



Transparency and Independence in the Appointment Processes of Judicial Authorities in Latin America



This report contains a summary of the main findings of monitoring activities conducted by the civil society organizations Fundación Ciudadanía y Desarrollo (FCD), México Evalúa, and Fundación para el Desarrollo de la Libertad Ciudadana (FDLC). It was made possible by the support of the Pan American Development Foundation (PADF). Rafael Alberto Basora (independent consultant) is the author of this report, which was translated and edited by PADF.



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Executive Summary

This report presents a detailed examination of the state of judicial independence across three selected countries in Latin America – Ecuador, Mexico, and Panama – and draws conclusions relevant for these and other countries in the region. Supported by the Pan American Development Foundation (PADF) and conducted in collaboration with partner civil society organizations (CSOs) in all three countries, it underscores the pivotal role of judicial independence for the quality of democracy in the region.

By analyzing these three case studies, the report illustrates regional challenges, emphasizing legislative shortcomings, transparency deficits, and obstacles to citizen engagement in judicial appointments. These issues extend beyond mere bureaucratic or procedural concerns, profoundly affecting the effectiveness of anti-corruption efforts and the overall vitality of democratic institutions, as illustrated by regional case studies. The involvement of CSOs in judicial monitoring activities emerges as crucial in upholding democracy. Through their oversight, CSOs infuse much-needed transparency and accountability into judicial processes, fortifying democratic governance. The report delves into the analyses of judicial monitoring activities in Ecuador, Mexico, and Panama, undertaken by CSOs. Each country's case study unveils distinctive challenges and incidents during the judicial appointment processes, providing a nuanced perspective on the political dynamics and their ramifications for judicial independence.

Regarding Ecuador, the report sheds light on the processes surrounding the selection of judges for the Constitutional

Court and anti-corruption judges. It points out issues related to transparency, citizen oversight, and procedural irregularities that marred these processes. Mexico's scenario is discussed in the context of the appointment of the President of the Supreme Court of Justice and the general prosecutors, where the report highlights a significant lack of transparency and evident political control over judicial appointments. In Panama, the report delves into the complexities of the State Pact for Justice and the sluggish implementation of the Judicial Career, pointing out the palpable political influence that undermines public trust in the judiciary.

The report also includes country-specific and general recommendations to strengthen judicial transparency and accountability, such as the establishment of independent bodies with representatives from various state powers and civil society. These bodies should play a central role in ensuring impartial and fair judicial appointments. The report also calls for regulatory reforms to mandate a transparent and public scrutiny-oriented methodology for evaluating and appointing judicial authorities. It underscores the need for robust ethical regimes, including conflict of interest declarations and mechanisms to penalize unjustified enrichment among magistrates and public ministry personnel. Furthermore, the report highlights the critical need for educational programs focused on democratic competencies and the empowerment of civil society and media to conduct effective judicial monitoring.

Introduction

Judicial independence, particularly in terms of how judicial authorities are appointed, is a critical factor influencing the quality of democracy of states. In recent decades, significant setbacks in judicial independence and the separation of powers in Latin America and the Caribbean have affected the status of democratic institutions in many countries in the region. According to the Rule of Law Index by the World Justice Project,¹ which evaluates various aspects related to the effectiveness of civil and criminal justice, norm compliance, absence of corruption, and government power limitations, it is noticeable that, except for Uruguay (0.71), Costa Rica (0.68), Chile (0.66), Argentina (0.55), and Panama (0.52), all other countries in continental Latin America score below 0.50, with 1 indicating the highest adherence to the rule of law. **This highlights a clear weakness, indicative of a potential decline in the quality of democracy particularly in terms of judicial independence, across the region.**

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A cause-effect relationship emerges between the deterioration of democracy, institutional integrity, and judicial independence, coinciding with a decline in the quality of life, social unrest, and an upsurge in crime, notably drug trafficking and administrative corruption.

The correlation between indicators on the quality of democracy and those around other social issues is substantiated by studies on democracy and related factors, as highlighted in the latest Latinobarómetro report. Latinobarómetro 2023 delineates a “democratic recession” in Latin America, in addition to on judicial independence, separation of powers, increased corruption, crime, and loss of individual freedoms.² A concerning trend is the **growing indifference towards democracy as the preferred form of government**; a recent survey indicates that only 48% favor democracy, marking a 15-point drop from 63% in 2010.

For optimal functioning, the judiciary must be autonomous and independent, not only from other branches of the state but also from external interests. While quality of democracy depends on several factors, it is largely contingent upon the separation of powers for mutual checks and balances and the independence of the judiciary. While this report focuses on judicial appointments, it is equally important to examine the judiciary’s independence alongside political checks and balances that maintain a balance of power.

Constitutionally, the judiciary, through jurisdictional control of administrative actions, and the legislature, through political oversight, are tasked with checking the executive branch. However, when governments and external interests interfere in the judiciary’s composition and functioning, with legislative complicity or permissiveness, the essential judicial independence required for maintaining a strong democracy is undermined.

A prevalent theme in the countries examined in this report relates to legislative weaknesses or insufficiencies, lack of transparency in the process of electing and appointing judicial authorities, and the existence of barriers to citizen participation, among others. Judicial independence is a guarantee for the effectiveness of anti-corruption efforts.

1 <https://worldjusticeproject.org/rule-of-law-index/global>

2 <https://www.latinobarometro.org/lat.jsp>

With its decrease, influenced directly or indirectly by executive and legislative powers, as well as other de facto powers and organized crime, the fight against corruption is substantially hindered. Various manifestations of corruption often operate silently, aiming to obstruct the proper functioning of the natural mechanisms of reciprocal checks and balances of public powers. In most democracies structured under the traditional tripartite separation of power (legislative, judicial, executive), systemic corruption seeks to control the sovereign popular power for private interests. Both domestic and transnational corruption aim to control public power structures, with the administration of justice being particularly vulnerable.

To counteract this threat, a first line of defense is to ensure that the principles of independence, impartiality, integrity, suitability, equality, and competence, enshrined in the Bangalore Principles of Judicial Conduct³ and the United Nations Basic Principles on the Independence of the Judiciary, are followed. Their robust application is vital to prevent corruption, protect democracy, and safeguard human rights. These principles extend across the judiciary's operational and functional spectrum, encompassing the constitution of judicial and administrative authorities, their functioning, the administration of justice, resource management, and the conduct of judges, prosecutors, and support staff in both their professional and personal capacities.

To guarantee the defense of fundamental rights and legal security, an effective rule of law is necessary. States must establish legal frameworks, particularly in key aspects for the proper functioning of the state, with the administration of justice taking precedence.



The absence of a legal regime that ensures the transparent and participatory selection of judicial authorities by an independent body poses an imminent threat to democratic governance.

Furthermore, to ensure the judiciary's independence and autonomy, the norms and systems for selecting, appointing, and evaluating magistrates, public prosecutors, and other judicial authorities should minimize unilateral concentration by any other state powers.

This report will encapsulate key findings from judicial monitoring projects conducted by PADF partner organizations in Ecuador, Mexico, and Panama. Additionally, it will provide actionable, country-specific recommendations to improve transparency, accountability, and citizen participation in those processes, as well as general conclusions and recommendations applicable to other countries in the region and beyond.

3 <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>

Democracy Index 2022, The Economist Intelligence Unit

This index aims to assess the quality of democracy in the examined states through the analysis of five factors: electoral processes, government functioning, political participation, political culture, and civil liberties. The analysis categorizes states into four groups based on their scores: Full Democracies (8.00 – 10.00), Flawed Democracies (6.00 – 8.00), Hybrid Regimes (4.00 – 6.00), and Authoritarian Regimes (0.00 – 4.00).

Country	Overall Score	Rank	Difference from previous report	Electoral Processes	Functioning of Government	Political Participation	Political Culture	Civil Liberties
Uruguay	8.91	11/167	2	10.00	8.93	7.78	8.13	9.71
Panama	6.91	49/167	-1	9.58	6.07	7.22	3.75	7.94
Ecuador	5.69	81/167	0	8.75	5.00	6.67	1.88	6.18
Mexico	5.25	89/167	-3	6.92	4.64	7.22	1.88	5.59

Rule of Law Index 2023, World Justice Project

This index identifies the strengths and weaknesses of the rule of law by analyzing a series of factors related to the fundamental aspects of democracy, civil liberties, and government functionality. The scores for each factor range from 0.00 to 1, with 1 indicating the highest adherence to the rule of law.

Country	Overall Score	Rank	Constraints on Government Powers	Absence of Corruption	Open Government	Fundamental Rights	Order and Security	Regulatory Enforcement	Civil Justice	Criminal Justice
Uruguay	0.72	25/142	0.76	0.73	0.73	0.80	0.71	0.71	0.72	0.58
Panama	0.51	74/142	0.53	0.40	0.56	0.62	0.70	0.49	0.46	0.34
Ecuador	0.47	96/142	0.49	0.38	0.52	0.53	0.59	0.47	0.46	0.33
Mexico	0.42	116/142	0.44	0.26	0.58	0.48	0.50	0.44	0.37	0.26



Case Studies





CONTEXT

The surge in criminality in **Ecuador** has severely impacted the country's judiciary. Four prosecutors were murdered between 2022 and 2023, and other judicial officials, including judges, face intimidation and threats.⁴ These attacks coincide with Ecuador's political crisis, exacerbated by former President Guillermo Lasso's invocation of "mutual death" in response to an impending political trial. Despite Daniel Noboa's victory in one of the country's most violent elections, Ecuador faces a scenario that requires consensus-building to restore democratic governance. President Noboa's government program outlines reforms for the judicial and police systems aiming to enhance efficiency and foster fairness.

MONITORED PROCESSES

Fundación Ciudadanía y Desarrollo (FCD, the Ecuadorian Chapter of Transparency International) conducted the following judicial oversight processes:

1. Selection of judges and alternate (backup) judges for the Constitutional Court for the period 2022 – 2025.
2. Public competition process based on opposition and merits for the selection and appointment of anti-corruption judges.

MAIN FINDINGS

Selection of judges and alternate (backup) judges for the Constitutional Court for the period 2022 – 2025:

In adherence to the constitutional provisions of the Republic of Ecuador, the renewal of judges of the Constitutional Court occurs in thirds every three years. The partial renewal process

for the Court was carried out between August 2021 and February 2022. FCD's oversight findings⁵ are summarized below.

The process began with the formation of the qualifying commission, which, as per the Constitution, is composed of two members each from the Legislative, Executive, and Transparency and Social Control functions. The President of the Constitutional Court requested these bodies to appoint their commissioners. FCD analyzed the commissioners based on their profiles and qualifications to ensure they met the legal requirements and did not have any impediments, aligning with the requirements for judges of the Constitutional Court outlined in the Organic Law of Jurisdictional Guarantees and Constitutional Control (LOGJCC). An early finding was the non-submission of sworn asset declarations by some commissioners, hindering a comprehensive understanding of their personal and financial backgrounds. This information is crucial for candidates, control bodies, and the public to identify potential conflicts of interest or situations that could compromise the commissioners' objectivity.

Upon commencing the process, which involved soliciting shortlists from the authorized bodies and reviewing compliance with the requirements, several incidents unfolded, including the following:

- The Congress failed to meet the documentation submission deadline, resulting in the exclusion of their candidates.
- The Commission also found that none of the candidates practiced law or university teaching to a satisfactory standard.

4 <https://f24.my/9XUh>

5 <https://www.ciudadaniaydesarrollo.org/publicaciones/informe-de-veeduria-proceso-de-renovacion-parcial-de-la-corte-constitucional/>

Initially, candidates were allowed to rectify these shortcomings, but this decision was later reconsidered, and the contest was declared void in its first call. The Executive, Legislative, and Transparency and Social Control Functions were asked again to submit their nominations, and they promptly complied. Following a meticulous verification and refinement of the candidacies, the Commission compiled shortlists for judges of the Constitutional Court, comprising three women and six men.

Another significant finding was the resignation of Commissioner Rafael Oyarte, who cited professional commitments incompatible with his commission duties. Given the absence of a provision in the LOGJCC for a replacement, his position remained vacant until the completion of the process. In the challenge phase, four objections were filed against three candidates. The allegations against Jorge Sosa and Barbara Terán centered on political affiliations and supposed lack of suitability and integrity, respectively. These concerns were addressed during the challenge hearings, which were broadcast on Facebook and ultimately dismissed by the qualifying commission. The third challenged candidate, Salim Zaidan, was questioned for integrity and ethical issues but later withdrew from the process, citing a lack of guarantees and the incomplete composition of the Commission, among other reasons. The merit phase proceeded without major incidents, although Barbara Terán withdrew her candidacy due to health reasons. The opposition phase consisted of a blind technical test and an oral appearance. An incident occurred when candidate Jorge Sosa attempted to “recuse” some commissioners for alleged associations with other candidates and for randomly changing the order of interviews instead of following the alphabetical order as the regulations stipulate. The interviews proceeded, except for two candidates, Jorge Sosa and Carlos Vásquez, who resigned, citing irregularities in the process.

Amidst the various incidents encountered throughout the various stages, a total of five candidates reached the final stage: two from the Executive, two from the Legislative, and one from the Transparency and Social Control Function. Although four of the five finalists faced challenges, all objections were ultimately dismissed, and the scores were finalized. The ultimate outcome resulted in the filling of three vacancies, favoring the highest-scoring candidates: Richard Omar Ortiz Ortiz (nominated by the Executive), Jhoel Marlin Escudero Soliz (nominated by the Executive), and Ximena

Alejandra Cárdenas Reyes (nominated by the Legislative). For the Reserve Bench, Ana Carolina Donoso Bustamante (nominated by Transparency and Social Control) and Luis Fernando Sarango Macas (nominated by the Legislative) were appointed, with the National Assembly officially ratifying all positions on February 10, 2022.

Public Contest Based on Opposition and Merits for the Selection and Appointment of Anti-Corruption Judges:

As part of reforms to the Organic Code of Judicial Function, Ecuador’s National Assembly created new judicial units specializing in corruption and organized crime, which were established by the Judiciary Council in December 2021. These units, named Judicial Unit and Specialized Penal Guarantees Court for the Trial of Crimes Related to Corruption and Organized Crime, required the appointment of judges. To facilitate this process, the “Public Competition Based on Opposition and Merits, Citizen Challenge, and Social Control for the Selection and Appointment of Judges for Judicial Units Specialized in Corruption and Organized Crime Crimes” regulation was approved, and the public call for participation was officially announced on March 29, 2022. A total of 425 applications were received. After verifying the regulatory requirements, 73% of the applicants were disqualified, leaving only 37 candidates for the challenge phase. Seven challenges were presented during this phase, and after verification, all were dismissed. However, the Human Resources Department identified that one challenged candidate had been dismissed by the Judiciary Council, resulting in his disqualification from the process. In response to this incident, FCD requested access to information from the Judiciary Council regarding disciplinary proceedings against the anti-corruption judge candidates, but the request was denied citing the involvement of “personal information.”

The 36 candidates who successfully advanced through the first stage underwent a trust test designed to verify “skills, abilities, aptitudes, and cognitive skills for justice service”. Additionally, they actively participated in a training course where their performance, theoretical understanding, and practical application were rigorously evaluated. The grades obtained determined the final election results. The course, encompassing 16 subjects, involved a competitive selection process to appoint qualified instructors. After the completion of classes, exams, and tests, the results were verified by

qualification tribunals composed of the instructors. The final report and results were approved by the General Directorate of the Judiciary Council in November 2022.

The process resulted in the five-year appointment of anti-corruption judges, through the establishment of specialized units:



One weakness identified during the process, among others detailed in FCD's final oversight report,⁶ pertains to Citizen Oversight. Due to a late call for participation, citizens were prevented from monitoring all phases of the process. Additionally, there were shortcomings in the transparency of the process. Despite having a website for active transparency, out of seven information access requests submitted by FCD, only two were fully answered. Three requests received incomplete responses, and two were denied, significantly constraining the effectiveness of oversight efforts.

PROPOSALS FOR IMPROVEMENT

Selection of judges and alternate (backup) judges for the Constitutional Court for the period 2022 – 2025:

1. Consider incorporating the following provisions in future amendments of the Organic Law of Jurisdictional Guarantees and Constitutional Control (LOGJCC):
 - a. Introduce guidelines for the utilization of eligible candidate pools, defining their validity or expiration periods, and specifying whether candidates from previous processes can be reconsidered.
 - b. Establish provisions for replacing or substituting commissioners in the Qualifying Commission in cases of resignation, death, or any other form of unavailability.
 - c. Integrate into the incompatibility regulations for Qualifying Commission membership a prohibition

on having any vested interest in the process, such as being part of the eligible candidate pool.

- d. Outline measures and justifications regarding incompatibilities and grounds for the recusal of Qualifying Commission members, such as failing to submit their sworn asset declarations and other breaches of integrity, ethics, objectivity, or process transparency.
2. Implement informative campaigns prior to the renewal processes of judicial bodies to ensure compliance with the established forms, deadlines, and terms of current regulations, especially to encourage the proper and active participation of citizen oversight bodies.
 3. Enhance and improve the transparency and publicity of the process by opening new channels for disseminating information about the process stages, including social media and mass media.

Public Contest Based on Opposition and Merits for the Selection and Appointment of Anti-Corruption Judges:

1. Consider, in accordance with current public information access regulations, classifying as public information pertaining to the official records of administrative and jurisdictional personnel of the Judiciary, particularly in processes of competition and evaluation for the appointment of judges.
2. Actively promote and promptly facilitate the engagement of citizen oversight bodies.
3. Develop mechanisms to prevent and promptly identify conflicts of interest that may arise during the processes of selecting and appointing judicial authorities.

⁶ <https://www.ciudadaniaydesarrollo.org/publicaciones/informe-final-de-veeduria-al-concurso-publico-de-oposicion-y-meritos-para-la-seleccion-y-designacion-de-las-y-los-jueces-anticorrupcion-en-ecuador/>



CONTEXT

The lack of judicial independence and political control over judicial bodies, along with insufficient or non-transparent processes for selecting judicial authorities, are common at both state and federal levels across Mexico. The recent process for electing the President of the Supreme Court of Justice of the Nation drew civil society's attention due to challenges in participation and a lack of public scrutiny. While largely compliant with legal provisions, the process faced significant challenges in transparency and citizen oversight, underscoring the need for reforms to enhance openness. Experts warn against recent reform initiatives that aim to expand political control over the justice system,⁷ a threat that can only be averted through heightened societal participation and scrutiny of judicial operations.

MONITORED PROCESSES

México Evalúa conducted the following oversight processes:

1. Appointment of the President of the Supreme Court of Justice for the period 2022 – 2026
2. General Prosecutors' Appointment Processes in the State of Nuevo León and Mexico City

MAIN FINDINGS

Appointment of the President of the Supreme Court of Justice for the period 2022 – 2026

To monitor the appointment process of the President of the Supreme Court of Justice of the Nation (SCJN) and the Federal Judiciary Council, México Evalúa's "Transparency in Justice" program established the **National Network for Monitoring**

Judicial Appointments. This network, comprising various organizations, particularly the Foundation for Justice and the Public Appointments Observatory, was focused on increasing transparency in judicial appointments.

According to the political constitution of the United Mexican States, every four years, the judges of the full bench of the Supreme Court of Justice (SCJN) are required to elect their President from among their members, who cannot be re-elected for the subsequent period. The 2023 election process concluded with the appointment of Justice Norma Lucía Piña Hernández as President, making her the first woman to lead the SCJN and the Federal Judiciary Council. Justice Piña Hernández is known for her long career in the judiciary and her reputation for independence.

The process began with limited and delayed information, especially regarding judges interested in running as candidates. Although the Internal Regulations of the SCJN state that interested ministers should nominate themselves within the first five days of December, the list was not published until December 6. Five ministers, none of whom had previously presided over the SCJN, presented themselves as candidates for this term.

To enhance transparency in the process, the coalition of organizations requested greater publicity for the appointment process and that the candidates publicly present their work plans. Unfortunately, this was not possible due to the short time between the publication of the candidate list and the start of the judicial vacation period. The civil society group, aiming to increase transparency, publicity, and the credibility of the process, made several unacknowledged proposals and suggestions. Although the open forum proposed by

⁷ <https://eljuegodelacorte.nexos.com.mx/independencia-judicial-y-sus-desafios-en-los-sistemas-democraticos-el-caso-mexico/>

the Supreme Court for candidates to present their work programs did not take place, a public event was organized jointly with the Institute of Legal Research of the UNAM. Three SCJN presidential candidates, academics, jurists, and civil society representatives participated. As a result, México Evalúa noted that several candidates, including the current SCJN President, incorporated recommendations from the group of organizations into their programmatic proposals.

As part of the evaluation process, the Public Appointments Observatory, in collaboration with México Evalúa, prepared profile sheets of the candidates with information about their proposals. This information was then strategically disseminated through diverse channels, including traditional media, digital platforms such as Animal Político,⁸ other widely disseminated platforms, and infographics and video columns published through the Twitter (X) account of México Evalúa (@mexevalua).⁹

General Prosecutors' Appointment Processes

Regarding **criminal justice**, México Evalúa undertook several actions concerning the appointment of **general prosecutors**. Firstly, they conducted a general analysis of the state of criminal justice, particularly focusing on how prosecutors are selected. They also developed a tool outlining guidelines for the appointment of general prosecutors and monitored two election processes for prosecutors in Nuevo León and Mexico City.

A notable point is that between 2022 and 2023, the general prosecutors of Nuevo León, Oaxaca, Chihuahua, State of Mexico, Durango, Sonora, Quintana Roo, Baja California, and Zacatecas resigned for various reasons, including political changes at the executive level or shifts within parliamentary factions in those jurisdictions, and in some cases due to controversies or scandals in their roles. Following these resignations, in most cases, *replacements were made through direct nomination processes or appointments by the highest local executive authority* without an open call for candidates to apply or for society to participate, learn about their profiles, and evaluate their proposed work plans.

Through its analysis, México Evalúa identified five distinct models for the appointment of general prosecutors. Only three – in Mexico City, and the states of Sinaloa and Nuevo

León – involve some form of participation, and only eight states¹⁰ open the process through a public call for nominations or applications.

Additionally, regarding criminal justice, México Evalúa created the “*Guidelines for the Appointment of General Prosecutors*” tool,¹¹ made available to the public in 2023 to support and develop the capabilities of non-governmental actors to monitor and participate in the nomination processes.

Nuevo León Case

One of the primary weaknesses and challenges identified by México Evalúa pertains to the regulations that overlook essential elements for the proper appointment of prosecutors, such as unforeseen requirements in their profiles (experience, competencies, and skills), as well as subjectivity and insufficient criteria for nominations. Nuevo León is one of the states with a hybrid election system. It incorporates an open call to receive applications from the public. The National Anti-Corruption Committee reviews the applications and interviews the candidates, then submits the preliminary list to the State Congress. The analysis revealed a lack of a comprehensive mechanism to evaluate candidates, both in terms of educational background and during interviews. This is evidenced by the fact that only 2 out of 65 applications were objected to, with the rest being forwarded to Congress.

The appointment of the State Attorney General in Nuevo León has led to a standoff between the Executive and the Legislative branch, impeding the conclusion of the process. The State Congress has pushed for a series of reforms aimed at significantly reducing the Governor’s influence and power in selecting the State Attorney General and other officials. In response, the Governor has initiated several legal actions to obstruct the approval of these legislative initiatives. While these initiatives have not been finalized, they have had an impact; the constitutional dispute they triggered has suspended the continuation of the State Attorney General’s appointment process, leaving no definite date for its resumption.

Mexico City Case

México Evalúa has been monitoring the transformation

8 <https://www.animalpolitico.com/>

9 <https://twitter.com/mexevalua>

10 Coahuila, Guerrero, Michoacán, Hidalgo, Nayarit, Nuevo León, Sinaloa, and Veracruz.

11 <https://www.mexicoevalua.org/wp-content/uploads/2023/08/lineamientos.pdf>

process¹² of the office of the Attorney General of Mexico City. Legislative reforms have been approved, allowing the incumbent Attorney General to be considered for ratification for an additional four-year term. This reform is crucial to understanding the current implications and circumstances surrounding the office of the Mexico City Attorney General for Justice (FGJCDMX). The current holder, Ernestina Godoy, whose term concludes in January 2024, is undergoing the process for ratification in her position.

While the ratification process complies with current regulations, it is important to note that international standards, such as those of the UN Human Rights Council and the Inter-American Commission on Human Rights, favor “single, non-renewable mandates.” The concern is that the possibility of renewal could lead officeholders to act in ways that ensure their ratification, undermining the independence of their functions. Additionally, these international standards advocate for judicial authority nominations, including those of the Public Ministry, to be based on public examination and merit-based competitions, where any interested person can compete on equal terms. However, the reality in Mexico City differs; reforms like the amendment to the Organic Law of the General Prosecutor’s Office of Mexico City were passed with the support of the MORENA party,¹³ to which the current attorney general belongs, with the firm decision to ratify her in the position. Ideally, an opposition process should be conducted, allowing both the incumbent and any other merited individual to be considered equally. Instead, what is unfolding is a mere formality with a politically predetermined goal of ratifying the current holder.¹⁴

A critical aspect to consider about the fragility of the FGJCDMX nomination process is the role of the Citizen Judicial Council (CJC), a constitutional body responsible for selecting a shortlist for the head of the General Prosecutor’s Office, from which the Head of Government will submit a nomination proposal to Congress. Formally constituted in September 2023 by eleven citizens chosen by Congress, its composition was criticized by the opposition, who claim that several members have political ties to MORENA and allied

parties.¹⁵ The CJC’s result was a favorable opinion for the ratification of Ernestina Godoy, a process questioned for its subjectivity and irregularities.

The ratification is yet to be declared by Congress, where MORENA, despite being the majority party, lacks sufficient votes and will require support from opposition parties, several of which have pointed out procedural violations and other irregularities in the process.¹⁶

Other related activities

México Evalúa also conducted judicial vetting processes for the appointment of authorities at both State and Federal levels. In these processes, the organization identified weaknesses such as excessive discretion in selection procedures, limited openness to civil society participation, scarce or hard-to-access information about the processes, non-compliance with regulations, particularly regarding timelines for the selection or appointment of judicial authorities, and a lack of publicity about the methods and channels of nomination, as well as of the profiles of proposed or nominated candidates. To address these issues, México Evalúa published an article in the digital media outlet Animal Político, titled **“The Political Capture of Judicial Positions Corrupts Everything.”**¹⁷ This article sheds light on cases and the lack of transparency and publicity in the processes for appointing judicial authorities, which not only undermines the independence of the judiciary at the local level but also affects legal security, transparency, and the control of public powers.

Within the framework of its judicial observation project, México Evalúa developed the **“Guide for Monitoring Judicial Appointments.”** This guide aims to develop knowledge, competencies, and skills for judicial observation by identifying upcoming vacancies and selection processes at the federal or state level, as well as monitoring the selection processes of judicial personnel.

12 Resulting from the Law of Transition from the Attorney General’s Office to the General Prosecutor’s Office of Mexico City.

13 <https://elpais.com/mexico/2023-05-10/morena-aprueba-una-ley-para-que-ernestina-godoy-la-fiscal-de-ciudad-de-mexico-continue-otros-cuatro-anos-en-el-cargo.html>

14 <https://www.eluniversal.com.mx/metropoli/morena-se-congratula-con-avance-de-ratificacion-de-godoy-pan-dice-que-fue-marrulleria-la-decision-del-cjc/>

15 <https://www.infobae.com/mexico/2023/10/14/pan-califico-proceso-de-ratificacion-de-ernestina-godoy-como-un-engano-y-un-fraude/>

16 <https://www.infobae.com/mexico/2023/11/09/pri-advirtio-que-votara-contra-la-ratificacion-de-ernestina-godoy-como-fiscal-de-cdmx/>

17 <https://www.animalpolitico.com/analisis/organizaciones/lo-que-mexico-evalua/captura-politica-puestos-judiciales-corrupcion>

PROPOSALS FOR IMPROVEMENT

1. Propose regulatory reforms to mandate publicity and increase transparency in the appointment processes of judicial authorities, particularly of the President of the Supreme Court of Justice of the Nation (SCJN).
2. Develop initiatives and measures to promote and guarantee public participation and scrutiny, engaging academic and legal communities, media, civil society organizations, and the general public. This entails providing openness and publicity about the candidacies for the Presidency of the SCJN, including information on the judges' profiles, their work plans, and any other relevant information.



CONTEXT

The 2005 State Pact for Justice represented a significant step in defining a structural change agenda in Panama, incorporating evaluations of Supreme Court justices.¹⁸ Despite reducing direct and totalitarian control by the executive over this process, concerns persist about a potential regression due to the absence of constitutional reform formalizing a more balanced process, particularly in the nomination and vetting stages. The implementation of the Judicial Career has been slow, giving rise to legitimate concerns about political maneuvers and illegitimate influence affecting the judiciary's image and eroding public trust. The enactment of Law 53 in 2015 marked a substantial effort to address the deterioration of trust in the judicial system. However, measures like the establishment of the Special Court of Integrity and Transparency have not fully restored confidence in the justice system.

KEY ACTIVITIES

PADF's partner *Fundación para el Desarrollo de la Libertad Ciudadana* (FDLC, the Panamanian chapter of Transparency International) conducted the following activities:

1. Development of a platform for gathering information about the Justices of the Supreme Court and the new Court of Integrity and Transparency.
2. Training for journalists on how to use the platform and education about the judicial selection process.
3. A scholarship project for investigative journalism.

MAIN FINDINGS

1. The 2005 State Pact for Justice marked a turning point

in addressing concerns about the lack of independence and autonomy of the Judicial Power. This pact led to a series of reforms, including constitutional amendments and the establishment of a Special Commission for the evaluation of the Justices of the Supreme Court, a process in place since 2015. The Special Commission organized evaluations for the Justices in 2015, 2018, 2019, 2021, and 2022. Although no candidate evaluation process was developed after the initiation of PADF's judicial observation project, these processes were analyzed to identify strengths, areas for improvement, and vulnerabilities, including:

- Public hearings and interviews for candidate evaluations.
- Participation of citizens and civil society, both virtually and in-person.
- Broadcasts via TV and the internet, except for the 2019 process.
- Implementation of new evaluation tools, such as background checks for legal practice issued by the National Bar Association and the Supreme Court of Justice, as well as psychometric tests to assess the attitudinal profile and values of the candidates.

The processes involving Justices Cecilio Cedalise Riquelme and Olmedo Arrocha Osorio are noteworthy:

- Justice Cecilio Cedalise Riquelme's appointment to the Supreme Court was scrutinized because, at the time of his nomination, he was serving as an Advisor to the then Minister of Labor (2014-2019), Luis Ernesto Carles. This raised concerns for the State Commission

¹⁸ <https://www.laestrella.com.pa/nacional/131216/2005-crea-pacto-justicia>

for Justice due to his position as a member of the Cabinet Council and therefore as a nominating entity.

- The appointment of Justice Olmedo Arrocha Osorio also raised questions about his independence due to his career path, which included various governmental positions and his political affiliation with the Panameñista Party, which he resigned from before applying for the position of Justice. His previous and current work ties or consultancy services during his interview and selection process, as well as his involvement in legal consultancy firms linked to political power circles within the Executive and Legislative branches, raised questions about Justice Arrocha's impartiality and independence.

In both cases, potential and probable conflicts of interest were noted due to personal ties, political affiliations, and professional, labor, or corporate relationships. While these prior relationships might not alone disqualify or objectify them for judicial roles, it is indisputable that having this information is necessary to ascertain future scenarios where their recusal or disqualification might be required.

2. There is a regulatory gap that fails to limit the Executive Power's influence over the appointment processes of Justices. Despite the 2005 State Pact for Justice, which mandates that the Special Commission of the State Pact for Justice evaluates candidates for the Supreme Court of Justice, these advancements require further elaboration through regulations that prevent setbacks and continue to drive transformations in favor of consolidating the independence of the Judicial Power. The current concentration of the Executive's influence is evident in the following ways:
 - The Executive Power is not constitutionally required to submit its preliminary selections to the State Commission for Justice or to adhere to the Commission's shortlist from the evaluations. While the Executive's nominations must be ratified or endorsed by the National Assembly, the existing methodology places the Executive in a position of disproportionate discretion, relying solely on voluntary and good-faith respect for the Pact and the decisions of the State Commission. This situation can only be overcome and corrected through a constitutional reform that institutionalizes the State Commission, legitimizes its

competencies, or, alternatively, incorporates the model of the National Council of the Magistracy, granting it the authority for both the evaluation and selection of Justices.

- The responsibility of defining criteria, techniques, and evaluation methodologies should lie with a body other than the Executive Power. This opens the door to discretionary modifications without robust external oversight, thus reducing the legitimacy of any process conducted under such circumstances. Therefore, the regulatory authority of the evaluation process must be granted to the State Commission.
3. While the positive impact of the State Commission in recent processes is worth highlighting, an analysis of these processes has revealed several areas for improvement, including:
 - Increasing the dissemination of the Commission's findings, particularly regarding the evaluation of candidates.
 - Expanding channels for publicizing ways and methods for citizen participation in evaluation processes.
 - Encouraging the involvement of Civil Society Organizations specializing in justice matters to assess the processes, their transparency, and the integrity of Commission members.
 - Ensuring comprehensive dissemination of reports, documents, and findings from the processes, especially those addressing concerns or questions about candidates, whether they are selected for the Executive's shortlist or not.
 - Generating public influence to promote the expansion of the State Commission's competencies and evaluation methodologies to encompass other key judicial positions, such as those within the Integrity and Transparency Tribunal, pending constitutional reform.
 4. Other significant findings that require special attention include:
 - The need for a unified, standardized, and publicly accessible registry within the justice system that allows for consultation and verification of personal information and the career trajectory of judges. This system should compile information on judges' performance, personal

and financial data, and other relevant details for public scrutiny of the judiciary's conduct.

- The importance of having information tools about ordinary judges, justices of the Supreme Court, and other judicial bodies, allowing the public to engage in recusal or veto exercises as needed in specific cases. Supporting initiatives like the “Eye on the Position” platform and other similar standards-based platforms is crucial.
- Regarding sworn declarations of interest from justices, given their utility in identifying potential or actual conflicts of interest, these should be made public and easily accessible. Additionally, standard formats for mandatory declarations should encompass information on property, economic, and fiduciary matters, as well as professional, labor, and other types of relevant ties for the detection of conflicts of interest.

PROPOSALS FOR IMPROVEMENT

Legislative Reforms

1. Establishment of regulations delineating selection parameters and criteria that ensure the appointment of judicial authorities with high standards of independence, autonomy, and objectivity through a transparent process subject to public scrutiny.
2. The creation of a **Council of the Magistracy or Judiciary**, endowed with functional, budgetary, and administrative autonomy, composed in a balanced manner by representatives of the executive, judicial, and legislative powers. This council should have regulatory competence for refining and evaluating candidacies and appointing judicial authorities, along with other duties inherent to such bodies.
3. Consider granting the authority to nominate candidates for the Supreme Court of Justice and the Tribunal of Ethics and Transparency, as well as other judicial instances, to professional guilds and organizations (e.g., Bar Association), social organizations, and other civil society groups.
4. Introduce provisions mandating budget percentages or allocations in favor of the Justice System. Emphasize the need for equitable salary measures in lower courts to reduce gaps and corruption risks.
5. Develop a disciplinary regime to promote ethical behavior among jurisdictional and administrative staff within the Judiciary and the Public Ministry. This regime should be administered by a collegiate body composed of peers from the judiciary and the Public Ministry and should extend to allegations and charges brought against Justices of the Supreme Court.
6. Implement regulations to strengthen administrative transparency within the Judiciary, both administratively and jurisdictionally. This includes bolstering the career and conduct of judges through the establishment of personal files accessible for public scrutiny.

Programmatic, Technical, and Other Recommendations

1. Open and/or expand channels for filing complaints under the strictest confidentiality and attention, enabling citizens and organizations to submit complaints and any indications that may constitute grounds for exclusion or disqualification from the evaluation process.
2. Strengthen the promotion of citizen participation and specialized civil society organizations in judicial observation to maintain investigative actions and influence on the transparency of the judicial system and the integrity of judicial operators.
3. Support the technical development of the Tribunal of Integrity and Transparency and the special investigation unit of Integrity and Transparency. Empower citizens for responsible complaint filing within this specialized jurisdiction.
4. Conduct awareness campaigns highlighting the impact of the judicial power's functional autonomy and independence on the democratic system and the defense of human rights.
5. Support capacity building for oversight and audit bodies, such as the General Comptroller's Office, ensuring their functional autonomy and operational independence. Enhance accessibility and publicize their reports to facilitate investigations and subsequent charges.
6. Advocate for the reinstatement of the State Pact for Justice agreements to resume the implementation of necessary reforms to the Panamanian justice system, particularly constitutional reforms and the establishment of The National Council of the Magistracy . Incorporate constitutional measures to enhance the effectiveness of reciprocal control between the Supreme Court of Justice and the National Assembly.

General conclusions and recommendations

1. To ensure the judicial authorities have the necessary independence to administer justice with objectivity, credibility, and autonomy, it is vital that states establish bodies comprising representatives from the executive, legislative, and judicial branches, as well as civil society. This would foster informed and unrestricted participation from civil society representatives and citizens in the evaluation and vetting processes.
2. States should enact regulations delineating the methodology for evaluating, selecting, and appointing judicial authorities. These regulations should encompass criteria for candidate profiles, incompatibilities, appeal processes, eligible candidate registries, and procedures for addressing resignations, deaths, suspensions, and other foreseeable scenarios.
3. States should adopt methodologies set by responsible bodies for evaluating, electing, or appointing judicial authorities. The methodology should be made public, encouraging and facilitating citizen and civil society observation and oversight. These methodologies should include tools and data for constructing detailed profiles of judicial candidates, encompassing personal, professional, financial, and immediate family information.
4. Regulations should mandate periodic and updated asset and sensitive activity declarations by magistrates, with a regime of consequences for omission and falsification of information or failure to declare. Such regulations must ensure public access to this information, including updates upon leaving or assuming another position.
5. Ethical regimes should regulate the work-related obligations to be abided by judicial authorities, specifying incompatible, potentially questionable, and prohibited links and activities. This includes the obligation to declare conflicts of interest and situations potentially jeopardizing objectivity and independent judgment. Given the nature of judicial work, regulations should stipulate exclusive dedication by magistrates, with law-specified exceptions such as teaching.
6. Promote regulations on “cooling-off periods” for occupying sensitive positions in judicial bodies. This is a strategy to control and reduce risks of influence, interference, and conflicts of interest from sensitive sectors (e.g., regulated sectors, political parties, financial sector).
7. Advocate for regulations requiring candidates for judicial positions to submit interest declarations aiding in detecting potential conflicts of interest or other situations that could compromise objectivity in their judicial roles.
 - a. These declarations should include financial, fiduciary, commercial, labor, and other relevant information.
 - b. Independent bodies should oversee and verify these declarations to detect inconsistencies.
8. Implement regulations to penalize unjustified enrichment, complementing asset declarations, with a special focus on magistrates and public ministry personnel.
9. Foster the creation or strengthening of permanent consensus-building and dialogue spaces among different sectors and national leaders. These platforms aim to develop consensus and discussions on the need to rescue, strengthen, and protect constitutional order, judicial independence, separation of powers, and checks and balances.
10. Promote educational programs and integrate training for democratic competencies (e.g., citizen participation, responsible voting) into school curricula. Emphasize the importance of judicial independence, the separation and reciprocal control of state powers, and fundamental democratic principles.
11. Encourage and provide technical and financial support for the work of judicial observation conducted by investigative journalism, civil society organizations, researchers, and academics.

