buses on the day of the CANG election to vote for pro-government candidates.
14. This phenomenon has been observed in other Latin American countries, universities are used to reach public offices and positions. Some law schools are established with the political and economic support of legal (government and private sector) and illegal (corruption networks) interest groups to ensure quotas in the postulation commissions and select people with particular interests in justice.<sup>21</sup> Some universities even issue false certifications and degrees to benefit candidates who do not meet the requirements, as in the case of some magistrates of the current Supreme Electoral Tribunal, who presented false degrees in order to be elected, and despite this continue in office.<sup>22</sup>
15. In 2018, the International Commission against Impunity in Guatemala (CICIG) revealed the Parallel Commissions Case on the manipulation of the election process of the CSJ and the Court of Appeals in 2014 *2014* (this case was already brought to light within the inputs submitted for the 2017 UPR).<sup>23</sup> CICIG and the Special Prosecutor's Office against Impunity (FECCI) discovered that the way in which the names of the people who made up the lists in the 2014 election were negotiated and the illegal negotiations carried out by the lawyer Roberto López Villatoro, Juan de Dios Rodríguez, former president of the Guatemalan Institute of Social Security and Gustavo Herrera, a businessman in exile in Nicaragua, to elect the magistrates.<sup>24</sup> The election was based on individual political and economic interests and not on the capacities of the candidates.<sup>25</sup>
16. The same problems were repeated in the 2019 election. In September of that year, the Constitutional Court suspended the work of the postulation commissions because multiple irregularities were reported in the work of the postulation commissions, and the commissions did not take into account the results of the performance evaluation of the judges and magistrates who aspired to the positions, as established by the Judicial Career Law in 2016.
17. In February 2020, the Special Prosecutor's Office against Impunity (FECCI) revealed the *2020 Parallel Commissions* case. FECCI's investigations revealed secret meetings between

the former private secretary of the presidency, Gustavo Alejos (who was in prison for acts of corruption) and members of the nominating commissions, judges, magistrates, lawyers and deputies for the purpose of illicitly negotiating the inclusion of certain candidates on the lists that the nominating commissions would send to the Congress of the Republic for the election of magistrates to the Supreme Court of Justice and the Court of Appeals.<sup>26</sup>

18. The attorney general filed an injunction with the Constitutional Court requesting that the election be suspended again because of the imminent threat that Congress would elect people who did not meet the requirements of "*capacity, suitability, honesty and recognized honorability*" established in the Constitution. It added that the processes carried out would violate the norms on judicial independence and on security and legal certainty to the extent that the list of candidates was highly influenced by persons accused in multiple criminal cases, such as Gustavo Alejos Cámara, a political actor previously accused in numerous corruption cases.<sup>27</sup> The influence of this politician in the process of shaping the nomination commissions is clearly documented.<sup>28</sup>
19. On May 6, 2020, the Constitutional Court, through Resolution 1169-2020, stated that Guatemalan citizens have the right to an objective, impartial and independent judiciary and ordered the Attorney General's Office to send Congress a detailed report on court candidates with ongoing criminal proceedings or investigations. This should be used by deputies to assess the "suitability" and "honorability" of the candidates. The court also ordered that each deputy must vote *viva voce* on the candidates to ensure the transparency of the process.<sup>29</sup>
20. However, for more than two years, Congress has refused to comply with the ruling of the Constitutional Court, arguing that the Attorney General's report violates the principle of innocence because the people who appear in the report have not been tried and the deputies do not agree with the procedure of voting by voice because they consider that it takes too long. As a consequence, the magistrates of the CSJ and the Courts of Appeals who were elected in 2014 continue in office, which has represented a strong erosion of the justice system.<sup>30</sup> In the Advisory Opinion issued by the Constitutional Court, the magistrates elected in 2014 continue to exercise their functions of administration of justice, violating the constitutional rule of the period. This was one of the points highlighted by the Special Rapporteur, Diego García Sayán.<sup>31</sup>
21. In short, the system of nomination commissions is subject to the interference of political actors and corruption networks that seek to control the justice system in order to maintain their benefits and act with absolute impunity. The interference of other public powers, such as the executive and the legislature, in the selection of magistrates is a problem that will continue as long as the Constitution is not reformed and the country does not adopt international standards on judicial independence.<sup>32</sup>
22. The election of the Constitutional Court (CC) also depends on political power and is subject to the interference of power and economic groups. The Court is made up of ten magistrates, five regular and five substitutes, elected for a period of five years. They are elected by five

bodies: the President of the Republic in a council of ministers, the Congress, the Supreme Court of Justice, the Bar Association and Notaries and the Higher University Council of the University of San Carlos de Guatemala (the only public university in the country). Each body elects two magistrates, one titular and one substitute.<sup>33</sup>

23. The election of the CC in 2021 was full of irregularities, with each body defining its own procedure and evaluation criteria. The Congress and the CSJ made a public call and defined evaluation criteria, while the President of the Republic chose the magistrates in a discretionary manner. The elections of the CANG and the Higher University Council were challenged and after a long legal process all the magistrates of the CC were elected.<sup>34</sup>
24. However, on 13 April 2021, Congress did not allow Judge Gloria Porras, who had been elected by the University Superior Council, and who had served two consecutive terms as a CC judge, to take office because the Foundation Against Terrorism had filed several challenges to her election. This foundation has been accused in multiple instances of undermining judicial independence and governance.<sup>35</sup> In fact, in July 2021, the president and counsel for this organization were included by the State Department in the "Report to Congress on Foreign Persons who have knowingly engaged in actions that undermine democratic processes or institutions, significant acts of corruption, or obstruction of investigations into such corruption in El Salvador, Guatemala, and Honduras."<sup>36</sup> The Inter-American Commission on Human Rights made a pronouncement on this point.<sup>37</sup>
25. Finally, on March 29, 2022, the Constitutional Court annulled the election of magistrate Gloria Porras and ordered the University Superior Council to repeat the entire process from the convocation. However, it did not order to repeat the election of the alternate magistrate Rony López, who was elected on the same day and with the same procedure as magistrate Porras, which represents a clear violation of the principle of equality. The annulment of Justice Porras' election is a clear reprisal for her independent work and her rulings in favour of judicial independence and respect for human rights. As a consequence, in June 2022 the University Superior Council repeated the election and appointed Héctor Hugo Pérez Aguilera, who had already been a magistrate of that court between 2011 and 2016.<sup>38</sup>

## **Recommendations**

26. It is necessary to promote a constitutional and legal reform to change the system of election of the country's high courts in order to strengthen judicial independence. The magistrates of the Courts of Appeals should be part of the judicial career and should not be appointed by the Congress of the Republic; the magistrates of the Supreme Court of Justice should be elected based on objective criteria and not depend on the discretion of the Congress.
27. While it is not possible to reform the Constitution, it is recommended that the Law on Nominating Commissions be reformed and that more objective mechanisms be developed to evaluate the experience, capacity and ethics of the candidates. Criteria should also be established to exclude commissioners and applicants with conflicts of interest from the process (D51 Administration of justice & fair trial).

28. Judicial operators who are part of the judicial career must play a more active role in the process, especially considering the prerogative contained in the Judicial Career Law. It is also essential for the Judicial Career Council to participate actively by sending information on judges with excellent professional performance to the nominating commissions. (F14 Participation of women in political and public life; D51 Administration of justice & fair trial).
29. It is recommended that the requirements for applicants be developed in greater detail to avoid ambiguous interpretations about experience, academia, background, etc. and to reduce the discretion of the members of the commissions. To this end, it is also necessary that each process considers the specific requirements of the vacancy to be filled, including general professional competencies beyond specific knowledge. This should take into account the recommendations of the IACHR on how to ensure that both personal merit and professional capacity are adequately assessed in the selection and appointment of judges.<sup>39</sup>
30. It is necessary to improve the mechanisms of transparency and publicity of the process. This access refers to the information provided by the candidates, as well as the analysis and decision of the commissioners, and the motivations behind the evaluations made. The more information available on the reasons behind the nominations, the more likely it is that irregularities will be identified. (D51 Administration of justice & fair trial)
31. A comprehensive reform should address at least the following elements: a. Integration of appellate magistrates into the judicial career. b. Creation of a body responsible for the administration of the judiciary in order to decentralize financial and administrative powers. c. Strengthening of the judicial career, including issues of entry, promotion, assignment, education and training, and discipline of judges, magistrates, and auxiliary personnel. d. Comparative analysis with other Latin American states on the appointment period. e. Analysis of the judicial career of judges, magistrates, and auxiliary personnel. Comparative analysis with other Latin American states on the term of appointment. f. Other guarantees of judicial independence, such as budget, economic remuneration, retirement, security, removal processes, incompatibility regime.<sup>40</sup> (A47: Good Governance; B52 Impunity; D51 Administration of justice & fair trial)
32. Any reform should be consulted, socialized, analyzed together with civil society. (A47: Good Governance; B52 Impunity; D51 Administration of justice & fair trial D51 Administration of justice & fair trial; F14 Participation of women in political and public life)
33. It is also important to have the participation of sitting judges and civil society.
34. On the other hand, international organizations and the authorities of other States can be extremely useful in processes of consultation, lessons learned and improvement.

35. Finally, the legal community must be involved in the process of analysis and reform, as it is these members who interact with the judiciary. This legal community includes trial lawyers, corporate lawyers, academics, civil society organizations, students, and other judges and magistrates. Some of these relevant actors do not participate in the nominating commissions nor do they have a mechanism for monitoring and oversight of these processes. (D51 Administration of justice & fair trial)

## References

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<sup>1</sup> **The Cyrus R. Vance Center for International Justice** promotes global justice by engaging legal professionals around the world to support civil society and an ethically active legal profession. It is a non-profit program of the New York City Bar Association that brings together leading law firms and other partners around the world to promote international justice initiatives and provide pro bono legal representation to civil society organizations fighting for social justice. Inspired by the Jewish commitment to justice, **American Jewish World Service (AJWS)** works to realize human rights and end poverty in Africa, Asia, Latin America and the Caribbean. The **Center for Justice and International Law (CEJIL)** is an organization of human rights defenders working to reduce inequality and violence by strengthening democracies, protecting and promoting human rights, and combating impunity in the Americas. They have been working for more than 30 years throughout the Americas and represent more than 10,000 victims of human rights violations. **Due Process of Law Foundation (DPLF)** is a regional human rights organization whose mandate is to promote the rule of law and the protection of human rights in Latin America. Through its judicial independence program, DPLF promotes the strengthening of the region's justice systems and their autonomy. **Guatemala Human Rights Commission (GHRC)** is a grassroots, non-profit, solidarity-based organization dedicated to promoting human rights in Guatemala and supporting communities and activists facing threats and violence. GHRC documents and denounces abuses, raises international awareness, and promotes policies that foster peace and justice. **Impunity Watch** is an international human rights organization that promotes transitional justice and the strengthening of the rule of law in countries with violent pasts. It works in partnership with victims' organizations and civil society to fight impunity and prevent atrocities. **Latin America Working Group Education Fund (LAWGEF)** is a Washington, D.C.-based nongovernmental organization that advocates on U.S. policy toward Latin America and the Caribbean and on issues of human rights and social, environmental, economic, and peace justice. The

**Washington Office on Latin America (WOLA)** is a leading research and advocacy organization promoting human rights in the Americas. Its vision is to achieve a continent in which public policies protect human rights and recognize human dignity, and where justice prevails over violence. **Plataforma Internacional Contra la Impunidad (PICI)** is a strategic alliance of European and Central American non-governmental organizations that promotes international attention and action towards structural causes and effects of impunity in different areas of Central America in support of actors vulnerable to impunity. The **ACTuando Juntas Jotay Programme** is the joint initiative in Guatemala of four European ecumenical organisations: Norwegian Church Aid, Act Church of Sweden, Bread for the World and the Lutheran World Federation. It seeks to contribute to the construction of an inclusive and sustainable society that respects and guarantees human rights. **Protection International Mesoamerica (PI)** is an international, non-profit NGO that facilitates the formulation of strategies and the use of security and protection management tools for people and groups that defend human rights. Based in Brussels, it has a presence in Asia, Africa and the Americas where it has two regional offices: one for Mesoamerica in Guatemala and another for South America in Colombia. **Robert F. Kennedy Human Rights (RFKHR)** was founded in 1968 following the assassination of then-Attorney General Robert F. Kennedy. The organization seeks to continue his legacy by promoting respect for human rights and civic space in collaboration with local organizations in different regions of the world, including Latin America.

<sup>2</sup> Political Constitution of Guatemala, article 113.

<sup>3</sup> Universal Declaration of Human Rights, Article 21.

<sup>4</sup> American Declaration of the Rights and Duties of Man, Article 20.

<sup>5</sup> International Covenant on Civil and Political Rights, Article 25.

<sup>6</sup> Political Constitution of the Republic of Guatemala, Article 230.

<sup>7</sup> *Accompaniment of the Lawyers Council for Civil and Economic Rights to Guatemala for the Appointment Process of the Supreme Court of Justice and Court of Appeals*, June 2019. <https://www.vancecenter.org/wp-content/uploads/2020/05/Acompañamiento-del-Lawyers-Council-a-Guatemala-para-el-proceso-de-nombramiento-de-Magistrados.-Julio-2019.pdf>

<sup>8</sup> *Report on the visit of a Lawyers Council delegation to Guatemala*, August 2019. <https://www.vancecenter.org/wp-content/uploads/2019/09/Reporte-de-la-visita-de-una-delegacion-del-Lawyers-Council-a-Guatemala-Agosto-2019.pdf>

<sup>9</sup> *Accompaniment of the Lawyers Council for Civil and Economic Rights to Guatemala for the Process of Appointment of Magistrates of the Supreme Court of Justice and Court of Appeals*, June 2020. <https://www.vancecenter.org/wp-content/uploads/2020/06/Lawyers-Council-seguimiento-Magistrados-Guatemala.pdf>

<sup>10</sup> Articles 8 and 25 of the American Convention on Human Rights, and Article 14 of the International Covenant on Civil and Political Rights; Inter-American Commission on Human Rights. Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas. December 2013. OEA/Ser.L/V/II. Doc.44, <https://www.oas.org/es/cidh/defensores/docs/pdf/operadores-de-justicia-2013.pdf>; I/A Court H.R.: Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 12: Debido Proceso, Inter-American Court of Human Rights (IACtHR), 2017; IACtHR: Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 13: Protección Judicial, Inter-American Court of Human Rights (Corte IDH), 2018.

<sup>11</sup> *Basic Principles on the Independence of the Judiciary*, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from 26 August to 6 September 1985, and confirmed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146

of 13 December 1985, <https://www.ohchr.org/es/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

<sup>12</sup> Political Constitution of the Republic of Guatemala, Article 214: *"Integration of the Supreme Court of Justice. The Supreme Court of Justice shall be composed of thirteen magistrates, including its President, and shall be organized in the chambers determined by law. Each chamber shall have its president. The President of the Judicial Branch is also the President of the Supreme Court and his authority extends to the courts throughout the Republic. In the event of temporary absence of the President of the Judicial Branch or when, in accordance with the law, he is unable to act or hear, in certain cases, he shall be replaced by the other justices of the Supreme Court of Justice in the order of their appointment"*.

Article 215 - *"Election of the Supreme Court of Justice. The justices of the Supreme Court of Justice shall be elected by the Congress of the Republic for a period of five years, from a list of twenty-six candidates proposed by a nominating commission composed of a representative of the rectors of the country's universities, who chairs it, the deans of the faculties of law or legal and social sciences of each university in the country, an equivalent number of representatives elected by the General Assembly of the Bar Association and Notaries of Guatemala and an equal number of representatives elected by the judges of the Court of Appeals and other courts referred to in Article 217 of this Constitution.*

*The election of candidates requires a vote of at least two-thirds of the members of the commission.*

*No proxies shall be accepted in the balloting for membership on the Nominating Committee for the slate of candidates.*

*The justices of the Supreme Court of Justice shall elect, from among its members, with the favorable vote of two thirds, the president of the Court, who shall serve for one year and may not be reelected during that period of the Court.*

<sup>13</sup> Article 217 - *"To be a judge of the Court of Appeal, of the collegiate courts and of others that may be created with the same status, it is necessary, in addition to the requirements set out in Article 207, to be over thirty-five years of age, to have been a judge of first instance or to have practiced law for more than five years.*

*The titular magistrates referred to in this article shall be elected by the Congress of the Republic, from a list containing twice the number to be elected proposed by a nominating commission composed of a representative of the rectors of the country's universities, who shall preside over it, the deans of the faculties of law or legal and social sciences of each university in the country, an equivalent number of members elected by the General Assembly of the Bar Association and Notaries of Guatemala and by an equal number of representatives elected by the magistrates of the Supreme Court of Justice.*

*The election of candidates requires a vote of at least two-thirds of the members of the Commission.*

*No proxies shall be accepted on the ballots both for membership of the Nominating Committee and for the composition of the slate of candidates."*

<sup>14</sup> *Accompaniment of the Lawyers Council for Civil and Economic Rights to Guatemala for the Appointment Process of the Supreme Court of Justice and Court of Appeals*, June 2019. <https://www.vancecenter.org/wp-content/uploads/2020/05/Acompañamiento-del-Lawyers-Council-a-Guatemala-para-el-proceso-de-nombramiento-de-Magistrados.-Julio-2019.pdf>

<sup>15</sup> Articles 216 and 217 of the Constitution of the Republic of Guatemala.

<sup>16</sup> Decree 19-2009, Article 4.

<sup>17</sup> Decree 19-2009, Article 7.

<sup>18</sup> Decree 32-2016, Articles 76 and 77.

<sup>19</sup> *Guatemala's Justice System: Evaluating Capacity Building and Judicial Independence*, WOLA, Myrna Mack Foundation, June 19, page 38.

<sup>20</sup> *Sectors see the need for a reform of the current Law on Nominating Commissions*, Prensa Libre (May 27, 2022): <https://www.prensalibre.com/guatemala/justicia/sectores-ven-necesaria-una-reforma-a-la-actual-ley-de-comisiones-de-postulacion/>

<sup>21</sup> *Guatemala's Justice System: Evaluating Capacity Building and Judicial Independence*, WOLA, Myrna Mack Foundation, June 19, page 38.

<sup>22</sup> *Da Vinci University fires manager accused of forging certificates*, I'm 502 (May 31, 2021): <https://www.soy502.com/articulo/giammattei-hay-fiscales-hay-pasarles-chilca-5313>

<sup>23</sup> *Summary of stakeholder submissions on Guatemala*, Report of the Office of the United Nations High Commissioner for Human Rights, Human Rights Council, Working Group on the Twenty-eighth Universal Periodic Review, 6-17 November 2017. See also: Inter-American Commission on Human Rights, *Situación de derechos humanos en Guatemala: Diversidad, desigualdad y exclusión*, 31 December 2015: <http://www.oas.org/es/cidh/informes/pdfs/guatemala2016.pdf>

<sup>24</sup> *Accompaniment of the Lawyers Council for Civil and Economic Rights to Guatemala in the process of appointing judges to the Supreme Court of Justice and the Court of Appeals*, July 2019.

<sup>25</sup> *Parallel Commissions: Mechanisms of Cooptation of Justice*, Myrna Mack Foundation, Guatemala (May 2020): [https://myrnack.org.gt/images/stories/fmm/archivos/informes/2020/Informe\\_Comisiones\\_Paralelas.pdf](https://myrnack.org.gt/images/stories/fmm/archivos/informes/2020/Informe_Comisiones_Paralelas.pdf)

<sup>26</sup> FECCI identifies people who visited Gustavo Alejos. [Parallel Commissions 2020: FECCI identifies people who visited Gustavo Alejos \(publinea.com.gt\)](https://www.publinea.com.gt/2020/05/20/fecci-identifica-a-los-visitantes-de-gustavo-alejos/)

<sup>27</sup> CICIG, 2019b: Thematic Report. Guatemala: A State Captured; Guatemala: International Commission against Impunity.

<sup>28</sup> *Parallel Commissions: Mechanisms of Cooptation of Justice*, Myrna Mack Foundation, Guatemala (May 2020): [https://myrnack.org.gt/images/stories/fmm/archivos/informes/2020/Informe\\_Comisiones\\_Paralelas.pdf](https://myrnack.org.gt/images/stories/fmm/archivos/informes/2020/Informe_Comisiones_Paralelas.pdf)

<sup>29</sup> Resolution 1169 of May 6, 2019, Constitutional Court. See also: *Mynor Moto may no longer be a judge in Guatemala after being excluded from the Judicial Career Council*, Prensa Libre (July 8, 2021): <https://www.prensalibre.com/guatemala/justicia/mynor-moto-no-podra-volver-a-ser-juez-en-guatemala-tras-ser-excluido-del-consejo-de-la-carrera-judicial-breaking/>

<sup>30</sup> Guatemala completes two years without renewing its courts due to institutional crisis, Swiss Info (Oct. 13, 2021): [https://www.swissinfo.ch/spa/guatemala-justicia\\_guatemala-cumple-dos-años-sin-renovar-sus-cortes-por-una-crisis-institucional/47025938](https://www.swissinfo.ch/spa/guatemala-justicia_guatemala-cumple-dos-años-sin-renovar-sus-cortes-por-una-crisis-institucional/47025938) See also: *CIDH exhorta a Guatemala cumplir estándares internacionales en el proceso de selección de titular de la Corte de Constitucionalidad*, Press Release, Inter-American Commission on Human Rights (11 April 2022): "In light of the order of the CC and in the context of the delay of more than three years in the election of magistrates and judges of the Supreme Court of Justice and High Courts for the 2019-2024 term, the IACHR urges the State of Guatemala to ensure that the appointment of the new incumbent can be developed with the utmost diligence, within the established deadlines and in compliance with international standards on the matter": <https://www.oas.org/en/CIDH/jsForm/?File=/en/cidh/prensa/comunicados/2022/078.asp>

<sup>31</sup> AGJI's Efforts Highlighted by UN Special Rapporteur, AGJI (January 19, 2021): <https://agji.org/~agjitor/agji-efforts-are-highlighted-by-special-relator-of-UN/>

<sup>32</sup> Guatemala Concludes Controversial Election of New Constitutional Magistrates, (March 10, 2021): <https://www.dw.com/es/guatemala-concluye-polémica-elección-de-nuevos-magistrados-constitucionales/a-56832718>

<sup>33</sup> The election of the CC is regulated by the Political Constitution and the Law on Amparo, Personal and Constitutional Exhibit. Articles 150 to 162 of the Amparo Act establish the requirements for eligibility for the post of judge, and the mechanism and deadlines for election.

<sup>34</sup> Impunity Watch, policy brief: Anomalies in the Constitutional Court election process. May 2021: [IW-informe-anomalias-en-la-el-eleccion-de-la-ICC-mayo-2021.pdf \(independenciajudicial.org\)](https://www.independenciajudicial.org/informe-anomalias-en-la-el-eleccion-de-la-ICC-mayo-2021.pdf)

<sup>35</sup> *CC anula designación de Gloria Porras anula y le ordena al CSU repetir elección de magistrado constitucional*, Prensa Libre (29 March 2022): <https://www.prensalibre.com/guatemala/justicia/cc-anula-designacion-de-gloria-porras-y-le-ordena-al-csu-repetir-eleccion-de-magistrado-constitucional/> See also: Guatemala asfixia cada vez más la disidencia, El Faro (1 March 2022): <https://elfaro.net/es/202202/columnas/26034/Guatemala-asfixia-cada-vez-más-la-disidencia.htm>

<sup>36</sup> Department of State, *Section 353 Report to Congress on Corrupt and Undemocratic Actors, July 1, 2021*, Ricardo Rafael Méndez Ruiz Valdez and Raúl Amílcar Falla Ovalle in Guatemala listing, <https://www.state.gov/seccion-353-informe-sobre-actores-corrup-tos-y-antidemocraticos/> (Accessed May 27, 2022).

<sup>37</sup> IACHR asks Guatemalan State to guarantee election of CC magistrate, Prensa Comunitaria (April 12, 2022): <https://www.prensacomunitaria.org/2022/04/cidh-pide-al-estado-de-guatemala-garantizar-la-eleccion-de-magistrado-a-la-cc/>

<sup>38</sup> El periódico, June 22, 2022: CSU elects Perez Aguilera as full magistrate to the CC: [CSU elects Perez Aguilera as full magistrate to the CC | elPeriódico de Guatemala \(elperiodico.com.gt\)](https://www.elperiodico.com.gt/CSU-elects-Perez-Aguilera-as-full-magistrate-to-the-CC/)

<sup>39</sup> Inter-American Commission on Human Rights. Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas. December 2013. OEA/Ser.L/V/II. Doc.44, para. 57

<sup>40</sup> *Accompaniment of the Lawyers Council for Civil and Economic Rights to Guatemala for the Appointment Process of Magistrates of the Supreme Court of Justice and Court of Appeals*, June 2019. <https://www.vancecenter.org/wp-content/uploads/2020/05/Acompañamiento-del-Lawyers-Council-a-Guatemala-para-el-proceso-de-nombramiento-de-Magistrados.-Julio-2019.pdf>