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Why Reforms Alone Are Insufficient to Strengthen the Judiciary: A Case Study of Guatemala's Judicial Selection Processes

BY MIRTE POSTEMA*

As the Cold War was coming to an end, Central American countries emerged from decades-long armed conflicts by signing peace agreements and initiating transitions to civilian rule.¹ The imperative of strengthening democratic institutions spurred the disbursement of over 200 million dollars for judicial reform projects,² which mostly focused on creating new infrastructure and

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1. The Esquipulas Agreements, the first of which (*Declaración de Esquipulas*) was signed on May 5, 1986, and the second (*Declaración de Esquipulas II*) on August 7, 1987, established Central American presidents' commitment to end the armed conflicts in the region and establish a "stable and lasting peace" ("*paz firme y duradera*"). Each country followed its own process. In Guatemala, the war was ended by a series of peace agreements, the last one of which (*Acuerdo sobre el cronograma para la implementación, cumplimiento y verificación de los acuerdos de paz* [*Agreement about the timeframe for the implementation, observance and verification of the peace agreements*]) was signed on December 29, 1996.

2. Between 1992 and 2011, the World Bank and the Inter-American Development Bank (IDB) financed justice reform projects in Central America for US\$229,541,646. The vast majority of these projects were loans. These numbers do not account for projects executed with funds from international cooperation agencies, like the U.S. Agency for International Development. LUIS PÁSARA, INTERNATIONAL SUPPORT FOR JUSTICE REFORM IN LATIN AMERICA: WORTHWHILE OR WORTHLESS? 3, 4 (2012).

laws.³ However, the initial promise of democracy has been substituted for a general sense of despair: despite these considerable investments, no clear progress has been made in strengthening the judiciary⁴ and public confidence in judicial institutions remains extremely low.⁵

Guatemala is a stark example. Loans from financial institutions alone amounted to the spending of over 60 million dollars on judicial reform projects in the last decades.⁶ Nevertheless, public trust in the country's judicial institutions has only declined: in 2013, a combined total of 71.2% of Guatemalans indicated to have little to no confidence in the judiciary, compared with 56.3% in 1997.⁷ Although the initiatives undertaken have shown some positive results – specialized laws⁸ and courts⁹ were created, and more recently, a United Nations-backed (“UN”) commission and the Public Ministry conducted important investigations into organized crime and corruption¹⁰ – it is important to note that the judiciary's structural

3. See Pásara, *supra* note 2; LINN HAMMERGREN, ENVISIONING REFORM: IMPROVING JUDICIAL PERFORMANCE IN LATIN AMERICA (2007).

4. *Id.*

5. In the public opinion polls conducted by Latinobarómetro in 2013, a combined total of 79.2% of Central Americans (counting inhabitants of Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama; data about Belize was not available) indicated that they had little to no trust in the judiciary. *Análisis Online [Online Analysis]*, LATINOBARÓMETRO, <http://www.latinobarometro.org/latOnline.jsp> (select countries, year, “Confianza en las instituciones nacionales” [Trust in national institutions], “Grado de confianza en instituciones-personas: El poder judicial” [Level of trust in institutions-persons: the judiciary]) (last visited Sept. 14, 2015).

6. Between 1992 and 2011, the World Bank and the IDB financed justice reform projects in Guatemala for US\$63,627,000: the largest amount of all Central American countries. If projects financed by international cooperation agencies would be taken into account, this number would be even higher. Pásara, *supra* note 2, at 3.

7. *Análisis Online [Online Analysis]*, LATINOBARÓMETRO, <http://www.latinobarometro.org/latOnline.jsp> (select “Guatemala,” year, “Confianza en las instituciones nacionales” [Trust in national institutions], “Grado de confianza en instituciones-personas: El poder judicial” [Level of trust in institutions-persons: the judiciary]) (last visited Sept. 14, 2015).

8. For instance, the law that regulates the selection processes for judicial authorities. *Ley de Comisiones de Postulación* [Nominating Commissions Law], *Decreto 19-2009* [Decree 19-2009] June 2, 2009 (Guat.).

9. For instance, the specialized courts for violence against women. see MINISTERIO PÚBLICO DE GUATEMALA [PUBLIC MINISTRY OF GUATEMALA], *Inauguran Juzgado de Turno de Primera Instancia Penal de Delitos de Femicidio* [Inauguration of Criminal Court of First Instance for Crimes of Femicide], Nov. 23, 2012, <https://www.mp.gob.gt/2012/11/23/inauguran-juzgado-de-turno-de-primera-instancia-penal-de-delitos-de-femicidio/>. (last visited Sept. 14, 2015).

10. See Azam Ahmed, *Guatemala's Corruption Investigations Make Swift Strides*, N.Y. TIMES (Aug. 25, 2015), <http://www.nytimes.com/2015/08/26/world/americas/guatemalas->

problems remain largely unaddressed. Consequently, notwithstanding the implementation of certain judicial reforms, powerful forces such as political actors, the business community, and criminal organizations continue to exercise their influence over the courts. Guatemala's selection processes for judicial authorities is a striking example of this unfortunate reality.

This Article draws upon the author's work as an observer and civil society actor in Guatemala's 2014 judicial selection processes.¹¹ It first provides a characterization of Guatemala's recent history, after which it summarizes the normative framework that regulated the selection processes. It then continues to discuss the intricacies of how the selection bodies, despite formally complying with applicable laws, manipulated these processes. This Article concludes that, notwithstanding the implementation of judicial reforms that created detailed norms for a transparent and merit-based selection, powerful actors have managed to manipulate Guatemala's judicial selection processes and counted on the endorsement of judicial and political actors for doing so. This disregard for legality has serious consequences for the rule of law.

A number of lessons might be drawn from Guatemala's experience that could be relevant to other countries – in particular, those emerging from conflict or authoritarian rule, and where the effective power of *de facto* actors could constitute an obstacle to implementing effective reforms. One is that where powerful entrenched interests interfere with the adequate functioning of public institutions, reforms are not likely to be successful if such manipulations remain unaddressed. Secondly, in such contexts, isolated reforms (i.e., those only focusing on the judiciary rather than on the system of governance of a whole) will likely be insufficient to effect meaningful changes in practice. Nevertheless, thirdly, the recent successes of the International Commission against Impunity in Guatemala (CICIG) in investigating and disbanding parallel powers in the country suggest that a further examination of CICIG's experience is advisable to explore whether the establishment of such an internationally supported entity should be recommended as a first step to countries facing similar challenges.

corruption-investigations-make-swift-strides.html (last visited Sep. 14, 2015).

11. For an overview of this work, see DUE PROCESS OF LAW FOUNDATION, *DPLF's Work in the Judicial Selection Processes in Guatemala*, <http://www.dplf.org/en/news/dplfs-work-judicial-selection-process-guatemala> (last visited Sept. 14, 2015).

I. Guatemala: Social Exclusion, Conflict, Parallel Powers

Guatemala is located in Central America, bordered by Mexico, Belize, Honduras, and El Salvador, and has some 15 million inhabitants. The country faces considerable challenges: almost 30% of Guatemala's population lives on \$2 USD a day or less,¹² 71% of its rural population lives in conditions of poverty,¹³ and income distribution is very unequal.¹⁴ In addition to this, the UN Office on Drugs and Crime (UNODC) indicated that drug trafficking routes increasingly go through Guatemala's border regions,¹⁵ and the 2013 Global Study on Homicide reported that there were 6,025 intentional homicides in the country that year, for a count of 39.9 per 100,000 inhabitants.¹⁶ This is extremely high: The global average was 6.2,¹⁷ Iraq had 8, Mexico had 21.5, and the Netherlands had 0.9 intentional homicides per 100,000 inhabitants.¹⁸

These kinds of problems are not new for the country. In 1996, Guatemala emerged from a thirty-six year long armed conflict that, according to the UN-sponsored truth commission for Guatemala, the Commission for Historical Clarification (*Comisión para el Esclarecimiento Histórico*, CEH), had its origins in the "profound exclusion, antagonism and conflict"¹⁹ that characterized Guatemala's "economic, social, and cultural relations (. . .)—a reflection of its colonial history."²⁰ The conflict had been fueled by the Cold War²¹

12. World Bank, *Poverty headcount at \$2 a day (PPP) (% of population)*, <http://data.worldbank.org/indicator/SI.POV.2DAY/countries> (last visited Sep. 14, 2015).

13. World Bank, *Rural poverty headcount ratio at national poverty lines (% of rural population)*, <http://data.worldbank.org/indicator/SI.POV.RUHC/countries> (last visited Sept. 14, 2015).

14. World Bank numbers from 2011 estimated Guatemala's Gini index to be 52.4. See World Bank, *GINI index (World Bank estimate)*, <http://data.worldbank.org/indicator/SI.POV.GINI> (last visited Sept. 14, 2015).

15. See UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC), TRANSNATIONAL ORGANIZED CRIME IN CENTRAL AMERICA AND THE CARIBBEAN: A THREAT ASSESSMENT (2012).

16. See UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC), GLOBAL STUDY ON HOMICIDE 2013 (2014) 126, https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf (last visited Sept. 14, 2015).

17. *Id.* at 12.

18. *Id.* at 122-32.

19. COMMISSION FOR HISTORICAL CLARIFICATION (CEH), GUATEMALA. MEMORY OF SILENCE. TZ'INIL NA'TA'BAL. CONCLUSIONS AND RECOMMENDATIONS (1999), concl. 3.

20. *Id.*

and led to the deaths of over 200,000 people,²² 83% of whom were Mayan indigenous peoples.²³ The CEH concluded that 93% of all acts of violence could be attributed to agents of the State, while guerrilla groups were responsible for some 3%.²⁴ Moreover, the CEH reached the conclusion that genocide had been committed²⁵ and that the judicial system had tolerated—and in some cases facilitated—acts of violence.²⁶ The judiciary had denied *habeas corpus*, consistently interpreted the law in favor of the country's authorities, demonstrated indifference to the torture of detainees, and restricted the right to defense.²⁷ It had contributed to creating “a climate of terror.”²⁸

When discussing contemporary Guatemala, it is important to be mindful of another element to this already complex scenario: the presence of “illegal clandestine security apparatuses” (*cuerpos ilegales y aparatos clandestinos de seguridad*, CIACS).²⁹ CIACS mostly originated in State intelligence agencies that were involved in counter-insurgency efforts during the armed conflict, such as the Presidential Guard (*Estado Mayor Presidencial*, EMP), as well as in the then-present paramilitary forces.³⁰ The intelligence agencies were so powerful—in part, because of their strong links to other important actors in Guatemalan society³¹—that a special section in the Peace Accords established the necessity of their restructuring and

21. *Id.*, concl. 13, 14, 18.

22. *Id.*, concl. 2.

23. *Id.* at 85.

24. COMMISSION FOR HISTORICAL CLARIFICATION, *Id.* concl. 128.

25. *Id.*, concl. 108-123.

26. *Id.*, concl. 10.

27. *Id.*, concl. 95.

28. *Id.*, concl. 56.

29. See generally LUIS JORGE GARAY SALAMANCA ET AL., NARCOTRÁFICO, CORRUPCIÓN Y ESTADOS. CÓMO LAS REDES ILÍCITAS HAN RECONFIGURADO LAS INSTITUCIONES EN COLOMBIA, GUATEMALA Y MÉXICO [DRUG TRAFFICKING, CORRUPTION AND STATES. HOW ILLEGAL NETWORKS HAVE RECONFIGURED THE INSTITUTIONS IN COLOMBIA, GUATEMALA AND MEXICO] (2012).

30. See SUSAN C. PEACOCK & ADRIANA BELTRÁN, WASHINGTON OFFICE ON LATIN AMERICA (WOLA), HIDDEN POWERS: ILLEGAL ARMED GROUPS IN POST-CONFLICT GUATEMALA AND THE FORCES BEHIND THEM, EXECUTIVE SUMMARY (2003), <http://www.wola.org/sites/default/files/downloadable/Citizen%20Security/past/HiddenPowers%20%20Exec.%20Summary.pdf>. Also see CIACS, InSight Crime, <http://www.insightcrime.org/guatemala-organized-crime-news/ciacs> (last visited Sept. 14, 2015).

31. Peacock & Beltrán, *supra* note 30, at 4.

regulation.³² However, as the UN Verification Mission in Guatemala (MINUGUA), established to monitor the implementation of the Peace Accords, observed in 2002:

Commitments in the peace agreements that would give the State mechanisms to control [CIACS], such as strengthening police and judicial investigative capacities, civilian intelligence and congressional controls over intelligence agencies, have not been implemented. Shielded by impunity, these structures have regrouped and are pursuing illegal business interests and political influence. With the State no longer committing human rights abuses as a matter of policy, these groups' relations to the Government apparatus are diffuse, although they still hold some key positions and maintain informal links to police, justice officials and military intelligence.³³

It is important to note that the peace agreements, which were meant to address the structural issues that led to the conflict³⁴ and included a number of reforms to strengthen the judiciary,³⁵ were never fully implemented.³⁶ Even though several important new laws

32. ACUERDO SOBRE FORTALECIMIENTO DEL PODER CIVIL Y FUNCIÓN DEL EJÉRCITO EN UNA SOCIEDAD DEMOCRÁTICA [AGREEMENT ON THE STRENGTHENING OF CIVILIAN POWER AND ROLE OF THE ARMED FORCES IN A DEMOCRATIC SOCIETY] (Sept. 19, 1996), arts. 46-54, <http://www.guatemalaun.org/bin/documents/Acuerdo%20fortalecimiento%20poder%20civil%20y%20funcion%20del%20ej%C3%A9rcito.pdf>, translated in United Institute for Peace, Peace Agreements General Collection (Nov. 20, 1998), http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/guat_960919.pdf [hereinafter Agreement on the Strengthening of Civilian Power].

33. U.N. General Assembly, *Thirteenth Report on Human Rights of the United Nations Verification Mission in Guatemala*, A/57/336 (Aug. 22 2002), at para. 52 [hereinafter *MINUGUA Thirteenth Report*]. See also INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA (CICIG), *TERCER AÑO DE LABORES: RESUMEN EJECUTIVO 3* (2010), http://www.cicig.org/uploads/documents/informes/INFOR-LABO_DOC06_20100901_ES.pdf (last visited Sept. 14, 2015).

34. See LUIS PÁSARA, PAZ, ILUSIÓN Y CAMBIO EN GUATEMALA: EL PROCESO DE PAZ, SUS ACTORES, LOGROS Y LÍMITES [PEACE, HOPE AND CHANGE IN GUATEMALA: THE PEACE PROCESS, ITS ACTORS, ACHIEVEMENTS AND LIMITS] 16-18 (2003).

35. AGREEMENT ON THE STRENGTHENING OF CIVILIAN POWER, *supra* note 32, arts. 8-17.

36. See MINUGUA *Thirteenth Report*, *supra* note 33, at para 52; U.N. General Assembly, *United Nations Verification Mission in Guatemala*, A/59/746 (2004). See also Pásara, *supra* note 34.

were adopted,³⁷ no real advances were made in addressing the structural problems affecting the country's judicial institutions. The expert Thomas Carothers may provide a possible explanation: "[w]hat [those implementing reforms] tend not to ask is *why* the judiciary is in a lamentable state, whose interests its weakness serves, and whose interests may temporarily be threatened or bolstered by reforms. The assistance may temporarily alleviate some of the symptoms, but the underlying systemic pathologies remain."³⁸

As a result, the impact of judicial reforms has been limited, and Carothers' 1999 observation remains valid. Most of the entrenched social and political problems that have marked life for decades are still very much with Guatemalans: a tremendously skewed distribution of wealth in favor of a small, self-protective business class; an indigenous majority that is profoundly marginalized; widespread poverty; incoherent, shifting political parties; a weak civil society; and powerful security forces reluctant to submit to political authority.³⁹

The practical consequences of this reality become clear when we examine Guatemala's judicial selection processes in more detail. Even though norms have been created that provide the elements necessary to conduct transparent and merit-based selection processes, the influence of powerful actors such as political forces, the business community, and CIACS in the selection bodies has meant that although these rules are complied with formally, they are not respected in practice.

II. Judicial Selection Processes in Guatemala

The judiciary is essential for the functioning of any modern, democratic society. It upholds the rule of law and is a check on other State powers.⁴⁰ The quality of the administration of justice is determined, to an important extent, by the capacity of its individual

37. For example, the *Ley Marco del Sistema Nacional de Seguridad* [Framework Law for the National System of Security] (Mar. 11, 2008) (Guat.).

38. THOMAS CAROTHERS, *AIDING DEMOCRACY ABROAD. THE LEARNING CURVE* 101 (Washington 1999).

39. *Id.* at 75.

40. See generally SHIMON SHETREET ET AL., *THE CULTURE OF JUDICIAL INDEPENDENCE. CONCEPTUAL FOUNDATIONS AND PRACTICAL CHALLENGES* (Nijhoff Publishers 2012).

members. This means that the existence of judicial selection processes aimed at finding those who are most qualified is essential to building a strong, independent judiciary.⁴¹ This is even more relevant when judicial authorities are selected, especially where magistrates have considerable administrative powers in addition to their judicial ones and are thus able to influence lower judges' careers, as is common in Latin America.⁴²

Despite the importance of solid selection processes of judicial authorities, detailed regulation of these processes is often lacking. As a result, appointing authorities have extremely broad discretionary powers and tend to base their decisions on criteria of political convenience rather than on the merits of the candidates.⁴³ Guatemala is an interesting case: unlike many other countries, it does have a detailed law that provides the necessary elements for transparent and merit-based judicial selection processes, but an examination of these processes reveals that this sophistication has not stopped the interference of powerful actors.

Both lawful actors, such as the government and the business community, and illicit entities, like CIACS, have a strong interest in controlling the judiciary. In the first place, the judiciary is crucial to protecting and legitimizing these actors' current activities and interests.⁴⁴ Secondly, apart from CIACS, a number of key actors in the political and business community had their origins in the armed

41. See INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, GUARANTEES FOR THE INDEPENDENCE OF JUSTICE OPERATORS: TOWARDS STRENGTHENING ACCESS TO JUSTICE AND THE RULE OF LAW IN THE AMERICAS (2013) OEA/SER.L/V/II.DOC.44, 56. See also DUE PROCESS OF LAW FOUNDATION, GUIDELINES FOR A TRANSPARENT AND MERIT-BASED SYSTEM FOR THE APPOINTMENT OF HIGH-LEVEL JUDGES (2014), http://www.dplf.org/sites/default/files/guidelines_selection_of_highlevel_judges.pdf (last visited Sept. 14, 2015).

42. See UN Human Rights Council, Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, A/HRC/23/43/Add.4, ¶ 79; Inter-American Commission on Human Rights, *supra* note 41, at ¶ 57. For an overview of judicial selection and appointment processes in Latin America, see Luis Pásara & Marco Feoli, *Prevalece la selección política en nombramientos judiciales en América Latina* [Political selection prevails in judicial appointments in Latin America] (2013) http://dplf.org/sites/default/files/pasara_y_feoli_prevalece_la_seleccion_politica.pdf (last visited Sept. 14, 2015).

43. See INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *supra* note 41, at ¶ 57; Pásara & Feoli, *supra* note 42.

44. See Martín Rodríguez Pellecer, Andres Zepeda & Rodrigo Véliz, *Las 5 claves para entender la disputa por la justicia* [The 5 keys to understanding the fight over the justice sector], NÓMADA (Apr. 22, 2014) <https://nomada.gt/las-claves-para-entender-la-disputa-por-la-justicia-2/>.

conflict and had (and often continue to have) ties to the armed forces.⁴⁵ Some of these might want to ensure impunity for crimes of the past, for which controlling the judiciary is essential.

This means that in 2014, when a number of crucial actors in the Guatemalan justice system were to be appointed, much was at stake. Between February and May of 2014, a process was implemented to appoint a new Attorney General to a four-year term. Between July and November of 2014, the selection processes for the thirteen justices of the Supreme Court and for the 128 judges of the country's Court of Appeals took place concurrently, albeit in different selection commissions.⁴⁶ These judges would be appointed to five-year terms.⁴⁷

A. The Normative Framework: Ley de Comisiones de Postulación (Nominating Commissions Law)

In an attempt to depoliticize the judicial selection processes,⁴⁸ Guatemala selects its Attorney General, Supreme Court, and Court of Appeals by means of *Comisiones de Postulación* (Nominating Commissions, "CdPs").⁴⁹ Other authorities, with the exception of the

45. See Martín Rodríguez Pellecer, *Los militares y la élite, la alianza que ganó la guerra [The military and the elite, the alliance that won the war]*, PLAZA PÚBLICA (Aug. 21, 2013), <http://www.plazapublica.com.gt/content/los-militares-y-la-elite-la-alianza-que-gano-la-guerra>.

46. See Mirte Postema, 2014, *año clave para la justicia en Guatemala [2014, a crucial year for justice in Guatemala]*, DPLFBLOG JUSTICIA EN LAS AMÉRICAS (Mar. 19, 2014), <http://dplfblog.com/2014/03/19/2014-ano-clave-para-la-justicia-en-guatemala/>; Mirte Postema, *Righting Guatemala's Broken Judicial Selection Process*, AMERICAS QUARTERLY BLOG (Oct. 16, 2014), <http://www.americasquarterly.org/content/righting-guatemalas-broken-judicial-selection-process> [hereinafter: Postema, *Guatemala's Judicial Selection*].

47. It is important to note that such short periods of tenure are problematic for judicial independence *per se*, because they do not sufficiently guarantee job stability. See Leandro Despouy, (Special Rapporteur on the independence of judges and lawyers), *Report*, A/HRC/11/41 (March 24, 2009), at ¶ 54; IACHR INDEPENDENCE OF JUSTICE OPERATORS, *supra* note 41, at ¶¶ 83, 84.

48. *Acuerdo Legislativo Número 18-93* [Legislative Agreement Number 18-93] (November 17, 1993) (Guat.); *Ley de Comisiones de Postulación, Decreto 19-2009* [Law on Nominating Commissions, Decree No. 19-2009] (June 2, 2009) (Guat.). Before, the Attorney General was directly appointed by the President, and judges were appointed by Congress. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA [POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA], Sept. 15, 1965, arts. 221, 242, 253. (Guat.).

49. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA [POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA] May 31, 1985 (amended Nov. 17, 1993), arts. 215, 217, 251 (Guat.); *Ley de Comisiones de Postulación [Nominating Commissions*

Constitutional Court,⁵⁰ are selected by mechanisms similar to CdPs, to which the principles enshrined in the Nominating Commissions Law (LCP) also apply.⁵¹

CdPs are *ad hoc* bodies that are mandated by the Constitution to establish a shortlist of candidates from which Congress – or, in the case of the Attorney General, the President – then makes the appointments from this list.⁵² The deans of the country's law schools form the core of CdPs.⁵³ When judges are selected, other members of the legal community, like representatives of the bar association and of judges, also take part in CdPs.⁵⁴

Law], Decreto 19-2009 [Decree 19-2009] June 2, 2009 (Guat.). See also MÍCHEL ANDRADE, IMPUNITY WATCH, NOMINATING COMMISSIONS AND JUDICIAL INDEPENDENCE IN GUATEMALA (2014), available at http://www.impunitywatch.org/docs/PB_Comisiones_version_ingles.pdf (last visited Oct. 9, 2015).

50. The Presidency, Congress, Supreme Court, San Carlos University (the national public university) and the business community directly appoint one judge each to the Constitutional Court. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA [POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA] May 31, 1985 (amended Nov. 17, 1993), art. 269 (Guat.).

51. The *Procurador de los Derechos Humanos* [Human Rights Ombudsman] (PDH) and the Director of the *Instituto de la Defensa Pública Penal* [Public Defender's Office] (IDPP), for instance, are elected by Congress, but the shortlist for the PDH is established by a Congressional Commission (CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA [POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA] May 31, 1985 (amended Nov. 17, 1993), art. 273 (Guat.), and the shortlist for the Director of the IDPP is drawn up by the IDPP Council (*Ley del Servicio Público de la Defensa Pública Penal* [Law on the Public Service of the Public Defender's Office], Decreto 129-97 [Decree 129-97], Dec. 5, 1997, arts. 10, 23 (Guat.)). These selection bodies are obliged to apply the principles enshrined in the LCP (*Ley de Comisiones de Postulación* [Nominating Commissions Law], Decreto 19-2009 [Decree 19-2009] June 2, 2009 (Guat.), art. 1).

52. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA [POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA] May 31, 1985 (amended Nov. 17, 1993), arts 215, 217, 251 (Guat.).

53. This was not the first time for Academia to have an important say in the justice system. During the dictatorship of General Ríos Montt (1982-1983), "the Constitution was suspended and the magistrates of the Supreme Court were replaced by the deans of private universities," Rachel Sieder & Patrick Costello, *Judicial Reform in Central America: Prospects for the Rule of Law*, in Rachel Sieder (ed.), CENTRAL AMERICA: FRAGILE TRANSITION 195 (1996).

54. The CdP for the Attorney General consists of Guatemala's (currently 11) law school deans, the president of the Guatemalan bar association (*Colegio de Abogados y Notarios de Guatemala*, CANG), the president of the bar association's disciplinary body (*Tribunal de Honor*), and the president of the Supreme Court, who presides the CdP. The CdPs for the Supreme Court and Court of Appeals are much larger with a total of 34 members: the 11 law school deans, and equal numbers of representatives of the bar association and of judges, elected by their peers. In the CdP for the Supreme Court, representatives of Court of

In 2009, following significant UN and civil society involvement,⁵⁵ a relatively detailed legal framework for the operation of these commissions was adopted: the *Ley de Comisiones de Postulación* (Nominating Commissions Law, “LCP”).⁵⁶ The Guatemalan Constitution establishes that all public offices are awarded on the basis of capacity, aptitude, and honesty,⁵⁷ and that judges need to be “of recognized honorability” (*de reconocida honorabilidad*).⁵⁸

The LCP's most important features are that prior to each selection process, CdPs are obliged to establish a profile and a grading table according to which candidates' ethical, academic, professional, and personal qualities (“*proyección humana*”), like vocation and leadership, are evaluated.⁵⁹ CdPs are required to verify applicants' qualifications⁶⁰ and can decide to interview them.⁶¹ The public can submit observations if it considers certain candidates to be unqualified.⁶² Moreover, all CdP meetings and evaluations are

Appeals judges participate, and when Court of Appeals judges are selected, the representatives of judges are Supreme Court justices. These commissions are presided by a university rector, also elected by his or her peers. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA [POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA] May 31, 1985 (amended Nov. 17, 1993), arts. 215, 217 (Guat.).

55. See Leandro Despouy (Special Rapporteur on the independence of judges and lawyers), *Report, Addendum, Mission to Guatemala* (Oct. 1, 2009) A/HRC/11/41/Add.3; Helen Mack, *Desafíos y retos de las Comisiones de Postulación (Antecedentes de la Ley de Comisiones de Postulación)* [Challenges and threats for Nominating Commissions (History of the Law on Nominating Commissions)], text of presentation at Foro sobre Ley de Comisiones de Postulación [Forum about Nominating Commissions Law], June 2009, available at <http://eleccionmagistrados.guatemalavisible.org/index.php/informacion/39> (last visited Sept. 14, 2015).

56. *Ley de Comisiones de Postulación* [Nominating Commissions Law], *Decreto 19-2009* [Decree 19-2009] June 2, 2009, art. 2 (Guat.).

57. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA [POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA] May 31, 1985 (amended Nov. 17, 1993), art. 113 (Guat.).

58. *Id.* art. 207.

59. *Ley de Comisiones de Postulación* [Nominating Commissions Law], *Decreto 19-2009* [Decree 19-2009] June 2, 2009, art. 12 (Guat.).

60. *Id.* art. 18.

61. *Id.* art. 19.

62. *Id.* art. 20. See Comisión de Postulación para Magistrados de la Corte Suprema de Justicia [CdP for Supreme Court Justices], *Criterios para la evaluación de impedimentos contra los aspirantes a Magistrados de la Corte Suprema de Justicia* [Criteria for the evaluation of impediments against applicants to the Supreme Court], http://guatemalavisible.net/index.php?option=com_k2&view=item&task=download&id=362_6eaec4bfdb7752e5e2880a9f6587747d&Itemid=124. For a list of the challenges filed by the public against candidates for the Court of Appeals, see Comisión de Postulación de la Corte de Apelaciones y

public. The meetings are recorded in audio and video format, the resulting documents remain accessible,⁶³ and each CdP is required to “opportunistically inform” the public of its actions.⁶⁴

The *Corte de Constitucionalidad* (Constitutional Court, “CC”) further bolstered the standards applicable to the judicial selection processes. In 2010, it determined that CdPs could not limit themselves to grading basic competencies, but that they are required to analyze and discuss the qualifications of applicants.⁶⁵ Furthermore, although CdPs should not award a grade for honorability (*reconocida honorabilidad*), they are required to evaluate whether a candidate is deemed honorable.⁶⁶ Lastly, in a decision directly concerning the 2014 selection processes, the CC obligated CdPs to expressly establish whether a candidate fit the previously established profile, to conduct interviews to evaluate the extent of his or her abilities, and to indicate the reasons why a person ultimately was, or was not, included on a CdP’s shortlist.⁶⁷

One might think that with such a framework, transparent and merit-based selection processes would be guaranteed. There are autonomous selection commissions composed of legal scholars and practitioners who evaluate candidates’ qualifications following a clearly established, transparent process. However, a closer look at how these commissions have functioned proves otherwise.

otros Tribunales Colegiados de igual categoría [CdP for the Court of Appeals and other Collegiate Tribunals of equal hierarchy], *Listado de postulantes que se les notificó denuncias y/o señalamientos* [List of applicants who were notified of complaints and/or observations], http://guatemalavisible.net/index.php?option=com_k2&view=item&task=download&id=417_3276a78fa4e3133bc3df2982768042a4&Itemid=124.

63. *Ley de Comisiones de Postulación* [Nominating Commissions Law], *Decreto 19-2009* [Decree 19-2009] June 2, 2009 (Guat.), art. 9.

64. *Id.* at art. 2.

65. Corte de Constitucionalidad [Constitutional Court], June 10, 2010, Expedientes acumulados Números 1477, 1478, 1488, 1602 and 1630-2010 [Joint files Numbers 1477, 1478, 1488, 1602 and 1630-2010] at 7 (Guat.).

66. Corte de Constitucionalidad [Constitutional Court], Aug. 24, 2010, Expediente Número 942-2010 [File Number 942-2010] (Guat.).

67. Corte de Constitucionalidad [Constitutional Court], June 13, 2014, Expediente Número 2143-2014 [File Number 2143-2014] (Guat.). See also Mirte Postema, *Constitutional Court of Guatemala strengthens judicial selection rules*, DPLFBLOG JUSTICIA EN LAS AMÉRICAS (July 7, 2014), <https://dplfblog.files.wordpress.com/2014/07/blog-post-cc-2143-2014-english.pdf> (last visited Sept. 14, 2015).

B. Problems in Practice: Infiltration by Powerful Actors Leads to Disregard for Legality

There are a number of issues with the normative framework that affect the workability of the CdP model. For example, the excessive size of the CdPs for the selection of the Supreme Court and Court of Appeals judges, and the fact that there is no necessary relation between the grade a candidate receives and his or her inclusion on the shortlist. As a result, commissioners can simply vote for those with the lowest, instead of the highest, qualifications. Another problem is that only the legal sector participates in the selection of judicial authorities. This restricts the process to a small, closed community, which results in uncritical assessments and influence peddling. Additionally, the requirement that all CdP meetings are public may be ineffective: Issues of importance tend to be debated in substance during the frequent recesses that CdPs take, rather than during the public meetings. However, although these issues should be remedied, those that most undermine the effectiveness of the selection processes are of a practical nature.

The essence of the problem is that the creation of a normative framework, however solid and transparent it might be, does not automatically lead to a change in practice. This is especially true when powerful actors might see their interests threatened.⁶⁸ Indeed, the experience of Guatemala's CdPs demonstrates that it is possible for selecting authorities to provide a veneer of legality to such processes by complying formally with the law, while disregarding its purpose. In the 2014 judicial selection processes, there were a number of factors that contributed to this manipulation. Some factors include the permeability of the commissions, the abuse of the margins of discretion in the LCP, the endorsement of these practices by judicial and political authorities, and the lack of significant social or political consequences to these violations. As a result, different powerful actors such as political parties, the business community, and organized crime managed to achieve influence in the selection processes.

68. *See generally* GUILLERMO O'DONNELL, COUNTERPOINTS: SELECTED ESSAYS ON AUTHORITARIANISM AND DEMOCRATIZATION 180-82 (1999); *see also* GUILLERMO O'DONNELL, DISSONANCES: DEMOCRATIC CRITIQUES OF DEMOCRACY 119 (2007).

1. *Permeability of CdPs*

The problems with Guatemala's judicial selection processes start with the composition of CdPs. Although these commissions were established to ensure objective selection processes,⁶⁹ the influence of third party actors has distorted their purpose.⁷⁰ The interference in the appointments of deans of law schools has been an important vehicle for this.

Given that the Constitution does not establish a finite number of authorities or law schools that have seats on CdPs, the creation of a new law school means that an additional dean will be added to each Commission. Moreover, since the number of deans is directly related to the number of representatives of both the bar association and judges that participate in CdPs,⁷¹ the creation of one law school creates not just one, but three possibilities for influence – and unfortunately, the bar association⁷² and the judiciary⁷³ have shown to be permeable actors.⁷⁴ As a consequence, far-fetched as it may seem

69. See *Ley de Comisiones de Postulación* [Nominating Commissions Law], Decreto 19-2009 [Decree 19-2009] June 2, 2009 (Guat.), preamble.

70. See Stephen Dudley, *Justice and the Creation of a Mafia State in Guatemala*, INSIGHT CRIME (Sept. 15, 2014) <http://www.insightcrime.org/investigations/justice-and-the-creation-of-a-mafia-state-in-guatemala>; Postema, *Guatemala's Judicial Selection*, *supra* note 46.

71. See footnote 51.

72. See MOVIMIENTO PRO JUSTICIA, CONFORMACIÓN DE LAS COMISIONES DE POSTULACIÓN PARA MAGISTRADOS DE LA CORTE SUPREMA DE JUSTICIA Y CORTE DE APELACIONES 2014-2019. ELECCIÓN DE REPRESENTANTES DEL COLEGIO DE ABOGADOS Y NOTARIOS DE GUATEMALA (CANG) [CONFIGURATION OF NOMINATING COMMISSIONS FOR SUPREME COURT JUSTICES AND COURT OF APPEALS JUDGES 2014-2019. ELECTION OF REPRESENTATIVES OF THE GUATEMALAN ASSOCIATION OF LAWYERS AND NOTARIES (CANG)] 1, 6 (2014), <http://www.movimientoprojusticia.org.gt/images/archivos%202014/otros/Elecci%C3%B3n%20de%20representantes%20CANG%202014.pdf> (last visited Sep. 14, 2015).

73. MOVIMIENTO PRO JUSTICIA, CONFORMACIÓN DE LAS COMISIONES DE POSTULACIÓN PARA MAGISTRADOS DE LA CORTE SUPREMA DE JUSTICIA 2014-2019. ELECCIÓN DE LOS REPRESENTANTES DE LA CORTE DE APELACIONES [CONFIGURATION OF NOMINATING COMMISSIONS FOR SUPREME COURT JUSTICES 2014-2019. ELECTION OF THE REPRESENTATIVES OF THE COURT OF APPEALS] 3, 4 (2014), <http://www.movimientoprojusticia.org.gt/images/archivos%202014/otros/Elecci%C3%B3n%20de%20representantes%20CA%202014.pdf> (last visited Sept. 14, 2015).

74. INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA (CICIG), TERCER AÑO DE LABORES: RESUMEN EJECUTIVO [THIRD YEAR OF WORK: EXECUTIVE SUMMARY] 3 (2010), http://www.cicig.org/uploads/documents/informes/INFOR-LABO_DOC06_20100901_ES.pdf (last visited Sept. 14, 2015). See also Stephen Dudley, The 'Tennis Shoe King' Who Became Guatemala's Gentleman Lobbyist, INSIGHT CRIME (2014), <http://www.insightcrime.org/investigations/guatemala-lopez-villatoro-corruption-lobbyist> (last visited Sept.

for the amount of work and monetary investment involved, the last two decades have seen a proliferation of law schools in Guatemala.⁷⁵

When the mechanism of CdPs was established by the 1993 constitutional reforms, there were four law schools in the country.⁷⁶ In 2004, there were seven, in 2009, there were nine,⁷⁷ and in 2014, Guatemala had eleven law schools. Even though some of these do not have an academic track record – one had not enrolled any students, and three of these had not graduated any students yet⁷⁸ – the deans of these law schools did participate in the CdPs. Initially, with four law schools, a CdP would be composed of thirteen members (four deans, four bar association representatives, four judges and a presiding university president). However, the 2014 CdPs for the Supreme Court and the Court of Appeals numbered thirty-four members.⁷⁹ Aided by this expansion of membership, powerful actors such as political forces, the business community, and CIACS have been able to yield significant influence in Guatemala's judicial selection processes.

2. Abuse of Margin of Discretion in Norms

During a selection process, there are two ways in which one can favor certain candidates while staying within the formal margins of the law, i.e., by designing the mechanism with which candidates will be evaluated, and by influencing how this instrument is applied. Such interferences will appear less obvious if executed well, making these

14, 2015).

75. INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA (CICIG), INFORME: PROCESO DE ELECCIÓN DE MAGISTRADOS A LA CORTE SUPREMA DE JUSTICIA Y CORTES DE APELACIONES Y OTROS TRIBUNALES COLEGIADOS DE IGUAL CATEGORÍA AÑO 2009, [REPORT: SELECTION PROCESS FOR JUSTICES OF THE SUPREME COURT OF JUSTICE AND COURTS OF APPEALS AND OTHER COLLEGIATE TRIBUNALS OF EQUAL HIERARCHY IN 2009] 65 (2009), http://www.cicig.org/uploads/documents/informes/INFOR-TEMA_DOC02_20091101_ES.pdf [hereinafter CICIG 2009] (last visited Oct. 14, 2015).

76. Oswaldo J. Hernández, *El país de los abogados* [The country of lawyers], PLAZA PÚBLICA, Sep. 8, 2014, <http://www.plazapublica.com.gt/content/el-pais-de-los-abogados> (last visited Sep. 14, 2015).

77. CICIG 2009, *supra* note 74 at 65.

78. Hernández, *supra* note 76; Ximena Enríquez, *Los 7 pecados capitales de las comisiones de postulación* [The 7 deadly sins of the Nominating Commissions], CONTRAPODER (January 26, 2015), <http://contrapoder.com.gt/2015/01/26/los-7-pecados-capitales-de-las-comisiones-de-postulacion/> (last visited Oct. 14, 2015).

79. See *supra* text accompanying note 49.

an effective way to manipulate selection processes.

Even though the qualification of a candidate is not dispositive for his or her inclusion on a CdP's shortlist, the inclusion of those with the highest qualifications does give the process a veneer of legitimacy. And because the voting for the CdP shortlist occurs in descending order,⁸⁰ in practice, it might be somewhat easier to push for the inclusion of the higher ranked candidates.

In the 2014 judicial selection processes in Guatemala, the clearest examples of such practices occurred in the CdPs for the Supreme Court and the Court of Appeals.⁸¹ While these CdPs complied formally with the applicable norms, a closer examination of the selection processes makes clear that the purpose of these norms was not respected. Qualification tables did not evaluate applicants' merits or integrity, norms of transparency were not complied with, and there were indications of influence peddling between members of the CdPs and candidates.

a. Qualification Instruments Did Not Evaluate Capacity or Integrity of Candidates

The CdPs for the Supreme Court and the Court of Appeals both established qualification tables that, instead of evaluating the capacity of candidates, merely valued their professional seniority. The tables did not contemplate reviewing judicial decisions or other documents written by candidates, conducting interviews, or evaluating candidates' integrity.

Several constitutional challenges were made against these grading tables⁸² and new processes were designed.⁸³ However, the

80. *Ley de Comisiones de Postulación* [Nominating Commissions Law], Decreto 19-2009 [Decree 19-2009] June 2, 2009 (Guat.), arts. 22, 23.

81. For a description of how this occurred in the selection process of the Attorney General, see MIRTE POSTEMA, DUE PROCESS OF LAW FOUNDATION, THE SELECTION PROCESS OF THE ATTORNEY GENERAL IN GUATEMALA: INCREASED REGULATION DOES NOT MEAN LESS ARBITRARINESS (2014), http://dplf.org/sites/default/files/selection_process_ag_in_guatemala_a_increased_regulation_does_not_mean_less_arbitrariness.pdf (last visited Sept. 14, 2015).

82. This resulted in the grading tables being temporarily suspended by court order. Claudia Palma, *Comisión de Postulación deberá repetir tabla de gradación* [CdP will need to redo grading table], PRENSA LIBRE (Aug. 8, 2014), http://www.prensalibre.com/postuladora_sala_de_apelaciones/salas_de_apelaciones-juzgado_quinto_civil-tabla_de_gradacion-convergencia_por_los_derechos_humanos_0_1189681183.html (last visited Sept.

new tables did not differ substantially from the original versions.⁸⁴ They continued to be centered on valuing professional seniority rather than excellence.⁸⁵ Moreover, the grading table for the Court of Appeals was structured in a way that created a significant – and illogical – disadvantage for career judges. The points that candidates could receive for professional experience were divided between “experience in the judiciary,” and “experience as a lawyer.”⁸⁶ Since

14, 2015).; Carmen Quintela, *Tabla de gradación para postuladora CSJ también queda anulada* [Grading table for CdP Supreme Court is also annulled], EL PERIÓDICO (Aug. 12, 2014), <http://bdc.elperiodico.com.gt/es/20140812/pais/235/Tabla-de-gradación-de-postulado-ra-para-CSJ-también-queda-anulada.htm> (last visited Sept. 14, 2015).

83. However, both CdPs appealed the provisional judgments, and requested further clarification (*aclaración*) and elaboration (*ampliación*). Moreover, the CdP for the Supreme Court requested that one of the lawyers who filed the challenges, as well as the judges who had ordered the suspension, be submitted to disciplinary proceedings. MOVIMIENTO PRO JUSTICIA, MONITOREO DE LAS SESIONES DE LAS COMISIONES DE POSTULACIÓN DE CANDIDATOS A MAGISTRADOS EN EL MES DE AGOSTO (2014) [MONITORING OF THE SESSIONS OF THE NOMINATING COMMISSIONS FOR CANDIDATES FOR JUDGES IN THE MONTH OF AUGUST 2014] [hereinafter MPJ MONITOREO AGOSTO 2014], 36, 37, 40, <http://www.movimientoprojusticia.org.gt/images/archivos%202014/otros/Sesiones%20CSJ%20Agosto%202014.pdf> (last visited Sept. 14, 2015).

84. Although the second versions of the tables did formally contemplate the evaluation of candidates' integrity and honorability, the CdPs never established how this evaluation would be performed. See MPJ Monitoreo agosto 2014, *supra* note 83, at 36, 37, 40. First versions of tables on file with author.

85. Candidates for the Supreme Court could receive a maximum of 70 (out of 100) points for professional experience: Fifty points if they had served three complete terms as appeals court judges and/or been a lawyer – working in any law-related field – for more than twenty years; forty-five points for having completed two periods as an appeals court judge and/or having fifteen to twenty years of experience as a lawyer; and those who had completed one period as an appeals court judge and/or had ten to fifteen years of experience as a lawyer received thirty-five points. Having had a leadership position in either the public or private sector for a minimum of five years counted for an additional ten points. Comisión de Postulación para Magistrados de la Corte Suprema de Justicia [CdP for Supreme Court Justices], *Tabla de gradación* [Grading table], http://guatemalavisible.net/index.php?option=com_k2&view=item&task=download&id=359_e1985c66e65027ae73c95cc6813b2eef&Itemid=124 (last visited Oct. 14, 2015).

86. Candidates for the Court of Appeals could receive a maximum of seventy-five (out of 100) points for professional experience: thirty for their length of experience in the judiciary, thirty for their length of experience as a lawyer, and fifteen for experience (of more than five years) in public or private sector positions. Those who had more than fifteen years of experience in the judiciary received thirty points; those with ten to fifteen years of experience, twenty-five points; and those with five to ten years of experience, twenty points. Additionally, candidates with more than fifteen years of experience as a lawyer received thirty points; those with ten to fifteen years of experience, twenty-five points; and those with five to ten years of experience received twenty points. Comisión de Postulación de la Corte de Apelaciones y otros Tribunales Colegiados de igual categoría [CdP for the Court of Appeals and other Collegiate Tribunals of equal hierarchy], *Tabla de gradación. Para evaluar aspirantes al cargo de Magistrado de Corte de Apelaciones y otros Tribunales Colegiados de igual*

career judges (who are common in civil law systems, where judges tend to spend their entire career in the judiciary) are prohibited from working as lawyers, they could only receive points in one category—experience in the judiciary—as opposed to those who had been active as a lawyer and joined the judiciary later in their careers.⁸⁷

The inadequacy of the grading tables was evident when twenty-eight candidates who had applied for both courts received a significantly higher qualification for a position in the Supreme Court than for the Court of Appeals. Some received ‘only’ four points more, but there were four candidates who were rated twenty-two to twenty-four points higher in aptitude for the Supreme Court than for the Court of Appeals. This outcome defies all logic.⁸⁸ Even though several members of the CdP admitted that the qualification instruments had fallen short of conducting solid and just evaluations, no action was taken to correct this.⁸⁹

b. No Examination of Candidates' Merits

These serious shortcomings in the grading tables made it easier for the CdPs to reach arbitrary decisions. Even though both the LCP⁹⁰ and case law from the Constitutional Court established⁹¹ that

categoría [Grading table. To evaluate applicants for the position of Judge of the Court of Appeals and other Collegiate Tribunals of equal hierarchy], http://guatemalavisible.net/index.php?option=com_k2&view=item&task=download&id=367_b68777507074249cdecea7419e67720b&Itemid=124 (last visited Oct. 14, 2015).

87. See Postema, *Guatemala's Judicial Selection*, *supra* note 46 and DUE PROCESS OF LAW FOUNDATION, AMICUS CURIAE PRESENTADO ANTE HONORABLE CORTE DE CONSTITUCIONALIDAD (2014), http://dplf.org/sites/default/files/amicus_dplf_para_cc_guatemala_procesos_de_seleccion_judicial_nov14_1.pdf, [hereinafter DPLF AMICUS CURIAE] (last visited Sept. 14, 2015).

88. These comparisons were made on the basis of the aspects that the grading tables had in common, without taking into account the additional points candidates for the Supreme Court received for a psychometric test. If the points for that test would be added, the difference in qualifications would be 28, 30, 31 and 31 points, respectively. See DPLF AMICUS CURIAE, *supra* note 87, at 20-22.

89. See Claudia Palma and Manuel Hernández, *Postulantes no superan pruebas [Applicants do not pass tests]*, PRENSA LIBRE (Sept. 12, 2014), http://www.prensalibre.com/postuladora_sala_de_apelaciones/Nacionales-postulantes-no-superan-pruebas-postuladora-salas-Apelaciones-pruebas_0_1210678921.html.

90. *Ley de Comisiones de Postulación* [Nominating Commissions Law], *Decreto 19-2009* [Decree 19-2009] June 2, 2009 (Guat.), arts. 18, 19, 21.

91. Corte de Constitucionalidad [Constitutional Court], June 13, 2014, Expediente Número 2143-2014 [File Number 2143-2014] (Guat.).

CdPs were required to perform an investigation into candidates' aptitude and conduct interviews, neither commission performed investigations seriously.⁹²

The LCP authorized CdPs to break up into commissions of three people⁹³ allowing for up to eleven simultaneous interviews. Still, the CdP for the Court of Appeals, citing time constraints, did not hold any interviews.⁹⁴ The CdP for the Supreme Court did hold interviews, but these were only between two and five minutes in length, in which each candidate answered one question picked at random.⁹⁵ Although this latter CdP might have, again, formally complied with the CC's requirement to interview candidates, it is clear that the way interviews were conducted did not allow for a serious evaluation of candidates' aptitude or integrity, thus failing to comply with applicable norms.

There was a similar disregard in how the CdPs considered objections made by the public. Although both CdPs formally provided this possibility in case of concerns about the professional or ethical qualifications of candidates, the criteria for the evaluation and verification of information were vague. As a result, it remains unclear why some complaints were dismissed *prima facie* and why all others were eventually declared unfounded.⁹⁶

Some candidates of doubtful integrity thus remained in the process. For example, there was a complaint about the integrity of a

92. See Postema, *Guatemala's Judicial Selection*, *supra* note 44; DPLF AMICUS CURIAE, *supra* note 87.

93. *Ley de Comisiones de Postulación* [Nominating Commissions Law], *Decreto 19-2009* [Decree 19-2009] June 2, 2009 (Guat.), art. 19.

94. Carmen Quintela, "Según la ley tienen derecho de participar, otra cosa son los valores" ["According to the law they have a right to participate, values are a different matter"], EL PERIÓDICO (Sept. 5, 2014), <http://bdc.elperiodico.com.gt/es/20140905/pais/1434/Según-la-ley-tienen--derecho-de-participar-otra-cosa-son-los-valores>.htm.

95. Carmen Quintela, *Postuladora entrevista a 105 aspirantes a CSJ* [CdP interviews 105 candidates for Supreme Court], EL PERIÓDICO (Sept. 18, 2014), <http://bdc.elperiodico.com.gt/es/20140918/pais/2043/Postuladora-entrevista--a-105-aspirantes-a-CSJ.htm>. An example of one such question was "¿Qué piensa del nepotismo?" ["What do you think about nepotism?"], MOVIMIENTO PRO JUSTICIA, SESIONES DE SEPTIEMBRE 2014 DE LA COMISIÓN DE POSTULACIÓN DE CANDIDATOS A MAGISTRADOS DE LA CORTE SUPREMA DE JUSTICIA [SEPTEMBER 2014 SESSIONS OF THE NOMINATING COMMISSION FOR SUPREME COURT JUSTICES] (hereinafter MPJ MONITOREO SEPTIEMBRE 2014) 67, <http://www.movimientoprojusticia.org.gt/images/archivos%202014/otros/Sesiones%20CSJ%20%20Septiembre%202014.pdf> (last visited Sept. 14, 2015).

96. *Id.*

judge who had also been publicly denounced by CICIG for his suspected involvement in corruption.⁹⁷ This judge had been photographed having lunch with a mayor who had a pending trial for corruption before that judge's court – a case that the judge soon dismissed after the lunch meeting.⁹⁸ Inexplicably, the CdP ruled this complaint to be unfounded because the accusation relied exclusively on news clippings.⁹⁹

Another example of a serious deficiency involved at least two candidates for the Court of Appeals who were awarded more points than would have corresponded according to the grading table. One candidate worked as a public defender for a little less than four years, then as a private lawyer for nine, and then as a legal advisor for a public institution for three years. This person received fifty-five points for professional merits, but according to the grading table, he should have received thirty points at best.¹⁰⁰

c. Transparency Requirements Disregarded

In addition to these considerable substantive shortcomings, the CdPs failed to comply with norms on transparency: information was not published timely,¹⁰¹ one meeting was closed to the press and the

97. On July 6, 2015, CICIG and the Public Ministry requested that this mayor's immunity be lifted so he could be indicted for corruption. See Press Release, International Commission against Impunity in Guatemala (CICIG), *Comunicado de prensa 035. Antejucios contra cuatro diputados y alcalde de Chinautla* [Press release 035. Pre-trial proceedings against four members of Congress and mayor of Chinautla] (July 6, 2015), <http://www.cicig.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=612&cntnt01returnid=67> (last visited Sept. 14, 2015); see also Manuel Rodríguez, *MP espera solicitud de antejudio para jueces* [Public Ministry awaits request for pre-trial proceedings against judges], LA HORA (Sept. 17, 2014) <http://lahora.gt/mp-espera-solicitud-de-antejuicio-para-jueces/>.

98. *Por debajo de la mesa* [Under the table], EL PERIÓDICO (Guatemala), May 21, 2014, at 1.

99. See MPJ MONITOREO SEPTIEMBRE 2014, *supra* note 95, at 31.

100. Since the grading table did not contemplate awarding points to candidates with less than five years of experience in the judiciary, the four years that the candidate worked as a public defender should remain without credit. Having experience as a lawyer for a period of five to ten years should count for twenty points, and having experience in the public or private sector of up to five years would award ten points. DPLF AMICUS CURIAE, *supra* note 86, at 19, 20.

101. See Enríquez, *supra* note 77.

public,¹⁰² and during other meetings, commissioners could only be observed at a distance and their discussions could not be followed nor recorded. For instance, during the protracted voting process in both CdPs, commissioners took frequent, extended recesses to negotiate privately.¹⁰³ Moreover, neither CdP complied with the Constitutional Court's requirement to "publicly and expressly explain"¹⁰⁴ the reasons why a candidate had, or had not, been included in the shortlist.¹⁰⁵

d. Influence Peddling

Lastly, strong suspicions regarding the influence peddling between commissioners and candidates surfaced, further disqualifying the activities of the CdPs. Twenty-three people who participated as evaluators in one CdP (for example, for Supreme Court judges), applied to a position in the other CdP (for the Court of Appeals).¹⁰⁶ This provided them with an unfair advantage. They were able to lobby the deans of law schools that participated in both commissions and were also in a position to trade votes with other commissioners who were candidates. This position of advantage was clear when eleven applicants who were commissioners in the CdP for the Supreme Court did not only receive judgeships in the Court of Appeals, but were also appointed as presidents of their chambers by the Supreme Court they had helped elect.¹⁰⁷

102. Glenda Sánchez, *Empieza a opacarse labor de comisiones [Commissions' work is starting to become intransparent]*, SIGLO 21 (Aug. 6, 2014), <http://www.s21.com.gt/nacionales/2014/08/06/empieza-opacarse-labor-comisiones>.

103. See Claudia Palma, *Dura elección de aspirantes a CSJ [Difficult election of applicants for Supreme Court]*, PRENSA LIBRE (Sept. 22, 2014), http://www.prensalibre.com/postuladora_csj/dura-eleccion-aspirantes-csj_01216678333.html; MPJ MONITOREO SEPTIEMBRE 2014, *supra* note 95, at 31.

104. Corte de Constitucionalidad [Constitutional Court], June 13, 2014, Expediente Número 2143-2014 (Guat.).

105. See Postema, *Guatemala's Judicial Selection*, *supra* note 46; DPLF AMICUS CURIAE, *supra* note 87, at 26, 27.

106. Claudia Palma, *Comisionados van tras magistraturas [Commissioners go after judgeships]*, PRENSA LIBRE (Aug. 7, 2014), http://www.prensalibre.com/postuladora_csj/Nacionales-comisionados-van-tras-magistraturas-CSJ-Apelaciones-procesospostulacion_0_1189081086.html.

107. See Glenda Sánchez, *Excomisionados ocupan presidencias de salas [Ex-commissioners take up presidencies of appeals courts]*, SIGLO 21 (Nov. 28, 2014),

1. Judiciary and Congress Participated in Violation of Norms

It is important to note that not just the CdPs were involved in the manipulation of the selection processes. The judiciary also played an important role by endorsing the violations committed, thus providing a veneer of legitimacy. This was done by denying *amparos*¹⁰⁸ (constitutional challenges), as well as by depriving the few *amparos* that were awarded from having practical effects. Congress, in turn, appointed the justices by means of a fast-track procedure in which no considerations were given to candidates' qualifications.

The numerous violations committed during the selection processes led to the presentation of a considerable number of *amparos*, which concerned almost every aspect of the proceedings: the profile and grading tables designed by the CdPs, traffic of interests between members of the CdPs, and the CdPs' refusal to conduct serious interviews with candidates.¹⁰⁹ However, almost all such challenges were dismissed. The reasons for these judicial decisions remain unclear, given that *amparos* tend to be granted or denied with the sole justification that "the circumstances of the case"¹¹⁰ advise such decision.

While several *amparos* were provisionally granted, their practical impact was limited. Firstly, because the CC eventually revoked some of these *amparos*, it canceled their effect.¹¹¹ Secondly, because a number of other cases had not yet been resolved at the time the CdPs

<http://www.s21.com.gt/nacionales/2014/11/28/excomisionados-ocupan-presidencias-salas>.

108. An *amparo* action aims to prevent or remedy a violation of constitutional rights. *Ley de Amparo, Exhibición Personal y de Constitucionalidad* [*Amparo, Habeas Corpus and Constitutionality Law*], Decreto 1-86 [Decree 1-86], Jan. 8, 1986 (Guat.).

109. See Press Release, International Commission against Impunity in Guatemala (CICIG), *Comunicado de prensa 032. Preocupación sobre procesos de selección de candidatos para Corte de Apelaciones y Corte Suprema de Justicia* [Press release 032. Concern about selection processes for candidates for the Court of Appeals and Supreme Court of Justice] (hereinafter CICIG press release 032-2014) (Sept. 16, 2014), <http://www.cicig.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=560&cntnt01returnid=67>, (last visited Sept. 14, 2015).

110. The formula the courts tend to use is "...a su juicio, las circunstancias del caso hacen aconsejable..." [...according to the Court, the circumstances of the case advise that...]. E.g., Corte de Constitucionalidad [Constitutional Court], Oct. 9, 2014, Expedientes acumulados 4639-2014, 4645-2014, 4646-2014 y 4647-2014, [Joint files 4639-2014, 4645-2014, 4646-2014 y 4647-2014] (Guat.).

111. Corte de Constitucionalidad [Constitutional Court], Sept. 19, 2014, Expediente 4054-2014 [File 4054-2014] (Guat.).

composed their shortlists, thus allowing the selection processes to continue amongst considerable legal uncertainty.¹¹² Thirdly, even in cases in which the CC had granted *amparos*, its resolutions were so limited that they, in practice, did not remedy the violations committed by the CdPs.

In these latter cases, the CC decisions established that CdPs needed to create instruments that respected the parameters laid out in the Constitution and in CC case law. However, the decisions also emphasized that the Court did not suspend the original grading tables.¹¹³ This is an essential, but easily overlooked, detail. If the CC had suspended the grading tables – as the provisional rulings had – it is likely that the CdPs would have had to start their work all over again because the grading table is the first step for the entire selection process. But because the ruling kept the grading tables intact without attaching clear consequences to noncompliance, the highest court effectively endorsed the CdPs' modes of operation.

After these deeply flawed selection processes, the Guatemalan Congress fast-tracked the appointment of the new Supreme Court. Without waiting until the period to present challenges to the process had ended, an alliance between the government party and the main opposition party appointed the thirteen new justices without discussing their qualifications.¹¹⁴ Days later, the judges of the Court of Appeals were elected.¹¹⁵ Congress followed in the footsteps of actors who violated the norms applicable to the judicial selection processes.

A number of new *amparo* challenges were presented against these violations.¹¹⁶ However, although the Constitutional Court

112. See Press Release CICIG 032-2014, *supra* note 109.

113. Corte de Constitucionalidad [Constitutional Court], Aug. 22, 2014, Expediente Número 3772-2014 [File Number 3772-2014] (Guat.). Corte de Constitucionalidad [Constitutional Court], Aug. 22, 2014, Expediente Número 3758-2014 [File Number 3758-2014] (Guat.).

114. See Redacción La Hora [Editorial Office La Hora], *Diputados eligieron a magistrados sin respeto a 72 horas de impugnación* [Members of Congress elected judges without respecting 72 hours for challenges], LA HORA (Sept. 25, 2014), <http://lahora.gt/diputados-eligieron-magistrados-sin-respeto-72-horas-de-impugnacion/> (last visited Oct. 9, 2015).

115. Jessica Gramajo & Hugo Alvarado, *Alianza Partido Patriota y Líder eligen cortes de Apelaciones* [Alliance between Patriot Party and Líder elects appeals courts], Prensa Libre (Oct. 1, 2014), http://www.prensalibre.com/postuladora_sala_de_apelaciones/Naciones-alianza-PP-y-Lider-eligen-cortes-postuladora-Salas-Apelaciones-Congreso_0_1222077785.html (last visited Oct. 9, 2015).

116. See B. Vásquez, H. Alvarado & J. Ramos, *Crece presión a CC para revertir elecciones a magistrados* [Pressure mounts for Constitutional Court to revert elections of

granted a provisional injunction, suspending the effects of the selection process and thus preventing the judges-elect from taking office,¹¹⁷ it eventually endorsed the selection processes.¹¹⁸

2. No Major Social or Political Consequences

Despite this clear disregard for applicable norms, public outrage was not widespread among the Guatemalan public. This was not because the violations committed by the CdPs had not been evident; the selection processes had received ample media coverage. While the number of articles at the beginning of the CdPs' operations might have been modest,¹¹⁹ there was considerable media attention in the months of September, October, and November of 2014 with an average of around 300 newspaper articles per month.¹²⁰

However, a week before the justices-elect were scheduled to take office, another scandal surfaced. An appeals court judge announced she would not be taking office because of the violations committed during the selection processes, and she called upon her fellow judges to join her in speaking out.¹²¹ This judge, Claudia Escobar, denounced that an influential member of Congress of the government party had attempted to bribe her. If she would decide an

judges], PRENSA LIBRE (Oct. 8, 2014), http://www.prensalibre.com/postuladora_csj/Nacionales-procesos-postulacion-postuladora-CSJ-Salas-Apelaciones-crece-presion-CC-para-revertir-elecciones-magistrados_0_1226277365.html (last visited Oct. 9, 2015).

117. Corte de Constitucionalidad [Constitutional Court], Oct. 9, 2014, Expedientes Acumulados No. 4639-2014, 4645-2014, 4646-2014, and 4647-2014 [Joint files No. 4639-2014, 4645-2014, 4646-2014, and 4647-2014] (Guat.).

118. Corte de Constitucionalidad [Constitutional Court], Nov. 19, 2014, Expediente No. 4639-2014 y Acumulados [File No. No. 4639-2014 and Joint Cases] (Guat.).

119. Some 56 articles were published in July, and some 59 in August. Numbers based on press compilations made by *Centro de Estudios de Guatemala* [Center of Studies of Guatemala] (CEG) of articles published in six nationally circulated newspapers: Prensa Libre, el Periódico, Siglo21, La Hora, Diario de Centroamérica and Nuestro Diario. At times, CEG supplemented this coverage with articles published by online medium Plaza Pública, as well as radio broadcaster Emisoras Unidas. Compilations on file with author.

120. In September, at least 307 articles were published. October had at least 379 articles on the topic, and November, saw at least 234 articles. Numbers based on press compilations made by Centro de Estudios de Guatemala (CEG), on file with author.

121. See Jessica Gramajo, *Elección de cortes está viciada, dice jueza* [Election of courts is flawed, says judge], PRENSA LIBRE (Oct. 6, 2014), http://www.prensalibre.com/postulador_a_sala_de_apelaciones/Salas_de_apelaciones-Congreso-elecciones-irregularidades-Guatemala-Corte_de_Constitucionalidad-renuncia-jueza-Claudia_Escobar_0_1225077482.html (last visited Oct. 9, 2015).

amparo case pending before her court in favor of the then-Vice-President, she would be reelected as a judge.¹²² Escobar had recorded the entire conversation. This evidence was presented to the Supreme Court in proceedings to authorize further investigation of this member of Congress.

However, despite this seemingly clear proof, the Supreme Court declined the request to start proceedings to lift the Congressman's immunity,¹²³ and the Public Ministry refused to investigate the case *proprio motu*.¹²⁴ While Escobar's statements put the selection processes back in the national debate, the only consequences that ensued were that reprisals were taken against Escobar and the judges who had stood with her.¹²⁵ Notwithstanding the clear indications of manipulation of the selection processes, the Constitutional Court, as mentioned above, endorsed the proceedings,¹²⁶ and a completely renewed Supreme Court and Court of Appeals took office in November 2014.¹²⁷

122. The people who visited Escobar were Gudiberto Rivera, former President of Congress, and Vernon González, Vice-President Baldetti's lawyer and a government appointee. Although Escobar did not vote in favor of the *amparo* filed by the Vice-President, Congress reelected her as an appeals court judge anyway.

123. Evelyn De León, *CSJ engaveta antejuicio contra diputado oficialista Gudy Rivera [Supreme Court shelves pre-trial proceedings against Gudy Rivera, Congressman of government party]* (Nov. 14, 2014), SOY502, available at <http://www.soy502.com/articulo/csj-antejuicio-gudy-rivera> (last visited Sept. 14, 2015). CICIG filed an *amparo* against this decision before the Constitutional Court, and some six months after this petition was filed, the CC granted the *amparo*, returning the case to the Supreme Court. It is important to note that this CC decision was handed down in a thoroughly altered political climate. Edwin Pitán, CC ampara a CICIG por antejuicio a Gudy Rivera [CC rules in favor of CICIG on pre-trial proceedings against Gudy Rivera], PRENSA LIBRE (Aug. 5, 2015), available at <http://www.prensalibre.com/guatemala/justicia/cc-ampara-al-mp-por-antejuicio-a-gudy-rivera> (last visited Oct. 9, 2015).

124. Evelyn De León, *MP no hará nada para revertir fallo que cerró antejuicio a Gudy Rivera [Public Ministry will not do anything to revert decision that closed pre-trial proceedings against Gudy Rivera]*, SOY502 (Nov. 18, 2014), <http://www.soy502.com/articulo/mp-no-hara-nada-revetir-fallo-cerro-antejuicio-gudy-rivera> (last visited Sept. 14, 2015).

125. DUE PROCESS OF LAW FOUNDATION & MYRNA MACK FOUNDATION, INFORME DE AUDIENCIA. DERECHOS HUMANOS E INDEPENDENCIA JUDICIAL EN GUATEMALA [HEARING REPORT. HUMAN RIGHTS AND JUDICIAL INDEPENDENCE IN GUATEMALA] 33-48 (2015), http://www.dplf.org/sites/default/files/inf_audiencia_gtindependencia_judicial19marzo2015_dplffmm.pdf (last visited Sept. 14, 2015).

126. Corte de Constitucionalidad [Constitutional Court], Nov. 19, 2014, Expediente No. 4639-2014 y Acumulados [File No. 4639-2014 and Joint files] (Guat.).

127. *En medio de polémica, juramentan a jerarcas judiciales de Guatemala [In middle of controversy, highest judges of Guatemala are sworn in]*, EL PERIÓDICO (Nov. 24, 2014),

III. Entrenched Problems Call for Structural Solutions

The violation of applicable norms, such as those that occurred throughout Guatemala's judicial selection processes, is not limited to these occasions. A similar disregard for the law has been displayed where legal reforms curtailed powers of authorities. An example is the refusal by successive Guatemalan Supreme Courts to respect certain provisions in the *Ley de Carrera Judicial* (Law on the Judicial Career, "LCJ")¹²⁸ that limit their power over lower judges. Instead, these Courts have continued to apply provisions from the *Ley del Organismo Judicial* (Law on the Judiciary, "LOJ"),¹²⁹ even though the LCJ is of a more recent date and its provisions should thus, in case of conflict, take precedence over articles in the LOJ.¹³⁰ Such structural problems continue to thwart meaningful progress in strengthening the judiciary.

It remains doubtful that this situation will improve. Although the full impact of the manipulation of the 2014 judicial selection process on the rule of law might be difficult to determine relatively shortly after their conclusion, a number of decisions by the newly elected Supreme Court have been severely criticized for their perceived bias in favor of those who helped elect the justices. One example is the Court's appointment of eleven former CdP commissioners (appeals court judges who established the shortlist for the Supreme Court and who received judgeships) as presidents of their chambers.¹³¹ Another controversial decision was the Court's ruling to not allow pretrial proceedings to go forward against a member of Congress who is a key member of the government party that forged a political alliance

<http://bdc.elperiodico.com.gt/es/20141124/pais/5302/En-medio-de-polémica-juramentan-a-jerarcas-judiciales-de-Guatemala.htm>.

128. *Ley de Carrera Judicial* [Law on the Judicial Career, Decreto 41-99 [Decree 41-99], Nov. 29, 1999.

129. *Ley de Organismo Judicial* [Law on the Judiciary], Decreto 2-89 [Decree 2-89], Mar. 28, 1989.

130. Mónica Leonardo Segura, *Independencia y transparencia del poder judicial en Guatemala* [Independence and transparency of the judiciary in Guatemala], in: DUE PROCESS OF LAW FOUNDATION, *LEY VS. REALIDAD: INDEPENDENCIA Y TRANSPARENCIA DE LA JUSTICIA EN CENTROAMÉRICA Y PANAMÁ* [LAW VS. REALITY: INDEPENDENCE AND TRANSPARENCY OF THE JUDICIARY IN CENTRAL AMERICA AND PANAMA], 4 (2013), http://www.dplf.org/sites/default/files/guatemala_v05.pdf.

131. Sánchez, *supra* note 107.

to elect the current Supreme Court¹³² and was caught on tape pressuring appeals court judge Claudia Escobar.¹³³ Additionally, a member of the Supreme Court has recently been the subject of controversy. Blanca Aída Stalling Dávila and members of her family have been linked to several high-level corruption cases.¹³⁴

Addressing such entrenched issues, in which so many powerful actors are involved, requires rigorous measures. However, despite the magnitude of its problems, Guatemala might also provide a unique example of how this can be done: by the establishment of an internationally supported entity tasked with the investigation and dismantling of parallel criminal powers like CIACS.¹³⁵

Following the lack of progress in combating CIACS, Guatemalan civil society organizations pushed for the establishment of a UN-backed commission. This commission was fully funded by international cooperation and was designed to investigate these illegal actors operating in the country.¹³⁶ After the Constitutional Court invalidated the creation of the initial version of this commission,¹³⁷ the agreement was renegotiated with the assistance of the United Nations Department of Political Affairs (DPA),¹³⁸ and the International Commission against Impunity in Guatemala started its operations in 2007.¹³⁹ This hybrid entity does not have prosecutorial

132. See Gramajo & Alvarado, *supra* note 115.

133. See section II.B.4 of this Article.

134. Stalling Dávila's son was arrested for his involvement in a high-level corruption crime ring, and her sister in law, a judge, is being investigated for having accepted bribes in another high-profile corruption case. Both cases were investigated by CICIG. See Claudia Palacios, *Blanca Stalling y sus vínculos son un reto para el sistema de justicia [Blanca Stalling and her connections are a challenge for the justice system]*, LA HORA (June 24, 2015), <http://lahora.gt/blanca-stalling-y-sus-vinculos-son-un-reto-para-el-sistema-de-justicia/> (last visited Oct. 9, 2015); Carolina Gamazo, *Los seis vínculos comprometedores de la magistrada Blanca Stalling [The six compromising connections of Justice Blanca Stalling]*, PLAZA PÚBLICA (May 11, 2015), <http://www.plazapublica.com.gt/content/los-seis-vinculos-comprometedores-de-la-magistrada-blanca-stalling> (last visited Sept. 14, 2015).

135. See section I of this Article. The experience of CICIG in Guatemala and the relevant lessons for other countries will be addressed in more detail in a forthcoming publication by the author.

136. INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA (CICIG), *Background*, <http://www.cicig.org/index.php?page=background> (last visited Sept. 14, 2015) [hereinafter: CICIG BACKGROUND].

137. *Corte de Constitucionalidad [Constitutional Court]*, Aug. 5, 2004, Opinión Consultiva Expediente No. 1250-2004 [Advisory Opinion File No. 1250-2004] (Guat.).

138. CICIG BACKGROUND, *supra* note 136.

139. *Agreement between the United Nations and the State of Guatemala on the*

powers because all legal actions need to be initiated by the Guatemalan Public Ministry. However, it does have the power to investigate CIACS, participate in criminal proceedings as a third party, and recommend public policy.¹⁴⁰

After eight years of operations that, understandably, have seen ups and downs, CICIG's work is starting to show considerable impact in Guatemala. It has helped to establish a legal framework for the investigation of complex criminal cases, assisted in the creation of local capacity for such investigations, and participated in public policy debates,¹⁴¹ although the Guatemalan Congress has largely disregarded its proposals for reforms.¹⁴² CICIG's most important contribution has been the investigation of cases. These investigations initially concerned less prominent organized crime structures, but soon started to include high-level authorities.

In CICIG's earlier years, such high-level cases were met with obstruction within Guatemala, but convictions obtained in foreign courts¹⁴³ legitimized the Commission's work. In recent years, its investigations have included influential criminal networks, as well as current members of Congress, judges, and high-level authorities.¹⁴⁴ While these more recent investigations might not yet have resulted in

establishment of an International Commission against Impunity in Guatemala (CICIG), Dec. 12, 2006, U.N.T.S. 2472.

140. See *Id.*; INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA ("CICIG"), *Mandate*, <http://www.cicig.org/index.php?page=mandate> (last visited Sept. 14, 2015).

141. See WASHINGTON OFFICE ON LATIN AMERICA (WOLA), *THE INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA (CICIG): AN INNOVATIVE INSTRUMENT AGAINST CRIMINAL NETWORKS AND FOR STRENGTHENING THE RULE OF LAW* (2015), [hereinafter: WOLA CICIG REPORT] http://www.wola.org/sites/default/files/Citizen%20Security/2015/WOLA_CICIG_ENG_FNL_extra%20page.pdf (last visited Oct. 9, 2015).

142. INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA (CICIG), *Institutional Reform*, <http://www.cicig.org/index.php?page=institutional-reform> (last visited Sep. 14, 2015).

143. See WOLA CICIG REPORT, *supra* note 141; Press Release, United States Attorney's Office of the Southern District of New York, *Former President of Guatemala Alfonso Portillo Sentenced in Manhattan Federal Court for Laundering Millions of Dollars Through United States Banks* (May 22, 2014), <https://www.fbi.gov/newyork/press-releases/2014/former-president-of-guatemala-alfonso-portillo-sentenced-in-manhattan-federal-court-for-laundering-millions-of-dollars-through-united-states-banks> (last visited Sep. 14, 2015); Press Release, International Commission against Impunity in Guatemala (CICIG), *Press release 021, 5 years and 3 months in prison for retired military officials* (June 5, 2014), <http://www.cicig.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=545&cntnt01returnid=105> (last visited Sept. 14, 2015).

144. See WOLA CICIG REPORT, *supra* note 141.

convictions, it is undeniable that the revelations regarding the involvement of high-level public officials in crime rings and schemes to defraud the State¹⁴⁵ have had an enormous impact in the country. CICIG's accusations against powerful governmental appointees, such as the director and former director of Guatemala's customs authority and former presidents of its Central Bank, forced the President, the Vice-President, and a number of cabinet ministers to resign. The public outrage against corruption spurred pacific protests of a magnitude not seen in decades.¹⁴⁶ The former President and Vice-President, as well as a number of other authorities, have since been detained for their involvement in one of those corruption cases.¹⁴⁷

These events are unprecedented, and have already had a considerable impact in the country. They provide a unique opportunity to address Guatemala's entrenched problems. However, it is important to note that their long-term effects will mostly depend on whether the parallel power structures identified will effectively be disbanded and whether comprehensive reforms will be implemented that might lead to meaningful changes in practice.

It seems that CICIG's recent successes also created an important spillover effect in neighboring countries. Calls for the establishment of similar commissions in countries facing comparable challenges, such as Honduras, El Salvador, and Mexico, have recently become louder.¹⁴⁸ CICIG's experience should be studied in more detail in

145. See Press Release, International Commission against Impunity in Guatemala (CICIG), *Comunicado de prensa 055. A prisión preventiva ex presidente Otto Pérez Molina* [Press Release 055. Pretrial detention for former President Otto Fernando Pérez Molina] (Sep. 8, 2015), <http://www.cicig.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=632 &cntnt01returnid=67> (last visited Sept. 14, 2015).

146. See *Guatemalan President resigns after arrest warrant issued*, THE GUARDIAN (Sep. 3, 2015), available at <http://www.theguardian.com/world/2015/sep/03/guatemalan-prosecutors-move-to-arrest-president-otto-perez-molina> (last visited Oct. 9, 2015); *Thousands of protesters demand resignation of president in Guatemala*, THE GUARDIAN (June 12, 2015), available at <http://www.theguardian.com/world/2015/jun/12/protesters-guatemala-president-resignation> (last visited Oct. 9, 2015).

147. Francisco Goldman, *From President to Prison: Otto Pérez Molina and a Day for Hope in Guatemala*, THE NEW YORKER (Sept. 4, 2015), <http://www.newyorker.com/news/news-desk/from-president-to-prison-otto-perez-molina-and-a-day-for-hope-in-guatemala>.

148. See Michael Lohmuller, InSight Crime, *Honduras Protestors Call for Own Version of Guatemala's CICIG*, INSIGHT CRIME (June 9, 2015), <http://www.insightcrime.org/news-briefs/honduras-protestors-call-for-creation-of-un-court>; Selim Rodríguez, *CICIG, veni a El Salvador* [CICIG, come to El Salvador], EL MUNDO (July 28, 2015), <http://elmundo.sv/cicig-veni-a-el-salvador/>; Jorge Castañeda, "Cicig en México: Cicim" ["CICIG in Mexico:

order to draw relevant lessons for the possible establishment of comparable entities in other countries.

IV. Conclusion

Judicial reforms led to the adoption of detailed norms for judicial selection processes in Guatemala. As a result, the country counts with a much more elaborate normative framework than other States in the Americas. However, this Article demonstrated that the 2014 selection processes in Guatemala could nevertheless be manipulated, and that this occurred with the endorsement of judicial and political authorities.

A number of important lessons can be drawn from this experience that might be valuable to other countries. These could be especially relevant in contexts where efforts to strengthen public institutions will be undertaken, possibly following periods of dictatorship or conflict, and in which *de facto* powers might constitute an obstacle to the effective implementation of reforms.

First of all, Guatemala's judicial selection processes showed that reforms focused on the judiciary alone, without addressing (the role of other actors in) the system of governance, have proved insufficient to effect meaningful changes in practice. The structural causes of weaknesses in the judiciary should be analyzed, and these should be addressed by undertaking comprehensive reforms, of which judicial reforms form a part.

Secondly, Guatemala's experience suggests that where entrenched interests of powerful actors interfere in the operation of (semi-) public institutions, reforms are likely to be unsuccessful if such manipulations are not combated first.

Thirdly, the recent successes of CICIG in investigating and dismantling parallel powers in Guatemala show its utility in combating the interference of such powers in the State. This experience should be studied in more detail to explore whether similar internationally supported mechanisms might be useful to countries facing comparable challenges.