

**WHEN ACCOUNTABILITY MEETS JUDICIAL
INDEPENDENCE:**

***A case-study of 2008 civil society transparency
observation of the Colombian Constitutional Court's
nominations***

A THESIS

SUBMITTED TO THE

SCHOOL OF LAW

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

FOR THE DEGREE OF

MASTER IN THE SCIENCE OF LAW

Everaldo Lamprea Montealegre

April 2009

ABSTRACT

In 1991, Colombia established a Constitutional Court with expansive powers to protect rights. The power to nominate members of the Court was placed in the hands of the President along with the Supreme Court and Administrative Court. In 2008, fourteen Colombian NGOs formed the *Elección Visible*, a coalition designed to ensure greater accountability in Constitutional Court nominations by the two higher courts. In this study I explore the roots of the resulting clash between the *Elección Visible* and the nominating courts. I show that the conflict arose when NGO demands for *accountability* through a more transparent nomination process were resisted by the nominating courts in the name of *judicial independence*. Moreover, I show that Administrative and Supreme Court's Justices decide whom to nominate according to subjective, political, ideological and personal criteria. In particular, I argue that the Administrative Court relies on a traditional *liberal/conservative* dichotomy in making its Constitutional Courts nominations, while the judgments of the Supreme Court rely heavily on assessments of loyalty towards the Supreme Court once the candidate is appointed to the Constitutional Court. The cost of admitting these "hidden" nomination criteria publicly in a legal system such as the Colombian—still highly formalistic and based on a model of Judge who adjudicates based only on "the law"—is far too high. Therefore, Justices had strong incentives to conceal the "real" nomination criteria from the efforts by *Elección Visible* to ensure greater transparency.