

APPOINTMENT PROCESS OF THE SUPREME COURT AND COURT OF APPEALS JUDGES IN GUATEMALA

BACKGROUND, PROBLEMS,
AND RECOMMENDATIONS

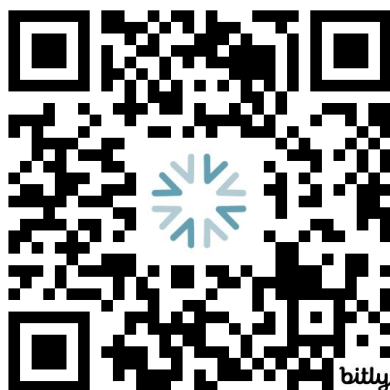


CYRUS R. VANCE CENTER
FOR INTERNATIONAL JUSTICE



FECAJUD
FEDERACIÓN CENTROAMERICANA DE
JUECES Y JUECES POR LA DEMOCRACIA

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**Cyrus R. Vance Center for
International Justice**
www.vancecenter.org

The Vance Center promotes global justice by engaging legal professionals around the world. We support civil society and promote an ethically active legal profession. The Vance Center is a non-profit program of the New York City Bar Association that brings together leading law firms and other partners to promote international justice initiatives and provide pro bono legal assistance to civil society organizations fighting for social justice.



**Federación Centroamericana de Juezas y Jueces
por la Democracia FECAJUD**
www.fecajud.org

The Federation's objectives are to contribute to the consolidation of the democratic rule of law and judicial independence in the countries of Central America, and fundamentally to contribute to a greater awareness on the part of judges as guarantors of Human Rights.

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JUDGES IN GUATEMALA

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APRIL 2024

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I. INTRODUCTION

The **Cyrus R. Vance Center for International Justice** ("Vance Center") 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 to promote international justice initiatives and provide pro bono legal representation to civil society organizations fighting for social justice.

Through the Vance Center's **Lawyers Council for Civil and Economic Rights**,¹ the process for renewing the Supreme Court and the Court of Appeals members is relevant to the rule of law in this country and the region.

The **Central American Federation of Judges for Democracy** (FECAJUD) aims to contribute to the consolidation of the democratic rule of law and judicial independence in Central America and fundamentally to contribute to a greater awareness of judges as guarantors of human rights. The Vance Center supports FECAJUD in its efforts to achieve its

mission, and this topic is of special relevance within this collaboration.

The process in Guatemala will be complex in 2024 because the previous process in 2019 did not end with the appointment of the courts in the time established by the Guatemalan Constitution. That process set a bad precedent that extended the functions of the courts until 2023, when they should have instead handed over their positions in 2019. To date, Guatemala faces a serious issue with the criminalization of justice operators and human rights defenders, and the courts themselves have been the main actors characterized by a lack of independence.² In addition, Guatemala has recently completed an electoral process for the election of president and vice president, marked by countless judicial actions, which put the democratic institutionality of the country at serious risk. These events prompted the international community to actively defend the rule of law and the peaceful transition of power.

How Guatemala elects its Supreme Court and Court of Appeals judges is critical for upholding the rule of

¹ The **Lawyers Council for Civil and Economic Rights** brings together legal professionals from private practice in the Americas to support the rule of law, combat corruption and support the work of civil society. The Lawyers Council's membership is comprised of lawyers who have distinguished themselves in the practice of private law in their respective countries and who have demonstrated consistent civic engagement throughout their careers.

² Vance Center Report" [The Criminalization of Justice Operators in Guatemala | Cyrus R. Vance Center For International Justice](#)

Resolution: [IACHR expresses concern over new violations of judicial independence in Guatemala \(oas.org\)](#)

Report: Chapter IV) B Guatemala of the Annual Report 2022 of the Inter-American Commission on Human Rights. [10-IA2022_Cap_4B_GU_ES.pdf \(oas.org\)](#)

law, ensuring the balance of power, and providing legal certainty. Newly appointed courts must act independently to curb power abuses by those previously identified and sanctioned for corruption and anti-democratic practices.³

The Vance Center recognizes that the well-being of a society depends on a well-functioning rule of law, essential for exercising civil and economic rights and fostering a thriving national economy. Businesses exist only because of laws that permit their incorporation and grant them powers and responsibilities. Their activities thrive in states where "all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and consistent with international human rights norms and standards."⁴

The rule of law is particularly important when companies consider investing internationally. They rely on their lawyers to advise whether a country's legal and judicial systems adequately mitigate political risks. Those risks include official corruption, excessive delay or unpredictability in regulatory and judicial decision-making, and other rule of law divergences. Political risks raise the cost of doing business in a country and, therefore, require companies to undertake more profitable

investments and forgo investment if higher returns are not available to match the higher risks.

The Rule of Law Index of the *World Justice Project (WJP)*⁵ ranks Guatemala 111th out of 142 countries globally and 26th out of 32 in the region. Regarding the factors measuring the justice system, Guatemala is well below the average for the Latin American region. The factor measuring criminal justice obtained a score of 0.30 out of 1, while the factor measuring civil justice⁶ obtained a score of 0.33 out of 1.

The lack of independent justice in Guatemala directly affects the level of impunity. In turn, high levels of impunity affect the exercise of civil, political, social, and economic rights, creating spaces for corruption and insecurity to flourish. These effects are structural causes of migration and insecurity, seriously impacting the region.

For the appointment of judicial officials, on the one hand, objective evaluation criteria make it possible to designate the most prepared and experienced profiles as a guarantee of integrity, reasoned and motivated action. On the other hand, a transparent and public process, with spaces for participation open to civil society, may detect undue influences that could affect the impartiality and independence of the judicial function and provide relevant information on the candidates' background, which the public can provide. This process, equipped with

³ [Section 353 Corrupt and Undemocratic Actors Report - United States Department of State](#)

[353 Report on Corrupt and Undemocratic Actors - U.S. Embassy in Guatemala \(usembassy.gov\)](#)

[Section 353 Corrupt and Undemocratic Actors Report: 2023 - United States Department of State](#)

[Section 353 Corrupt and Undemocratic Actors Report: 2023 - United States Department of State](#)

[Designation of Attorney General Maria Consuelo Porras Argueta de Porres for Involvement in Significant Corruption and](#)

[Consideration of Additional Designations - United States Department of State](#)

⁴ Definition of the rule of law. Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616).

⁵ World Justice Project. Rule of Law Index 2023. <https://worldjusticeproject.org/rule-of-law-index/country/2023/Guatemala>

⁶ Accessibility, discrimination, corruption, independence, efficiency, and effectiveness.



mechanisms to assess participant merit and protect against external pressures, will demonstrate Guatemala's commitment to overcoming the judicial challenges noted in previous appointments in 2014 and 2019.

Given these factors, the international legal community views the election of judicial authorities in Guatemala as important. Despite various judicial attempts to undermine the electoral will, the recent national and international support for the Executive Branch's assumption of power underscores the urgency of establishing independent and effective courts. The new President of Guatemala has marked a departure from past administrations' practices of denial and interference, as he requested the Organization of American States an International Observation Mission.⁷

The vulnerability of judicial independence is a regional problem, particularly when appointing high authorities for the justice system. In that sense, the process carried out by Guatemala will be an important reference for the entire region. If an actively transparent, public, open, and legitimate process is guaranteed, it can become a good practice for countries undergoing similar processes.

A. Vance Center Support

The Vance Center seeks to engage with key sectors of the Guatemalan and international legal profession to support and monitor this process and identify essential considerations to comply with national and international standards for selecting

judicial officials. Additionally, the Vance Center seeks to contribute to discussing the process by which judges are appointed and a necessary reform of the justice system to guarantee true judicial independence.

These efforts focus on the characteristics of the rule of law that underpin the judicial function; it does not consider political issues or positions.

The methodology is based on the work previously carried out by the Vance Center *Lawyers Council* in the 2019 process, similar processes in other countries, and extensive work in Guatemala on this and other issues.

The *Vance Center* has organized four previous missions to Guatemala. The first, in August 2013, to assess the effects on the rule of law and the international business climate in Guatemala resulting from the prosecution of former President Efraín Ríos Montt and Mauricio Rodríguez Sánchez, his former military intelligence chief, on charges of genocide and crimes against humanity.⁸

The second mission, in July 2014, was to follow up on the 2013 Delegation and monitor the appointment of judges for the Guatemalan courts.⁹

The third mission, in August 2019, was conducted by the Lawyers Council to accompany the judicial election process in Guatemala. Meetings were held with the legal community and judges, from whom

⁷ [Arevalo asks OAS for an observation mission for election of judicial authorities in Guatemala \(vozdeamerica.com\)](https://www.vozdeamerica.com/en/arevalo-asks-oas-for-an-observation-mission-for-election-of-judicial-authorities-in-guatemala)

⁸ For more information: [https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/observations-and-recommendations-of-](https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/observations-and-recommendations-of-the-new-york-city-bar-associations-delegation-of-business-lawyers-to-the-americas-to-guatemala)

[the-new-york-city-bar-associations-delegation-of-business-lawyers-to-the-americas-to-guatemala](https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/observations-and-recommendations-of-the-new-york-city-bar-associations-delegation-of-business-lawyers-to-the-americas-to-guatemala)

⁹ For more information: <https://www.nycbar.org/media-listing/media/detail/city-bar-reports-on-second-delegation-to-guatemala-following-genocide-trial>

valuable information and recommendations were obtained.¹⁰

In the fourth mission, in November 2023, the delegation again had the opportunity to verify *in situ* the current situation of the Central American country and make specific recommendations to support citizen confidence in the justice system. On that occasion, President-elect Bernardo Arévalo, who took office two months later, was important to discuss issues related to anti-corruption legislation, strengthening of the justice system, and freedom of the press.¹¹

These visits addressed challenges in electing judges and challenges to the justice system in general.

This document is an update of the one prepared for the third mission regarding the current selection process conducted in 2019.

¹⁰ See more information <https://www.vancecenter.org/lawyers-council-focuses-on-judicial-appointments-in-guatemala/>

¹¹ See more information <https://www.vancecenter.org/vance-center-leads-international-delegation-to-guatemala/>



II. RENEWAL OF THE SUPREME COURT AND COURT OF APPEALS IN GUATEMALA

The Supreme Court and Court of Appeals members should be renewed this year.

The Supreme Court consists of 13 judges appointed by Congress for a five-year term from a list of 26 candidates proposed by a Nominating Commission.

Congress appoints the judges of the Court of Appeals from a list containing twice the number of judges to be elected, proposed by a nominating commission. The Court of Appeals comprises 138 judges and 2 substitute judges for each chamber, distributed in 46 Chambers of the Court of Appeals. Overall, 230 persons must be elected.

The results of this process extend to renewing high courts; given the current political situation, the Supreme Court decides whether a criminal charge should be brought against members of Congress, justices of the peace, trial judges, and judges of the appellate courts.

A. Integration of the Nominating Committees

To appoint the judges of the Supreme Court and Court of Appeals, Nominating Committees are formed for each of the processes, formed by 37 members as follows:

- Supreme Court¹²

- 1) A representative of the presidents of the country's universities who presides.
- 2) Twelve deans of faculties of law or legal and social sciences.
- 3) Twelve representatives of the judges of the Court of Appeals must be elected by all the judges of the Court of Appeals.
- 4) Twelve representatives of the Bar Association, elected by the Bar members.

- Court of Appeals

- 1) A representative of the presidents of the country's universities who presides.
- 2) Twelve deans of faculties of law or legal and social sciences.
- 3) Twelve representatives of the justices of the Supreme Court.
- 4) Twelve representatives of the Bar Association, elected by the Bar members.

The judges must be Guatemalan by birth, of recognized honorability, possess full citizenship rights, and be licensed attorneys.¹³ Additionally, to be a judge of the Court of Appeals, one must be at

¹² Political Constitution of the Republic of Guatemala. Article 215. <https://www.congreso.gob.gt/wp-content/plugins/normativa->

[constitucional/includes/uploads/docs/1511972586_constitucion_politica_de_la_republica.pdf](#)

¹³ Ibid. Article 207.

least 35 years old, have served as a trial judge, or have practiced law for more than five years.¹⁴

To be elected judge of the Supreme Court, one must be older than 40 years old, have served a full term as judge of the Court of Appeals, or have practiced law for more than 10 years.¹⁵

B. Selection Process for Judges

Per the Law on Nominating Commissions ("the Law"), Congress must convene the Nominating Commissions, which should occur four months before the end of the officials' terms.

Once the different elected representatives have formed the Commissions, they will carry out the following process:

- 1) The Nominating Committees shall prepare the **professionals' profile** for the position, considering the individual's ethical, academic, professional, and human projection quality.
- 2) The Commissions must approve a **grading table** of the candidates, from 1 to 100 points, to quantify in a single table the academic, professional, and human projection merits.
- 3) Through their secretariat, the Nominating Committees shall publish a notice in the official newspaper and two of the country's largest circulation newspapers, announcing the selection process for applicants so that they may submit the respective documentation. The **notice** must contain:
 - a. Identification of the Nominating Committee in question
 - b. Purpose of the call
 - c. Number of applicants to be included in the list to be forwarded to the appropriate
 - d. Legal requirements for applicants
 - e. Deadline, place, and time for submission of documentation
 - f. Any other information that the Commission determines to be relevant.
- 4) The Commissions shall prepare a **form** to be delivered to the interested parties, and they shall send it back to the place indicated in the public call for applications, together with the **curriculum vitae** and accompanying documentation.
- 5) The Commissions shall draw up a list of the candidates and include a summary of the candidate's relevant information. The members of the Commissions shall be summoned to hear the total list of participants prepared by the respective secretariat. They shall reasonably exclude all those who do not meet the requirements outlined in the law and included in the notice.
- 6) The Commissions shall prepare a new list of **candidates**, including only those **who meet the requirements** outlined in the law, as required by the call for applications, and who will participate in the selection process.
- 7) Each Commission is empowered and shall **corroborate**, by the appropriate means, the **information provided** by the professional in question. If the candidates have already held a judicial office, the Judicial Civil Service Council is obliged to submit the lists and records of faults and sanctions, as well as the professional

¹⁴ Ibid. Article 217

¹⁵ Ibid. Article 216



performance evaluation carried out by the Performance Evaluation Unit of the Council.¹⁶

- 8) The Commissions may conduct the **interviews** they deem pertinent to the candidates, when necessary, in their judgment. The interviews shall be conducted by no less than three members of the Commission, who shall approve, as soon as the Nominating Committee is installed, an **interview guide** that allows the interview results to be quantified.
- 9) The Nominating Committees shall make known the names of the participants who meet the requirements employing a publication in the official newspaper and two of the largest circulation newspapers in the country so that any person who knows of any impediment may make it known in writing.
- 10) The Commissions will examine the dossiers formed, assigning each participant a score according to the ranking. In practice, **groups** of commissioners are formed to carry out this exercise.
- 11) The Nominating Committees shall draw up a **list of eligible candidates**, starting with those who have obtained the best evaluation and decreasing until the list is complete.
- 12) Based on this list, the Nominating Commissions shall vote (two-thirds of the members of the respective Commission) on integrating the **lists** of candidates to be sent to Congress. Voting shall begin with the candidate who obtained the highest score, and the candidates who obtained the lowest score shall be voted in descending order. If several candidates have received the same score, the surnames of such

candidates shall be arranged in alphabetical order. Voting shall conclude when the number of candidates on the list is completed.

- 13) The Commissions shall send to Congress the list of candidates, together with the files and all the corresponding documentation, at least 20 calendar days before the end of the term for which the officials who conclude their terms were constitutionally elected; simultaneously, the list in question shall be published once in the official newspaper and two of the country's largest circulation newspapers.
- 14) Congress finally elects the persons who will be sworn in as judges of the Court of Appeals and the Supreme Court.

C. Judicial Civil Service Law of 2016

In 2019, the Judicial Civil Service Law was applied for the first time, granting judges already in the judicial civil service a preference in the application process. Despite this, the nomination commissions rejected petitions of at least twelve judges who had expressed interest in following the law. In the upcoming 2024 process, the commissions again decide whether to enforce the regulation that acknowledges differentiated treatment for those within the justice system based on their experience, specialty, and judicial performance evaluations.

For these purposes, the Judicial Civil Service Council must promptly prepare and submit the list with the respective files of judges to nomination commissions. This list should include results from the evaluation process considered primary

¹⁶ Judicial civil service Law. Decree Number 32-2016
http://ww2.oj.gob.gt/uci/images/fotosnoticias/2017/LCJ_DEC_RETO_32-2016.pdf Articles 10 and 22.

elements, such as years of experience in the judiciary, specialization, and professional performance, whether satisfactory or outstanding.

The law stipulates that the nominating committee's list, proposing candidates for judges of the Court of Appeals and other courts of the same category, should primarily include members from the judicial civil service and those who have served as judges and judges. This preference is given with consideration to the candidates' specialties. It is expected that most nominees will come from the judicial civil service for the first time in this process.

On the other hand, the law mandates a more balanced and pluralistic composition for the Supreme Court. It requires that the nominating committee's list with the proposal of candidates for the position of judge of the Supreme Court shall be composed equally of members from the judicial civil service, former judges, former judges, and lawyers who meet the constitutional and legal qualifications for the position.

D. Background: 2014-2019

The 2014 nomination process for judges faced several accusations due to the influence of external groups and actors. Notably, this led to a case known as "Parallel Commissions," which alleged undue influence by individuals including lawyer Roberto López Villatoro, known as "The King of Tennis"; Juan de Dios Rodríguez, former president of the

Guatemalan Institute of Social Security; and businessperson Gustavo Herrera.¹⁷

The 2014 process was also widely criticized by national and international observers for errors such as adopting evaluation criteria that favored professional seniority over merit, interviews that lasted less than five minutes, the inability of Commissioners to explain their votes, and the lack of opportunities to challenge candidates.¹⁸

Additionally, several cases were filed against the process carried out by the Nominating Commissions and Congress. The judges' appointment was suspended through a provisional injunction, and the outgoing judges continued in office until the final resolution of the injunctions.

By a divided decision, the Constitutional Court revoked the provisional injunction granted on November 19, 2014, and validated the election carried out. Both the judges of the Supreme Court and the Court of Appeals took office when the term established by the Constitution had expired.¹⁹

Regardless of whether the allegations of influence were true or not, what is certain is that the legitimacy of the process was affected, which affects one of the dimensions of judicial independence and erodes the rule of law.

The nomination process for the year 2019 was subject to injunction actions seeking to ensure the selection of suitable and honorable professionals, which led to the suspension of the election by the

¹⁷ Free Press. *First dispute for the conformation of postuladors to renew the judiciary*. March 27, 2019. <https://www.prensalibre.com/guatemala/justicia/primer-disputa-por-la-conformacion-de-postuladoras-para-renovar-el-poder-judicial/>

¹⁸ ILAC Rule of Law Assessment Report Guatemala. <http://www.ilacnet.org/wp->

<content/uploads/2018/09/Informe-de-Evaluacion-de-ILAC-sobre-el-Estado-de-Derecho-Guatemala.pdf> p. 50

¹⁹ Ibid. Prensa Libre. *First dispute for the conformation of postuladors to renew the judiciary*. <https://www.prensalibre.com/guatemala/justicia/primer-disputa-por-la-conformacion-de-postuladoras-para-renovar-el-poder-judicial/>



Congress of Guatemala and by the date on which they were to be appointed, October 13, 2019, was not met, so that the judges of the previous period remained in their functions. In a first order, the Constitutional Court ordered the Judicial Civil Service Council to evaluate the judges who had expressed interest in the process. Subsequently, in February 2020, the Public Prosecutor's Office presented the case "Parallel Commissions 2020," which consisted of criminal investigations of undue influence in the 2019 process. On May 6 of the same year, the Constitutional Court ordered Congress to appoint judges and provide reasons for the appointment, having to exclude those accused in criminal investigations of the Public Prosecutor's Office.

Congress delayed the election since that date, and the legislative body never complied with the order of the Constitutional Court. On November 7, 2023, it again issued a resolution for the legislative body to proceed within a peremptory term to the election for the period ending on October 13, 2024. After more than four years, the Supreme Court and Court of Appeals judges were appointed on November 16 and 21, 2023, respectively, to complete the period ending in October 2024.

E. Notice 2019-2024

1. First Notice

On February 26, 2019, Congress approved Agreement 6-2019²⁰, which mandated the Nominations Commissions to integrate the list of nominees to appoint the Supreme Court and the Court of Appeals judges. Subsequently, on March 20, the Guatemalan Bar Association called upon its members to elect their representatives to the Nomination Commissions, with the election scheduled for May 31.²¹

2. Legal Resources

Since Congress issued the summons more than seven and a half months before the date on which the Supreme Court and Court of Appeals judges are due to take office, the association Familiares y Amigos contra la Delincuencia y el Secuestro (FADS) and the Movimiento Pro Justicia requested an injunction from the Constitutional Court against the summons. This action was taken due to concerns that the extended timeframe could affect the election process.²²

The groups opposed to initiating the process earlier considered the members of Congress, especially those who were not re-elected, seeking to ensure impunity before the first round of elections.²³ On the other hand, some lawyers consulted believe

²⁰ Congress of the Republic. Agreement No. 06-2019 <https://www.congreso.gob.gt/acuerdo-detalle?id=17900>

²¹ Bar Association of Guatemala. Minute Number 11-2019 Point Three. <https://legal.dca.gob.gt/GestionDocumento/VisualizarDocumento?verDocumentoPrevia=True&versionImpresa=False&doc=12372>; <https://www.prensalibre.com/guatemala/justicia/primera-disputa-por-la-conformacion-de-postuladoras-para-renovar-el-poder-judicial/>

²² <http://209.236.70.133/images/archivos%202019/FADS-Bolet%C3%ADn%2001-2019.pdf>; <https://lahora.gt/pro-justicia-acciona-contra-convocatoria-a-comisiones-de-postulacion/> ; <https://lahora.gt/eleccion-del-presidente-de-postuladora-para-magistrados-se-hara-en-junio/>

²³ Ibid. Prensa Libre. *First dispute for the conformation of postulators for the renewal of the judiciary.*

that the early call favored objectivity, as it would give the Nominating Commissions more time to fulfill their duties properly.

In May, the Constitutional Court responded to these concerns by granting a provisional injunction and ordering Congress to issue a new agreement to integrate the Commissions, stipulating that this should occur strictly four months in advance.²⁴

3. Second call for applications

On June 12, Agreement 08-2019,²⁵ approved by the plenary of Congress, came into force. This agreement convened the respective Nominating Commissions to appoint judges.

The next day, June 13, 2019, the Forum of Rectors of the country's universities elected the rector of the Universidad Mesoamericana as president of the Nomination Commission to elect candidates to the Supreme Court. Likewise, said Forum elected the rector of the Universidad de San Carlos de Guatemala and president of the Nomination Commission to elect candidates for the Court of Appeals judges.²⁶

On June 13, 2019, the Board of Directors of the Bar Association and Notaries of Guatemala called its members to an extraordinary session of the General Assembly scheduled for July 26, 2019. This session aimed to elect the 12 representatives of the General Assembly to integrate each of the Nominating Commissions.²⁷

4. Delay in the election and extension of functions.

Once sworn in by Congress, the Nomination Commission began its work on August 19. Their task included approving the evaluation instruments or profiles required for the judicial positions and receiving resumes from the applicants. On August 28, the Mirna Mack Foundation filed an injunction against the commissions because they had not complied with the requirement to obtain the files and evaluations of career judges interested in the process from the Judicial Civil Service Council. This requirement was mandated by the Judicial Civil Service Law, with the requirement to obtain from the Judicial Civil Service Council the files and evaluations of career judges interested in the process.

The Constitutional Court issued a resolution granting injunctions aimed at repeating the election of the Appellate Courts' representatives. This was also to ensure that the Judicial Civil Service Council complied with the required evaluations of judges, as stipulated by the Judicial Civil Service Law. Due to the issues reported, the process reverted to earlier stages. Consequently, the scheduled handover of positions on October 13, 2019, did not occur, extending the mandate of those already in office.

On December 2, the Constitutional Court outlined the procedure for the Judicial Civil Service Council to evaluate interested judges. This would enable the Nominating Commissions to comply with the provisions of the Judicial Civil Service Law. Accordingly, on February 19, 2020, the Nomination

²⁴ <https://elperiodico.com.gt/nacion/2019/05/17/cc-aplaza-convocatoria-a-comisiones-de-postulacion-de-cortes/>

²⁵ Congress of the Republic. Agreement No. 08-2019. <https://www.congreso.gob.gt/acuerdo-detalle/?id=17903>

²⁶ <https://www.prensalibre.com/guatemala/politica/felix-serrano-y-murphy-paiz-presidiran-postuladoras-para-elegir-aspirantes-a-magistrados-de-csj-y-apelaciones/>

²⁷ <https://republica.gt/2019/06/13/colegio-de-abogados-comisiones-de-postulacion/>



Commission sent the list of nominees to Congress so that the respective appointments could be made.

F. Call 2024-2029

In the next weeks, the plenary of Congress will approve an Agreement to summon the Nominating Commissions to integrate the list of nominees for the appointment of the judges of the Supreme Court and the Court of Appeals.

Based on the legislative agreement, the Bar Association and Notaries of Guatemala should post a call for the participation of active members to represent the guild in the Nominating Commissions. Additionally, there will be a call to elect by slate the 12 Bar Association representatives to integrate each of the Nomination Commissions.

Likewise, a call must be made for the Appellate Court Judges to elect 12 of their representatives to the Nominating Committee for the election of the Supreme Court. Also, 12 Supreme Court Justices must be integrated into the Nominating Commission for Appellate Court Judges.

To be one of the 12 representatives in the Nominating Commissions, candidates must meet certain requirements, such as being Guatemalan, being an active member of the Bar Association, having at least five years of professional practice, not be disqualified from holding public office, not have been sanctioned by the Bar Association's Honor Tribunal, and not have a police or criminal record.

Additionally, the Forum of Rectors of the country's universities must elect a rector as president of the Nomination Commission to elect candidates to the Supreme Court, and another person as president of the Nomination Commission to elect candidates to the Court of Appeals.

III. ISSUES IN THE PROCESS

Unlike other countries in the region with which the *Vance Center* and FECAJUD have worked, the challenges in Guatemala are twofold. On the one hand, there is a design problem in the justice system, and on the other hand, an underlying issue related to co-optation and corruption as a way of State functioning. These challenges can be understood in the following ways:

A. Design and Form of the Judicial System in Guatemala

- 1) Although in most of the region, there has been a tendency to expand and strengthen the judicial civil service, in Guatemala, it is **minimal** as it includes only justices of the peace and trial judges. As a regional trend, the judicial civil service is entered from the lowest levels (in some countries such as Argentina, Brazil, or Mexico, the judicial civil service includes certain auxiliary personnel of the judges), and a scheme of professionalization and incentives is generated for promotion to high-ranking judicial positions.
- 2) The fact that Appellate Judges are appointed through a **process perceived as more political than technical** departs from the trend of establishing selection mechanisms within the judiciary itself based on technical criteria and judicial civil service performance.
- 3) **The lack of separation of administrative tasks from the Supreme Court** is noteworthy. In most countries in the region, there are bodies generally called the “Council of the Judiciary,” which, among other issues, oversee the administration of the judiciary and the judicial civil service. These bodies have been created by Argentina, Brazil, Colombia, Costa Rica, Ecuador, Mexico, and the Dominican Republic. Although there were efforts to have the Council of the Judicial Civil Service assume more functions, they have regressed, and many of these essential functions continue to fall to the Supreme Court.
- 4) The lack of a judicial civil service emphasizes the **short duration of appellate judges**. Compared to the five years that they last in Guatemala, in most countries of the region, these judges, who will be the last instance in most cases, are permanent appointments until they reach retirement age (generally between 70 and 75 years).
- 5) The brevity of the appointment period also exposes judges to undue influence, as they will have to advocate for the continuity of their positions or position themselves for other professional opportunities after leaving office, aspects that undermine the impartiality and absence of conflicts of interest of judges.
- 6) The **term of office of Supreme Court Justices is minimal compared** to other jurisdictions. In some countries, the duration is based on age; for example, in Argentina and Chile, justices serve up to 75 years of age. In other countries such as Colombia and Mexico, they establish a defined duration, 8 and 15 years, respectively. To avoid undue influence, these positions generally do not allow for re-election.



- 7) Both the appellate chambers and the Supreme Court **are renewed in their entirety**, which results in the loss of institutional experience every five years. In other countries, this has been solved by staggering (programmed or natural) the renewal of spaces.

B. The System for the Appointment of Judges

- 1) Due to the problems the process has presented and the lack of political will to modify it, the appointment model is exhausted. What began as a model that sought to strengthen the appointment of judges ended up being a model that is perceived as political and subject to manipulation and corruption, and that produces apathy in some sectors to participate and disappointment and resignation concerning the expected results.
- 2) There have been no conditions to address vices that affect the legitimacy of the process.
- 3) The perception that the appointment process may be, to some extent and for certain candidates, the formalization of prior agreements between interest groups, even before the candidates have registered to participate in the process, is concerning. This perception and the criminal investigation

processes surrounding these agreements have seriously affected the legitimacy of the process and confidence in the judiciary as an independent and impartial entity. The lack of compliance with the regulations for selecting members of the Nomination Commissions generates doubts that may affect the legality of the process.

C. Corruption and Lack of Legitimacy as Underlying Issues

- 1) There is widespread distrust of the judicial branch's independence due to high corruption and perceived lack of legitimacy in appointing judges.
- 2) We highlight the perception of an atmosphere of openness and possibilities for this process, together with the commitment of various sectors to move away from the vices of previous occasions to work in favor of the justice system as a fundamental factor of the rule of law, and a driving force for change in the situation of impunity in the country.

The atmosphere of intimidation through the abuse of criminal charges against pro-justice actors as a mechanism to maintain the *status quo* of co-optation of the justice system is noted with concern.

IV. RECOMMENDATIONS FOR THE GUATEMALAN LEGAL COMMUNITY FOR THE APPOINTMENT PROCESS OF JUDGES 2024-2029

*"One of the main objectives of the separation of public powers is to guarantee the independence of judges and, to this end, the different political systems have devised strict procedures for both their appointment and dismissal... the independence of any judge requires an **adequate appointment process**, a fixed term of office and a guarantee against external pressures".²⁸*

Article 203 of the Constitution of the Republic of Guatemala states that judges are independent in exercising their functions and are subject only to the Constitution and the laws. Although judicial independence is not exhausted when appointing judges through a series of institutional arrangements, an adequate appointment process is indispensable for the independent exercise of jurisdictional function.

Judicial independence is an essential element of the democratic system and a human right. Paragraph 10 of the Basic Principles on the Independence of the Judiciary²⁹ states that persons selected for judicial office shall be persons of integrity and ability and have appropriate legal training or qualifications and that any method used to choose judicial personnel

shall ensure that they are not appointed for improper motives.

Guatemala's legal system does not establish a strictly meritocratic process for the selection of Supreme Court and Court of Appeals judges, making it more susceptible to political influence compared to the appointment of lower judges, subject to evaluations and the merit of the Judicial Civil Service Law. However, on a positive note, Guatemala has a Nominating Commissions Law³⁰ that seeks to regulate and establish objective and concrete mechanisms and procedures for the selection. In theory, it is good practice to have the support of a technical body that depoliticizes and mechanizes the appointments; however, the reality has been different.

Although this law establishes objective criteria, there is still a margin for discretionary action, in which it is essential to act in accordance with international standards and regional best practices. Additionally, the Constitutional Court has established criteria based on the interpretation of

²⁸ I/A Court H.R., *Case of the Constitutional Tribunal v. Peru*, Merits, Reparations and Costs. Judgment of January 31, 2001, Series C No. 71, paras. 73 and 75.

²⁹ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from August 26 to September 6, 1985, and confirmed by

the United Nations General Assembly in its resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985.

³⁰ Law on Nominating Commissions. Decree number 19-2009. <https://www.congreso.gob.gt/consulta-legislativa/decreto-detalle/?id=13138>



the law to guide the actions of the different Commissions.

The bodies of the universal and inter-American systems have established minimum standards through their pronouncements and decisions to guarantee judicial independence. These standards are related to establishing adequate mechanisms for identifying merit and introducing transparent selection mechanisms.³¹

The Inter-American Commission on Human Rights (IACHR) has pointed out that the objective of any selection and appointment process for judges and other justice operators must be to select candidates based on personal merit and their professional capacity, as well as the uniqueness and specificity of the functions they are to perform in such a way as to ensure equal opportunities, without unreasonable privileges or advantages.³²

The IACHR also notes that a significant issue in some regional countries is the high degree of politicization in the systems for selecting, appointing, or electing justice operators. This politicization often starts with the selection processes at the highest hierarchies of justice entities and affects the appointment of other instances, compromising the functionality of the entire justice system.³³ In response, Latin America has developed regulatory and institutional frameworks to make the appointment of judges more technical.

Gabriela Knaul, the UN Special Rapporteur on the independence of judges and lawyers, has highlighted that Central America faces numerous risks and challenges that transcend the local level. These challenges demand the strengthening of justice administration and independence to end impunity. In this context, having judicial powers with independent judges committed to respecting human rights and reinforcing the rule of law is crucial.³⁴

The Vance Center and FECAJUD present several key aspects that the Guatemalan legal community should consider carefully. These are based on national legislation, jurisprudence, international standards, and comparative experiences and are critical at every process stage. The Vance Center and FECAJUD stress the importance of adhering to legal and national jurisprudence and incorporating international best practices. This approach can yield qualified profiles that impart justice and a judiciary that enjoys legitimacy and public trust.

The members of the Nomination Commissions bear the historical responsibility of departing from past practices to help build the rule of law to which Guatemala aspires.

A. Actors and Participants

The process of appointing Supreme Court and Court of Appeals judges contemplates the participation of the members of the Nominating Commissions and

³¹ Guarantees for the independence of justice operators. Towards strengthening access to justice and the rule of law in the Americas. <https://www.oas.org/es/cidh/defensores/docs/pdf/Operadore-s-de-Justicia-2013.pdf>; The selection process of judges of the Supreme Court of El Salvador: Recommendations for a necessary reform. December 2016. DPLF. http://www.dplf.org/sites/default/files/seleccion_mag_esv5.pdf

³² Guarantees for the independence of justice operators . Para. 75

³³ Guarantees for the independence of justice operators . Para. 57

³⁴ Report of the Special Rapporteur on the independence of judges and prosecutors
judges and lawyers, Gabriela Knaul. Sub-regional Consultation on the Independence of the Judiciary in Central America <https://undocs.org/es/A/HRC/23/43/Add.4> para. 6

Congress; however, there are other actors whose participation is relevant in the process.

The legal community should pay attention and follow up on a process that impacts the practice of all persons engaged in the legal profession and is fundamental to the rule of law.

This legal community includes, among others, lawyers practicing as individuals or as part of a law firm, corporate lawyers, academics, civil society organizations, students, and other judges and judges.

It is very important that practicing lawyers participate in the composition of the nominating commissions as representatives of sectors that are generally not included, thus adding to the plurality and internal control of what happens in the commissions. On the other hand, the legal community must be vigilant about the quality, independence, and commitment of the persons elected to the commissions.

As part of the research, there was concern about the participation of deans of "garage" faculties, i.e., academic institutions formally created but without students. The role that the Constitution grants to universities is very important, so the role of deans should provide a vision that reflects the ideals of academic institutions and where students can participate, particularly through the analysis of profiles.

In this process, for the second time, the regulations of the Judicial Civil Service Law, which establishes preferential treatment for judges who are already part of the judicial civil service and who have expressed interest in applying, should be put into

practice, always taking into account parameters such as specialty, trajectory, experience, and satisfactory performance evaluation. The *Vance Center* and FECAJUD express concern about the lack of implementation of the 2016 Judicial Civil Service Law reforms, which has not allowed the assessment of judges, which is the preliminary step for this profile analysis.

Additionally, there is concern regarding conflicts of interest that may exist among the participants in the process, and in which particular care and attention must be paid to ensure the legitimacy of the process. Article 18 b) of the Law of Probity and Responsibilities of Public Officials and Employees of Guatemala³⁵ prohibits acting under a conflict of interest.

A complication of origin is the participation of practicing attorneys, who choose the judges to resolve the matters they represent. To resolve this dilemma, it is recommended that mechanisms be established so that the commissioners are excused from hearing, particularly the case files of judges who have resolved matters that these attorneys have represented in the past. Additionally, it is recommended that mechanisms be established to ensure that the persons appointed as judges are excused from hearing matters in which the commissioners who evaluated their profile as part of the evaluation group (not because they are part of the Commission) participate.

Another conflict of interest that is important to resolve is the participation of individuals as commissioners and applicants since it is incompatible to evaluate and be evaluated simultaneously. This occurs when judges hold the

³⁵ Congress of the Republic. Law of Probity and Responsibilities of Public Officials and Employees

<https://www.congreso.gob.gt/consulta-legislativa/decreto-detalle/?id=236>



position and are simultaneously members of the respective Nomination Commission. In Guatemala, this is known as a previous agreement of "you choose me, and I choose you" between judges of chambers and the Supreme Court.

By the international observation and accompaniment that Guatemala received for the 2023 electoral process, it is expected that this process of election of judicial authorities will also receive due attention from international bodies and international organizations to guarantee the creation of a Judicial Branch at the service of the people of Guatemala and justice.

B. Profile

According to Articles 113 and 207 of the Constitution, in addition to the formal requirements (nationality, enjoyment of citizenship rights, and membership as a lawyer) to hold the position of judge, the person must meet the following criteria:

- Capacity
- Suitability
- Honesty
- Recognized honorability

As an elaboration of these requirements, the law establishes that the profile prepared must take into account the following aspects:

- Ethical, which includes those related to proven morality, honorability, rectitude, independence, and impartiality
- Academic, which includes university teaching, academic degrees, studies,

essays, publications, participation in academic events and merits obtained

- Professional, which includes everything related to the applicant's professional experience
- Human projection, which includes aspects related to service vocation and leadership

According to international standards, these criteria should require that the persons selected to occupy judicial positions be of integrity and suitability, with adequate legal training and qualifications.³⁶

The purpose of this profile is, on the one hand, to facilitate the selection of persons applying for the different positions. On the other hand, the Constitutional Court, in file 2143-2014, established that "each applicant knows the requirements that he/she must possess for a successful application."

The opportunity presented by the elaboration of this profile is to adapt the vision of the function that the elected persons must perform. In the case of *Reverón Trujillo v. Venezuela*, the Inter-American Court of Human Rights established that "judges should be selected exclusively based on personal merit and professional ability, through objective selection and tenure mechanisms that take into account the uniqueness and specificity of the functions to be performed."³⁷

The Nominating Committees must determine this profile by integrating the personal and professional skills, qualities, and aptitudes necessary to perform

³⁶ Ibid. Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaut. para. 100 c.

³⁷ I/A Court H.R., Case of *Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009, Series C no. 197, para. 72.

the position independently and impartially.³⁸ It is also important that this profile be **detailed**, as it will be an important guide for evaluating the Commissions.

It is recommended that each of the aspects that the profile should contain clearly outline what is expected of the candidates, that is, the particular characteristics that are expected in terms of ethics, academic, professional, and human projection.

As indicated above, the Judicial Civil Service Law establishes a special consideration for sitting judges who express interest in the Nominating Commissions so that the experience, trajectory, specialty, seniority in the position, and professional performance evaluations to which they are periodically subjected can provide important information to determine the suitability and professionalism of those who wish to obtain a promotion within the Judiciary. Therefore, the law offers preferential treatment to those who already hold a position within the judicial civil service, which should be considered by the actors who impact the nomination and final election.

The qualities outlined in the profile must be related to the powers and responsibilities of the position to be held, not limited to specific knowledge but also professional competencies, as well as their vision of the role of the judge in the current context in Guatemala.

The IACHR believes that to guarantee that both personal merit and professional capacity are adequately valued and under conditions of equality

within the selection and appointment processes, objective criteria should be established to determine their content precisely. Such criteria should be enshrined in State regulatory instruments to ensure their observance and enforceability.³⁹

In Honduras, the Nominating Board for the selection process of Judge and Judge of the Supreme Court for the period 2022-2030 created a profile in a 34-page document, which contained the definition of a mission, description, principles and values, academic background, professional trajectory, and competencies (physical, ethical, cognitive, social, and technical-managerial). The mission was established as follows:

To impart justice with independence, impartiality, transparency, quality, diligence, and gender equity, incorporating an approach based on human rights, respect for democratic values, and adherence to the Constitution of the Republic, international conventions and treaties, and domestic laws of Honduras, exercising control of constitutionality and conventionality and demonstrating effective commitment to the defense of the Constitutional State, the fight against corruption and organized crime, as well as respect for the independence and complementarity between branches of government, ensuring effective judicial protection of all recognized rights.⁴⁰

In Argentina, there is a Decree that regulates the procedure for the President to appoint judges to the Supreme Court, which establishes that the purpose of the procedure is: "the pre-selection of candidates ... within a framework of prudent respect for the good name and honor of those proposed, the

³⁸ El Manual de Selección de Magistrados/as y Jueces/zas de El Salvador: reflexiones para la elección de magistrados de la Sala de lo Constitucional. DPLF.
http://www.dplf.org/sites/default/files/seleccion_jueces_el_salvador_2018_vf.pdf

³⁹ Guarantees for the independence of justice operators. Para. 78

⁴⁰ Nominating Board, Instrument JN-2022-IT02, approved October 13, 2022.



correct assessment of their moral aptitudes, their technical and legal suitability, their track record and their commitment to the defense of human rights and democratic values that make them worthy of such an important function".⁴¹

In Peru, a very detailed profile was recently created for the members of the National Justice Board,⁴² as follows:

The National Board of Justice member is committed to the independence of his function.

Has sufficient legal knowledge of the principles, values, rights, and institutions enshrined in the Political Constitution of Peru and the Peruvian Constitutional State and the purposes and system of justice, judicial, and prosecutorial work. Has knowledge and competence in disciplinary control and sanctioning law, and, in general, applies the law with criteria of justice and equity.

Maintains a commitment to the rule of law, the defense of fundamental human rights, democratic values, transparency, and integrity. Resolves with impartiality, prudence, objectivity, and openness, proscribing any political, economic, social, media, or other type of pressure.

They also know public management and human talent. They have reasoning and argumentation skills and the ability to generate consensus.

They have a proven track record of probity, suitability, and democratic trajectory.

As part of the previous research, it is difficult for jurists recognized for their trajectory and honorability to participate in these processes. This problem is common in the region and is strictly related to the profile that is created and the wear and tear that it implies. When the process can guarantee participation under equal circumstances

based strictly on merit, and the judicial function is recognized by society, these profiles will be the ones to participate.

C. Evaluation Table

In addition to the minimum profile, the Nominating Committees must approve a grading table of qualifications of the applicants, from 1 to 100 points, to quantify numerically in a single table the following aspects:

- Academic merits
- Professional merits
- Merits of human projection

The ranking table should be used as a basis by the members of the Nominating Commissions at the time of voting to draw up lists of candidates with a high profile.

Although the law establishes the merits to be evaluated in the table, it is also true that the Nominating Committees have the discretion to develop the specific items to be assessed for each aspect. In this sense, the grading table must be as specific and clear as possible, defining the scores corresponding to each merit. In addition, it is recommended that no points be awarded for the minimum requirements established in the Constitution, i.e., just as no points are awarded for nationality or age, no points should be awarded for the minimum number of years of professional practice.

⁴¹ Decree 222/2003. Procedure for the exercise of the power that section 99, subsection 4 of the Constitution of the Argentine Nation confers to the President of the Nation for the appointment of the justices of the Supreme Court of the Nation. Regulatory framework for the pre-selection of

candidates for the filling of vacancies.

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/86247/norma.htm>

⁴² The Peruvian. Publication of April 23, 2019.

It is recommended not to limit the evaluation of professional merits to professional seniority but to consider other aspects, such as evaluations of the Judicial Civil Service Council, or other elements submitted to the Commissions. In other words, the review cannot be limited to the time since becoming a member of the Bar, but it is essential to include the quality of the professional's practice.

The law establishes that the Nominating Committees may request additional information from candidates. It is recommended to consider requesting written elements that may be subject to evaluation, such as examples of judgments (if they have been judges), legal analysis of judgments, etc. It is important to include in the merits evaluated the independence and impartiality of the professional background, legal knowledge, and relevant competencies for the position, such as analytical skills, oral expression, commitment to the justice system, human rights, integrity, etc.⁴³

In order to carry out this type of merit evaluation in Guatemala, there is an additional problem: the number of people who participate in each of these processes. The people interviewed mentioned that they expected around 400 candidates for the Supreme Court process and at least 900 for the Appeals Chambers. Additionally, they commented

that each person's dossier can be up to 800 pages long.

In this sense, the *Vance Center* and FECAJUD emphasize the importance of establishing a very clear profile, limiting the number of people who meet the profile, and clearly including in the call for applications the information necessary to prove the established requirements and the information that is not necessary. For example, although it is important to know the academic publications of a participant, it is not essential to include the text of all publications.

In turn, smaller dossiers will make it possible to make the information immediately available to the public, which is particularly important for its consideration and effects on the evaluation. It is recommended that participants be asked to submit a digital version of their dossier for publication ([see section G. Evaluation of profiles and motivation](#)).

Based on the experience of the 2014 call for candidates, it is recommended to consider the grading table criteria that particularly address the addition of points to persons with a judicial civil service since their trajectory may imply a proven ability⁴⁴ to hold the position. Particularly, in this process, the provisions of the Judicial Civil Service

⁴³ For example, in 2015, for the appointment process of Ministers of the Supreme Court of the Nation in Mexico, the Justice Commission of the Senate of the Republic in charge of the process, requested the following information for the evaluation of the profiles:

- An essay in which the main challenges of constitutional justice in Mexico and how they should be addressed.
- A brief in which three rulings of the Supreme Court of the Nation are presented. Two of them, because they are considered the most relevant in terms of their legal, institutional and social implications, and a third one because it implies a setback in the constitutional interpretation.

- A brief in which you state three issues of urgent attention in which you would propose that the Court exercise its power of attraction.
- A brief containing a pronouncement on the profile that a Minister of the Supreme Court of the Nation should have, based on the 2011 human rights reform.
- A written description of the profiles you are looking for to integrate your paper.

Once delivered, this information was made available on the website.

Justice Committee, Senate of the Republic.

<http://www.senado.gob.mx/comisiones/justicia/ministro.php>

⁴⁴ Capacity in the sense defined by Ruling 2143-2014 of the Constitutional Court.



Law should be considered to give preference to candidates who have been judges in the past.

In Honduras, the Nominating Board for the selection process of Judge and Judge of the Supreme Court for the period 2022-2030 created a technical evaluation matrix that, although it can be improved, can serve as a basis since it considers international standards for the evaluation, assigning definitions, sources of verification and scores for each of the selection criteria.⁴⁵

D. Corroboration of Information

According to Ruling 2143-2014 of the Constitutional Court, the merits contained in Article 113 of the Constitution are susceptible to weighting, for which "a particular analysis of them must be made."

Reviewing the elements provided by the participants is not enough to carry out a particular analysis; the Nominating Commissions must also conduct their verifications and investigations, as stated in Judgment 2143-2014.

The *Vance Center* and FECAJUD consider that one of the best ways to carry out this corroboration is through the information that civil society can provide, so it is important that this process be accessible and the information available so that citizens can carry out a broad verification of the information supplied and provide additional information. ([See section F. Tachas](#)).

E. Honorability

In its judgment dated August 24, 2010 (Case No. 942-2010), the Constitutional Court outlined the meaning of recognized honorability as traits that "are known to the whole society or to a segment of it, which shows him/her for what he/she is in terms of merits, talents, skills, abilities, criteria, and human qualities, which will seek and seek the correct application of the rules or laws." It also stated that recognized honorability is a concept that can only be understood intellectually and that the way to prove it and its valuation is not defined.

Ruling 2143-2014 established that these aspects, due to their nature, are not susceptible to being assigned a percentage; however, this does not mean that the Commissions may omit their evaluation. The way to qualify the existence of ethical aspects and not omit their assessment is to determine whether the participants possess them.

The persons interviewed commented that this aspect is always among the most difficult to evaluate since there is no proof of recognized good repute. In other jurisdictions, participants are asked to declare under oath that they meet the requirements for the position, including recognized honorability, and there is a presumption that this is the case unless third parties provide elements to demonstrate that this is not the case. If these elements exist, then the person's honorability is questioned.

It is essential that in addition to providing information that civil society can provide, the Commissions act proactively and provide

⁴⁵ Technical Instrument JN-2022-IT-01. Available at https://www.tsc.gob.hn/web/leyes/Matriz_Evaluacion_Tecnica-JN.pdf

information to determine the absence of elements that could cast doubt on the honorability of the candidates.

F. Objections

For the last two elements above, it is essential to have a process that allows citizens to provide elements that refer to non-compliance with the requirements to hold the position.

Good practices include submitting objections in writing, identifying the person or organization submitting the objection, contact information, description of the facts and grounds on which the objection is based, and means of proof.

The Commissions must guarantee a process in which they review this information, respond to it, carry out the necessary procedures to determine the integrity of the objections presented, evaluate the evidence, and guarantee the possibility for the participant to provide elements to refute or clarify the information presented.

G. Interviews

The law establishes that the Nominating Committees may conduct interviews of applicants when necessary.

The IACHR has established that conducting interviews is a good practice for evaluating the candidates' abilities. Citizens, non-governmental organizations, and other interested parties can have

the opportunity to know the answers, challenge the candidates, and express their concerns or support.⁴⁶

In this sense, it is recommended that these interviews be carried out, establishing sufficiently in advance the dates on which they will take place and the place and means for their dissemination. It is important to ensure that citizens can attend the interviews and disseminate them through electronic media.

In the **interview guide** contemplated by Article 19 of the Law, it is important to establish that the members of the Nominating Committees must ask all applicants questions. In addition, it is essential to develop objective criteria for the questions and some common questions that allow for comparing the candidates' answers.

It is suggested to prepare the interviews in advance to have questions oriented to specific aspects to be examined, among them:⁴⁷

- a) Background of independence and impartiality,
- b) Honorability and a history of impeccable conduct,
- c) Commitment to the institutionality of the judiciary,
- d) Oral expression capacity of the applicants,
- e) Commitment to the protection of human rights, democratic values, and transparency,
- f) Ability to understand the legal and social relevance of the position,
- g) Ability to find solutions to problems that arise,
- h) Ability to take into consideration other people's positions,

⁴⁶ IACHR, Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas. OEA/Ser.L/V/II. Doc. 44, December 5, 2013, paras. 81 and 249.

⁴⁷ Guidelines for a transparent and merit-based selection of high court members. DPLF.
http://dplf.org/sites/default/files/seleccion_de_integrante_de_alta_cortes.pdf



- i) Knowledge related to the position. In this type of question, it is important to guarantee objectivity, since it is common in some countries in the region to ask exceedingly difficult questions to candidates whom you want to harm, and to ask easy questions to candidates you want to support. One mechanism to guarantee the objectivity of these questions is to have a bank of questions and choose randomly.

It is recommended that the time that the interviewers will have to ask the questions and the time that the candidates will have to answer be established in the guide so that everyone has the same time.

In addition, it is important that the Guide includes the evaluation criteria to be used by the interviewers and the minimum and maximum scores for each criterion that will allow the result to be quantified.

In addition, a mechanism can be included so that citizens can submit questions for the applicants.

Although it is impossible for all commissioners to interview all participants due to the number of participants, it is possible to randomly select groups of interviewers and make the entire process transparent, thus highlighting the importance of having objective criteria for the evaluation of the interview.

H. Profile Evaluation and Motivation

The Application Committees must evaluate the participants' profiles and assign scores according to the grading table.

Ruling 2143-2014 established that the academic, professional, and human projection merits must be weighed objectively and reasonably in which the information obtained is taken into consideration, determining in an objective, reasoned, public, individual manner by each of the commissioners whether the professionals participating as eligible candidates effectively meet the requirements of proven capacity, specialty, suitability, honesty, and honorability.

The various applicable instruments of international law establish a common characteristic of the selection and appointment processes for judges, prosecutors, and public defenders: that applicants should not be subject to discrimination and that the selection processes should be carried out under equal conditions.⁴⁸

It was mentioned in [section B. Grading table](#) the importance of making the information obtained available to society since civil society needs to have a clear idea of the result of the evaluation by each commissioner and access to the elements used for the review. It is particularly suggested that the information available to the public include the grades obtained by the applicants in each requirement or merit evaluated and the grades given by each evaluator.

⁴⁸ Guarantees for the independence of justice operators. Para. 60

Since each of the 37 people cannot review many files, the practice has been to divide into groups to analyze the profiles. It is recommended that these groups be formed randomly, considering the representation that makes up the Commission and that the assignment of the files to be reviewed also be done randomly. Also, it is recommended that these groups' discussions be public and accessible to the interested legal community.

The Commissions must apply the principle of maximum publicity provided for in Article 30 of the Constitution and the Law on Access to Public Information, since by maximizing transparency and trust in the process and by having decisions subject to public scrutiny, the citizenry could observe considerable deviations in the way of evaluating or the scores assigned. This will guarantee not only equality in the application of the profile and the table but also, very importantly, will provide legitimacy and the appearance of legitimacy to this process.

The IACHR has established that it is positive, especially for the appointment of high-ranking judges, that the procedures are open to the scrutiny of social sectors, which significantly reduces the degree of discretion of the authorities in charge of the selection and appointment and the consequent possibility of interference by other powers, facilitating the identification of the merit and professional capabilities of the candidates.⁴⁹

Additionally, according to Judgment 2143-2014, the evaluation that each of the members of the Nominating Commissions must perform must

"justify in public, reasoned and express manner at the time of voting, why a particular candidate is or is not elected" and, in addition, indicate "whether the relevant analysis has been performed that has allowed evidencing whether or not the candidate for whom the vote is being cast effectively met the requirements referred to in Article 113 of the Constitution, of capacity, suitability and honesty".

This information verifies that the selection body has followed its own guidelines for evaluating the applicants' capabilities, thus limiting the possibility of arbitrary decisions or decisions made without the necessary reflection.⁵⁰

I. Stage Before Congress

Once the Nominating Commissions integrate the list of candidates with the files and documentation, Congress elects the Supreme Court and the Court of Appeals judges for a five-year term. The law establishes that for granting such public positions, Congress will only consider reasons based on **merits of capacity, suitability, and honesty**.

The Special Rapporteur on the independence of judges and lawyers, Gabriela Knaut, noted the risks of politicizing the procedure with the legislature's involvement in appointing judicial officials.⁵¹

In Advisory Opinion 3755-2009 of October 7, 2009, the Constitutional Court declared that the professional and ethical requirements constitute individual characteristics of the candidates, being ideal that the appointment is made under the strict moral responsibility of the voters; therefore, such

⁴⁹ Guarantees for the independence of justice operators. Para. 80

⁵⁰ Good practice recognized in: Guidelines for a transparent and merit-based selection of high court members. DPLF. April 2014.

http://www.dplf.org/sites/default/files/seleccion_de_integrante_de_altas_cortes.pdf P.3

⁵¹ Ibid. Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaut, para. 25.



requirements must be qualified with special rigor. In the sentence of February 11, 2010, file No. 3635-2009, the Constitutional Court declared that it is a constitutional obligation of the deputies to Congress to comment, discuss, and decide in a loud voice on the reasons why each candidate meets or does not meet such requirements, thus qualifying with special rigor the professional and ethical requirements with which each candidate must comply.

This cannot mean that Congress should do the same exercise as the Nomination Commissions, but rather that it is a control mechanism of the information provided by the Commissions to determine who are the most suitable and capable persons to occupy the position of judge and for this, the Deputies should have a discussion on the merits of the candidates.

The interesting thing about this phase of the process is that entrusting the appointment of the persons who will perform these public functions to a political body will necessarily have a political element in the decision, which implies that a discretionary decision is possible in the face of two or more candidates who equally meet the requirements. However, the discretion in this case should be less since the decision is restricted to the merits of capacity, suitability, and honesty.

However, although there is a degree of discretion in the decision, this does not imply that it is an arbitrary and unfounded decision, much less a space for politicizing the appointment.

For this reason, the *Vance Center* and FECAJUD consider that the discussion within the legislative

body should be public and well-founded, motivated, and clear regarding the evaluations made on the profiles. This should impede reaching agreements based on political quotas or other interests, which distance themselves from the constitutional norm of electing judges based solely on merit.

Finally, the IACHR considers that the most relevant aspect of any appointment and selection procedure is that, from a substantive perspective, States must ensure that these procedures are not carried out or may be perceived by the public as being decided based on political reasons, affecting the conviction of those entitled to justice in their independent actions.⁵²

⁵² Guarantees for the independence of justice operators. Para. 106

V. COMPREHENSIVE REFORM OF THE JUSTICE SYSTEM

This process in Guatemala allows the legal community to contribute to the justice system. Beyond this appointment process, it is necessary to reflect on the appointment mechanism as a guarantee of true judicial independence.

The Vance Center noted the existence of proposed reforms to the Law of Nominating Commissions, which seek to add locks and eliminate flaws in this process; however, the discussion of strengthening the justice system should go beyond this and even include constitutional reforms to eliminate undue interference by other constitutional and de facto powers.

Until conflicts of interest in the appointment process are eliminated and appellate judges and other professionalized officials are part of a merit-based judicial civil service, the politicization of the appointment and lack of judicial independence is inevitable.

Although in most countries of the region, the appointment of Supreme Court justices is primarily a political process, some mechanisms guarantee the independence of the powers involved. To begin with, the temporary nature of the appointment and the fact that the entire body is renewed are elements to be considered.

In the comparative experience, it is extraordinary that the appointment of judges to the appellate chambers remains a political appointment and not part of the judicial civil service. Moreover, the short tenure does not allow for experience as a judge to be institutionalized, weakening judicial independence.

Faced with the challenge of having a professionalized judiciary that enjoys independence from the public authorities, regulatory and institutional designs have been created in the region to technicalize the appointment of judges and judges, as well as to free judges from administrative tasks that in the interest of guaranteeing prompt justice, can distract time and resources from the jurisdictional function. These bodies' functions are to oversee compliance with judicial guarantees, especially the appointment, promotion, and accountability of judges, as well as the establishment of judicial civil services.⁵³

Since Guatemala has such a limited judicial civil service (justice of the peace and first instance judge), it is necessary to reflect on the mechanisms to strengthen it, and to create incentives so that its members can access high-level positions without having to participate in political processes that may

⁵³ For further information we recommend: *La Judicatura en Iberoamérica*, Secretaría Permanente de la Cumbre Judicial Iberoamericana. Second Edition. Mexico. April 2016.

https://www.cjf.gob.mx/resources/index/infoRelevante/2016/pdf/La_Judicatura_en_Iberoamerica_2a_edicion.pdf



involve compromising interests and assuming commitments.

Guaranteeing objective mechanisms of assignment, evaluation, and discipline in the actions of the Judicial Civil Service Council is fundamental to ensuring an independent judiciary.

For the *Vance Center*, the performance of this Council will define in part the quality of the administration of justice in Guatemala and, in turn, the security and legal certainty for the exercise of civil and economic rights, as well as respect for the rule of law, as a fundamental aspect for a climate conducive to investment and business.

The *Vance Center* now offers technical assistance to the different actors of the legal community in Guatemala to have criteria and standards based on regional and international best practices that will strengthen the judiciary's actions.

VI. SUMMARY OF RECOMMENDATIONS

Based on the above considerations and observations, the *Vance Center* and FECAJUD reiterate the following recommendations:

A. Short-Term Recommendations: Current Process of Appointment of Judges

Although the importance of having a new process for the appointment of Judges has been mentioned, there is a process currently underway, and it is a fundamental objective of this accompaniment to influence its development. In this sense, the following is emphasized:

- 1) The legal community and civil society must be vigilant about the quality, independence, and commitment of those elected to the Nominating Commissions. It is especially important to pay attention to conflicts of interest that may arise.
- 2) Under the request of the Government of Guatemala to the Organization of American States to send an observation mission, there must be openness and availability of all the institutions and instances involved in the process so that the mission's objective, the accompaniment, and international oversight, can be fulfilled.
- 3) The method of preference to be established for persons already in the judicial civil service should be clear in the call for applications issued by the Nominating

Commissions. To the greatest extent possible, given the importance of prior experience as a judge in adequately performing the functions of a judge, the judicial civil service and evaluations of such professional development should receive priority attention.

- 4) It is essential to establish a detailed profile commensurate with the importance of the jurisdictional function, which will act as a pre-filtering method to receive a much more manageable number of requests.
- 5) The grading grid should reflect the evaluation criteria relevant to the position of a senior judge, being as specific and clear as possible.
- 6) For this process, it is essential to establish a mechanism to receive and analyze the information submitted by civil society, which can assist the Nominating Committees in verifying the information provided by the candidates and the honorability of the participants.
- 7) As far as possible, considering the substantial number of candidates, interviews with the finalists should be conducted to allow for a complete evaluation of the profiles.
- 8) The Vance Center particularly emphasizes the importance of maximizing the



transparency of the process. This should involve not only access to the information provided by the candidates but also to the commissioners' actions to know the analysis made of each candidate, and the scores each commissioner gave to the people they evaluated. Knowing this information will allow for noticing considerable deviations in evaluating the scores assigned.

- 9) To have a process that society can observe as legitimate, and since each of the 37 commissioners cannot review all the files, the sub-groups formed to carry out this evaluation should be formed randomly, considering the representation that makes up the Commission. The files to be reviewed should also be assigned randomly.

B. Medium- and Long-Term Recommendations: Comprehensive Reform of the Justice System

As professionals engaged in the private practice of law, a good business climate, and domestic and foreign investment will depend on the legal certainty and legal security that a strong judiciary can guarantee with independent judges who ensure the full exercise of civil and economic rights. The deterioration of legal certainty often accompanies the decline of economic prospects.

- 10) It is recommended that a comprehensive reform consider the following aspects:
 - a. Integration of appellate judges into the judicial civil service (without necessarily eliminating external candidates).

- b. Strengthening of the body responsible for the administration of the judiciary.
- c. Strengthening the judicial civil service in general, including rules on admission, promotion, assignment, training, transfers, training, and discipline of judges, judges, and auxiliary personnel.
- d. Consideration of the period of appointment and staggered renewal of judges and judges.
- e. Other guarantees of judicial independence include budget, economic remuneration, retirement benefits, security, removal processes, and incompatibility regime, among others.

Establishing these aspects in the legislation does not have a single answer, but there are international criteria and comparative experience that can guide the proper conduct of the process.



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