



**International NGO Coalition calls for Guatemalan Constitutional Court Selection to be Merit-based;  
Urges President Morales to Act Transparently**

As a coalition of international human rights groups, we have followed with great interest the selection process for the Guatemalan Constitutional Court (*Corte de Constitucionalidad de Guatemala*), an autonomous tribunal of last instance with a crucial role in the country's legal system. Electoral authorities have a unique opportunity and duty to ensure that the Guatemalan people will be served by honorable, extremely capable, impartial, and independent justices. We join the calls from Guatemala and around the world urging for the formation of a Constitutional Court that will strengthen and contribute to a society with justice for all.

The Constitutional Court has a vital role to play in the ongoing fight against corruption and impunity, both past and present. Its role is also to ensure the adequate guarantee of the human rights of all people in Guatemala. For example, it was the Constitutional Court that issued a controversial 3-2 ruling in 2013 overturning the historic conviction of former dictator Efraín Ríos Montt for genocide and crimes against humanity. Groundbreaking cases brought to light by the International Commission Against Impunity in Guatemala (*Comisión Internacional contra la Impunidad en Guatemala*, CICIG) in partnership with the Attorney General's office, such as the *La Linea* corruption case which led to the resignation and arrest of former President Otto Pérez Molina and Former Vice President Roxana Baldetti, will also be subject to final review by the next Constitutional Court. As such, the election of independent, impartial, and highly qualified justices is of great national and international significance.

According to law, five entities—Congress, the Supreme Court, the main public university, the national bar association, and the president with his cabinet—are each required by law to appoint a justice and a substitute justice to the Constitutional Court. This process takes place every five years, and the new justices will take office beginning next month. As we have emphasized during other high court selection processes, including that for the Guatemalan Supreme Court of Justice (*Corte Suprema de Justicia*) in 2014, international standards and best practices require that such processes be transparent and rooted in objective, merit-based criteria. We welcome certain improvements in the current Constitutional Court selection process, particularly with respect to transparency. In this regard, we wish to highlight the excellent and rigorous work of many Guatemalan civil society organizations, whose members have worked tirelessly to report on and advocate for greater transparency in this and other selection

processes. As a result, all but one of the selecting entities voluntarily adopted the Selection Commission (*Comisión de Postulación*) framework to carry out their elections, thereby enabling the public to closely monitor their activities and be aware of how Constitutional Court candidates are ranked.

President Jimmy Morales has failed to commit to the spirit of transparency, providing scant information regarding how he is fulfilling his mandate to select a Constitutional Court justice. The president has only recently confirmed specific candidates he is considering, but has not divulged the process or the criteria by which he will make a final selection. He has also not provided an opportunity for members of the Guatemalan public to present complaints (*tachas*) or voice their concerns regarding candidates. While President Morales is not legally obliged to follow the Selection Commission law, it is deeply troubling that, in an era where the importance of transparency in a democratic society is well understood, the leader of the country would resist his constituents' legitimate demands for information regarding his decision. The undersigned wish to respectfully remind President Morales of the commitments he made during his campaign to serve the Guatemalan people and root out corruption from government, and urge him to immediately remedy the lack of transparency thus far by following the spirit of the Selection Commission framework. We highlight that the president is obliged under the Article 270 of the Constitution to select a justice and a substitute justice who are persons of "recognized honorability," and also note that under Article 113 the right to opt for public employment or office is based only on capabilities, suitability for the position, and honesty.

We are also concerned that the process thus far has not guaranteed that the very best candidates will ultimately be chosen as Constitutional Court justices. For instance, several individuals who are believed to have ties to corrupt actors and/or who have openly expressed opposition to anti-corruption mechanisms have not been eliminated from the selection process. The adoption of the Selection Commission framework does not by itself guarantee the election of the most qualified individuals; the election authorities must also respect merit-based criteria. The Supreme Court of Justice has already made its decision, and the remaining four authorities are expected to do so very soon. Taking into account the specific context of Guatemala as a country currently tackling widespread impunity and corruption, potential conflicts of interest and reliable evidence of ties to groups on the margins of the law must be properly considered in assessing the suitability of potential justices.

9 March 2016

Due Process of Law Foundation (DPLF)  
Washington Office on Latin America (WOLA)  
Center for Justice and International Law (CEJIL)  
Plataforma contra la Impunidad  
Impunity Watch