FINDING JUDICIAL INDEPENDENCE: RETHINKING THE SUPREME COURT SELECTION PROCESS IN GUATEMALA.

By
Luis Fernando Paiz Lemus

Submitted to Central European University - Private University
Department of Legal Studies

In partial fulfilment of the requirements for the degree of Master of Laws in Human Rights.

Supervisor: Juliana Cesario Alvim Gomes

Vienna, Austria
2025

COPYRIGHT NOTICE

 [1]

[1] Icon by Font Awesome.

AUTHOR'S DECLARATION

I, the undersigned, **Luis Fernando Paiz Lemus**, candidate for the LLM degree in Human Rights declare herewith that the present thesis titled "Finding Judicial Independence: Rethinking the Supreme Court Selection Process in Guatemala" is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography.
I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person's or institution's copyright.

I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Vienna, 16 June 2025.

Luis Fernando Paiz Lemus

ABSTRACT

In 2024, the Supreme Court selection process for the 2024-2029 term took place in Guatemala amid widespread optimism that it would mark a step forward in consolidating judicial independence. Unfortunately, the outcome fell short of expectations, motivating the central research question of this thesis: How does the Guatemalan legal framework regulating the selection process of Supreme Court Justices hinder judicial independence and consequently the rule of law?

This thesis examines the Guatemalan selection process through the lens of relevant academic literature and international standards, focusing on the concepts of judicial independence and institutional design, namely the selection process. The analysis draws particularly on the theorical framework proposed by Melton and Ginsburg, as well as Brinks and Blass, to critically assess the extent of which the selection process in Guatemala safeguards judicial independence.

To illustrate the real-world implications of a weak institutional design, the case of journalist José Rubén Zamora is presented as an example of how deficiencies in the selection process of Supreme Court justices can directly undermine the administration of justice. The thesis concludes with a package of concrete recommendations aimed at reforming the legal framework governing the selection process in order to enhance transparency, accountability, and to finally find judicial independence.

Keywords: rule of law, right to a fair trial, judicial independence, selection process.

DEDICATIONS

To Thelma, Edgar, Lisset and Ricardito… mi familia. Your support means everything.

To Marianna. My team.

To my friends. Thank you for always knowing how to make me smile.

To Guatemala. Because we can, and must, be better.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

ACHR: American Convention on Human Rights

IACHR: Inter-American Commission on Human Rights

IACtHR: Inter-American Court of Human Rights

ICCPR: International Covenant on Civil and Political Rights

PIE: Panel of Independent Experts

RoL: Rule of Law

SR: Special Rapporteur

UN: United Nations

INTRODUCTION

In 2024, the Supreme Court selection process for the 2024-2029 term took place in Guatemala with optimism, as many anticipated that it would serve to consolidate judicial independence. The sentiment was motivated by the fact that a new President took office with a strong anti-corrupt agenda[2]. Unfortunately, the outcome was different.

Many national and international organizations, such as the Panel of Independent Experts[3], local civil society organizations[4] and indigenous organizations[5] severely questioned the selection process for not fulfilling its objective of protecting judicial independence and contributing to the democratic backsliding happening in the country, thereby undermining the legitimacy of the judiciary.

This situation has exposed significant deficiencies in the system for appointing justices, as established in the Constitution and the Law on Nominating Commissions. Although, these deficiencies are not a recent development, their severity is gradually intensifying with each successive appointment process. It is imperative that this issue be addressed with urgency from an academic standpoint, to develop and propose innovative solutions aimed at strengthening and consolidating judicial independence.

[2] CFR Editors, 'A Conversation With President Bernardo Arévalo of Guatemala | Council on Foreign Relations' <https://www.cfr.org/event/conversation-president-bernardo-arevalo-guatemala> accessed 5 June 2025.
[3] Antonia Urrejola, Ana Lorena Delgadillo and Sidney Blanco, 'Obstáculos y desafíos para la independencia judicial en Guatemala' (Panel de Personas Expertas Independientes (PEI-GT) 2024) 4.
[4] Movimiento Pro Justicia, 'Informe Final Del Proceso de Elección de Magistrados de Las Cortes de Justicia 2024-2029' (2024) 3 <https://movimientoprojusticia.org.gt/images/Archivos%202024/Informe%20final%20de%20la%20elecci%C3%B3n%20de%20magistrados%202024-2029.pdf> accessed 1 February 2025.
[5] 'Autoridades indígenas: la elección de Cortes "fue una burla" para la ciudadanía' (*Prensa Comunitaria*, 17 October 2024) <https://prensacomunitaria.org/2024/10/autoridades-indigenas-la-eleccion-de-cortes-fue-una-burla-para-la-ciudadania/> accessed 1 February 2025.

- **Research goals**

The hypothesis of this research is that the selection process in Guatemala is leading to the exact opposite of what it was supposed to achieve. Particularly worsened by the legal framework guiding the process. It is worth noting that, even though the focus will be the Guatemalan legal framework, external elements affecting the outcome are obvious. For instance, questionable political agreements between members of Congress, corruption between members of the commission and external influence in the process. These aspects have been documented in many forms, from astonishing statements made by a former member of Congress[6], to one of the most important criminal investigations in Guatemalan history[7], showing political connections inside the selection process with external interests.

The aim of this thesis is to engage with the relevant literature to analyze key concepts, namely rule of law, the right to a fair trial, judicial independence and the selection process of justices. Furthermore, there is a necessity for an analysis of international standards regarding judicial independence and the selection process. These analyses should then be integrated in order to review the Guatemalan legal framework to find possible gaps that could be improved to strengthen the selection process and therefore judicial independence in the Supreme Court. The case against journalist Jose Rubén Zamora will be presented to illustrate, in a broad sense, the implications of the integration of the Supreme Court through a highly questionable process.

[6] WordPress com VIP, 'Baldetti: Alrededor de una cama se discutió la elección de Cortes en 2004' (*La Hora*, 19 September 2014) <https://lahora.gt/nacionales/wpcomvip/2014/09/19/baldetti-alrededor-de-una-cama-se-discutio-la-eleccion-de-cortes-en-2004/> accessed 5 June 2025.

[7] Ministerio Público, 'Informe Del Ministerio Público al Congreso de La República' <https://www.movimientoprojusticia.org.gt/images/archivos%202020/informeMP_FECI_al_Congreso_mayo2020.pdf> accessed 5 June 2025.

Based on my hypothesis, the intention will be to tackle the following research question: How does the Guatemalan legal framework regulating the selection process of Supreme Court Justices hinder judicial independence and consequently the rule of law?

- **Significance of the project**

Guatemala is currently experiencing a politically sensitive period, in which the principles of the rule of law and judicial independence are being subjected to rigorous scrutiny by both domestic and international actors.

To illustrate this from a different perspective, some popular indexes show the state of the country in different areas: Freedom House gives Guatemala 1 point out of 4 in Judicial Independence[8], V-Dem indicates that Guatemalan democracy is regressing[9] and the World Justice Project rank the country 107 out of 142 in Rule of Law[10]. Although, indexes are always subject to criticism because of the selection of variables[11], causal inferences[12] or indicators[13], this is just to show what quantitative measures suggest.

The Inter-American Commission on Human Rights has included Guatemala in Chapter IV.B of its Annual Report since 2021. This chapter is reserved for situations of concern regarding human rights[14] and that undermine rule of law[15]. However, in their 2024 Annual

[8] 'Guatemala: Freedom in the World 2024 Country Report' (*Freedom House*) <https://freedomhouse.org/country/guatemala/freedom-world/2024> accessed 9 January 2025.
[9] 'Democracy Report 2024: Democracy Winning and Losing at the Ballot' (University of Gothenburg: V-Dem Institute 2024) 21 <https://www.v-dem.net/documents/43/v-dem_dr2024_lowres.pdf> accessed 1 February 2025.
[10] 'WJP Rule of Law Index' <https://worldjusticeproject.org/rule-of-law-index> accessed 26 January 2025.
[11] Svend-Erik Skaaning, 'Measuring the Rule of Law' (2010) 63 Political Research Quarterly 449, 449.
[12] Gerardo L Munck and Jay Verkuilen, 'Conceptualizing and Measuring Democracy: Evaluating Alternative Indices' (2002) 35 Comparative Political Studies 5, 31.
[13] Mila Versteeg and Tom Ginsburg, 'Measuring the Rule of Law: A Comparison of Indicators' (2017) 42 Law & Social Inquiry 100, 101.
[14] 'IACHR :: Rules of Procedure of the Inter-American Commission on Human Rights' (*Inter-American Commission on Human Rights (IACHR)*) art 59.6 <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/basics/rulesiachr.asp> accessed 8 March 2025.
[15] Inter-American Commission on Human Rights, 'Chapter IV.B Guatemala. Annual Report of the Inter-American Commission on Human Rights' (Inter-American Commission on Human Rights 2023) OEA/Ser.L/V/II. Doc. 386 rev. 1 755.

Report, the Commission removed Guatemala from this chapter. The rationale behind this decision remains opaque; a potential factor may be the new government's openness to international monitoring[16]. Notwithstanding this fact, the situation regarding the judiciary continues to be a cause for concern.

Within the international human rights law framework, judicial independence falls into a right, namely the right to equality before courts and tribunals and to a fair trial[17], as explained by the United Nations Human Rights Committee in their General Comment 32[18], which will be one of the elements to examine in this thesis. Furthermore, for this right to be completely operational it needs, as a requisite sine qua non, a selection process that can allow the appointment of independent judges. Judicial independence starts to consolidate or weaken from this moment.

The link between the enforcement of rights and judicial independence appears to necessitate a focus on the selection process within the judiciary. This thesis aims to analyze the process of appointing Supreme Court justices in Guatemala. Guatemala is a relevant case in the context of judicial independence, given the selection process used for the appointment of justices.

Guatemala uses a particularly interesting system to select and appoint Supreme Court justices. The proposal is similar to the so-called Missouri Plan, which is characterized by a two-stage process. The process of appointing Supreme Court justices is enshrined in both the Constitution and the Law on Nominating Commissions (Decree 19-2009). The process is comprised of two stages. The initial stage was supposed to be characterized by its technical nature and involves the establishment of a commission including representatives from the Bar

[16] Inter-American Commission on Human Rights, 'Annual Report' (2024) para 44 <https://www.oas.org/en/iachr/docs/annual/2024/IA2024_ENG.pdf> accessed 5 June 2025.
[17] International Covenant on Civil and Political Rights 1966 art 14.
[18] United Nations Human Rights Committee, 'General Comment No. 32 Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial' CCPR/C/GC/32 para 2.

Association, the Deans of law faculties authorized in Guatemala, and representatives of the magistrates of the Appeal Courts. This commission is tasked with the preparation of a list of names to be presented to the Congress, thus initiating the second stage of the process, which is of a political nature and ends with the appointment of the justices.

Reports from the United Nations mechanisms, emphasize the necessity of focusing on the selection process. For instance, the fourth cycle of the Universal Periodic Review (UPR) of Guatemala incorporates recommendations from the United States and Belgium, which also refer to the selection process[19]. In addition, the Concluding Observations of that cycle underline that the Human Rights Committee is concerned about the politization of the selection process of justices[20], and request the State to ensure a selection process based "…*on objective, transparent criteria for the assessment of candidates' merits in terms of their qualifications, competence and integrity*."[21]. This confirm the notion that the selection process is not fulfilling their objectives in terms of judicial independence.

To add a remark on my own positionality, I need to state that I was directly involved in the last selection process of 2024 to appoint the Supreme Court Justices. I worked as a legal advisor to the Chancellor of the Rafael Landívar University, who was the President of the Commission in charge of the process. This experience motivated me to embark on this project, with the aim of gaining a deeper understanding of the process from an academic perspective.

[19] United Nations Human Rights Council, 'Report of the Working Group on the Universal Periodic Review. Guatemala' (2023) A/HRC/53/9 para 90.47-90.48.
[20] United Nations Human Rights Committee, 'Concluding Observations on the Fourth Periodic Report of Guatemala' (2018) CCPR/C/GTM/CO/4 para 30.
[21] ibid 31 (b).

- **Methodology**

To develop the topic of this thesis and answer the research question, a qualitative methodology will be used, utilizing both primarily and secondary sources. Specifically, I will be using an academic article by Melton and Ginsburg called "Does De Jure Judicial Independence Really Matter?: A Reevaluation of Explanations for Judicial Independence"[22] and their six-parameter evaluation of judicial independence, to analyze the Guatemalan process. Also, the article by Brinks and Blass called "Rethinking judicial empowerment: The new foundations of constitutional justice"[23] will be used to study the Guatemalan selection process. For the purposes of this thesis, the terms "justice", "judge" and "magistrate" will be used indistinctly.

Furthermore, a review of the most relevant recommendations issued by international bodies, like the United Nations bodies, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights and international and national civil society organizations, will be conducted. This review will focus on the selection process used by Guatemala in appointing Supreme Court justices.

This thesis will employ an analytical legal research methodology. The starting point will be the process conducted in 2024, the Constitution and the Law on Nominating Commissions in force since 2009. There will be a brief historical contextualization of the selection process since 1985, the year in which the current Constitution was promulgated.

[22] James Melton and Tom Ginsburg, 'Does De Jure Judicial Independence Really Matter?: A Reevaluation of Explanations for Judicial Independence' (2014) 2 Journal of Law and Courts 187.
[23] Daniel M Brinks and Abby Blass, 'Rethinking Judicial Empowerment: The New Foundations of Constitutional Justice' (2017) 15 International Journal of Constitutional Law 296.

Something worth noting, is the fact that many recommendations to Guatemala from different sources focus on constitutional amendments. Nevertheless, very little has been explored regarding changes on the ordinary legal framework, that is a more viable political goal. This thesis will seek to contribute from that standpoint. This will be an innovative approach to the Guatemalan case, and it will allow me to contribute to the discussions that the country must urgently conduct in a democratic, technical and honest way to try to fulfil the aim of judicial independence, through the legal changes needed.

CHAPTER ONE: UNDERSTANDING KEY CONCEPTS TO STUDY THE SELECTION PROCESS OF SUPREME COURT JUSTICES

The goal of this first chapter is to present the close correlation between theorical concepts of judicial independence and the safeguarding of human rights, particularly the right to a fair trial. This chapter is going to explain how the selection process of Supreme Court justices is connected to the vast literature regarding the rule of law and judicial independence, and the ramifications that these have in respect to international standards.

1.1 The Law and the Rule of Law

There is an academic consensus that Rule of Law (hereinafter RoL) is at the core of political goals for various forms of government. For Ginsburg and Versteeg, is at the center along with democracy, justice and development[24]. Lynn even argued that is the "…*bedrock principle of democracy*."[25], and for Waldron the RoL is one of the political ideals together with democracy, human rights, and economic freedom[26].

The importance of the concept is such that even authoritarian countries talk about it[27], proving that is a pillar on which all sort of decisions could have legitimacy. Consequently, it can be concluded that the concept is not confined exclusively to democratic governments.

[24] Tom Ginsburg and Mila Versteeg, 'Constitutional Correlates of the Rule of Law' in Maurice Adams, Anne Meuwese and Ernst Hirsch Ballin (eds), *Constitutionalism and the Rule of Law* (1st edn, Cambridge University Press 2017) 1 <https://www.cambridge.org/core/product/identifier/9781316585221%23CN-bp-17/type/book_part> accessed 15 March 2025.
[25] Laurence E Lynn, 'Restoring the Rule of Law to Public Administration: What Frank Goodnow Got Right and Leonard White Didn't' (2009) 69 Public Administration Review 803, 803.
[26] Jeremy Waldron, 'The Rule of Law and the Importance of Procedure' (2011) 50 Nomos 3, 1.
[27] Ginsburg and Versteeg (n 24) 1.

In substance, the RoL can mean a lot of things and that is probably the reason of its popularity, framing concepts from formal criteria and institutional programs to vague ideas[28]. Ginsburg argues, when trying to measure it, that is difficult because it is a complicated concept that involves institutions, social elements and traditions[29]. When Kleinfeld refers to RoL, after analyzing what it means for United Stated assistance, she stated that is often seen just as an institutional attribution[30], meaning that the understanding is likely to fall under procedural elements. As elucidated by Fukuyama, the prevailing Western conception of law can be delineated as being defined procedurally and in a positive sense [31], excluding substantive elements.

In this regard, Fallon posits that while having rules is paramount, there are instances wherein the consideration of substantive elements is necessary to ensure the preservation of the RoL[32]. It is a question about balance[33], in other words, the existence of regulations does not guarantee an approximation to justice. Dworkin, as cited by Ginsburg and Versteeg, is categorical in his assertion that the RoL is not a rulebook, rather, its primary functions must be the protection of rights[34].

[28] Kim Lane Scheppele, 'The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work' (2013) 26 Governance 559, 1.
[29] Tom Ginsburg, 'Pitfalls of Measuring the Rule of Law' (2011) 3 Hague Journal on the Rule of Law 269, 272.
[30] Rachel Kleinfeld Belton, 'Competing Definitions of the Rule of Law: Implications for Practitioners' 6 <https://www.policyarchive.org/handle/10207/6528> accessed 8 March 2025.
[31] Francis Fukuyama, 'Democracy's Past and Future: Transitions to the Rule of Law' (2010) 21 Journal of Democracy 33, 41.
[32] Richard H Jr Fallon, 'The Rule of Law as a Concept in Constitutional Discourse' (1997) 97 Columbia Law Review 1, 51.
[33] Lydia Brashear Tiede, 'Rebuilding the Rule of Law in the Era of Democratic Backsliding' (2025) 17 Hague Journal on the Rule of Law 31, 51.
[34] Ginsburg and Versteeg (n 24) 10.

In the context of the RoL, the popular phrase "government by law and not by men"[35] is often invoked. According to Joseph Raz, this phrase indicates two components: firstly, that people should be ruled by it and demonstrate obedience; and secondly, that people must feel guided by it[36]. In accordance with this idea, Allan, citing Dworking, emphasizes two criteria within the theory of law, "…*must be persuasive as a matter of political morality; it must also provide a convincing explanation of existing legal practice*"[37]. To add another argument to support the idea that law requires some level of commitment by the people, Tamanaha explains three levels of social recognition of law[38]. Firstly, there is the recognition of the existence of legal rules within a given community. Secondly, there is the recognition of legal officials who possess legal authority to create, enforce and apply legal norms. Thirdly, there is the recognition of what counts as valid legal rules and actions.

Moreover, Albers explains the notion that the law should govern the conduct of individuals in a vertical sense (government and citizens) and in a horizontal sense (between citizens)[39]. This is a pertinent point for consideration, as it suggests that the fundamental basis for compliance with the law is, in fact, the result of the legitimacy given by the people. The same author explains the difference between rule of law and rule by law. He stated that, "…*rule by law (the governmental power is exercised through or via laws) and rule of law (officials exercise power in accordance with the law*)."[40]. This clarification is important since it shows that the former implies a discretional power and the latter could be framed as the result of a

[35] Joseph Raz, 'The Rule of Law and Its Virtue' in Joseph Raz (ed), *The authority of law: Essays on law and morality* (Oxford University Press 1979) 212 <https://doi.org/10.1093/acprof:oso/9780198253457.003.0011> accessed 15 March 2025.
[36] ibid 213.
[37] TRS Allan, 'Dworkin and Dicey: The Rule of Law as Integrity Review Article' (1988) 8 Oxford Journal of Legal Studies 266, 9.
[38] Brian Z Tamanaha, *A Realistic Theory of Law* (Cambridge University Press 2017) 196 <https://www.cambridge.org/core/books/realistic-theory-of-law/B02EE7FBCFB66D61A049B59BB474EB2D> accessed 15 March 2025.
[39] Dr Pim Albers, 'How to Measure the Rule of Law: A Comparison of Three Studies' Council of Europe 1.
[40] ibid.

democratic process. This idea follows Postema´s explanation regarding the RoL "…*law by which rulers govern must also govern the rulers (reflexivity) and that all ruling power must be legally ordained (exclusivity)*."[41]. Reflexivity and exclusivity are elements that are close enough to Albers clarification between rule by law and rule of law.

Another important element to consider is the idea developed by Krygier. For this author, the RoL should be designed for a good purpose[42]. To this extent, it is difficult to understand what a "good purpose" could be. However, the establishment of RoL institutions, as explained by Raz, could serve to mitigate the risk of discretionary power[43], that is inherent in the law. Consequently, both the law and the RoL institutions can pursue Krygier´s good purpose. The good purpose idea is a position that is also reinforced by Raz´s assertion that the RoL must serve a greater good[44].

1.2 Defining the Requirements of the Rule of Law

At this point, rather than focusing on the definition of the RoL, the focus should be shifted to the requirements intrinsic to the concept. This will provide a clear context for the objective of this thesis.

Jeremy Waldron is key to outline the requirements of the RoL as he makes a division between formal aspects, procedural aspects and substantive aspects[45]. I am going to develop these three aspects in the words of different authors. Fuller, cited by Ginsburg and Versteeg[46], develops eight formal requirements for the RoL summarized as follows: Generality, meaning

[41] Gerald J Postema, 'Executive Power Leashed: Crisis and Pardon' in Gerald J Postema (ed), *Law's Rule: The Nature, Value, and Viability of the Rule of Law* (Oxford University Press 2023) 243 <https://doi.org/10.1093/oso/9780190645342.003.0012> accessed 15 February 2025.
[42] Martin Krygier, 'The Rule of Law and Its Rivals.' (2017) 9 Hague Journal on the Rule of Law 19, 25.
[43] Raz (n 35) 224.
[44] ibid 225.
[45] Jeremy Waldron, 'The Rule of Law', *Stanford Encyclopedia of Philosophy Archive* (Spring, 2020) 10.
[46] Ginsburg and Versteeg (n 24) 3.

the requirement for conduct to be stipulated in general rules that are applicable in a broad sense. Publicity, rules to be publicly announced. Prospectivity, rules to remain unaltered retroactively. Clarity, rules to be comprehensible to all the people. Consistency, rules are not contradictory. Possibility to compliance, rules do not demand impossible actions. Stability, rules are not subject of constant change. And congruence between rules in the text and their administration. As a complementary idea to Fuller´s requirements, Ginsburg and Versteeg explain that the RoL also requires courts to exercise judicial review[47].

At the end of the day, it is vital to acknowledge the pivotal role of courts, particularly high courts, in the enforcement of the RoL. Building on the role of courts, Josep Ratz, in opposition of the requirements described by Fuller, focus the attention on the judiciary, what Waldron calls procedural requirements. Under his, also, eight requirements[48] for the RoL, Ratz mentions the importance of judicial independence and the necessity for the courts to possess review powers in order to ensure the RoL.

Tom Bingham, a distinguished figure in the British judiciary, develops eight requirements for the RoL[49] too. Even though Bingham, Ratz and Fuller shares some RoL requirements like publicity, generality, consistency and so on, Bingham goes beyond and touch substantial elements, as described by Waldron. For instance, Bingham considers the protection of fundamental rights and compliance with international law as essential requirements of the RoL. But he also notes that the adjudicative procedures must be fair. Basically, he is integrating the three aspects stated by Waldron.

[47] ibid 13.
[48] Raz (n 35).
[49] Tom Bingham, *The Rule of Law* (Penguin Books 2011) <https://www.advisory21.com.mt/wp-content/uploads/2022/04/The-Rule-of-Law-PDFDrive-.pdf> accessed 15 March 2025.

Additionally, other authors have also made key contributions to the RoL requirements because they build them on the formal, procedural and substantive aspects. Hayek, cited by Kethledge[50], states four principle to ensure the RoL. A known rule is the only one that can be enforced. Furthermore, it is imperative that laws are certain and not vague. Equally important is that the law must be applied equally to governors and governed. Finally, an important contribution by Hakey that touches judicial independence, the separation of powers is paramount. Furthermore, Sunstein presents seven RoL requirements[51], mixing formal, procedural and substantial aspects. It is worth noting that Sunstein agrees with Hayek in terms of the separation of powers, but he also introduce the concept of hearing rights as part of the RoL. Moreover, he puts at the center of the hearing rights the necessity of independent judges as independence from political pressure[52].

Something worth noting is the fact that even the International Commission of Jurists in the Act of Athens[53] in 1959, defined the RoL requirements as follows: first, the State is subject to the law; second, governments should respect fundamental rights and provide means for their enforcement; third, judges should protect the RoL and resist any political interference on their judicial independence; and fourth, lawyers should preserve the independence of their profession and protect that every accused is accorded a fair trial. The Commission highlights the role of the judiciary in protecting the RoL, of the four requirements, two are directly related to it. To add other elements, the RoL Inventory Report[54], cited by Albers, stablishes six requirements, one of which is judicial independence. Albers also indicates that a strong RoL system requires

[50] Raymond M. Kethledge, 'Hayek and the Rule of Law: Implications for Unenumerated Rights and the Administrative State' [2020] 13 NYU JL & Liberty 195.
[51] Cass R Sunstein, 'THE RULE OF LAW' (2024) 4 American Journal of Law and Equality 498, 498.
[52] ibid 500.
[53] International Commission of Jurists, 'The Rule of Law in a Free Society' 12 <https://www.icj.org/wp-content/uploads/1959/01/Rule-of-law-in-a-free-society-conference-report-1959-eng.pdf> accessed 15 March 2025.
[54] Albers (n 39) 2.

"…*political independent and impartial system of courts, some form of separation of powers and a right to a fair trial*."[55].

As we analyzed in this section, many authors agreed that judicial independence and the right to a fair trial are core elements of the RoL.

1.3 The Relationship between the Rule of Law and Democracy

After reviewing the RoL requirements that many scholars proposed, it seems evident that the RoL can only be successful in a democratic system. Requirements like the separations of powers, the independent judiciary, the principle of individuals are subject to the law and so on, is incompatible with any other form of government. As mentioned by Bertelli, "*Democracy is a collaborative exercise in self-governance among the members of society who are guided by the rule of law*…"[56].

Fukuyama's standpoint is consistent with the aforementioned perspective, as he asserts that the comprehension of liberal democracy is contingent upon an appreciation for the rule of law[57]. Moreover, the Venice Commission of the Council of Europe devised a trifecta between democracy, human rights and rule of law[58], and for Helmke and Rosenbluth the intersectionality is for democracy, rule of law and judicial independence[59]. This suggests that RoL can be understood in two distinct ways. Firstly, it can be understood as a prerequisite for the effective functioning of democracy (RoL being under democracy). Secondly, it can be regarded as one

[55] ibid 1.
[56] Anthony M Bertelli and Lindsey J Schwartz, 'Public Administration and Democracy: The Complementarity Principle' [2022] Elements in Public and Nonprofit Administration 16 <https://www.cambridge.org/core/elements/public-administration-and-democracy/1C4DC866077A6374CF0CE800638030B5> accessed 15 March 2025.
[57] Fukuyama (n 31) 33.
[58] 'Rule_of_law' <https://www.venice.coe.int/WebForms/pages/?p=02_Rule_of_law&lang=EN> accessed 1 February 2025.
[59] Gretchen Helmke and Frances Rosenbluth, 'Regimes and the Rule of Law: Judicial Independence in Comparative Perspective' (2009) 12 Annual Review of Political Science 345, 347.

of the fundamental components of contemporary states (RoL being one of the pillars of many forms of government). In this thesis, the argument will be put forward that RoL is one of the pillars of contemporary states. However, the complete fulfilment of its objectives can only be achieved in a democratic system. Following this concept, Spanau explains that modern states are legitimate because of the democratic principle (legitimacy by election) and the principle of rule of law (government subject to the law)[60], with judicial control being the one call upon to protect the RoL[61].

In this respect, Weber mentions that democracy and the RoL are a natural relationship, inseparable from each other[62]. The concept of RoL encompasses the notion that, in a democracy, all individuals are equally subject to the law, and in the case of any transgression, independent courts ensures that justice is served without external influences[63]. Weber´s ideas can be associated with O´Donell´s. O´Donell outlines three elements of a democratic RoL: democratic political rights and freedoms; civil rights; and public and private agents are subjects to accountability[64]. It should be noted that the RoL aims to protect human rights, otherwise its nature will be conflicted[65].

This understanding is pivotal as it facilitates the identification of instances when a system is attacking the RoL. As Huq and Ginsburg have previously asserted, constitutional

[60] Calliope Spanou, 'Judicial Controls Over the Bureaucracy' in Calliope Spanou, *Oxford Research Encyclopedia of Politics* (Oxford University Press 2020) 2 <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1729> accessed 15 March 2025.
[61] ibid.
[62] Jeremy Webber, 'A Democracy-Friendly Theory of the Rule of Law' (2024) 16 Hague Journal on the Rule of Law 339, 368.
[63] European Commission, 'EU's Rule of Law Toolbox – Factsheet 2023' (2023) 1 <https://commission.europa.eu/document/download/be9d4f20-64ad-4ccc-8d29-8dc48649d2e2_en?filename=112_1_52675_rol_toolbox_factsheet_en.pdf> accessed 3 February 2025.
[64] Guillermo O'Donnell, 'The Quality of Democracy: Why the Rule of Law Matters' (2004) 15 Journal of Democracy 32, 36.
[65] Gerald J Postema, 'Democracy, Rights, and Justice' in Gerald J Postema, *Law's Rule* (1st edn, Oxford University PressNew York 2023) 108 <https://academic.oup.com/book/44615/chapter/378602001> accessed 24 January 2025.

retrogression signifies a deterioration in the RoL, the quality of elections, and speech and association rights[66]. This retrogression is intrinsically related to the judiciary which is the guardian of the RoL[67], as the same authors pointed out regarding the democratic backsliding in the Hungarian case[68]. Many scholars have highlighted the requirement of judicial independence as key component of the RoL[69]. To sum up, seems obvious that the best system to ensure the RoL is within a democratic system.

1.4 The Rule of Law and Judicial Independence

Following the logic that judicial independence is key to protect the RoL, and, as Lamer explains, the RoL needs courts to ensure the law[70], it is important to understand judicial independence and why is relevant to uphold the RoL.

Staton and Moore explain that definitions of judicial independence are frequently categorized into two categories: the first prioritizes judicial autonomy, and the second prioritizes judicial effectiveness[71]. For this thesis, the focus will be judicial autonomy, that the authors define as "*…judges' ability to develop opinions independent of the preferences of other political actors*."[72]. Boies shares the same idea, since judicial independence and judicial supremacy must ensure that the RoL will be safe from political pressure[73]. Owen Fiss reframed

[66] Aziz Z Huq and Tom Ginsburg, 'How to Lose a Constitutional Democracy' (Social Science Research Network, 18 January 2017) 117 <https://papers.ssrn.com/abstract=2901776> accessed 15 March 2025.
[67] Martin Krygier, 'Rule of Law (and Rechtsstaat)' in James R Silkenat, James E Hickey Jr. and Peter D Barenboim (eds), *The Legal Doctrines of the Rule of Law and the Legal State (Rechtsstaat)* (Springer International Publishing 2014) 47 <https://doi.org/10.1007/978-3-319-05585-5_4> accessed 15 March 2025.
[68] Huq and Ginsburg (n 66) 126.
[69] Versteeg and Ginsburg (n 13) 104.
[70] Antonio Lamer, 'The Rule of Law and Judicial Independence: Protecting Core Values in Times of Change Ivan C. Rand Memorial Lecture' (1996) 45 University of New Brunswick Law Journal 3, 6.
[71] Jeffrey K Staton and Will H Moore, 'Judicial Power in Domestic and International Politics' (2011) 65 International Organization 553, 559.
[72] ibid.
[73] David Boies, 'Judicial Independence and the Rule of Law Access to Justice: The Social Responsibility of Lawyers' (2006) 22 Washington University Journal of Law & Policy 57, 3.

the same notion of judicial independence, by integrating the concept of political insularity[74], which means that judges must be isolated from political pressure. Political insularity is key, given the fact that the judiciary oversees the enforcement of the legal framework that protects human rights and freedoms[75] and even social protests advocating for the RoL puts judicial independence at the core of their demands[76]. Another notion of judicial independence is related to private matters, in which parties expect impartial judges with no interest or relation in the case[77]. For this thesis, the notion of political insularity will be used.

The importance of judicial independence in the RoL is shared by several legal scholars. For instance, Spanou categorically states that judicial independence is a "…*condition sine qua non for the impartial and effective upholding of the rule of law*…"[78]. Moreover, for Jordao and Rose, judicial independence is associated with the state's responsibility to provide a justification for specific decisions taken[79]. It is worth noting that judicial independence is not a goal, rather is a condition to achieve justice and to gain public trust, as Lamer indicates[80]. Cases like Venezuela and Hungary show that the destruction of the RoL starts with the judiciary[81]. Following this idea, it seems that one of the reasons could be because the judiciary has the power to check other powers. The European Court of Justice even argues that judicial review is the essence of the RoL[82]. The work of Ginsburg and Versteeg shows that, in countries with

[74] Owen M Fiss, 'The Limits of Judicial Independence' (1993) 25 The University of Miami Inter-American Law Review 57, 4.
[75] Christopher M Larkins, 'Judicial Independence and Democratization: A Theoretical and Conceptual Analysis' (1996) 44 The American Journal of Comparative Law 605, 607.
[76] Waldron (n 26) 5.
[77] Vicki C Jackson, 'Judicial Independence: Structure, Context, Attitude' in Anja Seibert-Fohr (ed), *Judicial Independence in Transition*, vol 233 (Springer Berlin Heidelberg 2012) 20 <http://link.springer.com/10.1007/978-3-642-28299-7_2> accessed 14 March 2025.
[78] Spanou (n 60) 3.
[79] Eduardo Jordão and Susan Rose-Ackerman, 'JUDICIAL REVIEW OF EXECUTIVE POLICYMAKING IN ADVANCED DEMOCRACIES: BEYOND RIGHTS REVIEW' [2014] ADMINISTRATIVE LAW REVIEW 40.
[80] Lamer (n 70) 7.
[81] Aziz Huq and Tom Ginsburg, 'How to Lose a Constitutional Democracy.' (2018) 65 UCLA Law Review 78, 117.
[82] *C-72/15* [2017] European Court of Justice ECLI:EU:C:2017:236 [73].

strong judicial review tradition (like Guatemala), this tool can protect the RoL[83], but only when there is an independent judiciary[84]. The authors also state that judicial independence is not the panacea to ensure the RoL[85], because there are other elements in the game.

Some even argue, like Helmke and Rosenbluth, that in societies with strong history of protecting rights, democratic accountability alone is sufficient[86]. However, in unstable democracies, like Guatemala, and independent judiciary is essential to protect human rights[87]. Then, how can we achieve judicial independence? According to Raz, we must focus on specific rules like the system of appointing judges, tenure, salaries and other conditions of service[88]. Similarly, Rusell and O´Brien highlight the importance of the removal process of judges as a variable that can have an impact on the selection process[89], meaning that by securing the tenure and preventing reelection we could aspire to have more qualified people. On this regard Kritzer has found, in the case of state Supreme Courts in the United States, that there is an actual impact on the cases when a reelection/retention is at stake, especially in criminal cases[90]. This is something that future scholars interested in Guatemala could study. In this thesis, the scope will be to present a case to try to show the implications of the current selection process in Guatemala.

1.5 Judicial Independence as a Human Right

Prior to addressing the subject of the selection process per se, as a fundamental element of judicial independence, it is imperative to comprehend that judicial independence constitutes a human right. Judicial independence falls under the right to equality before courts and tribunals

[83] Ginsburg and Versteeg (n 24) 14.
[84] ibid.
[85] Ginsburg (n 29) 272.
[86] Helmke and Rosenbluth (n 59) 347.
[87] ibid 348.
[88] Raz (n 35) 217.
[89] Peter H Russell and David M O'Brien, *Judicial Independence in the Age of Democracy: Critical Perspectives from around the World* (University Press of Virginia 2001).
[90] Herbert M Kritzer, 'Impact of Judicial Elections on Judicial Decisions' (2016) 12 Annual Review of Law and Social Science 353, 367.

and under the right to a fair trial, as explained by Bingham[91]. Moreover, Waldron's notion on the right to a fair hearing by an impartial tribunal underscores the imperative for the presence of a trained and independent judicial official[92].

This right can be seen in many international human rights instruments, namely Article 14 of the International Covenant on Civil and Political Rights[93], Article 8 of the Inter-American Convention on Human Rights[94], Article 6 of the European Convention on Human Rights[95] and Article 7 of the African Charter of Human and Peoples´ Rights[96].

The Human Rights Committee, regarding article 14 of the International Covenant on Civil and Political Rights, understands that "…*the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception…*"[97]. It is worth noting that Guatemala is a State party to the Covenant as well as of other human rights instruments like the Convention on the Rights of the Child that also contains (Article 37) the right to a fair trial. These are binding obligations for Guatemala.

Another instrument which is binding for Guatemala is the American Convention on Human Rights, which Article 8 enshrined the right to a fair trial, under conditions of a competent, independent and impartial tribunal[98]. This is also present in the American Declaration on the Rights and Duties of the Man[99]. The Inter-American Court of Human Rights considers that

[91] Tom Bingham (n 49) 114.
[92] Waldron (n 26) 6.
[93] International Covenant on Civil and Political Rights.
[94] Inter-American Convention on Human Rights 1969.
[95] European Convention on Human Rights 1950.
[96] African Charter on Human and Peoples' Rights 1981.
[97] The Human Rights Committee, 'Communication No. 263/1987, M. González Del Río v. Perú' 6.
[98] Inter-American Specialized Conference on Human Rights, 'AMERICAN CONVENTION ON HUMAN RIGHTS' art 8 <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed 26 April 2025.
[99] Ninth International Conference of American States, 'AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN' art 26 <https://www.oas.org/dil/access_to_information_human_right_American_Declaration_of_the_Rights_and_Duties_of_Man.pdf> accessed 26 April 2025.

judicial independence is a feature of democracy that goes beyond the judge and that has repercussions in the society[100].

This section will be expanded upon in section 1.8, which addresses international standards of judicial independence. Furthermore, concrete measures will be extracted from international instruments with a view to improving the selection process of judges. In this section, the most significant issue was to clearly establish that human rights instruments consider the selection process of judges as a fundamental element of the right to a fair trial, which is an absolute right.

1.6 The Selection Process at the Core of Judicial Independence

The quest for the best selection method have been present since old times[101]. The aim of this section will be to present the different methods found in the literature regarding selection process of Supreme Court justices. The method used is deeply connected with the question of what kind of judges we want?[102]. The rich literature developed in the previous sections of this chapter provide us with the necessary tools to conclude that the way in which magistrates are being selected to integrate the Supreme Court could have either a positive or negative impact on judicial independence and on the RoL.

There is a broad consensus in the literature about the methods that exist for selecting Supreme Court judges. It is also true that a vast proportion of literature regarding the selection process is focused on the United States Supreme Courts, at both national and state levels. However, it is important to note that the methods employed are pretty much the same in the United States and around the world. Five methods have been identified in the literature as

[100] 'Corte IDH. Caso de La Corte Suprema de Justicia (Quintana Coello y Otros) Vs. Ecuador. Interpretación de La Sentencia de Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 21 de Agosto de 2014. Serie C No. 280.' para 154 <https://jurisprudencia.corteidh.or.cr/es/vid/883976020> accessed 3 February 2025.
[101] Peter D. Webster, 'Selection and Retention of Judges: Is There One "Best" Method?' (1995) 23 Florida State University Law Review 44, 2.
[102] ibid 44.

follows: "…*gubernatorial appointment, legislative appointment, partisan elections, nonpartisan elections, and commission-based selection*.[103]. This is supported by Gardner[104] and Kritzer[105].

Blankenship, when referring to existing methods in the US, also supports the above regarding the 5 ways of appointment[106], but he goes beyond and explains that "*Judicial accountability and independence are not mutually exclusive goals. The legitimacy of a legal system in a democratic republic is partially dependent on the development of a selection system that facilitates attainment of both ideals*."[107]. It can be argued that the selection process is not a minor component of the judiciary, this process, if correctly designed, can push the system to be closer to ensure the RoL.

But regardless of the above classification, other authors like Bulmer, quoting Ginsburg, mentioned the following methods: *"(a) single-body appointment mechanisms; (b) professional appointments; (c) cooperative appointment mechanisms; and (d) representative appointment mechanisms*"[108]. For Ware, the methods fit into one of the following: "…*appointment by elected officials, contestable elections, and the Missouri Plan (often called "merit selection*")."[109]. The merit-based process could be integrated in all the above methods as the key component is a selection being made on technical capacity.

[103] John F Kowal, 'JUDICIAL SELECTION FOR THE 21st CENTURY' [2016] New York University School of Law 4.
[104] Charles Gardner Geyh, 'Methods of Judicial Selection & Their Impact on Judicial Independence' (2008) 137 Daedalus 86, 89.
[105] Kritzer (n 90) 355.
[106] Michael B Blankenship, Jerry B Spargar and W Richard Janikowski, 'Accountability v. Independence: Myths of Judicial Selection' (1992) 6 Criminal Justice Policy Review 69, 69.
[107] ibid 78.
[108] Elliot Bulmer, *Judicial Appointments* (Second, International Institute for Democracy and Electoral Assistance 2017) 9.
[109] Stephen J Ware, 'IDEOLOGICAL COMPETITION OVER STATE SUPREME COURT SELECTION METHODS' 87 Albany Law Review 9.

It seems to be a consensus as well, at least in the literature of the United States, that the merit-based method has been the latest to born. According to Geyh, "*In 1913, a fifth method of judicial selection was devised: a "merit selection" system, in which judges were appointed by the governor from a pool of candidates whose qualifications had been reviewed and approved by an independent commission."*[110].

The merit-based was called the Missouri Plan, as part of the Progressive Era[111] because the State of Missouri was the first one to adopt this method in 1940. Other authors like Badó, highlights the idea that the merit-based method is now common in almost every system around the world each one with its own nuances but with the aim to find the most qualified persons[112].

Basically, the Missouri plan or merit-based consisted in an "…*independent commission recruits and vets candidates based on qualifications, not party affiliation or connection. The commission proposes a slate of finalists to the governor, who can only choose someone from that list".*[113]. Here it is important to mention that the original plan had a second part consisting in a voting from the people to retain a judge after his initial term but there are many variations about this process. However, merit remains the core element of this method[114]. This could be framed as the archetype used in Guatemala to select and appoint Supreme Court justices.

[110] Geyh (n 104) 88.
[111] Harold See, 'The Meaning of the Constitution and the Selection of Judges' [2016] 8 Faulkner L Rev 175 177.
[112] Attila Badó, '"Fair" Selection of Judges in a Modern Democracy' in Attila Badó (ed), *Fair Trial and Judicial Independence*, vol 27 (Springer International Publishing 2014) 55 <https://link.springer.com/10.1007/978-3-319-01216-2_2> accessed 1 February 2025.
[113] Kowal (n 103) 6.
[114] Virgil J Haggart Jr, 'The Case for the Nebraska Merit Plan' (1962) 41 NEBRASKA LAW REVIEW 740.

According to Haggart, a general agreement was reached that the Missouri Plan or American Bar Association Plan eliminates many external non-desirable factors[115] and that is the most effective way to elect competent judges, but it requires education of the public[116]. In most European countries, the establishment of a Judicial Council has been supported by the Venice Commission. The primary function of this Council is to supervise the processes of judge recruitment, promotion and evaluation[117].

It is obvious that establishing a perfect methodology for the selection of judges is an overwhelming and impossible challenge. Volcansek's work offers a valuable insight by presenting a range of examples from countries that have achieved different outcomes through the implementation of a merit-based process[118]. The author analyzed the Missouri Plan in new and old democracies with the aim to identify experiences that could be used in the United States. In my opinion, the most significant finding is that any selection process must be underpinned by a system that respects the rule of law and is not tainted by corruption[119].

In conclusion, the vast literature is consistent in its assertion that there is no perfect methodology for the selection of judges. It is evident that many variations have the potential to protect judicial independence. Moreover, this underscores the importance of measuring judicial independence to enhance the selection process.

[115] ibid 741.
[116] ibid.
[117] Antonina Bakardjieva Engelbrekt, 'Rule of Law and Judicial Independence in the EU: Lessons from the Union's Eastward Enlargement and Ways Forward' [2023] Scandinavian studies in law 177, 201.
[118] Mary L Volcansek, 'Exporting the Missouri Plan: Judicial Appointment Commissions' (2009) 74 Missouri Law Review 799.
[119] ibid.

1.7 Measuring Judicial Independence

As previously stated in the introduction to this thesis and after reviewing key concepts regarding judicial independence and the selection process of Supreme Court justices, I will now address the article by Melton and Ginsburg called "Does De Jure Judicial Independence Really Matter?: A Reevaluation of Explanations for Judicial Independence" [120]. In this work, the authors develop six de jure parameters of constitutions to measure judicial independence based on previous studies. They explain their selection by stating that "…*the emphasis is on components that will insulate the judiciary from attacks by other political actors… we try to focus on provisions that either raise the visibility of judicial independence or designate multiple officials to be involved in institutional processes related to the judiciary*."[121]

The parameters and the assumptions[122] they made are as follows: a) statement of judicial independence, to stablish if the constitution contains an explicit declaration of judicial independence; b) judicial tenure, lifetime appointments enhance judicial independence; c) selection procedure, judicial council or two or more actors involved in the process enhance judicial independence; d) removal procedure, to stablish if the constitution regulated the removal procedure; e) limited removal conditions, conditions under which judges can be removed affect judicial independence; and f) salary insulation, isolation of judge´s salary enhance judicial independence.

I will examine the Guatemalan selection process under these six parameters in chapter 2. Furthermore, the focus will be on the following findings of their research: a) that rules governing the selection and removal of judges are the most important provisions for judicial

[120] Melton and Ginsburg (n 22).
[121] ibid 195.
[122] ibid.

independence[123]; and b) that constitutions with processes that involve multiple bodies in the selection and removal of judges protects judicial independence[124].

In addition to that, as part of the examination process, the work of Brinks and Blass will be essential since they present a different approach to measure judicial independence. They call judicial autonomy to what others call judicial independence, as the path to ensure judicial impartiality[125]. Their work is focused on constitutional justice, but the same parameters could be used to measure ordinary justice, namely Supreme Courts. They split judicial autonomy into ex ante autonomy and ex post autonomy, and they define these concepts as follows: The former, "*…as the extent to which a particular court is free from control by an identifiable faction or interest outside the court before the judges are seated, through the process of appointment*."[126]; and the latter, "*…as the extent to which a particular court is free from pressures by an identifiable faction or interest outside the court after the judges have been seated*."[127].

They present that ex ante autonomy is marked by the number of actors involved in the selections process and a supermajoritarian consensus; and the ex post autonomy is marked by the number of veto players to punish or reward judges; their tenure and other elements like budget constraint. Their measures are somehow similar to Melton and Ginsburg´s parameters.

[123] ibid 209.
[124] ibid.
[125] Brinks and Blass (n 23) 306.
[126] ibid 307.
[127] ibid.

1.8 International Standards on Judicial Independence and the Selection Process of Supreme Court Justices

In addition to the examination of the Guatemalan selection process under the literature explained previously, it is important to evaluate the process under international standards of judicial independence. As has been reiterated, the selection process is a core element of judicial independence. In that regard, the Bangalore Principles indicate that "*Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial*."[128].

The Inter-American Court of Human Rights (IACtHR) is unequivocal to state regarding judicial independence that, "*It is a human right to have all the guarantees that allow fair decisions to be made*."[129]. In addition to that, the IACtHR permanently indicates that, "*The independence of any judge requires a proper appointment procedure, a fixed term of office and a guarantee against external pressure.*"[130]. The Court truly understands the significance of judicial independence and the importance of giving the appearance that judges are only acting according to the law[131].

This idea is of paramount importance, as judicial independence is not solely a matter of substance, but also of perception. The Court emphasized this by explaining the duty of the State to "…*ensure an appearance of independence of the judiciary which, in a democratic society, inspires sufficient legitimacy and confidence not only to the defendant but also to society*."[132]. The Court has articulated that not all methods for selecting judges are in accordance with the

[128] United Nations Economic and Social Council, 'The Bangalore Principles of Judicial Conduct' 8 <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf> accessed 10 January 2025.
[129] *Caso Maldonado Ordóñez Vs Guatemala Excepción Preliminar, Fondo, Reparaciones y Costas* [2016] Corte Interamericana de Derechos Humanos Serie C No. 311 [73].
[130] *Caso del Tribunal Constitucional Vs Perú* [2001] Corte Interamericana de Derechos Humanos Serie C No. 71 [75].
[131] *Caso Apitz Barbera y otros ("Corte Primera de lo Contencioso Administrativo") Vs Venezuela Excepción Preliminar, Fondo, Reparaciones y Costas* (Corte Interamericana de Derechos Humanos) [56].
[132] *Caso Reverón Trujillo Vs Venezuela Excepción Preliminar, Fondo, Reparaciones y Costas* [2009] Corte Interamericana de Derechos Humanos Serie C No. 197 [67].

provisions set forth by the Inter-American Convention on Human Rights by stating, "*If basic parameters of objectivity and reasonableness are not respected, it would be possible to design a system that allows a high degree of discretion...*"[133]. Nevertheless, the Court has not provided any specific measures for implementation.

The Statute of the Iberoamerican Judge[134] highlights, in Articles 11 and 12, some relevant aspects of a selection process. It is imperative that the institutions involved in the process undertake an objective evaluation of the professional capacities and merits of the candidates. Moreover, it is essential that the selection process is tailored to meet the specific requirements of each country.

The Basic Principles on the Independence of the Judiciary[135] set out at least three core requirements to take into consideration in the selection process of judges. The requirements are as follows: first, the selected candidates shall be individuals of integrity and with appropriate legal training; second, any method of judicial selection must ensure that judicial appointments are made for appropriate reasons only; and third, the selection must be conducted without discrimination. These Basic Principles are rooted in the understanding that, while there may not be a universally applicable methodology, there are values that must be safeguarded. However, there is a lack of specific actions that could be implemented.

On the contrary, the Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct[136] provide specific actions. The Measures state that the assessment of candidates should take into considerations not only their legal expertise, but also elements like

[133] ibid 74.
[134] VI IBEROAMERICAN SUMMIT OF PRESIDENTS OF SUPREME COURTS AND TRIBUNALS OF JUSTICE, 'Statute of the Iberoamerican Judge'.
[135] Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 'Basic Principles on the Independence of the Judiciary' para 10 <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary> accessed 26 April 2025.
[136] Judicial Integrity Group, 'MEASURES FOR THE EFFECTIVE IMPLEMENTATION OF THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT' art 11.1, 11.2.

social awareness, sensitivity, patience, honesty, courtesy, communications skills and so on. A priori, the political, religious or other beliefs should not be relevant, except in cases where there is proof that they interfere with the judge´s performance. Furthermore, the Measures in question emphasize the significance of the judiciary's reflection of the plural composition of society[137]. Specifically, regarding the appointment of judges, the document underscores the necessity to integrate the judiciary and the community in the process[138], and that "*All judicial vacancies should be advertised in such a way as to invite applications by, or nominations of, suitable candidates for appointment*."[139].

This document is pivotal in that it provides a comprehensive range of specific actions that could be implemented to design a process to ensure judicial independence. For instance, the members involved in the process should be selected because of their competence, experience, appreciation of the importance of a culture of independence and so on and so forth. Notably, the document also mentions that the non-judge members involved in the process should be selected from among outstanding jurists or citizens of acknowledged reputation[140]. The Measure also highlights that the creation of Higher Council for the Judiciary should not be dominated by political influences[141].

Equally important is what the Judicial Integrity Group mention regarding reelection of judges. The Group states that a fixed term should not ordinarily be renewable unless specific measures are in place to ensure that the decision is made according to objective criteria and merit[142]. Finally, the Council of Europe has emphasized the importance of the authority

[137] ibid 11.3.
[138] ibid 12.2.
[139] ibid 12.3.
[140] ibid 12.5.
[141] ibid 12.4.
[142] Judicial Integrity Group (n 136).

responsible for the selection process being independent from the executive and the legislative branches[143].

At the end of the day, the goal is to design and construct a system that protects judicial independence. In this regard, many international standards are congruent with the principles stipulated in the literature that are deemed essential for ensuring independence. For example, the appointment process should be lifetime, with numerous bodies involved in the selection process. The individuals involved in the selection process must possess both high integrity and knowledge. Furthermore, safeguards must be in place to prevent discretionary removals of judges. It is important to note that the standards stipulate that both the publication of vacancies as well as the nomination of candidates, can be considered appropriate mechanisms. These measures could be used in the conclusions' chapter to present other options for redefining the Guatemalan institutional design for the selection of Supreme Court justices.

[143] Conseil de l'Europe (ed), *Judges: Independence, Efficiency and Responsibilities* (Ed du Conseil de l'Europe 2011).

CHAPTER TWO: UNPACKING THE SELECTION PROCESS OF SUPREME COURT JUSTICES IN GUATEMALA

The objective of this chapter is to explain and comprehend the selection process of Supreme Court justices in Guatemala. To fulfil this objective, the present chapter is divided into four sections. Firstly, a historical overview is presented; secondly, an explanation of the selection process is provided under the literature already stated; thirdly, an analysis of the original sin is presented; and fourthly, the specific analysis of the process is undertaken identifying its flaws.

2.1 A Brief Historical Overview

Guatemala´s contemporary democracy began in 1985. In that year, the present constitution was formally adopted, and the people elected its first democratic president of this new era, signifying a pivotal transition after years of authoritarian military rule[144]. Regarding the judiciary, the original text of the Constitution[145], article 215, stipulated that the Supreme Court comprise nine justices each appointed for a six-year term. Four of these justices were directly elected by the Congress, while the remaining five were elected by the Congress but from a list of thirty candidates, as determined by a commission. This commission was integrated by the Deans of Law Faculties, an equal number of representatives from the Bar Association and just one representative from the judicial branch appointed by the Supreme Court.

Due to political turmoil and many other factors, in 1993, the former President of Guatemala, Serrano Elías, declared the dissolution of both the Congress and the Supreme Court of Justice

[144] Susan Berger, 'Guatemala: Coup and Countercoup' (1993) 27 NACLA Report on the Americas 4, 4.
[145] 'Diario de Centro América' *41* (3 June 1985) <https://www.congreso.gob.gt/assets/uploads/info_legislativo/decretos/1985/gtconstituci%C3%B3n1985.pdf> accessed 27 April 2025.

arguing that was necessary to fight corruption[146]. This declaration was called “autogolpe”. Without going deep into this historical moment, as Francisco Villagran, a distinguished Guatemalan diplomat, articulated, this period was indicative of the prevailing sentiment of anger among the public towards Congress and the Supreme Court[147].

The "autogolpe" was unsuccessful, and Ramiro de León Carpio was selected as the new President by the constitutional process that had been established. De León played a pivotal role in the reform of the Supreme Court[148] in 1993 precipitating numerous constitutional amendments. The most relevant were as follows: changes to the commission in charge of the selection process, the tenure of magistrates, which was reduced from six to five years, and the immediate termination of the terms of the sitting magistrates[149].

As previously stated, the reforms had a direct impact on the judiciary. Just seven years after the Constitution came into effect, the system underwent substantial change. A new process for selecting Supreme Court justices was established, yet for a considerable period, a legal vacuum[150] prevailed due to the Constitution's ambiguity regarding the selection process. This ambiguity induced extensive discretion[151] on the part of the Commission in charge of the process, which frequently employed inconsistent criteria and practices. As a result of these conditions, in February 2009, the then Congresswoman Nineth Montenegro presented a bill entitled the Law on Nominating Commissions. The purpose of the bill was to regulate the process to avoid discretionary elements[152] in the selection process of Supreme Court justices.

[146] Berger (n 144) 6.
[147] Francisco Villagrán de León, ‘Thwarting the Guatemalan Coup’ (1993) 4 Journal of Democracy 117, 124.
[148] Maxwell A Cameron, ‘Self-Coups: Peru, Guatemala, and Russia’ (1998) 9 Journal of Democracy 125.
[149] Mario Fuentes Destarac, ‘ANÁLISIS DE LAS REFORMAS POLÍTICAS EN GUATEMALA’ Instituto de Investigaciones Jurídicas UNAM 578.
[150] Nineth Montenegro, ‘INICIATIVA QUE DISPONE APROBAR LEY DE DE COMISIONES DE POSTULACIÓN.’ 3 <https://www.congreso.gob.gt/assets/uploads/info_legislativo/iniciativas/Registro3997.pdf> accessed 27 April 2025.
[151] ibid.
[152] ibid.

The legislation was promulgated in June 2009, and the Inter-American Commission on Human Rights expressed its satisfaction with the law saying that "…*was an important step toward improving the functioning of the administration of justice in Guatemala, particularly in terms of its independence and impartiality*".[153]. It is worth noting that this law regulates the Nominating Commissions as such, given the fact that Guatemala employs these Commissions in various configurations to select other high-ranking officials. The most rational approach would have been to devise a law that incorporates a tailored process for the selection of Supreme Court justices.

As for the law, time has passed, and the hopes placed on it are now gone. As early as 2011, certain deficiencies were already becoming apparent. One such example was the evident conflict of interest among the commissioners, who were both elected to the position of Supreme Court justice and subsequently participated in the selection process for the position of magistrate of the Court of Appeals[154]. This observation is highly relevant because it is a direct consequence of the constitutional changes that were implemented in 1993. In order to provide a more thorough clarification of this observation, it is first necessary to note that the original text of the Constitution, article 217, stated that the magistrates of the Court of Appeals should be selected by the Congress from a list prepared by the Supreme Court of Justice[155]. However, after the 1993 reforms, it is now stipulated that both the selection of Supreme Court justices and the selection of magistrates of the Court of Appeals should be conducted at the same time and by the same process.

[153] 'Press Release 73/09 - IACHR Urges Transparent, Inclusive Process in Appointment of Judges in Guatemala' <https://cidh.oas.org/Comunicados/English/2009/73-09eng.htm?utm_source=chatgpt.com> accessed 28 April 2025.
[154] Mónica Leonardo Segura, 'Aplicación de La Ley de Comisiones de Postulación 2009-2010' 13 <https://www.movimientoprojusticia.org.gt/files/Aplicaci%C3%B3n%20de%20la%20Ley%20de%20Comisiones%20de%20Postulaci%C3%B3n%202009-2010.pdf> accessed 27 April 2025.
[155] 'Diario de Centro América' (n 145).

Moreover, many other deficiencies were identified also in 2011. Most notably, an absence of standards for determining the honorability of candidates; the Commission's lack of an independent budget; and a high number of applicants[156]. Unfortunately, the same, or even more, weaknesses persist. In the following section, the current constitutional and ordinary frameworks that regulate the selection process of Supreme Court justices will be presented.

2.2 Examining the Constitutional Framework

The Guatemalan constitutional framework follows the trend, explained by Melton and Ginsburg in the first chapter of this work, in which judicial independence is enshrined on the text of the constitutions. Articles 203 and 205 clearly stablish it, highlighting that judges are to exercise their functions independently and are only subject to the Constitution and the laws[157]. In addition to that, Article 205 stipulates the core elements of judicial independence, encompassing functional and financial independence, in addition to tenure protection. Article 215 states the selection process of Supreme Court justices. The subsequent paragraph will provide an analysis of the process, with reference to the six parameters elucidated by Melton and Ginsburg.

First, statement of judicial independence. As previously stated, the Guatemalan Constitution contains strong provisions regarding judicial independence, in both functional and administrative dimensions. Second, judicial tenure. The Constitution clearly stipulates a five-year term, with the option of renewal. This configuration deviates considerably from the lifetime appointments proposed by the authors.

Third, selection procedure. The Guatemalan selection process is comprised of two phases. The initial phase is subject to the authority of the Nominating Commission while the subsequent

[156] Mónica Leonardo Segura (n 154) 13.
[157] Constitución Política de la República de Guatemala 1985 art 203.

phase falls under the jurisdiction of the Congress. The Congress is the authority that makes the final appointment of the thirteen Supreme Court justices from a list of twenty-six candidates selected by the Commission. The Commission is presided by one of the Chancellors of the universities of Guatemala. The rest of the Commission is constituted by all the Deans of the Faculties of Law, along with an equal number of representatives elected by the Bar Association and an equal number of representatives elected by sitting Magistrates of the Court of Appeals. For a candidate to be included on the list, it is necessary to receive two-thirds of the votes cast by the commissioners. The most recent process, conducted in 2024, involved a total of 37 commissioners. Consequently, the threshold required for a decision was set at 25 votes. This procedure follows the findings of Melton and Ginsburg, since it involves many bodies into the selection process. According to the authors, this composition is more likely to ensure judicial independence. It is worth noting the fact that the Commission in charge of the selection process is not permanent.

Fourth, removal procedure. This parameter is not stated in the Constitution. The removal of Supreme Court justices is fixed in an ordinary law, that is the "Ley en Materia de Antejuicio"[158] (Law on Pretrial Privilege). Articles 13 and 17 indicate the relevant procedure. The authority to remove the justices falls under the Congress. However, the proceedings are quite complicate to accomplish. First, a specific commission is established within the Congress by lottery to determine the veracity of the accusations. If this specific commission considers that there are reasonable grounds to subject the justice to criminal proceedings, the matter must then be put to a vote requiring a two-thirds majority of the total number of deputies in Congress. This process basically complies with this parameter, as presented by Melton and Ginsburg.

[158] Ley en Materia de Antejuicio [85–2002].

Fifth, limited removal conditions. This is another parameter that is in accordance with the arguments presented by Melton and Ginsburg. The removal conditions for the Supreme Court justices in Guatemala are restricted to criminal proceedings. And finally, sixth, salary limitations. Article 213 of the Constitution stipulates that the budget of the judiciary should never be less than two percent of the national budget. The judiciary also has specific incomes earned due to the issuance of certificates and other actions. It is clear that the salary of Supreme Court justices is determined by them. Again, another parameter in accordance with Melton and Ginsburg.

From the six parameters drawn by Melton and Ginsburg, the selection process in Guatemala complies with five of them. The sole parameter with which the process does not comply relates to lifetime appointments. Guatemala stablishes a five-year term with the option of renewal. At this juncture, it is important to revisit the conflict of interest that emerged from the 1993 constitutional reforms, as explained in section 2.1, given that this could be a consequence of short-term tenure and the possibility of renewal, impacting negatively on the selection process. This will be explained in the next section.

Following the explained findings of Melton and Ginsburg, the selection process in Guatemala complies with both. The rules governing the selection and removal of Supreme Court justices are strong enough to ensure judicial independence. The selection process involves several bodies, specifically for Guatemala, three different institutional bodies are involved. De jure provisions are being followed, but something is not working because de facto judicial independence shows another story. One could argue that these six parameters are not independent because the deviation of just one parameter can impact negatively on the others.

The article by Blink and Blass could help us to understand why judicial independence is not being achieve in Guatemala, despite its strong selection process, which complies with

international standards and recommendations in the literature. Their findings are key to explain the Guatemalan case, as well as their theorical framework of dividing ex ante and ex post dimensions. They argue, regarding institutional designers, "…*while they made appointments less easily controllable, they often compensated by making judges accountable ex post*."[159]. To some extent, this could be true for Guatemala given the fact that the selection process involved many bodies, but with a short-term tenure. They also mention that all the dimensions they presented interact with each other. This interaction produces different quality outcomes.

In section 2.4, I will try to explain how despite the Guatemalan selection process having a good institutional design, other factors are having a negative impact on it. In other words, ex ante dimension issues are heavily affecting judicial independence through ex post dimensions. Most importantly, I argue that some of these ex post issues could be mitigated by adjusting internal elements of the selection process.

2.3 The Original Sin

The 1993 constitutional reforms changed the process of selecting and appointing magistrates of the Court of Appeals. The new version of article 217 stablishes a similar Commission to the one employed for the selection of Supreme Court justices. The same two phases process with the Congress as the final authority to appoint them. The composition of this Commission is such that it is comprised of the same bodies as the Supreme Court Commission, namely one of the Chancellors of the universities, all the Deans of the Faculties of Law and an equal number of representatives elected by the Bar Association. It should be noted that the Deans of the Faculties of Law are the same individuals who are members of both

[159] Brinks and Blass (n 23) 321.

Commissions, the rest are different individuals even though they come from the same bodies. This Commission was also integrated by 37 members and the same threshold to take a decision.

One body was intentionally excluded from the above explanation because it needs all the attention. The missing body is the judiciary. In the selection process of Supreme Court justices, this body is represented by the magistrates of the Court of Appeals. In the selection process for the latter, this body is represented by the former. Meaning, the Supreme Court justices are directly involved in the selection of the magistrates of the Court of Appeals, and vice versa. This formula gives effect to the aforementioned conflict of interest.

There are also other conflicts of interests inherent in the process. At the end of the day, both commissions operate at the same time, and there are no restrictions preventing members of one commission from standing as candidates in the other. More about this will be presented in section 2.4. Calling this issue the original sin might be a strong statement, given the many other elements surrounding the process. However, it is undeniable that this change created chaos and introduced an additional issue to the process.

2.4 Examining the Legal Framework. The Design That Destroys Itself.

It should be noted that two significant pieces of legislation complement the text of the constitution: the Law on Nominating Commissions and the Law of Judicial Career. The former, as stated previously, contains the step by step of the selection processes of several high-rank positions. For instance, the Auditor General, the Public Prosecutor General, among others[160]. The latter is relevant just because it mentions that the list of 26 candidates to become Supreme Court justices should be composed equitably with members of the judicial career, individuals

[160] Ley de Comisiones de Postulación 2009 art 1.

who has served as judges and lawyers who meet the requirements[161]. There are other elements that could be important, but they are not relevant for this thesis.

However, regarding the Law on Nominating Commissions, it is essential to acknowledge the numerous flaws in the law. This piece of legislation emerged as a response to the several arbitrary practices that had become prevalent in the selection process of Supreme Court justices. Unfortunately, the outcome was different. Now, I will outline some of the flaws in the selection process that this law has caused. In the Conclusions' chapter I will address how we can overcome to these flaws.

To do so, I will divide the flaws as either procedural or institutional. By procedural, I am referring to issues inside the selection process per se, that is the process conducted by the Commission and Congress. By institutional, I am referring to weaknesses within the parameters explained by Ginsburg and Melton and, especially those in the bodies involved in the selection process. I will be using reports from international and national civil society organizations, but especially those from the Panel of Independent Experts (The Panel) that oversaw the last selection process in 2024, and the Preliminary Observations made by the Special Rapporteur on the Independence of Judges and Lawyers (SR). I will mention the ones that are more relevant, in my opinion, to this thesis.

- Procedural Flaws

The first procedural flaw is the one already mentioned. The conflict of interest derived from both commissions working at the same time and from members of one commission being able to apply as candidates in the other one, and vice versa. The Panel supports this. They highlighted the need to ban Commission members from standing as candidates for the Appeals Courts[162].

[161] Ley de la Carrera Judicial 2016 art 77.
[162] Urrejola, Delgadillo and Blanco (n 3) 36.

Second, both The Panel[163] and the SR[164] agree that standard regulations inside the commission are necessary to prevent each new commission from setting new criteria and permanently changing tools like the grading table, profiles and so on. Third, in a report delivered in April 2024, the Vance Center and other organizations[165] underscored the high number of candidates who apply to the Supreme Court selection process. Last year, the Commission received over 300 applications. This number is impossible to manage properly in a short period of time. The last process took just over two weeks to "evaluate" the candidates. Fourth, The Panel concluded that the grading table implemented does not evaluate quality aspects but rather focuses just on quantity aspects[166]. For instance, a journalist investigation showed that at least 40 candidates obtained between two to seven academic degrees simultaneously[167]. This was also pointed out by the SR[168]. Fifth, The Panel criticized the lack of regulation in the second phase of the selection process within the Congress[169]. And sixth, the selection process should improve the ethical assessment of candidates. The Panel expressed the view that a final judgement in a judicial process should not be regarded as the sole means of evaluating it[170]. On this regard, the SR underlined that a pass-fail assessment is not the best method[171]. This method was set by the Constitutional Court by considering that ethical merits are not susceptible of partial qualification[172]. The Constitutional Court has intervened many times and in various

[163] ibid 35.
[164] Special Rapporteur on the Independence of Judges and Lawyers, 'Visit to Guatemala - Preliminary Observations' 2 <https://www.ohchr.org/sites/default/files/documents/issues/ijudiciary/statements/12052005-eom-sr-ijl-visit-guatemala-en.pdf> accessed 8 June 2025.
[165] Federación Centroamericana de Juezas y Jueces por la Democracia FECAJUD, 'Appointment Process Of The Supreme Court And Court Of Appeals Judges In Guatemala Background, Problems, And Recommendations' 21 <https://www.vancecenter.org/wp-content/uploads/2024/05/Appointment-of-Supreme-Court-and-Court-of-Appeals-Judges-in-Guatemala.pdf> accessed 20 February 2025.
[166] Urrejola, Delgadillo and Blanco (n 3) 38.
[167] 'Candidatos a la CSJ: Los doctorados, maestrías y posgrados exprés de 40 aspirantes' (*Plaza Pública*) <https://www.plazapublica.com.gt/justicia/reportaje/candidatos-la-csj-los-doctorados-maestrias-y-posgrados-expres-de-40-aspirantes> accessed 27 April 2025.
[168] Special Rapporteur on the Independence of Judges and Lawyers (n 164) 2.
[169] Urrejola, Delgadillo and Blanco (n 3) 22.
[170] ibid 37.
[171] Special Rapporteur on the Independence of Judges and Lawyers (n 164) 2.
[172] *3300-2018 y 3387-2018* (Corte de Constitucionalidad de Guatemala) 34.

ways in the selection process, to the extent that in 2019 the Court suspended the appointment of new Supreme Court justices [173] due to a criminal investigation presented by public prosecutors. The investigation focused on external political influence within the commission. The incumbent justices remained in office for a period exceeding three years. This situation will be addressed in chapter 3.

- Institutional Flaws

The aim of this section is to address issues pertaining to the bodies involved in the selection process, as well as other elements external to the process, yet which have a direct impact on it. I will start with the latter. First, the Due Process of Law Foundation reiterates an issue that has already been raised here, tenure. In this case, the Foundation recommended lifetime appointments[174] to ensure judicial independence. Second, the SR called the attention to the fact of the entire renewal of justices. In her opinion, this situation is not advisable due to the significant stakes involved in each process[175]. These two issues are intrinsically connected to the selection process itself because every five years the Commission is integrated to select a new Supreme Court.

The following discussion will address the institutional flaws present within the bodies involved in the selection process. First, The Panel recommended to guarantee the independence and capacity of the commissioners, [176]. Many of them had personal agendas[177]. Second, the SR underlined the proliferation of low-quality universities[178] whose sole aim is to gain access to

[173] *Expediente 1169-2020* (Corte de Constitucionalidad).
[174] 'Judicial Independence in Central America: Problems and Proposals' 5 <https://dplf.org/en/wp-content/uploads/2024/09/dplf_-_judicial_independence_in_central_america_-_problems_and_proposals.pdf> accessed 2 February 2025.
[175] Special Rapporteur on the Independence of Judges and Lawyers (n 164) 2.
[176] Urrejola, Delgadillo and Blanco (n 3) 15.
[177] Impunity Watch, 'LECCIONES APRENDIDAS DE LA ELECCIÓN DE CORTES DE GUATEMALA' 3 <https://independenciajudicial.org/wp-content/uploads/2024/10/informe_cortes.final_.pdf> accessed 8 June 2025.
[178] Special Rapporteur on the Independence of Judges and Lawyers (n 164) 1.

the process. Third, the SR noted the absence of mechanisms to promote the participation of minorities[179]. The fourth and perhaps most serious issue is that of political influence within the Commission. The SR emphasized that the selection process is tainted by political and private interests[180], in part because of the identified flaws in the law. Movimiento Pro Justicia identified four political actors[181] who exerted influence over the last selection process. Furthermore, other authors have indicated that the weak legal framework allows strong political influence[182] and the interference of other branches of government in the judiciary[183]. In the next chapter, a case will be presented to illustrate the consequences of this political component, which is aggravated by procedural and institutional flaws.

[179] ibid 2.
[180] ibid.
[181] Movimiento Pro Justicia (n 4) 25.
[182] Estuardo Sebastián Morales Forte, 'PLURALISM AND POLITICAL ENTREPRENEURSHIP: A STUDY OF JUDICIAL CAPTURE IN GUATEMALA' (Tulane University 2024) 74.
[183] Claudia Escobar, 'How Organized Crime Controls Guatemala's Judiciary' in Robert I Rotberg (ed), *Corruption in Latin America* (Springer International Publishing 2019) 263 <https://link.springer.com/10.1007/978-3-319-94057-1_10> accessed 1 February 2025.

CHAPTER THREE: CONSEQUENCES OF THE CURRENT SELECTION PROCESS. THE CASE OF JOURNALIST JOSÉ RUBÉN ZAMORA

The aim of this chapter is to suggest how all the flaws in the selection process could have a negative impact on the administration of justice. To fulfil this aim, the best option is to present a landmark case with many guiding elements. At the end of the day, ordinary citizens are subject to face the same issues in court, most of which are connected to the Supreme Court of Justice in one way or another.

The case to be presented is from the Guatemalan journalist José Rubén Zamora. Zamora was the founder of El Periódico, a newspaper dedicated to reporting on government corruption. Throughout the years, he and the newspaper have been subjected to several challenges, including life threats, financial pressures and other forms of harassment, because of their work[184]. Things escalated in July 2022, and he was detained on charges of money laundering, blackmail and influence peddling, in a case that was built in just 72 hours[185]. The prosecutor in charge of the criminal investigation had been sanctioned by the United States [186] and the European Union[187] considering severe allegations of corruption.

[184] 'RSF Denounces Judicial Harassment of Guatemalan Newspaper | RSF' (6 March 2023) <https://rsf.org/en/rsf-denounces-judicial-harassment-guatemalan-newspaper> accessed 30 April 2025.
[185] 'The Case against Journalist José Rubén Zamora Was Built in 72 Hours' (*The Case against Journalist José Rubén Zamora Was Built in 72 Hours*) <https://elfaro.net/en/202208/centroamerica/26331/The-Case-against-Journalist-Jos%C3%A9-Rub%C3%A9n-Zamora-Was-Built-in-72-Hours.htm> accessed 30 April 2025.
[186] 'Section 353 Corrupt and Undemocratic Actors Report' (*United States Department of State*) <https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report-2022/> accessed 30 April 2025.
[187] 'Guatemala: Council Sanctions Five Individuals for Undermining Democracy and the Rule of Law' (*Consilium*) <https://www.consilium.europa.eu/en/press/press-releases/2024/02/02/guatemala-council-sanctions-an-additional-five-individuals-for-undermining-democracy-and-the-rule-of-law/> accessed 30 April 2025.

Both national and international organizations have documented his case. For instance, according to Amnesty International[188], Zamora is being persecuted solely for his journalistic work denouncing corruption and it is part of a political motivated prosecution, in which other anti-corrupt actors are also being targeted. This organization highlighted that El Periódico had published at least 144 reports of corruption attributed to the previous government [189] (2020-2024) and declared him a prisoner of conscious[190]. It is imperative to note that the United Nations Working Group on Arbitrary Detention (WGAD) declared that Zamora detention was arbitrary[191]. Many findings were identified, yet the following must be accentuated since they are in violation of the right to a fair trial: a) there is a pattern of criminalization of Zamora´s lawyers[192]. He had 10 lawyers in less than two years; and b) Zamora´s defense was not granted equality of arms in trial[193]. Furthermore, the Working Group received information regarding issues of judicial independence because there was a close relationship between the prosecutor and the judge[194] involved in the case.

To stablish a link between the irregularities of this landmark case and the selection process, it is necessary to divide the analysis into jurisdictional elements and administrative elements. The former is related to the political motivation of Zamora´s case. I define the latter as policies related to the administration of justice. Given that both issues fall within the Supreme Court´s competence, it had the institutional authority to take preventive action.

[188] 'Guatemala: Amnesty International Condemns the Return to Prison of Journalist Jose Rubén Zamora' (*Amnesty International*, 12 March 2025) <https://www.amnesty.org/en/latest/news/2025/03/guatemala-amnesty-international-condemns-the-return-to-prison-of-journalist-jose-ruben-zamora/> accessed 9 June 2025.
[189] 'Free Jose Rubén, Guatemalan Journalist, Prisoner of Conscience' (*Amnesty International*) <https://www.amnesty.org/en/petition/free-jose-ruben/> accessed 30 April 2025.
[190] 'Guatemala: Amnesty International Declares José Rubén Zamora a Prisoner of Conscience and Demands His Release' (*Amnesty International*, 1 August 2024) <https://www.amnesty.org/en/latest/news/2024/08/guatemala-amnistia-internacional-nombra-jose-ruben-zamora-preso-conciencia-exige-liberacion/> accessed 30 April 2025.
[191] Working Group on Arbitrary Detention, 'Opinion No. 7/2024, Concerning José Rubén Zamora Marroquín (Guatemala)*' para 99.
[192] ibid 103.
[193] ibid 110.
[194] ibid 116.

- Jurisdictional Elements

The case against Zamora was initiated in retaliation to the numerous investigations into the corruption of Giammattei´s government, as presented by the WGAD[195]. Organizations like Human Rights Watch[196] and Insight Crime[197] have reported the strong connection between former President Giammattei and incumbent Attorney General Porras. This is the first connection, a highly influential political figure, in this case the President, uses the authority of the Attorney General to criminalize a journalist who has exposed corruption in his government. Nevertheless, a second connection is highly relevant, any criminal investigation initiated by the Attorney General is subject to judicial control. In this regard, the Inter-American Commission on Human Rights has identified patterns of criminalization[198] that imply actions from both the Attorney General´s Office and the judiciary. The Inter-American Commission also issued a strong appeal to the Supreme Court, urging it to take action to prevent this criminalization. It is essential to note that the Supreme Court has the power to review the judgements of lower courts if the parties involved request it. In a case involving an individual who was declared arbitrarily detained, the lack of strong judicial control is extremely concerning. This issue encompassed three different Supreme Court compositions.

Another factor to highlight in this case is the fact that, after many legal actions, Zamora was granted house arrest. However, in March 2025, the same judge that had previously granted him house arrest, ordered his return to prison following a Court of Appeals judgement. At the conclusion of the hearing, the judge issued a statement denouncing being the subject of life

[195] ibid 96.
[196] Human Rights Watch, 'Guatemala: Events of 2022', *World Report 2023* (2023) <https://www.hrw.org/world-report/2023/country-chapters/guatemala> accessed 9 June 2025.
[197] Scott Mistler-Ferguson, 'Controversial Attorney General Outlasts Guatemala's Anti-Corruption Efforts' (*InSight Crime*, 18 May 2022) <http://insightcrime.org/news/controversial-attorney-general-outlasts-guatemalas-anti-corruption-efforts/> accessed 9 June 2025.
[198] Inter-American Commission of Human Rights, 'Preliminary Observations On-Site Visit to Guatemala' OEA/Ser.L/V/II.doc.124/24 para 24 <https://www.oas.org/en/iachr/reports/pdfs/2024/Preliminary_Observations_Guatemala.pdf>.

threats due to the case[199]. The Supreme Court, as the top administrative organ of the judiciary, has the duty to ensure the safety of its personnel. However, no action was taken in this case, not even a public statement. In contrast, the Inter-American Commission on Human Rights, together with the United Nations Special Rapporteurs on the Independence of Judges and Lawyers and on Freedom of Opinion and Expression, issued a press release on March 26, 2025[200]. In their statement they emphasized that this could constitute a violation of the right to a fair trial and compromise judicial independence. Recently, the Supreme Court has upheld the decision to re-incarcerate Zamora[201]. In this regard, the Supreme Court failed to protect the human rights and procedural guarantees of the defendant.

- Administrative Elements

It is worth noting that the Supreme Court is responsible for the appointment, re-appointment, promotion, transfer and removal of judges and magistrates of the Court of Appeals, as stated in the Law of Judicial Career. The Supreme Court has extensive administrative and jurisdictional powers, which enable it to exert a considerable influence on the administration of justice. This was mentioned by the Inter-American Commission that considered the necessity to separate these functions of the Supreme Court[202]. The United Nations International Commission Against Impunity in Guatemala (CICIG), in a 2019 report,

[199] *Juez Érick García Denuncia Amenazas e Intimidaciones Por El Caso Contra Jose Rubén Zamora* (Directed by PrensaLibreOficial, 2025) <https://www.youtube.com/watch?v=-OWxeQCFcno> accessed 30 April 2025.
[200] 'IACHR and UN Special Rapporteurs Express Concern about the Return to Prison of Journalist José Rubén Zamora in Guatemala' (*Inter-American Commission on Human Rights (IACHR)*) <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2025/060.asp> accessed 30 April 2025.
[201] SWI swissinfo.ch, 'La Corte Suprema de Guatemala rechaza la apelación del periodista encarcelado Zamora' (*SWI swissinfo.ch*, 28 March 2025) <https://www.swissinfo.ch/spa/la-corte-suprema-de-guatemala-rechaza-la-apelación-del-periodista-encarcelado-zamora/89077048> accessed 10 June 2025.
[202] Inter-American Commission of Human Rights (n 198) 38.

underlined the significant influence that the Supreme Court wields over lower courts due to its administrative powers[203].

During her visit to Guatemala in May 2025, the SR identified seven indicators of criminalization involving the Public Prosecutor´s Office, members of the judiciary and private actors[204]. I want to point out to three of those indicators: 1) Vague and overly broad charges, inadequately related to the facts; 2) Misuse of the case allocation; and 3) Erosion of due process guarantees. All three indicators are present in the case of Zamora: an ambiguous allegation, his case was heard by a well-documented questionable judge and the persecution of his lawyers.

To provide further context regarding the misuse of case allocation, it is relevant to mention that the judge who issued the arrest warrant and heard the case of Zamora was Freddy Orellana. This judge has been sanctioned by the United States[205], the European Union[206] and others due to significant corruption and for undermining democracy. This judge played a pivotal role in supporting the Attorney General and the status quo during the unsuccessful coup attempt that took place in 2023[207]. The SR in her Preliminary Observations stated that specific cases are systematically assigned to specific judges[208]. This pattern can be seen with specific judges[209]

[203] Comisión Internacional Contra la Impunidad en Guatemala, 'Guatemala: Un Estado Capturado' (2019) 78 <https://www.cicig.org/wp-content/uploads/2019/08/Informe_Captura_Estado_2019.pdf> accessed 10 June 2025.
[204] Special Rapporteur on the Independence of Judges and Lawyers (n 164) 6.
[205] US Embassy San Salvador, 'Section 353 Corrupt and Undemocratic Actors Report: 2023' (*U.S. Embassy in El Salvador*, 19 July 2023) <https://sv.usembassy.gov/section-353-corrupt-and-undemocratic-actors-report-2023/> accessed 30 April 2025.
[206] 'Guatemala: Council Sanctions Five Individuals for Undermining Democracy and the Rule of Law' (n 187).
[207] European Parliament Resolution, 'Attempt of Coup d'Etat in Guatemala. (C/2024/4186)' <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202404186>.
[208] Special Rapporteur on the Independence of Judges and Lawyers (n 164) 8.
[209] No-Ficción, 'Abelina, la redentora' (*No Ficción*, 22 January 2025) <https://no-ficcion.com/abelina-la-redentora/> accessed 2 April 2025.

and courts[210]. The previous Supreme Court re-appointed Fredy Orellana as a judge last year[211], despite the severe allegations related to him.

In contrast, different compositions of the Supreme Court of Justice have taken conflictive decisions. For instance, the previous composition of the Court transferred, without explanation, one of the two judges specialized in asset seizure that was involved in high-impact cases[212]. The current composition transferred a key judge involved in anti-corruption cases, without reasonable explanation too[213]. In addition to that, under the Supreme Court that exceeded its term, one of the top anti-corrupt judges, Miguel Gálvez, was compelled to self-exile as a consequence of the criminalization conducted by the Attorney General. The Supreme Court played a pivotal role to such an extent that there are reports that they ordered the cessation of his legal defense, which accelerated the lifting of his legal immunity[214]. These judges had in common the fact that they heard high-profile cases involving severe corruption of high-rank government officials. This has been the case with three different Supreme Court compositions.

CICIG explained that there are criminal-political structures that operates in the selection process to influence the composition of the courts to ensure impunity and the instrumentalization of the justice system[215]. This issue connects the three branches of

[210] Diego España, 'Tras estancar caso y girar órdenes de captura, Sala Tercera fija audiencia para definir juez en caso por acuerdos Odebrecht' (*La Hora*, 11 June 2025) <https://lahora.gt/nacionales/diego/2025/06/11/tras-estancar-caso-y-girar-ordenes-de-captura-sala-tercera-fija-audiencia-para-definir-juez-en-caso-por-acuerdos-odebrecht/> accessed 11 June 2025.
[211] 'CSJ confirma a Fredy Orellana para un nuevo periodo como juez séptimo penal' (*Prensa Libre*, 4 September 2024) <https://www.prensalibre.com/guatemala/justicia/csj-confirma-a-fredy-orellana-para-un-nuevo-periodo-como-juez-septimo-penal/> accessed 30 April 2025.
[212] 'CSJ acelera el traslado del juez de Extinción de Dominio Marco Antonio Villeda' (*Prensa Comunitaria*, 3 July 2024) <https://prensacomunitaria.org/2024/07/csj-acelera-el-traslado-del-juez-de-extincion-de-dominio-marco-antonio-villeda/> accessed 9 June 2025.
[213] Sergio Osegueda, 'CSJ retira a Silvia de León como Jueza de Mayor Riesgo y la envía a juzgado de turno' (*La Hora*, 6 June 2025) <https://lahora.gt/nacionales/sosegueda/2025/06/06/csj-retira-a-silvia-de-leon-como-jueza-de-mayor-riesgo-y-la-envia-a-juzgado-de-turno/> accessed 9 June 2025.
[214] 'Así impidió la Corte Suprema de Justicia que el juez Gálvez pudiera defenderse' (*Plaza Pública*) <https://www.plazapublica.com.gt/content/asi-impidio-la-corte-suprema-de-justicia-que-el-juez-galvez-pudiera-defenderse> accessed 10 June 2025.
[215] Comisión Internacional Contra la Impunidad en Guatemala (n 203) 77.

government and external actors. To sum up, when a corrupt and politically influential figure wants to put pressure on political opponents, a journalist in this case, the judicial system provides the necessary political connections to facilitate it. In this regard.

The Supreme Court of Justice possesses the necessary legal tools, both jurisdictional and administrative, to address the various issues raised in the Zamora case. Those issues are present in almost all cases. Nevertheless, no measures have been implemented. At the end of the day, it can be argued that the Supreme Court justices are perpetuating political criminalization by doing nothing to prevent it. One possible explanation, after reviewing these elements, could be that the selection process is so heavily influenced by external political interests that it results in the appointment of justices who serve those interests, thereby undermining the proper administration of justice. Another explanation could be that the process is so fundamentally flawed that it produces justices who lack the competence necessary to fulfill their duties, undermining the proper administration of justice. All these issues are undermining heavily the rule of law in Guatemala.

CONCLUSIONS

This final chapter is divided into four sections. First, the connection of the literature with the selection process and how international standards encompass those concepts will be discussed. Second, an analysis of the Guatemalan selection process of Supreme Court justices will be presented, drawing upon the work of Melton and Ginsburg, as well as Brinks and Blass. The third section explores the implications of the Zamora case, arguing that this landmark case serves as a clear illustration of the ongoing rule of law crisis in Guatemala. The final section offers a set of urgent and feasible recommendations aimed at reforming the selection process in order to restore judicial independence.

- The Literature v. International Standards

From the authors presented in the first chapter, it is worth noting that there are many definitions regarding the rule of law. These definitions range from those that consider only procedural aspects to those that incorporate human rights as a substantive element of the rule of law. However, it is evident that when scholars focus on the requirements of the rule of law, the matter becomes easier to identify. In this regard, there is a broad consensus among legal scholars that the active role of the judiciary is an unquestionable requirement of the rule of law.

Furthermore, the role of the judiciary in ensuring the rule of law is defined by its independence and autonomy, which contribute to the guarantee of the right to a fair trial. The right to a fair trial is particularly interesting to examine, given its status as an absolute right according to international standards. It is logical to conclude that this institutional safeguard is the backbone for the protection of all other rights.

The establishment of an independent judicial branch is a prerequisite for the effective enforcement of human rights. The notion of an autonomous judicial body, operating with a high degree of insulation from political influence, competing interests, and external influences, is widely regarded as the cornerstone of a robust rule of law. At the end of the day, the justice system relies in the public trust that is placed in the impartiality of judges.

International standards and a vast literature support the notion of a correlation between the selection process of judges and the concept of judicial independence. This suggests that the selection of judges, in the case of this thesis the selection of Supreme Court justices, constitutes the initial phase in the establishment of judicial independence. Nevertheless, there are many other elements that play a relevant role to build judicial independence.

- The Dynamism of Judicial Independence

The article by Melton and Ginsburg allow us to assess judicial independence in Guatemala using their six-parameter measure. Surprisingly, Guatemala meets five out of six of the ideal assumptions they proposed. The sole parameter that has not been met is that of tenure. There is a consensus among both international standards and legal scholars that longer mandates help to ensure judicial independence.

According to the authors, rules governing the selection and removal of judges are the most significant provisions for judicial independence. This finding is applicable solely to the Supreme Court, as it wields extensive administrative control over the appointment, removal or transfer of judges in lower courts. This gives rise to the possibility of undue influence. Judicial independence requires not only by the absence of external political influences but also the absence of internal influences within the judiciary itself.

The authors mention that constitutions which incorporate processes involving multiple entities in the selection of judges serve to protect judicial independence. Again, this applies solely to the Supreme Court. The efficacy of this measure is significantly diminished when the Supreme Court is endowed with extensive administrative powers that could affect lower courts.

The work of Brinks and Blass provides a valuable insight to understand the dynamism of judicial independence. Using the analysis provided by Melton and Ginsburg, it is possible to assess the key concepts of ex ante and ex post autonomy that the former presented. In the case of Guatemala, the selection and appointment process (ex ante) is, in theory, shielded from external influence. However, the bodies involved in the initial phase of the selection process are being cooptated by the many irregularities explained in chapter two. Consequently, the commissioners overseeing the selection process of Supreme Court justices are not suitably qualified to fulfil this role, due to the interests that they are representing and their personal qualifications. This issue is also affecting the process itself of selecting the most suitable candidate, which may be a reason why the grading table and other instruments are not measuring qualitative elements. Regarding ex post autonomy, elements like tenure and the Supreme Court´s exclusive power to punish lower judges are paramount in reaffirming that the selection process gives rise to many other issues. The flaws inherent in the selection process are having severe consequences. The enhancement of the selection process has the potential to address these severe issues.

To provide a direct response to the research question, it is essential to acknowledge that the Constitution incorporates a robust selection process to ensure judicial independence. This process is in accordance with the literature and international standards. Nevertheless, the gatekeepers responsible for overseeing the process, namely the bodies involved in the selection process, lack a solid institutional framework that they have been influenced by political interests. This issue may be attributed to the absence of a comprehensive legal

framework, with the numerous loopholes created by the law being exploited by external interests that are not beholden to the principles of judicial independence.

- The Elephant in the Room

The elephant in the room is that all the flaws in the selection process result in a Supreme Court that is composed of individuals with political ties to external actors and no strong qualifications whatsoever. This is evident when the Zamora case is analyzed because of two important reasons: a) The case shows the Supreme Court´s lack of will or capacity to address the various flaws in the allegations and proceedings within their jurisdictional powers; and b) The case was heard by a highly questionable judge who is instrumental to political interests, as many reports show. This issue illustrates patterns indicative of an administrative structure within the judiciary that consistently allocates politically sensitive cases to a select group of questionable judges. The lack of concrete action by the Supreme Court can only be rationally understood in light of the influences on the justices from the moment they are selected. In this case, it is not necessary to actively do something, simply ignoring the magnitude of the problem is enough to be complicit in this system.

- From Diagnosis to Action. Rethinking the Selection Process.

I would now like to present specific recommendations for improving the selection process of Supreme Court justices in Guatemala. This is the result of an analysis of the literature, international standards and reports presented in this thesis.

Some obstacles cannot be addressed without constitutional amendments. For instance, the five-years tenure, the total change of court justices, the possibility of reelection, the bodies involved in the selection process and the large number of commissioners participating in the selection process. I would like to emphasize that constitutional reforms are urgent, not only to

improve the judicial system, but also to address other matters. This reform must be entrusted to individuals who are committed to the country and have a long-term vision. However, given the current political context in Guatemala, a constitutional reform is highly unlikely.

Consequently, the focus must be on various laws, easier to reform. From my analysis, the most important recommendations are as follows: a) Given that the selection Commission is not permanent, an independent Administrative Office must be stablished to oversee all the functional matters. This Office would be permanently responsible for proposing standard and well-structured grading methods, this to ensure a qualitative assessment system for candidates. It would also provide legal support and keep administrative and legal records of the process; b) A prohibition must be established to prevent those involved in the selection process for the Supreme Court from participating in the selection process for magistrates of Appeal Courts, and vice versa; c) The qualifications to become a representative of the Bar Association in the process must be raised considerably to ensure capacity and honorability; d) The law must set out a strict timeframe for conducting each phase of the process; e) The education system must assess the quality of all universities, setting a minimum standard to participate in the process; f) The high number of applications must be addressed. One proposal could be to have an entry examination to select the top fifty candidates, with the selection process conducted exclusively with these individuals. An alternative proposal could be to replace the system of application with a system of nomination, whereby each involved body is required to submit twenty candidates. This would result in a total of sixty candidates. This issue is arguably among the most challenging to address.; g) It is important that the candidates' probity and qualifications be subjected to rigorous scrutiny. For instance, the presentation of an income declaration or other similar document is imperative to ensure integrity in the context of anti-corrupt measures. Moreover, it is essential to note that mandatory interviews are a pivotal component of the selection process, as they facilitate the comprehension of the legal and personal perspectives

held by candidates; h) It is imperative that civil society is involved in both phases of the process to address concern regarding the candidates in an internal bidding process. Furthermore, it is relevant that the Congress develops a process to ensure publicity and transparency in their decision-making process for appointing justices. The creation of a new law that is specifically designed for the selection of the judiciary is strongly necessary.

The aim of these recommendations is to start an urgent discussion to enhance the selection process of Supreme Court justices. For Guatemala, to be regarded as a nation that is dedicated to the principles of the rule of law, it is imperative to protect judicial independence. It is crucial to acknowledge that each sector of society has a significant role to play in this endeavor and the perfect starting point is the enhancement of the selection process to find judicial independence. When a society fails to find common ground on crises that threaten everyone´s rights, it begins to carve its own grave.

BIBLIOGRAPHY

Albers DP, 'How to Measure the Rule of Law: A Comparison of Three Studies' Council of Europe

Allan TRS, 'Dworkin and Dicey: The Rule of Law as Integrity Review Article' (1988) 8 Oxford Journal of Legal Studies 266

'Así impidió la Corte Suprema de Justicia que el juez Gálvez pudiera defenderse' (*Plaza Pública*) <https://www.plazapublica.com.gt/content/asi-impidio-la-corte-suprema-de-justicia-que-el-juez-galvez-pudiera-defenderse> accessed 10 June 2025

'Autoridades indígenas: la elección de Cortes "fue una burla" para la ciudadanía' (*Prensa Comunitaria*, 17 October 2024) <https://prensacomunitaria.org/2024/10/autoridades-indigenas-la-eleccion-de-cortes-fue-una-burla-para-la-ciudadania/> accessed 1 February 2025

Badó A, '"Fair" Selection of Judges in a Modern Democracy' in Attila Badó (ed), *Fair Trial and Judicial Independence*, vol 27 (Springer International Publishing 2014) <https://link.springer.com/10.1007/978-3-319-01216-2_2> accessed 1 February 2025

Bakardjieva Engelbrekt A, 'Rule of Law and Judicial Independence in the EU: Lessons from the Union's Eastward Enlargement and Ways Forward' [2023] Scandinavian studies in law 177

Belton RK, 'Competing Definitions of the Rule of Law: Implications for Practitioners' <https://www.policyarchive.org/handle/10207/6528> accessed 8 March 2025

Berger S, 'Guatemala: Coup and Countercoup' (1993) 27 NACLA Report on the Americas 4

Bertelli AM and Schwartz LJ, 'Public Administration and Democracy: The Complementarity Principle' [2022] Elements in Public and Nonprofit Administration <https://www.cambridge.org/core/elements/public-administration-and-democracy/1C4DC866077A6374CF0CE800638030B5> accessed 15 March 2025

Blankenship MB, Spargar JB and Janikowski WR, 'Accountability v. Independence: Myths of Judicial Selection' (1992) 6 Criminal Justice Policy Review 69

Boies D, 'Judicial Independence and the Rule of Law Access to Justice: The Social Responsibility of Lawyers' (2006) 22 Washington University Journal of Law & Policy 57

Brinks DM and Blass A, 'Rethinking Judicial Empowerment: The New Foundations of Constitutional Justice' (2017) 15 International Journal of Constitutional Law 296

Bulmer E, *Judicial Appointments* (Second, International Institute for Democracy and Electoral Assistance 2017)

Cameron MA, 'Self-Coups: Peru, Guatemala, and Russia' (1998) 9 Journal of Democracy 125

'Candidatos a la CSJ: Los doctorados, maestrías y posgrados exprés de 40 aspirantes' (*Plaza Pública*) <https://www.plazapublica.com.gt/justicia/reportaje/candidatos-la-csj-los-doctorados-maestrias-y-posgrados-expres-de-40-aspirantes> accessed 27 April 2025

Comisión Internacional Contra la Impunidad en Guatemala, 'Guatemala: Un Estado Capturado' (2019) <https://www.cicig.org/wp-content/uploads/2019/08/Informe_Captura_Estado_2019.pdf> accessed 10 June 2025

Conseil de l'Europe (ed), *Judges: Independence, Efficiency and Responsibilities* (Ed du Conseil de l'Europe 2011)

'Corte IDH. Caso de La Corte Suprema de Justicia (Quintana Coello y Otros) Vs. Ecuador. Interpretación de La Sentencia de Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 21 de Agosto de 2014. Serie C No. 280.' <https://jurisprudencia.corteidh.or.cr/es/vid/883976020> accessed 3 February 2025

'CSJ acelera el traslado del juez de Extinción de Dominio Marco Antonio Villeda' (*Prensa Comunitaria*, 3 July 2024) <https://prensacomunitaria.org/2024/07/csj-acelera-el-traslado-del-juez-de-extincion-de-dominio-marco-antonio-villeda/> accessed 9 June 2025

'CSJ confirma a Fredy Orellana para un nuevo periodo como juez séptimo penal' (*Prensa Libre*, 4 September 2024) <https://www.prensalibre.com/guatemala/justicia/csj-confirma-a-fredy-orellana-para-un-nuevo-periodo-como-juez-septimo-penal/> accessed 30 April 2025

'Democracy Report 2024: Democracy Winning and Losing at the Ballot' (University of Gothenburg: V-Dem Institute 2024) <https://www.v-dem.net/documents/43/v-dem_dr2024_lowres.pdf> accessed 1 February 2025

'Diario de Centro América' *41* (3 June 1985) <https://www.congreso.gob.gt/assets/uploads/info_legislativo/decretos/1985/gtconstituci%C3%B3n1985.pdf> accessed 27 April 2025

Editors CFR, 'A Conversation With President Bernardo Arévalo of Guatemala | Council on Foreign Relations' <https://www.cfr.org/event/conversation-president-bernardo-arevalo-guatemala> accessed 5 June 2025

Escobar C, 'How Organized Crime Controls Guatemala's Judiciary' in Robert I Rotberg (ed), *Corruption in Latin America* (Springer International Publishing 2019) <https://link.springer.com/10.1007/978-3-319-94057-1_10> accessed 1 February 2025

España D, 'Tras estancar caso y girar órdenes de captura, Sala Tercera fija audiencia para definir juez en caso por acuerdos Odebrecht' (*La Hora*, 11 June 2025) <https://lahora.gt/nacionales/diego/2025/06/11/tras-estancar-caso-y-girar-ordenes-de-captura-sala-tercera-fija-audiencia-para-definir-juez-en-caso-por-acuerdos-odebrecht/> accessed 11 June 2025

European Commission, 'EU's Rule of Law Toolbox – Factsheet 2023' (2023) <https://commission.europa.eu/document/download/be9d4f20-64ad-4ccc-8d29-8dc48649d2e2_en?filename=112_1_52675_rol_toolbox_factsheet_en.pdf> accessed 3 February 2025

European Parliament Resolution, 'Attempt of Coup d'Etat in Guatemala. (C/2024/4186)' <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202404186>

Fallon RHJr, 'The Rule of Law as a Concept in Constitutional Discourse' (1997) 97 Columbia Law Review 1

Federación Centroamericana de Juezas y Jueces por la Democracia FECAJUD, 'Appointment Process Of The Supreme Court And Court Of Appeals Judges In Guatemala Background, Problems, And Recommendations' <https://www.vancecenter.org/wp-content/uploads/2024/05/Appointment-of-Supreme-Court-and-Court-of-Appeals-Judges-in-Guatemala.pdf> accessed 20 February 2025

Fiss OM, 'The Limits of Judicial Independence' (1993) 25 The University of Miami Inter-American Law Review 57

Forte ESM, 'PLURALISM AND POLITICAL ENTREPRENEURSHIP: A STUDY OF JUDICIAL CAPTURE IN GUATEMALA' (Tulane University 2024)

'Free Jose Rubén, Guatemalan Journalist, Prisoner of Conscience' (*Amnesty International*) <https://www.amnesty.org/en/petition/free-jose-ruben/> accessed 30 April 2025

Fukuyama F, 'Democracy's Past and Future: Transitions to the Rule of Law' (2010) 21 Journal of Democracy 33

Geyh CG, 'Methods of Judicial Selection & Their Impact on Judicial Independence' (2008) 137 Daedalus 86

Ginsburg T, 'Pitfalls of Measuring the Rule of Law' (2011) 3 Hague Journal on the Rule of Law 269

Ginsburg T and Versteeg M, 'Constitutional Correlates of the Rule of Law' in Maurice Adams, Anne Meuwese and Ernst Hirsch Ballin (eds), *Constitutionalism and the Rule of Law* (1st edn, Cambridge University Press 2017) <https://www.cambridge.org/core/product/identifier/9781316585221%23CN-bp-17/type/book_part> accessed 15 March 2025

'Guatemala: Amnesty International Condemns the Return to Prison of Journalist Jose Rubén Zamora' (*Amnesty International*, 12 March 2025) <https://www.amnesty.org/en/latest/news/2025/03/guatemala-amnesty-international-condemns-the-return-to-prison-of-journalist-jose-ruben-zamora/> accessed 9 June 2025

'Guatemala: Amnesty International Declares José Rubén Zamora a Prisoner of Conscience and Demands His Release' (*Amnesty International*, 1 August 2024) <https://www.amnesty.org/en/latest/news/2024/08/guatemala-amnistia-internacional-nombra-jose-ruben-zamora-preso-conciencia-exige-liberacion/> accessed 30 April 2025

'Guatemala: Council Sanctions Five Individuals for Undermining Democracy and the Rule of Law' (*Consilium*) <https://www.consilium.europa.eu/en/press/press-releases/2024/02/02/guatemala-council-sanctions-an-additional-five-individuals-for-undermining-democracy-and-the-rule-of-law/> accessed 30 April 2025

'Guatemala: Freedom in the World 2024 Country Report' (*Freedom House*) <https://freedomhouse.org/country/guatemala/freedom-world/2024> accessed 9 January 2025

Harold See, 'The Meaning of the Constitution and the Selection of Judges' [2016] 8 Faulkner L Rev 175

Helmke G and Rosenbluth F, 'Regimes and the Rule of Law: Judicial Independence in Comparative Perspective' (2009) 12 Annual Review of Political Science 345

Human Rights Watch, 'Guatemala: Events of 2022', *World Report 2023* (2023) <https://www.hrw.org/world-report/2023/country-chapters/guatemala> accessed 9 June 2025

Huq A and Ginsburg T, 'How to Lose a Constitutional Democracy.' (2018) 65 UCLA Law Review 78

Huq AZ and Ginsburg T, 'How to Lose a Constitutional Democracy' (Social Science Research Network, 18 January 2017) <https://papers.ssrn.com/abstract=2901776> accessed 15 March 2025

'IACHR and UN Special Rapporteurs Express Concern about the Return to Prison of Journalist José Rubén Zamora in Guatemala' (*Inter-American Commission on Human Rights (IACHR)*) <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2025/060.asp> accessed 30 April 2025

'IACHR :: Rules of Procedure of the Inter-American Commission on Human Rights' (*Inter-American Commission on Human Rights (IACHR)*) <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/basics/rulesiachr.asp> accessed 8 March 2025

Impunity Watch, 'LECCIONES APRENDIDAS DE LA ELECCIÓN DE CORTES DE GUATEMALA' <https://independenciajudicial.org/wp-content/uploads/2024/10/informe_cortes.final_.pdf> accessed 8 June 2025

Inter-American Commission of Human Rights, 'Preliminary Observations On-Site Visit to Guatemala' OEA/Ser.L/V/II.doc.124/24 <https://www.oas.org/en/iachr/reports/pdfs/2024/Preliminary_Observations_Guatemala.pdf>

Inter-American Commission on Human Rights, 'Chapter IV.B Guatemala. Annual Report of the Inter-American Commission on Human Rights' (Inter-American Commission on Human Rights 2023) OEA/Ser.L/V/II. Doc. 386 rev. 1

——, 'Annual Report' (2024) <https://www.oas.org/en/iachr/docs/annual/2024/IA2024_ENG.pdf> accessed 5 June 2025

Inter-American Specialized Conference on Human Rights, 'AMERICAN CONVENTION ON HUMAN RIGHTS' <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed 26 April 2025

International Commission of Jurists, 'The Rule of Law in a Free Society' <https://www.icj.org/wp-content/uploads/1959/01/Rule-of-law-in-a-free-society-conference-report-1959-eng.pdf> accessed 15 March 2025

Jackson VC, 'Judicial Independence: Structure, Context, Attitude' in Anja Seibert-Fohr (ed), *Judicial Independence in Transition*, vol 233 (Springer Berlin Heidelberg 2012) <http://link.springer.com/10.1007/978-3-642-28299-7_2> accessed 14 March 2025

Jeremy Waldron, 'The Rule of Law', *Stanford Encyclopedia of Philosophy Archive* (Spring, 2020)

Jordão E and Rose-Ackerman S, 'JUDICIAL REVIEW OF EXECUTIVE POLICYMAKING IN ADVANCED DEMOCRACIES: BEYOND RIGHTS REVIEW' [2014] ADMINISTRATIVE LAW REVIEW

Jr VJH, 'The Case for the Nebraska Merit Plan' (1962) 41 NEBRASKA LAW REVIEW

'Judicial Independence in Central America: Problems and Proposals' <https://dplf.org/en/wp-content/uploads/2024/09/dplf_-_judicial_independence_in_central_america_-_problems_and_proposals.pdf> accessed 2 February 2025

Judicial Integrity Group, 'MEASURES FOR THE EFFECTIVE IMPLEMENTATION OF THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT'

Juez Érick García Denuncia Amenazas e Intimidaciones Por El Caso Contra Jose Rubén Zamora (Directed by PrensaLibreOficial, 2025) <https://www.youtube.com/watch?v=-OWxeQCFcno> accessed 30 April 2025

Kowal JF, 'JUDICIAL SELECTION FOR THE 21st CENTURY' [2016] New York University School of Law

Kritzer HM, 'Impact of Judicial Elections on Judicial Decisions' (2016) 12 Annual Review of Law and Social Science 353

Krygier M, 'Rule of Law (and Rechtsstaat)' in James R Silkenat, James E Hickey Jr. and Peter D Barenboim (eds), *The Legal Doctrines of the Rule of Law and the Legal State (Rechtsstaat)* (Springer International Publishing 2014) <https://doi.org/10.1007/978-3-319-05585-5_4> accessed 15 March 2025

——, 'The Rule of Law and Its Rivals.' (2017) 9 Hague Journal on the Rule of Law 19

Lamer A, 'The Rule of Law and Judicial Independence: Protecting Core Values in Times of Change Ivan C. Rand Memorial Lecture' (1996) 45 University of New Brunswick Law Journal 3

Larkins CM, 'Judicial Independence and Democratization: A Theoretical and Conceptual Analysis' (1996) 44 The American Journal of Comparative Law 605

Lynn LE, 'Restoring the Rule of Law to Public Administration: What Frank Goodnow Got Right and Leonard White Didn't' (2009) 69 Public Administration Review 803

Mario Fuentes Destarac, 'ANÁLISIS DE LAS REFORMAS POLÍTICAS EN GUATEMALA' Instituto de Investigaciones Jurídicas UNAM

Melton J and Ginsburg T, 'Does De Jure Judicial Independence Really Matter?: A Reevaluation of Explanations for Judicial Independence' (2014) 2 Journal of Law and Courts 187

Ministerio Público, 'Informe Del Ministerio Público al Congreso de La República' <https://www.movimientoprojusticia.org.gt/images/archivos%202020/informeMP_FECI_al_Congreso_mayo2020.pdf> accessed 5 June 2025

Mistler-Ferguson S, 'Controversial Attorney General Outlasts Guatemala's Anti-Corruption Efforts' (*InSight Crime*, 18 May 2022) <http://insightcrime.org/news/controversial-attorney-general-outlasts-guatemalas-anti-corruption-efforts/> accessed 9 June 2025

Mónica Leonardo Segura, 'Aplicación de La Ley de Comisiones de Postulación 2009-2010' <https://www.movimientoprojusticia.org.gt/files/Aplicaci%C3%B3n%20de%20la%20Ley%20de%20Comisiones%20de%20Postulaci%C3%B3n%202009-2010.pdf> accessed 27 April 2025

Movimiento Pro Justicia, 'Informe Final Del Proceso de Elección de Magistrados de Las Cortes de Justicia 2024-2029' (2024) <https://movimientoprojusticia.org.gt/images/Archivos%202024/Informe%20final%20de%20la%20elecci%C3%B3n%20de%20magistrados%202024-2029.pdf> accessed 1 February 2025

Munck GL and Verkuilen J, 'Conceptualizing and Measuring Democracy: Evaluating Alternative Indices' (2002) 35 Comparative Political Studies 5

Nineth Montenegro, 'INICIATIVA QUE DISPONE APROBAR LEY DE DE COMISIONES DE POSTULACIÓN.' <https://www.congreso.gob.gt/assets/uploads/info_legislativo/iniciativas/Registro3997.pdf> accessed 27 April 2025

Ninth International Conference of American States, 'AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN' <https://www.oas.org/dil/access_to_information_human_right_American_Declaration_of_the_Rights_and_Duties_of_Man.pdf> accessed 26 April 2025

No-Ficción, 'Abelina, la redentora' (*No Ficción*, 22 January 2025) <https://no-ficcion.com/abelina-la-redentora/> accessed 2 April 2025

O'Donnell G, 'The Quality of Democracy: Why the Rule of Law Matters' (2004) 15 Journal of Democracy 32

Osegueda S, 'CSJ retira a Silvia de León como Jueza de Mayor Riesgo y la envía a juzgado de turno' (*La Hora*, 6 June 2025) <https://lahora.gt/nacionales/sosegueda/2025/06/06/csj-retira-a-silvia-de-leon-como-jueza-de-mayor-riesgo-y-la-envia-a-juzgado-de-turno/> accessed 9 June 2025

Peter D. Webster, 'Selection and Retention of Judges: Is There One "Best" Method?' (1995) 23 Florida State University Law Review 44

Postema GJ, 'Democracy, Rights, and Justice' in Gerald J Postema, *Law's Rule* (1st edn, Oxford University PressNew York 2023) <https://academic.oup.com/book/44615/chapter/378602001> accessed 24 January 2025

——, 'Executive Power Leashed: Crisis and Pardon' in Gerald J Postema (ed), *Law's Rule: The Nature, Value, and Viability of the Rule of Law* (Oxford University Press 2023) <https://doi.org/10.1093/oso/9780190645342.003.0012> accessed 15 February 2025

'Press Release 73/09 - IACHR Urges Transparent, Inclusive Process in Appointment of Judges in Guatemala' <https://cidh.oas.org/Comunicados/English/2009/73-09eng.htm?utm_source=chatgpt.com> accessed 28 April 2025

Raymond M. Kethledge, 'Hayek and the Rule of Law: Implications for Unenumerated Rights and the Administrative State' [2020] 13 NYU JL & Liberty

Raz J, 'The Rule of Law and Its Virtue' in Joseph Raz (ed), *The authority of law: Essays on law and morality* (Oxford University Press 1979) <https://doi.org/10.1093/acprof:oso/9780198253457.003.0011> accessed 15 March 2025

'RSF Denounces Judicial Harassment of Guatemalan Newspaper | RSF' (6 March 2023) <https://rsf.org/en/rsf-denounces-judicial-harassment-guatemalan-newspaper> accessed 30 April 2025

'Rule_of_law' <https://www.venice.coe.int/WebForms/pages/?p=02_Rule_of_law&lang=EN> accessed 1 February 2025

Russell PH and O'Brien DM, *Judicial Independence in the Age of Democracy: Critical Perspectives from around the World* (University Press of Virginia 2001)

Salvador USES, 'Section 353 Corrupt and Undemocratic Actors Report: 2023' (*U.S. Embassy in El Salvador*, 19 July 2023) <https://sv.usembassy.gov/section-353-corrupt-and-undemocratic-actors-report-2023/> accessed 30 April 2025

Scheppele KL, 'The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work' (2013) 26 Governance 559

'Section 353 Corrupt and Undemocratic Actors Report' (*United States Department of State*) <https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report-2022/> accessed 30 April 2025

Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 'Basic Principles on the Independence of the Judiciary' <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary> accessed 26 April 2025

Skaaning S-E, 'Measuring the Rule of Law' (2010) 63 Political Research Quarterly 449

Spanou C, 'Judicial Controls Over the Bureaucracy' in Calliope Spanou, *Oxford Research Encyclopedia of Politics* (Oxford University Press 2020) <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1729> accessed 15 March 2025

Special Rapporteur on the Independence of Judges and Lawyers, 'Visit to Guatemala - Preliminary Observations' <https://www.ohchr.org/sites/default/files/documents/issues/ijudiciary/statements/12052005-eom-sr-ijl-visit-guatemala-en.pdf> accessed 8 June 2025

Staton JK and Moore WH, 'Judicial Power in Domestic and International Politics' (2011) 65 International Organization 553

Sunstein CR, 'THE RULE OF LAW' (2024) 4 American Journal of Law and Equality 498

swissinfo.ch SWI, 'La Corte Suprema de Guatemala rechaza la apelación del periodista encarcelado Zamora' (*SWI swissinfo.ch*, 28 March 2025) <https://www.swissinfo.ch/spa/la-corte-suprema-de-guatemala-rechaza-la-apelación-del-periodista-encarcelado-zamora/89077048> accessed 10 June 2025

Tamanaha BZ, *A Realistic Theory of Law* (Cambridge University Press 2017) <https://www.cambridge.org/core/books/realistic-theory-of-law/B02EE7FBCFB66D61A049B59BB474EB2D> accessed 15 March 2025

'The Case against Journalist José Rubén Zamora Was Built in 72 Hours' (*The Case against Journalist José Rubén Zamora Was Built in 72 Hours*) <https://elfaro.net/en/202208/centroamerica/26331/The-Case-against-Journalist-Jos%C3%A9-Rub%C3%A9n-Zamora-Was-Built-in-72-Hours.htm> accessed 30 April 2025

The Human Rights Committee, 'Communication No. 263/1987, M. González Del Río v. Perú'

Tiede LB, 'Rebuilding the Rule of Law in the Era of Democratic Backsliding' (2025) 17 Hague Journal on the Rule of Law 31

Tom Bingham, *The Rule of Law* (Penguin Books 2011) <https://www.advisory21.com.mt/wp-content/uploads/2022/04/The-Rule-of-Law-PDFDrive-.pdf> accessed 15 March 2025

United Nations Economic and Social Council, 'The Bangalore Principles of Judicial Conduct' <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf> accessed 10 January 2025

United Nations Human Rights Committee, 'Concluding Observations on the Fourth Periodic Report of Guatemala' (2018) CCPR/C/GTM/CO/4

——, 'General Comment No. 32 Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial' CCPR/C/GC/32

United Nations Human Rights Council, 'Report of the Working Group on the Universal Periodic Review. Guatemala' (2023) A/HRC/53/9

Urrejola A, Delgadillo AL and Blanco S, 'Obstáculos y desafíos para la independencia judicial en Guatemala' (Panel de Personas Expertas Independientes (PEI-GT) 2024)

Versteeg M and Ginsburg T, 'Measuring the Rule of Law: A Comparison of Indicators' (2017) 42 Law & Social Inquiry 100

VI IBEROAMERICAN SUMMIT OF PRESIDENTS OF SUPREME COURTS AND TRIBUNALS OF JUSTICE, 'Statute of the Iberoamerican Judge'

Villagrán de León F, 'Thwarting the Guatemalan Coup' (1993) 4 Journal of Democracy 117

VIP W com, 'Baldetti: Alrededor de una cama se discutió la elección de Cortes en 2004' (*La Hora*, 19 September 2014) <https://lahora.gt/nacionales/wpcomvip/2014/09/19/baldetti-alrededor-de-una-cama-se-discutio-la-eleccion-de-cortes-en-2004/> accessed 5 June 2025

Volcansek ML, 'Exporting the Missouri Plan: Judicial Appointment Commissions' (2009) 74 Missouri Law Review

Waldron J, ‘The Rule of Law and the Importance of Procedure’ (2011) 50 Nomos 3

Ware SJ, ‘IDEOLOGICAL COMPETITION OVER STATE SUPREME COURT SELECTION METHODS’ 87 Albany Law Review

Webber J, ‘A Democracy-Friendly Theory of the Rule of Law’ (2024) 16 Hague Journal on the Rule of Law 339

‘WJP Rule of Law Index’ <https://worldjusticeproject.org/rule-of-law-index> accessed 26 January 2025

Working Group on Arbitrary Detention, ‘Opinion No. 7/2024, Concerning José Rubén Zamora Marroquín (Guatemala)*’

C-72/15 [2017] European Court of Justice ECLI:EU:C:2017:236

Caso Apitz Barbera y otros (“Corte Primera de lo Contencioso Administrativo”) Vs Venezuela Excepción Preliminar, Fondo, Reparaciones y Costas (Corte Interamericana de Derechos Humanos)

Caso del Tribunal Constitucional Vs Perú [2001] Corte Interamericana de Derechos Humanos Serie C No. 71

Caso Maldonado Ordóñez Vs Guatemala Excepción Preliminar, Fondo, Reparaciones y Costas [2016] Corte Interamericana de Derechos Humanos Serie C No. 311

Caso Reverón Trujillo Vs Venezuela Excepción Preliminar, Fondo, Reparaciones y Costas [2009] Corte Interamericana de Derechos Humanos Serie C No. 197

Expediente 1169-2020 (Corte de Constitucionalidad)

African Charter on Human and Peoples’ Rights 1981

European Convention on Human Rights 1950

Inter-American Convention on Human Rights 1969

Ley en Materia de Antejuicio [85–2002]

Constitución Política de la República de Guatemala 1985

International Covenant on Civil and Political Rights 1966

Ley de Comisiones de Postulación 2009

Ley de la Carrera Judicial 2016

3300-2018 y 3387-2018 (Corte de Constitucionalidad de Guatemala)