



GUATEMALA: Benchmarks for those participating in and monitoring the judicial appointments process from the Special Rapporteur on Independence of Judges and Lawyers

1. Candidates must be chosen on the basis of legal criteria

Article 2 of the Law on Nominating Commissions sets out the following criteria for determining the suitability of candidates: "capacity, speciality, suitability, honesty and proven good repute". These criteria should be made publicly known, and the evaluation of each applicant should be clearly based on his or her compliance with them. Indicators for each of the criteria should be publicly available, a clear evaluation scheme must be followed, and the score to be assigned to each criterion should be specified from the start.

The evaluation scheme should also detail the methods of evaluation, the criteria for possible exclusions of applicants and criteria for the acceptance or exclusion of objections.

For officials already holding judicial office, the criteria of capacity and specialty should include an independent assessment of current performance of duties.

Concerning the criteria of honesty and honourability, the Special Rapporteur recalls that the lack of a criminal judgement is insufficient on its own. Candidates should be required to submit a sworn and public declaration of assets, employment contracts, and a sworn and public declaration of personal and commercial conflicts of interest. All of these elements should be considered when assessing honesty and honourability.

The Special Rapporteur highlights that conflicts of interest—possible or perceived clashes between the public duty and the private interests of a public servant—are inevitable, as all public servants have family and friends and have carried out business and work activities in the country. Such conflicts of interest should not automatically disqualify an applicant; instead, public declarations of conflict enable the Commissions to make sound decisions on nominations and help build trust.

2. The Commissions must follow a transparent, public and rule-based procedure

All actors who are to sit on these Commissions must, according to the law, act responsibly, represent their institutions, and be motivated by the national interest. In this way, the decisions of the Commissions will represent the broader interests of society.

3. Participation and social audit

According to the Law on Nominating Commissions, the process must be transparent and objective, ensuring citizen participation through social audit. The audit must encompass all phases, from the integration of the Nominating Commissions, through to the presentation of candidates to Congress

and the subsequent election of judges. To comply with this requirement, the relevant authorities should:

- publish all process documents in a timely manner, including the publication of assessment instruments in advance of the applicant profile;
- conduct public interviews of applicants who meet the criteria and have obtained a sufficient score in an objective and public evaluation of ability and speciality;
- take into account reasoned and evidenced challenges filed by civil society concerning aspirants.

“Finally, I suggest the adoption of positive measures with the aim of ensuring high courts that are representative of Guatemalan society, including women and indigenous peoples. In this sense, I recommend the publication of information about the process in indigenous languages or even the adoption of criteria to promote the participation of women, indigenous peoples or persons with disabilities in the process”, the Special Rapporteur concluded.