“The Justice We Seek” Prepared for the Inter-American Commission on Human Rights (IACHR)

On the occasion of the public hearing on “Judicial Reform in Mexico”.
to be held on November 12,2024

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The collective "La Justicia Que Queremos" (LJQQ) is a coalition of organizations, victims' groups and other allies with a well-established track record in defending and promoting justice in Mexico and across the region. Our overarching goal is to achieve equal justice for all and to ensure that impunity is no longer the norm in the country. We aim to shed light on the shortcomings and opportunities for improvement within the institutions responsible for administering justice, contributing to their enhancement, fostering substantive equality within the justice system, and working toward the eradication of impunity through active participation and advocacy for rights. The Fundación para la Justicia y el Estado Democrático de Derecho (FJEDD) serves as the Technical Secretariat of the Collective. Contact: colectivo@lajusticiaquequeremos.org

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I. Introduction: Constitutional Amendments, Judicial Reform, and Risks to Human Rights and Democracy

The current political context in Mexico grants the ruling party a qualified majority in the federal legislature and most state congresses—achieved through a coalition of like-minded parties—allowing them to approve constitutional reforms, even those that may undermine human rights and the foundations of the country's democratic system. This majority is further bolstered by the President, who is also part of this political bloc, enabling the passage of constitutional reforms without effective checks and balances.

Among the recently approved constitutional reforms that violate human rights standards are those that expand the militarization of public security and reform the Judiciary. Additionally, there is the potential approval of reforms already passed by one chamber of the Federal Congress, such as the expansion of the catalog for mandatory pretrial detention and the elimination of the transparency oversight body. These reforms contravene the principles and human rights enshrined in the American Convention on Human Rights (ACHR), signaling a departure from Mexico's regional commitment to uphold the rights and freedoms recognized in the ACHR and to guarantee their free and full exercise for all individuals under its jurisdiction.[1]

The judicial reform fails to bring about meaningful improvements to the judiciary or achieve its purported objectives, such as enhancing the efficiency of justice or addressing judicial corruption and nepotism. Instead, under the guise of representing the "popular will," the reform proposes the mass dismissal of judicial leaders at both the federal and local levels, replacing them through a process of popular election.

From a citizen's perspective, this reform represents a profound crisis, marked by the loss of the right to access justice and the erosion of the right to an independent and impartial judiciary.[2] This judicial reform fails to propose any mechanisms to streamline processes and improve access to justice, particularly for people and groups in vulnerable situations. Instead, it seeks to arbitrarily dismiss judicial officials and leverage constitutional reform mechanisms to impose an electoral model for appointing judges, magistrates, and justices at both the federal level and across Mexico's 32 states. Such a system would subject the judiciary to political

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[1] *American Convention on Human Rights (ACHR)*, adopted November 22, 1969, art. 1, https://www.oas.org/dil/esp/1969_Convenci%C3%B3n_Americana_sobre_Derechos_Humanos.pdf.
[2] Contrary to Articles 8 and 25 of the ACHR.

influence—or worse, leave it vulnerable to organized crime—undermining judicial independence and impartiality.[3]

This reform is inserted in a context of democratic erosion and incessant attacks on the Judiciary and its members by the political actors that make up the federal executive[4] and legislative branches. These attacks use arguments such as judicial corruption, the privileges of the judges, their alleged proclivity to protect "criminals", among other arguments. This type of stigmatizing statements are not the democratic channels to elucidate this type of situations, and therefore constitute in themselves, attacks to judicial independence; as has been pointed out by the United Nations Rapporteur on the independence of judges and magistrates. This is even more serious when such statements are not supported by objective and verifiable data; however, they were used to justify the need for reforms to "transform" the federal and state judiciaries and to provide for the removal of all current judges in Mexico.

In general, there are practices and actions carried out by the legislative and executive branches, both at the federal level and in specific states, that directly violate judicial independence. An example of this are public speeches aimed at undermining the credibility of the judicial institution or direct attacks against judicial institutions or those who represent them, biased criticism of judgments contrary to the interests of political groups, and legislative initiatives aimed at limiting or weakening the guarantees established in the federal or local constitutions. During 2023 alone, at least 135 cases of public speeches by then President Andrés Manuel López Obrador against the Judicial Branch were identified.

In Mexico, the following practices have been developed to attack the independence of judges, which in turn attack the separation of powers and democracy: 1) finger-pointing and stigmatization; 2) threats to integrity; 3) aggressions and homicides; 4) political trials; 5) arrests; 6) legislative reforms that seek to expand or decrease the number of judgeships, reduce their mandate and modify their appointment process to weaken them and make them vulnerable to politicization; 7) budget decreases; 8) dismissals or disciplinary sanctions processed or imposed without due process, in retaliation for independent judicial activity; 9) gender-based harassment; and, 10) political capture of the highest judicial responsibilities through appointments functional to interests of specific sectors and not based on merit or capabilities.

It has been said by the authorities that those of us who question the reform "oppose popular election". The problem with this reform is not the introduction of a new model for electing judges, since the reform of these mechanisms is a long-standing request from civil society, because the existing mechanisms had a political component that compromised their independence. The problem is that by introducing the mechanism of judicial election by popular vote, in the way it has been embodied in the

[3] There is only one mention in the reform of state judiciaries.

[4] "It is also worth mentioning the persistent accusations that the current head of the Executive Branch has made against judges who do not rule in accordance with the interests of his government. From January 1, 2023, to January 17, 2024, 167 accusations have been identified, 98% of which consisted of public statements, 88% of them issued directly by the President of the Republic". México Evalúa, *when imparting justice is dangerous. Attacks on the integrity of judicial personnel in Mexico* (Mexico, September 2024), 10, https://www.mexicoevalua.org/wp-content/uploads/2024/08/riesgos-integridad.pdf.

constitutional reform and secondary laws, the decision of who can be candidates or not has been left in the hands of the political powers, which not only defrauds the very idea of the election in the hands of the citizens (citizens can only vote for the options that the political powers allow, via the figure of Evaluation Committees), but also puts at risk the independence and judicial professionalization as a right of access to justice for the population. The judicial reform weakens the judicial career that has been consolidated, particularly in the Federal Judiciary, which is one of the few guarantees of the capacity, competence and independence of the judges for the protection and guarantee of the human rights of the population.

Since the constitutional reform on human rights in 2011, Mexico has changed its paradigm in the way it interprets the law. It went from a model of literal application of the law to a model that rewards legal argumentation. Thus, in the last decade, there has been an important jurisprudential development in the area of human rights, which has been driven mainly by jurisdictional criteria produced by the Federal Judiciary. To this end, the Mexican State has invested in the training and professionalization of judges in human rights issues and approaches, including the gender perspective. All these efforts, which were always accompanied and promoted by human rights civil society organizations, will be lost with the implementation of the judicial reform.

A judicial career is one of the main guarantees of judicial independence, as it ensures that the most important processes to which judges are subject are objective and impartial, and provides them with conditions that reinforce their stability, and thus their independence from external pressures. A robust judicial career with democratic accountability mechanisms encourages judges to fulfill their duties to protect rights and implement international standards. However, the reform leaves aside all the efforts made, since the new and lowered requirements to become a judge in Mexico are not aimed at ensuring that highly qualified, meritorious and ethically suitable people occupy these positions, which will be reflected in the quality of the judicial decisions that will rule on the rights of all people, particularly those who are in a situation of greater vulnerability and defenselessness.

II. Loss of Citizenship Rights and Impact on Democracy

The principle of judicial independence is a fundamental element of democratic regimes. The Inter-American Democratic Charter adopted by the General Assembly of the Organization of American States (OAS) in 2001, contains the commitment of Latin American States to promote and defend democracy, and Article 3 establishes the essential elements of representative democracy: "*among others, respect for human rights and fundamental freedoms, access to power and its exercise subject to the rule of law, the holding of periodic, free, fair elections based on universal and secret suffrage as an expression of the sovereignty of the people, the pluralistic regime of political parties and organizations, and the separation* ***and independence of the branches of government****.*"

The jurisprudence of the Inter-American Court of Human Rights (IACHR) has established that the right to independent and impartial authorities is essential to protect other rights and freedoms, such as access to justice and due process.[5]

Furthermore, the strength of the Judiciary and the independence of those who make up the judiciary is an essential component to progressively advance towards the consolidation of a republican and democratic system to which the Mexican State is committed, as a constitutional principle and as part of the Inter-American Human Rights System.

The implications of the judicial reform for the exercise of these guarantees are developed below.

a) Access to justice and the amparo process

The guarantee of access to justice will be interrupted with the judicial reform because there are no rules to support the transition in the implementation of the new form of selection of judges to ensure that the courts in Mexico will continue to function. This is expected, since there are no clear rules in the face of the massive dismissal of judges, magistrates, magistrates, ministers, ministers and judicial personnel and there are no rules to ensure that the people who assume the jurisdictional positions will have the skills, experience and legal tools to resolve the pending cases and that they will continue to enter the justice system.

In fact, what we have witnessed in Mexico in recent days is the approval of laws and constitutional reforms, as well as agreements and calls, which instead of facilitating and expanding the channels of access to justice, limit the exercise of remedies for the protection of rights. Furthermore, the context of the legislative processes in which these constitutional and legal reforms have been approved and issued have prevented a broad, transparent and in-depth discussion. It has been enough with the initiative or consent of the Executive with the agreement of the majorities in Congress -only by the majority party and its allies- for the reforms to be approved without in-depth discussions on their implications in a *fast-track* manner.

At the center of these constitutional and legal reform processes is the mechanism for the protection of rights par excellence in Mexico, which is the amparo trial, whose knowledge is vested in the Federal Judiciary. The amparo trial is a means of constitutional control[6] through which human rights recognized in the parameter of constitutional regularity[7] can be defended against acts or omissions of authority.[8] It is

[5] *Case Reverón Trujillo v. Venezuela*, (Inter-American Court of Human Rights, June 30, 2009), https://www.corteidh.or.cr/docs/casos/articulos/seriec_197_esp.pdf.

[6] Daniel Antonio García Huerta, coord., *Apuntes procesales para la defensa de los derechos humanos: juicio de amparo* (Mexico City: Unidad General de Conocimiento Científico y Derechos Humanos de la Suprema Corte de Justicia de la Nación, 2023), 26, https://www.scjn.gob.mx/derechos-humanos/sites/default/files/Publicaciones/archivos/2024-02/apuntes-procesales-juicio-amparo.pdf.

[7] That is to say, human rights that are contained both in the Political Constitution of the United Mexican States and in the various international treaties to which the Mexican State is a party.

[8] According to the jurisprudence of the federal courts, the concept of authority is not limited only to state actors but may also include private actors in certain specific circumstances.

a judicial mechanism through which it is recognized that the Constitution is a legal norm -that is, a set of provisions that are binding and enforceable- and not simply a declarative text. The very existence of the amparo is based on an approach that opposes a traditional vision that considered the Constitution as a mere set of guiding principles, or a letter of good wishes,[9] whose enforceability was limited to specific cases and situations.

The amparo trial is, then, the judicial means in Mexico that individuals can trigger when they consider that their human rights have been violated. Although there are other means of constitutional control that may also have the potential to protect human rights -such as the action of unconstitutionality- the amparo is the only jurisdictional mechanism in which all persons who suffer some form of affectation, and not only state or political actors, have standing to initiate the trial.[10]

It is important to recognize that, even when other types of judicial mechanisms are also available to individuals which, by their nature, can be considered as jurisdictional guarantees of human rights -such as the Judgment for the Protection of Political-Electoral Rights or the Process of Patrimonial Responsibility of the State- these are profoundly limited in terms of the matter they protect,[11] in such a way that they cannot be considered as an adequate and effective remedy in light of the standards derived from the American Convention on Human Rights.

On different occasions, the rulings derived from amparo trials have translated into positive transformations in the reality of people who, in the face of a human rights violation, decided to place their trust in a court to obtain a fair and effective remedy. The transformative potential of the law, for which activism and social movements have fought so hard, has found a concrete result in different rulings that have managed to change the lives of people and groups that have been socially and historically excluded or discriminated against.

This has been especially relevant in the face of adverse social or political contexts, in which the democratically elected powers have often failed not only to adequately address the needs of the people but have even, on many occasions, betrayed and squandered the wishes, desires and expectations of a country in which the pain of the hundreds of thousands of victims of human rights violations has already reached the dimensions of a true humanitarian crisis.

In the face of this democratic deficit, accentuated by the current concentration of power, the amparo trial has shown to have the capacity to peacefully confront the abusive and arbitrary use of public power to protect the rights of people who have

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[9] See: Eduardo García de Enterría, *La Constitución como norma y el Tribunal Constitucional, (*Madrid: Civitas, 2006).

[10] Pursuant to Article 105 of the Political Constitution of the United Mexican States, actions of unconstitutionality may only be brought by a) The equivalent of thirty-three percent of the members of the Chamber of Deputies of the Congress of the Union; b) The equivalent of thirty-three percent of the members of the Senate; c) The Federal Executive, through the Legal Counsel of the Government; d) The equivalent of thirty-three percent of the members of any of the Legislatures of the federal entities; f) The political parties; g) The National Human Rights Commission; h) The guarantor agency established in Article 6 of the Constitution; i) The Attorney General of the Republic.

[11] In the first case, it is limited to violations of political-electoral rights, and, in the second case, it is limited to the possibility of demanding compensation for the "irregular actions of the State".

been abandoned, ignored or even crushed by the elected powers. Hence, the amparo is an institution of major importance to protect minorities and groups that have been historically discriminated against.

That said, it is also undeniable and indisputable that the amparo trial has never been an accessible mechanism for most people in Mexico. It is an excessively technical judicial mechanism, which requires the close and permanent accompaniment of a lawyer with highly specialized knowledge. In a country with such high levels of inequality.[12] This has resulted in access to constitutional justice being discriminatory and elitist.

This phenomenon, known as "legal marginality", implies that the vast majority of people in Mexico simply do not have sufficient income to "knock on the door of a court in the face of the outrage and abuse of others (...because...) justice is a luxury that few can afford".[13] Even though some efforts have been made to strengthen the Federal Institute of Public Defense, its scope of competence does not cover all the scenarios in which a person may need to file an amparo lawsuit. From the private sector, civil society organizations and pro bono initiatives have also played an important role, but their capacities are clearly not enough to cover all the demand that exists.

Hence, access to the amparo trial has become a very profitable business that has been exploited by a handful of law firms that, beyond selling real expertise, have actually traded with the *know-how* on how to effectively circumvent all the formal and informal challenges, the so-called "judicial preferences", involved in going to an elitist and hyper-bureaucratized constitutional justice system.

This dynamic of commodification of access to constitutional justice is an aspect that was not addressed by the reform. On the contrary, experts from the United Nations called attention to the fact that "the popular election of judges could increase the risk that judicial candidates may seek to please voters or campaign sponsors in order to increase their chances of reelection"[14] , which could open the door to increasing the level of influence that large law firms have by, for example, now having the possibility of indirectly financing the campaign of an amparo judge. To the extent that the practice of the legal profession in Mexico is not adequately regulated, these types of practices could not be sanctioned.

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[12] Gerardo Esquivel Hernández, *Extreme Inequality in Mexico. Concentration of Economic and Political Power* (Mexico: OXFAM, 2015), https://oxfammexico.org/wp-content/uploads/2017/04/desigualdadextrema_informe.pdf.

[13] Ana Laura Magaloni Kerpel, "Un sistema de justicia de cabeza: justicia y desigualdad en México," *Revista de la Universidad de México, Dossier Desigualdad,* no. 905, (2024), https://www.revistadelauniversidad.mx/releases/ca4788a8-fe0e-4a1a-b9d7-fa7830c96b3a/desigualdad.

[14] Margaret Satterthwaite, *Mandate of the Special Rapporteur on the Independence of Judges and Lawyers*, *Ref: OL MEX 11/2024,* (United Nations Human Rights Office, July 29, 2024), https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=29251.

Both the misnamed "Reform with and for the Judiciary",[15] presented in 2020, and the recent judicial reform approved in 2024 -both promoted by the current regime- presented themselves as transcendental legal modifications to improve people's access to justice. However, none of them were really designed to break down the structures that prevent people from accessing federal justice on equal terms.

The amparo trial remains a technical and complex tool that is not accessible to most of the population. This is aggravated by the overload of cases in the federal courts, where many amparo suits are dismissed in the initial stages due to formal errors. Judicial reform did not effectively simplify the process. This is especially important in a context of extreme inequality, as most people living in vulnerable conditions have no legal representation.

On the other hand, we also highlight that the capacity of the amparo trial to address the crisis of serious human rights violations, such as forced disappearances and torture, continues to be extremely limited, as it was not an issue addressed by the judicial reforms approved in recent years, despite the fact that for several years civil society organizations and academia have reiterated the need to look to the regional experience, which "tells us that the real beginning of Latin American judicial reform occurred in post-dictatorship contexts, as part of a congruent and essential response to consolidate the rule of law and strengthen the institutionality and independence of the judiciary in order to ensure that they had the necessary capacities and conditions to sustain successful justice processes against powerful perpetrators of human rights violations.[16]

Although the amparo trial has historically had limitations, such as its excessive technification and elitism, it still represented a fundamental tool for the defense of human rights, allowing individuals to challenge the abuse of power by the authorities. However, the recent judicial reform introduces an even more worrisome scenario. National and international specialists have warned that the new scheme for electing judges, by weakening the basic guarantees of autonomy and independence of the Judiciary, threatens to completely dilute the courts' ability to act as an effective counterweight to political power. With this reform, the amparo trial would cease to be a reliable remedy, especially in cases of great public relevance, since judges could face pressure or be politically dependent on those who elect them, which would compromise their impartiality and the possibility of questioning the decisions of those in power. This represents a serious setback in the access to constitutional justice, as it would nullify all its useful effect.

Yesterday and today, the challenges to accessing federal justice will continue to be enormous. This is a real tragedy in a country where the pain of the victims of human

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[15] This reform, promoted by former Justice Arturo Zaldívar Lelo, was announced as "the most transcendental judicial reform since 1994, which will consolidate a better, closer, more sensitive and professional justice for the benefit of the people". See: *Reconoce Poder Judicial de la Federación aprobación de la Reforma Constitucional en materia de justicia federal por la Cámara de Diputados* (Press Release No. 253/2020), December 14, 2020, Suprema Corte de Justicia de la Nación, https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6296.

[16] Mexican Commission for the Defense and Promotion of Human Rights, "Reforma judicial: ¿un cambio de época?", *Animal Político,* May 17, 2021, https://www.animalpolitico.com/analisis/organizaciones/verdad-justicia-y-reparacion/reforma-judicial-un-cambio-de-epoca.

rights violations demands an urgent and effective response. The recent judicial reform is a clear example of gatopardism: changing everything so that nothing changes. The barriers that have prevented access to constitutional justice are still there, intact. People will not benefit from this reform, and worse, the few advances that had brought the amparo trial closer to those who need it most will be annulled. With judges who will no longer enjoy the minimum conditions of independence and impartiality, the expectation that the federal justice system will act with rectitude crumbles.

Although imperfect, the amparo trial has historically been a real limit to power in Mexico, a resource to stop abuses and protect rights. With the series of constitutional and legal reforms, and the current political context, this function has faded away, especially when in recent days the majorities in the Mexican Congress have reached the absurdity of authorizing the President of the Republic to disregard a suspension issued in an amparo.[17] With this, the slow and stunted construction of the Rule of Law, which had begun to be cemented almost three decades ago, has now completely collapsed, and today we are left to resist and start again: to imagine and bet on possible futures where access to justice is not an empty promise. In this process, international pressure will be essential to rebuild the Mexican justice system, as has been done in other latitudes.

b) Ensuring objective, independent and impartial justice

The guarantee that the justice that will be imparted in Mexico will be independent and impartial is also compromised, since the requirements established in the new constitutional text to be a judge, magistrate, magistrate or minister have been lowered, so that the judgeships and magistracies are not intended to be occupied by people with professional skills (experience and knowledge) and ethical suitability....

Since 2001, with the *Constitutional Tribunal v. Peru* judgment*,* inter-American jurisprudence has consistently recognized that the principle of judicial independence has three components: (i) an adequate appointment process, (ii) the guarantee of irrevocability, and (iii) the guarantee against external pressures.[18] Judicial reform that undermines these three components, through measures such as judicial election by popular vote and mass removal, which will be developed in greater detail below. On the contrary, the election by direct vote of judicial positions, as will be detailed later, increases the possibilities of co-optation of individuals either by political, economic or other interests. Added to this situation is the uncertainty in the absence of rules that should govern the process of replacing judges, the electoral processes and the transition of cases currently heard by the federal and state judiciaries.

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[17] Víctor Gamboa, Luis Carlos Rodríguez, Antonio López Cruz, "Senado avala desacato de Claudia Sheinbaum; carece de atribuciones para eliminar reforma judicial del DOF, afirma", *El Universal,* 24 October 2024, https://www.eluniversal.com.mx/nacion/senado-avala-desacato-de-claudia-sheinbaum-carece-de-atribuciones-para-eliminar-reforma-judicial-del-dof-afirma/.

[18] *Constitutional Tribunal Case v. Peru*, (Inter-American Court of Human Rights, January 31, 2001), https://www.corteidh.or.cr/docs/casos/articulos/seriec_197_esp.pdf.

c) Challenges related to due process and “faceless” judges

In particular, the amendment to Article 20, paragraph A, section X, provides that in the case of organized crime, the judicial administration body may provide the necessary measures to preserve the security and protect the identity of the judges, without regard to the rights of access to justice and the security of the victims who are parties to these criminal proceedings.

On several occasions, the Inter-American Court of Human Rights has had the opportunity to analyze the figure of "faceless judges" in various cases against Peru. This resulted in the construction of a solid line of jurisprudence in which it is considered that trials before "faceless" or identity-reserved judges violate Article 8(1) of the American Convention, since it prevents defendants from knowing the identity of the judges and therefore assessing their suitability and competence, as well as determining whether there are grounds for recusal, so that they can exercise their defense before an independent and impartial tribunal.

This precept provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial judge or tribunal, previously established by law, in the substantiation of any criminal accusation made against him, or for the determination of his rights and obligations of a civil, labor, fiscal or any other nature.

This practice also violates Article 10 of the Universal Declaration of Human Rights, which states that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

This is because concealing the identity of judges only for certain types of cases violates the principle of equality, and also the principle of impartiality because they could appoint a judge with conflicts of interest, and it would be unknown whether the judge meets all the requirements -such as adequate training- to conduct an independent trial with due process.

In addition, these circumstances end up extending to other judicial and non-judicial officials involved in the process, such as prosecutors. All of this constitutes a violation of the principle of the natural judge and a violation of the right to due process, but not only for the persons being prosecuted, but also for the victims.

The incorporation of this figure at the constitutional level could systematically vitiate the origin of all criminal proceedings followed in the very broad catalog of what is considered organized crime in Mexico today, as well as favoring the opacity of the administration of justice.

The provision contained in Article 20, paragraph A, section X of the Political Constitution of the United Mexican States (CPEUM or Mexican Constitution), regarding the fact that the judicial administration body may provide the necessary measures to preserve the security and safeguard the identity of the judges in cases of organized crime, violates the rights of access to justice and legal security of the victims who are parties to these criminal proceedings.

This possibility opens the opportunity for the ultimate guardians of the rights and due process of both the persons charged in organized crime proceedings and their victims to be faceless and unaccountable. They would have an absolute supra-constitutional power, granted by the Constitution itself.

This measure has an impact on the rights of the victims related to these proceedings, because they will not have certainty as to the identity of the judges who will rule on the victimizing events.

On this point, it should be noted that victims are parties to criminal proceedings and that, according to Article 20 of the Constitution, section A, subsection I, the purpose of the latter is to clarify the facts, protect the innocent, ensure that the guilty party does not go unpunished and that the damages caused by the crime are repaired. This last objective -the reparation of the damage- is a state responsibility derived from the right of access to justice. However, this state responsibility is hindered to the extent that the victims will not know the persons in charge of guaranteeing the clarification of the facts and repairing the damages caused by the victimizing events.

Thus, those who are affected by this constitutional reform to Article 20, paragraph A, section X, are precisely the victims of such serious crimes as human smuggling and trafficking, kidnapping or corruption of minors. In conclusion, the introduction of the figure of "faceless judges" in the context of criminal justice, especially in cases of organized crime, represents a serious threat to the rights of victims and the integrity of due process. By allowing the identity of judges to be kept secret, fundamental principles such as transparency, impartiality and the right to a fair trial are undermined.

This constitutional reform not only jeopardizes accountability, but also limits access to justice for those who have been affected by heinous crimes, without regard to the importance of ensuring that victims have clarity and confidence in the judicial system, therefore, it is essential to rethink this measure to ensure that justice is not only a control tool, but a real mechanism of protection and reparation for all those affected.

In this sense, the Mexican regulatory system must have legal mechanisms that allow citizens to have effective remedies in the event of arbitrary dismissal of judges[19] . In the Mexican case, although the removal of all judges in the country is justified by the amendments to the Constitution, it is also true that Article 133 of the Mexican Constitution establishes international treaties, such as the ACHR, as the "supreme law of the Union". Thus, the guarantee of judicial independence and the existence of mechanisms against arbitrary dismissal of judges are also protected by the treaties to which Mexico is a party.

d) The reform´s broader impact on democratic government

The impacts of the judicial reform on the configuration and operation of nothing less than a constituted power, the Judicial Branch, are radical, profound and of the utmost

[19] *Reverón Trujillo v. Venezuela*, 2009.

seriousness. A constitutional **democracy**, one that the Mexican State is called to be, demands the recognition of rights and liberties and the guarantee of the principle of division of powers. In the face of these demands, the judicial reform disrupts the latter and, therefore, jeopardizes the protection of the rights and freedoms of individuals. The content of the reform completely redefines the elements that were identity or representative of the Political Constitution of the United Mexican States, which safeguard the division of powers and are at the core of the coexistence pact that gives life and strength to the Mexican Constitution.

The reform weakens judicial independence and, therefore, the capacity of the Federal Judiciary to exercise impartial control over the political majorities that are transitory, through the judicial review of their acts, norms or laws that these powers promote. By politicizing the election of judges and incorporating the participation of the Legislative and the Executive in defining moments of this selection process, the constitutional judicial control of acts and norms is undermined and diluted, and, therefore, one of the pillars of the division of powers is also weakened. This control, contrary to what the ruling party has maintained, is not antidemocratic, but rather, in essence, preserves the most valuable democratic decision, that is, the constitutional norm.

Due to its scope, the reform is a representation of an abusive exercise of the power of the majorities, which disrupts the division of powers, which is part of the basic structure of the Mexican Constitution, one of its essential notes. The above is framed in a global context in which political majorities increasingly seek to agglutinate more spaces of power, eliminating checks and balances and, therefore, deeply eroding democracy.

This reform generates a profound rupture in the rules of the democratic game, in those that define and safeguard the integrity of the basic constitutional procedures that allow a democracy to sustain, develop and guarantee its own subsistence, making it a priority that they be preserved over time. [20]

This is serious because the value and strength of democracy is not exhausted in the existence and exercise of majority rule, which is always associated with transitory changes in electoral preferences. On the contrary, the value of democracy lies in the guarantee it offers for deliberation[21] , in the rules that order it, since only through it we can contrast the different visions and preferences to arrive at the best possible solution, the most equitable one. It is these basic rules that the reform under analysis has profoundly altered, completely unbalancing the system of checks and balances that is an essential part of the CPEUM.

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[20] This trend has been called *democratic proceduralism* and has been postulated by authors such as Stephen Gardbaum, Rosaldin Dixon, Roberto Gargarella, Aileen Kavanagh, Manuel José Cepeda Espinosa, David Landau, Roberto Niembro and Sergio Verdugo, and in turn has been referred to the Supreme Court of Justice of the Nation on the occasion of an *amicus curiae* regarding the processing of the recent constitutional controversy 286/2024, the unconstitutionality action 164/2024 and consultation files (4/2023, 5/2024, 6/2024 and 7/2024) subscribed by 50 people from the academy, available here: https://drive.google.com/file/d/1LbPpA9qIKxF_j51vp7nGchxz6Ihkp_vb/view?pli=1.

[21] Jürgen Habermas, "The Democratic Rule of Law, A Paradoxical Union of Constitutional Principles?", *Human Rights Yearbook*, no. 2, (2001): 444, https://revistas.ucm.es/index.php/ANDH/article/view/ANDH0101110435A/21009.

III. Unaddressed Challenges in Access to Justice

a) Guaranteeing access to justice, particularly to vulnerable groups

The guarantee and satisfaction of the right of access to justice, which requires the existence of a formal remedy provided by law to address and resolve disputes in any matter, a remedy that must be simple, quick and effective[22] , are entirely conditioned by the capacity of the institutions of justice to investigate crimes and bring charges before the courts in an effective manner. This is due to the constitutional design of the Mexican criminal justice system in which the Public Prosecutor's Office is responsible for the investigation and prosecution of criminal acts.[23]

Adequately guaranteeing this right must begin by addressing the major areas of opportunity and deficiencies that persist in Mexican **prosecutors' offices**, both at the state and federal levels. These are the gateway to the justice system and have the power, with considerable margins of discretion, to define their criminal prosecution policy and strategy. These areas of opportunity are associated with the heavy workload they face, insufficient budgets, the weakness of their independence, their susceptibility to corruption, their technical and scientific incapacity, among other key aspects. Challenges that were not considered or included in the legislative process that resulted in the approval and publication of the constitutional reform to the judiciary that this report analyzes.

Official statistics show that only a small portion of the crimes committed each year result in the formal opening of an investigation by the Public Prosecutor's Office and, of these cases, only a small proportion are brought before the judiciary. The incidence of crime in Mexico has shown an upward trend since we have public records at the national level (1997), rising from 2.2 million crimes reported in the early 2000s to 3.3 million in 2023. Most recently, this trend was interrupted only by the COVID-19 pandemic and rebounded again in 2021. However, 92.9% of the crimes that occurred during 2023 were not reported to the authorities[24] , a black figure that has remained constant over the last 13 years. Most of the non-reporting is associated with obstacles or causes attributable to the prosecutors' offices, such as long waiting times, distrust and difficult procedures.

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[22] This has been decided through its jurisprudence by the Inter-American Court of Human Rights in the Velásquez Rodríguez v. Honduras Case, and the Granier and others (Radio Caracas Televisión) v. Venezuela Case. See: *Judgment Case Velásquez Rodríguez v. Honduras*, (Inter-American Court of Human Rights, July 29, 1988), https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_esp.pdf; *Judgment Case* Granier *et al. (Radio Caracas Televisión) v. Venezuela,* (Inter-American Court of Human Rights, June 22, 2015), https://www.corteidh.or.cr/docs/casos/articulos/seriec_293_esp.pdf.

[23] In accordance with Article 21 of the Political Constitution of the United Mexican States (CPEUM).

[24] Instituto Nacional de Estadística y Geografía (INEGI), *Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública (*ENVIPE), 2024, https://www.inegi.org.mx/contenidos/programas/envipe/2024/doc/envipe2024_presentacion_nacional.pdf.

This behavior has in turn translated into similar increases in the number of investigations initiated by state prosecutors' offices. Thus, in the last three years, just over two million investigation files have been initiated each year at the state level[25] . Although there are many circumstances that determine the success of the investigation of a crime and, consequently, its prosecution before the courts through the exercise of criminal action, the data are conclusive: only 4 out of every 100 cases investigated (4.3%) were successfully prosecuted during 2022.[26]. This figure even showed a deterioration for the year 2023, reaching only 3.6% of the total. [27]

The scarce effectiveness shown by the prosecutors' offices to adequately prosecute this large volume of cases is revealing of the gap that exists in guaranteeing access to justice for crime victims and that cannot be attributed to the judiciary. At the national level, it is estimated that impunity reached 96.1% of cases known to the authorities during 2022,[28] this figure is 10% higher than that estimated in 2017[29] . The same occurs in the federal jurisdiction, where the level of impunity was estimated at 96.1% for 2021.[30] This ineffectiveness affects both crimes of higher incidence[31] as well as high-impact crimes or those that are considered a priority by the prosecutors' offices. For example, in the case of intentional homicide, the level of impunity rose to 95.7% in 2022,[32] while in cumulative terms (2016-2021) impunity was estimated at 92.8% for this crime.[33] In the case of the crime of enforced disappearance, it is estimated that, in 2022, it reached 96.5% impunity,[34] as well as 99% in cumulative terms.[35]

These indicators show that the capacity of the prosecutor's offices, in general, has deteriorated over time or has not been strengthened or increased according to the incidence of crime and the pressing criminal phenomena we face as a country. In addition to the above, there have been documented cases of great relevance in

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[25] According to MES data, 2,050,072 for 2021, 2,065,630 for 2022 and 2,139,747 for 2023.

[26] México Evalúa, *Hallazgos 2022, 10 años. Monitoring and Evaluation of Criminal Justice in Mexico* (Mexico, October 2023), 33, https://www.mexicoevalua.org/wp-content/uploads/2023/10/HALLAZGOS2022.pdf.

[27] México Evalúa, *Hallazgos 2023. Monitoring and Evaluation of Criminal Justice in Mexico* (Mexico, October 2024), https://www.mexicoevalua.org/wp-content/uploads/2024/10/HALLAZGOS2023.pdf.

[28] México Evalúa, *Hallazgos 2022, 10 años. Monitoring and Evaluation of Criminal Justice in Mexico* (Mexico, October 2023), 62, https://www.mexicoevalua.org/wp-content/uploads/2023/10/HALLAZGOS2022.pdf.

[29] México Evalúa, *Hallazgos 2017. Monitoring and Evaluation of the Criminal Justice System in Mexico* (Mexico, July 2018), 104, https://www.mexicoevalua.org/wp-content/uploads/2020/03/hallazgos2017.pdf.

[30] Chrístel Rosales, "Imaginemos una Fiscalía sin Gertz", January 21, 2023, *México Evalúa*, https://www.mexicoevalua.org/imaginemos-una-fiscalia-sin-gertz/.

[31] According to the report *Hallazgos 2022, 10 años. Monitoring and Evaluation of Criminal Justice in Mexico* (2023), it is estimated that during 2022 the crime of family violence reached an impunity level of 98.6 percent, while the crime of drug dealing reached a figure of 94.1 percent.

[32] Mexico Evalúa, *Findings 2022, 10 years. Monitoring and Evaluation of Criminal Justice in Mexico*, 18.

[33] Impunidad Cero, *Impunidad en homicidio doloso y feminicidio 2022* (Mexico, December 2022), 25, https://www.impunidadcero.org/uploads/app/articulo/175/contenido/1669895146I15.pdf.

[34] Mexico Evalúa, *Findings 2022, 10 years. Monitoring and Evaluation of Criminal Justice in Mexico*, 19.

[35] Impunidad Cero, *Impunidad en delitos de desaparición en México* (Mexico, December 2023), https://www.impunidadcero.org/uploads/app/articulo/196/contenido/1701870164C42.pdf.

which the prosecutor's offices have acted in a partial or irregular manner, denoting external interference or interests other than the pursuit of justice.[36]

In addition to this situation of the prosecutor's offices, there is also the weakness of the public defender's offices in the country. The public defender's offices should be the necessary counterweight to the prosecutor's offices, to encourage the quality of criminal proceedings, in addition to being indispensable for the protection of people's rights. Notwithstanding the importance of the public defender's offices in guaranteeing due process, the strengthening of these institutions was not considered in the judicial reform.

Thus, in general terms, it can be observed that the main objective of the judicial reform is not to improve the conditions of justice in Mexico, but simply to co-opt the judiciary. The absence of a systemic vision of the deficiencies of all the institutions that make up the justice system in Mexico contained in the judicial reform makes it evident that the objective is to remove the institutions that could constitute a counterweight to the Executive and Legislative branches.

Despite this adverse panorama, neither the recent constitutional reform to the judiciary (2024), nor the previous reforms to human rights (2011) and security and justice (2008), have provided for adjustments with a comprehensive or systemic approach to address the structural deficiencies in the prosecution of crime already mentioned. What is worse, far from helping to improve the conditions of access to justice, the judicial reform that is the subject of this report, by weakening judicial independence, also diminishes the victims' expectations of receiving justice. This will be the case because, by politicizing the appointment of judicial personnel, the impartiality with which judicial control is exercised throughout the criminal process will also be undermined. Key nodes of the process, such as the authorization of investigative acts such as searches or the interception of private communications; the control of the legality of detention; the review of determinations of the prosecutors' offices to close or close a case; the binding to process; the type of precautionary measure to impose on the accused; the admission of evidence with respect for human rights, among many others, run the risk of being weakened or of serving political interests or interests unrelated to the procurement and administration of justice.

IV. Implications of the reform on Judicial Independence

Judicial independence is closely related to the right of access to justice, which is guaranteed by Articles 8 and 25 of the American Convention on Human Rights, which implies state obligations that include ensuring the independence of justice

[36] This has been documented by México Evalúa in collaboration with Animal Político in ten cases of public interest involving both common and federal jurisdiction, which can be found in the microsite "Justicia bajo la lupa, fallas al descubierto" (Justice under the magnifying glass, flaws uncovered): https://panel.animalpolitico.com/justicia-bajo-la-lupa-fallas-al-descubierto/.

operators, both institutionally and functionally. The Inter-American Court has pointed out the need for "reinforced guarantees" for judges, as well as stability in their positions, to protect their independence. These guarantees allow judges and other justice operators to act without undue interference from the executive or legislative branches, which is essential to ensure effective access to justice and to protect the rights of all persons.[37]

This independence is indispensable to ensure compliance with due process standards, which is an essential human right. The lack of judicial independence not only affects the exercise of the right of access to justice, but also generates distrust in the system, dissuading people from resorting to the courts for fear of lack of impartiality.

According to the Basic Principles on the Independence of the Judiciary, judicial independence must be guaranteed by the State and recognized both in the Constitution and in the country's legislation.[38] It is therefore essential that the judicial system be organized in such a way that its independence is ensured at the highest level, and that there is no confusion or interference between the functions of the judiciary and the executive.

The judicial constitutional reform, published on September 15, 2024, constitutes an absolute and structural modification to the Judiciary, both federal and local. The main elements that are problematic for maintaining the guarantee of judicial independence are three: the cessation of all judicial appointments in the country in the years 2025 and 2027, the new constitutional process for selecting judges without adherence to international standards in the matter, and the creation of a court of judicial discipline with broad and ambiguous powers of jurisdictional control and oversight.

a) Termination of all federal and local judges between 2025-2027.

Judicial independence depends on the judges being able to exercise their functions without fear of reprisals or arbitrary removal. The second transitory article of the reform establishes an election process in the years 2025 and 2027.

If the judges are dismissed and replaced in their entirety, there will be an atmosphere of uncertainty and instability, since their permanence and irrevocability will not depend on their professional performance but on external factors, such as the presidential decision to implement this constitutional reform in the last year of his

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[37] See the cases decided by the IACHR Court: *Judgment Case of the Constitutional Tribunal vs. Peru*, 2001; *Judgment Case of the Supreme Court of Justice (Quintana Coello et al.) vs. Ecuador,* (Inter-American Court of Human Rights, August 23, 2013), https://www.corteidh.or.cr/docs/casos/articulos/seriec_266_esp.pdf; *Judgment Case of the Constitutional Tribunal (Camba Campos et al.) vs. Ecuador,* (Inter-American Court of Human Rights, August 28, 2013), https://www.corteidh.or.cr/docs/casos/articulos/seriec_268_esp.pdf; *Judgment Case of Ríos Avalos et al. v. Paraguay,* (Inter-American Court of Human Rights, August 19, 2021), https://www.corteidh.or.cr/docs/casos/articulos/seriec_429_esp.pdf.

[38] The independence of the judiciary shall be guaranteed by the State and proclaimed by the Constitution or legislation of the country. All governmental and other institutions shall respect and abide by the independence of the judiciary.

term, taking into account the broad effects of the replacement of all judges at the federal and local levels.

This means a delay in the administration of justice to the detriment of the users of the system.

The Inter-American Court of Human Rights, in the case of Gutiérrez Navas et al. v. Honduras, stated that judicial independence is one of the basic pillars of the guarantees of due process in a State governed by the rule of law, which is affected when the tenure of judges is arbitrarily interrupted. Likewise, there is a relationship between the institutional dimension of judicial independence and the access and permanence in office, under general conditions of equality.

b) The new selection process for judges, magistrates, magistrates and ministers

As mentioned, this reform changes the way judges, magistrates and ministers are selected. In the case of judges and magistrates, the most widespread mechanism was to follow a **public career service** through which, to become a judge and magistrate, extensive three-stage competitions were held**: an examination of general legal knowledge, the preparation of a draft judgment and an oral examination in front of other judges and magistrates.** These competitions also considered experience in the field, postgraduate studies and refresher courses**.**

The reform creates a complex and unclear system of "semi-democratic" elections that includes, in summary, the following steps**:**

- The Senate of the Republic will issue the call for the selection of candidates within 30 days from the beginning of the extraordinary electoral process. This call will include the vacant positions, stages of the procedure and deadlines.
- The Powers of the Union will nominate candidates through public announcements. The new requirements for judges and magistrates include being Mexican citizens, having a law degree with a minimum grade point average of 8 (and 9 in related subjects), having at least five years of legal experience (three years in related areas for circuit magistrates), good reputation with no convictions for felonies, having resided in Mexico for the last two years, and not having held high government positions in the year prior to the call.
- Each branch will create an Evaluation Committee responsible for evaluating the candidates and selecting the best profiles, observing criteria such as technical knowledge, honesty, good reputation and competence.
- The committees will reduce the lists of candidates by public insaculation, respecting gender parity. Then, these lists will be sent to each power. Once approved, the Senate will forward them to the National Electoral Institute for the organization of the elections.

- Public or private financing for the campaigns of candidates and the contracting of media is prohibited. Campaigns will last 60 days and will be restricted to certain media and forums.

The election of judges by popular vote poses a serious problem for judicial independence, since subjecting them to the scrutiny and approval of majorities may compromise their impartiality. By relying on the will of the electorate, judges may be pressured to make decisions that curry favor with voters, rather than applying the law objectively and in accordance with constitutional principles. This undermines the counter-majoritarian nature of the judiciary, which exists precisely to protect fundamental rights and guarantee the balance of power, without being subordinated to the demands of majorities or political pressures.

In addition, the reform introduces the issue of reelection, which generates dangerous incentives that may affect the impartiality of their decisions. Instead of issuing rulings based on the Constitution and justice, judges seeking reelection may feel the need to align their rulings with public opinion or with issues that are popular at the time, even if they are not necessarily just or in accordance with the law. This mechanism weakens judicial independence, as judges may prioritize their electoral interests over the duty to apply the law objectively, undermining confidence in a system that should be impartial and autonomous from political or popular pressures.

- Risks associated with the popular election of judges

The Judicial Branch reform proposes a new way of appointing judges through popular vote, which completely transforms the previous appointment process. The responsibilities that will be elected through the new process are ministers of the Supreme Court of Justice of the Nation (SCJN), magistrates of the Superior Chamber and regional chambers of the Electoral Tribunal of the Federal Judiciary (TEPJF), magistrates of the Judicial Disciplinary Tribunal, circuit magistrates and district judges.

So far, the process is regulated by the Political Constitution of the United Mexican States and the General Law of Institutions and Political Procedures, some secondary laws still need to be modified to have more clarity on the processes, however, even without them and during several challenges, it has been decided to start with the election processes.

To choose the candidates who will run, the law establishes a **pre-selection process** involving the three branches of government, the Executive, Legislative and Judicial, in which each one will propose a list for the electoral ballot.

Article 96 of the Constitution states that each Branch will form an **Evaluation Committee** made up of five persons recognized in the legal field who will oversee evaluating the candidates, to subsequently integrate the lists of the best evaluated persons for each responsibility and will purge the list based on an insaculation. The final lists will be sent to each branch for their approval, after which they will be forwarded to the Senate, which will oversee sending them to the National Electoral Institute to organize the election process.

As we can see, the process is divided into three stages: the integration of the Evaluation Committees, the evaluation process of the aspiring justice operators in which those who will run for election will be chosen, and the elections themselves.

On the one hand, several risks have been identified for the integration of the Committees:

- *There is no homogeneous methodology among the three Powers of the Union for their integration*, which does not ensure minimum guarantees in the processes, opening the door to discretionary decisions and excessively flexible and partial criteria. This opens the door to their capture and partial work. In fact, two of these three Committees[39] were integrated by profiles close to the government and/or party in power.
- *The eligibility requirements do not guarantee independent profiles, since* they only limit the participation of persons who have served in the national or state leadership of political parties, not those who have been part of one or have been militants, regardless of the level. Likewise, the prioritization of profiles that are and appear to be independent is not explicitly established.
- *The requirements do not prioritize profiles with knowledge and experience in the creation of evaluation methodologies*, which would not allow the creation of a methodology that comprehensively evaluates applicants.
- *Compliance with transparency and accountability standards* that would allow for a more detailed understanding of the process of integration of the Evaluation Committees *is not mandatory.*
- *There are no mechanisms for citizen participation* to contribute to the formation of the committees and build citizen confidence.

On the other hand, with respect to the evaluation process to be carried out by the Evaluation Committees of each branch, the following risks have been identified:

- *The evaluation methodology will be created by each Evaluation Committee*, which implies that the candidates will be evaluated in a heterogeneous, inequitable and partial manner, since there will not be the same indicators among the Committees, even if they aspire to the same responsibility. This situation will occur in the curricular evaluation and interview stage.
- *The evaluation of subjective criteria is noted*, since Article 500, paragraph 6, establishes that the "honesty and good reputation" of each applicant will be

[39] See: Designaciones (@designaciones), October 29, 2024, "#DesignacionesJudiciales | Today the @senadomexicano and the Chamber of @Mx_Diputados approved the integration of the Evaluation Committee of the Legislative Branch established in the #ReformaJudicial. They did NOT make transparent how they made this decision. Aquí los perfiles," *X*, https://x.com/designaciones/status/1851404534763147475; Designaciones (@designaciones), October 31, 2024, "#DesignacionesJudiciales | La @SCJN aprobó en sesión pública la integración del Comité de Evaluación del Poder Judicial establecido en la #ReformaJudicial, tras varias rondas de votación. Profiles come from academia, bars and judicial career #SinCuotasNiCuates," *X*, https://x.com/designaciones/status/1852090550134149199; Designaciones (@designaciones), October 31, 2024, "#DesignacionesJudiciales | Today the Executive Branch also published the integration of its Evaluation Committee under the #ReformaJudicial. The independence of the profiles is key p/build trust, but varixs show political closeness with the government #SinCuotasNiCuates", *X*, https://x.com/designaciones/status/1852124948632080739.

evaluated without defining or explaining what it refers to, which allows for a subjective and unclear interpretation of the criterion.
- *There is no mechanism for evaluating the past performance* of candidates who have been judges in the past.
- *Transparency and maximum publicity are not established in a mandatory manner*, so that all documents, evaluations, matrices and/or evaluation matrices and/or formats and justification of the chosen profiles are public.
- *There are no mechanisms for citizen participation* to contribute to the definition of the methodologies and work of the Evaluation Committees.

Specifically, the new way of electing judges does not allow guaranteeing a process in harmony with the principle of judicial independence, due to the little regulated and flexible nature established and the risks of the new election method outlined above. Since there is no specific regulation on the integration of the Committees and the selection processes, the conformation of the Powers of the Union makes it possible to influence the type of profiles that will be prioritized, with the possibility that these may be related to certain political or partisan groups, even giving a preponderant interference to the current party in government.

- Strengths and weaknesses of the election process.

The second transitory article of the reform to the Judiciary determined that there will be an extraordinary electoral process 2024-2025, in which all the ministers of the SCJN, the vacant judgeships of the Superior Chamber and all the judgeships of the TEPJF, the members of the Judicial Disciplinary Tribunal and half of the circuit judges and district judges will be elected.

In the case of circuit magistrates and district judges, the election will be staggered, half of the responsibilities will be renewed in 2025 and the other half in 2027. To choose the responsibilities that will be elected by popular vote, the Senate of the Republic defined a list with the vacancies, resignations and retirements programmed, the rest was determined by insaculation, on October 12. The exercise lasted five hours and it was decided that the nones of courts and tribunals will compete for the election of 2025 and the evens for the election of 2027.

In the tombola, the spheres with the nones plus the 114 vacant seats were added, exceeding the established half by 64 places. For this reason, the Senate extracted 64 of them, which will be elected in 2027. A similar process was used in the case of district judges. The number selected from 1 to 100 was 81, so it was determined that the positions that will go to the election of 2025 would also be those with zero numbers, that is, a total of 361. Since 386 positions were to be defined and 15 more were needed, a total of 25 were taken from the vacant positions, and the remaining 10 went to the election of 2027.[40]

Subsequently, on October 14 of this year, a decree was published amending and adding several provisions of the General Law of Electoral Institutions and

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[40] *El Financiero,* "Como en la Lotería: Así quedaron los resultados de la 'tómbola judicial' para 2025," October 12, 2024, https://www.elfinanciero.com.mx/nacional/2024/10/12/como-en-la-loteria-asi-quedaron-los-resultados-de-la-tombola-judicial-para-2025/.

Procedures, regarding the election of judges of the Federal Judiciary, in which the provisions for the integration of the Evaluation Committees and the integration of the lists to be voted on were expanded.

Once the insaculation was completed and with the respective adjustments due to resignations or situations, such as pregnant or breastfeeding women, on October 15 the united commissions of Human Rights and Justice, issued the call[41] on behalf of the Senate, which establishes the responsibilities to be elected in the extraordinary electoral process:

- Five female ministers and four justices of the SCJN, who will be elected at the national level.
- Three female and two male judges of the Judicial Disciplinary Tribunal, to be elected at the national level.
- One magistrate and one magistrate of the Superior Chamber of the TEPJF, to be elected at the national level.
- Ten magistrates and five magistrates of the Regional Chambers of the TEPJF, who will be elected by region in their corresponding plurinominal constituency.
- Four hundred and sixty-four responsibilities to be elected for judges of Collegiate Circuit Courts and judges of Collegiate Courts of Appeal. When the judicial circuit covers territories of more than one entity, the elective scope for the Collegiate Circuit Courts and Collegiate Courts of Appeal shall correspond to that one, without considering the territorial limits of the federal entities.
- Three hundred eighty-six positions to be elected for district judges. When the judicial circuit covers territories of more than one federative entity, the elective scope for the District Judges will correspond to that one, without considering the territorial limits of the federative entities.

On October 31, the three branches of government publicly announced the members of their respective Evaluation Committees. The Executive's list includes: Arturo Fernando Zaldívar Lelo de Larrea, Javier Quijano Baz, Mary Cruz Cortés Ornelas, Vanessa Romero Rocha and Isabel Inés Romero Cruz; the Legislative includes Ana Patricia Briseño Torres, Andrés Norberto García Repper Favila, Maribel Concepción Méndez De Lara, Maday Merino Damian and María Gabriela Sánchez García; while the Judicial Branch committee is composed of Wilfrido Castañón León, Mónica González Contró, Luis Enrique Peredo Trejo, Emma Meza Fonseca and María Emilia Molina de la Puente.

On November 4, the Evaluation Committees of each Branch published the calls for the process of evaluation and selection of nominations for the candidatures of ministers, ministers, magistrates, magistrates and judges to be elected. In the publications of the three Branches, it was stated that between 00:00 hours of November 5 until 23:59 hours of November 24, registration will be open for those

[41] *Public call to integrate the lists of candidates who will participate in the extraordinary election of the judges who will occupy the positions of Ministers of the Supreme Court of Justice of the Nation, Magistrates of the Superior and Regional Chambers of the Electoral Tribunal of the Federal Judicial Branch, Magistrates of the Judicial Disciplinary Tribunal, Circuit Magistrates and District Judges of the Federal Judicial Branch,* October 15, 2024, Diario Oficial de la Federación, https://www.dof.gob.mx/nota_detalle.php?codigo=5741185&fecha=15/10/2024#gsc.tab=0.

interested in participating, who may apply through the official websites enabled by each Branch:

-Executive: https://www.registroeleccionjudicial.adyt.gob.mx/
-Legislative: https://convocatoriapublica.senado.gob.mx/029PJ24
-Judicial: https://comiteevaluacion.scjn.gob.mx/

In addition to this situation, more than half of the federal judges and magistrates have declined and eight of the eleven Supreme Court justices have resigned, deciding not to take part in the selection process by direct vote.

c) Establishment of the Court of Judicial Discipline

The judicial reform also provides for the creation of a Judicial Disciplinary Tribunal, independent from the SCJN and the administrative body, which will oversee investigating and sanctioning judicial personnel in case of administrative misconduct and whose five members will be appointed by popular vote.

At present, it is important to point out that the disciplinary system is opaque and gives little certainty to both the persons under investigation and the public as to the impartiality of the proceedings. Therefore, the idea of disciplinary proceedings being resolved by a Tribunal could be interesting, as this implies that the proceedings will be public (although this will have to be specified in the secondary laws).

This body, provided for in Article 94 of the Constitution, shall be composed of five persons elected by the citizens, and shall serve for 6 years. The main functions are in plenary and in commissions. The Plenary will be the substantive authority and will resolve in second instance the matters of its competence, among which stand out the possibility of ordering ex officio or by complaint the initiation of investigations against judges, attracting proceedings related to serious misdemeanors or crimes, ordering precautionary measures and measures of constraint, as well as sanctioning public servants who incur in acts or omissions contrary to the law, administration of justice or principles of objectivity, impartiality, independence, professionalism and excellence.

What stands out the most about this jurisdictional body are its broad powers of sanction, in addition to the fact that in resolving disciplinary proceedings it acts with accusatory and inquisitorial powers without a clear and adequate means of defense, adding that it will also have a privileged position even superior to the Supreme Court of Justice of the Nation in the judicial structure, something extraordinarily atypical.

Concerns about this court relate to the future control it will be able to exercise over judges in order to be able to influence criteria on pain of opening investigations and imposing sanctions, which could be defined to a large extent by the powers that are incorporated into the secondary laws.

The following aspects of the Judicial Disciplinary Tribunal could pose serious risks to judicial independence.

First, the grounds on which judicial personnel may be investigated and, if applicable, sanctioned are too vague, imprecise and broad. In effect, the reform establishes that "public servants who incur in acts or omissions contrary to the law, to the administration of justice or to the principles of objectivity, impartiality, independence, professionalism or excellence, in addition to the matters determined by law, may be investigated." These concepts are so broad that they open the door to interpretation on a case-by-case basis and therefore to investigating judicial officials in a discretionary manner, as the IACHR standards have pointed out.[42] They could also allow for the prosecution of judges for the meaning of their sentences, something that also contravenes the IACHR standards.[43]

On the other hand, the design of the Judicial Disciplinary Tribunal is also of concern. First, instead of establishing two independent instances, it is foreseen that the first instance will be formed by a commission of three of the five magistrates of the Tribunal and the second instance by the Plenary of this same Tribunal. In other words, the magistrates who participate in the first instance will also decide in the second instance and, in fact, will be the majority in the second instance. This contravenes international standards, including those of the IACHR, which establish the right of individuals to challenge the sentence they receive in the first instance in a different and independent court from the first.[44]

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[42] "Vague and broad sanctioning regimes grant the officials in charge of prosecuting magistrates and judges an unacceptable discretion that is incompatible with the standards of the American Convention." Inter-American Commission on Human Rights, *Guarantees for the Independence of Justice Operators: Toward Strengthening Access to Justice and the Rule of Law in the Americas* (Organization of American States, December 2013), 92, https://www.oas.org/es/cidh/defensores/docs/pdf/operadores-de-justicia-2013.pdf.

[43] "The IACHR reiterates that it is prohibited by international law to establish as disciplinary grounds actions related to the judgment or legal criteria developed by justice operators in any decision. The Commission emphasizes that it is essential to be clear that, on the one hand, there are appeals, cassation, review, recusal or similar, whose purpose is to control the correctness of the decisions of the lower judge; and on the other hand, disciplinary control, which aims to assess the conduct, suitability and performance of the judge as a public official. The distinction between these two procedures is essential to guarantee independence, in such a way that the disagreement of the superior with an interpretation cannot, in any way, become a cause for disciplinary sanctions". 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, 93.

[44] "The right to a review of a decision resulting from disciplinary proceedings is provided for in the Basic Principles on the Independence of the Judiciary as well as the Guidelines on the Role of Prosecutors and the Basic Principles on the Role of Lawyers, applicable to public defenders. As developed by the UN Special Rapporteur 'all disciplinary and administrative decisions that have an impact on the status of judges and magistrates should have the possibility of being reviewed by another independent judicial body'. On this guarantee, the Commission notes that the European Charter on the Status of Judges, specifically refers in relation to disciplinary proceedings of judges that 'the decision [...] pronouncing a sanction [...] shall be subject to appeal to an independent judicial authority'.shall be subject to appeal to a higher judicial authority'; for their part, the African Principles and Guidelines on the Right to a Fair Trial and Legal Assistance prescribe that in disciplinary proceedings judges shall have the right 'to an independent review of decisions in disciplinary, suspension or removal proceedings' Specifically in the scope of the American Convention the right to appeal the decision is part of due process of law in accordance with the provisions of Article 8.2.h) of the Convention. As the Court has established, the right to appeal a judgment is a fundamental guarantee that must be respected in the framework of due process of law, in order to allow an adverse judgment to be reviewed by a different judge or court with a higher organic hierarchy, therefore, in the opinion of the Commission, the review stage of the sanctioning judgment is part of the disciplinary process that must be observed in order to effectively remove a justice operator". Inter-American

In addition, the Tribunal will oversee investigating, substantiating and resolving matters, when these functions should be separated. Indeed, although it is provided that "the Tribunal will conduct its investigations through a unit responsible for integrating and submitting to the Plenary or its commissions the reports of probable responsibility" this unit will depend hierarchically on the Plenary of the Tribunal, so there will not be due independence between the functions of investigation, substantiation and resolution.

Finally, it appears that the Judicial Disciplinary Tribunal could take criminal decisions against judicial public servants, and not only resolve administrative proceedings. Indeed, Art. 97 of the Constitution establishes that "any person or authority may report to the Judicial Disciplinary Tribunal facts that could be subject to administrative or criminal liability committed by any public servant of the Federal Judicial Branch, including ministers, magistrates and judges, in order for it to investigate and, if appropriate, sanction the conduct denounced." This is extremely worrisome given the deficiencies in the design of the Court already mentioned and the impossibility of appealing its decisions before an independent instance.

V. Failure to Comply with Judicial Suspensions

In this context, it is important to highlight that so far more than **70 suspensions** have been granted against the reform of the Judicial Branch in 15 states of the Republic. "At least 34 of these suspensions instruct to stop the process for the election of ministers, magistrates and judges scheduled for June 2025, through direct orders to the National Electoral Institute (INE), the Senate, or the responsible authorities in general."[45] The notices warn that in case the process is not stopped, as mandated by the suspension, sanctions of imprisonment or fines will be imposed.

Other suspensions sought to prevent the issuance of the call by the Senate, prevent the approval of the reform (before the vote took place) and have also ordered the authorities to refrain from issuing statements "that constitute an attack, mockery or defamation"[46] of the judges.

Last October 17, a federal judge granted a definitive suspension against the reform to the Judicial Power, in which she ordered the Official Gazette of the Federation (DOF) and the President of the United Mexican States to remove the Constitutional Reform Decree within 24 hours from the receipt of the notification. "In case of failure to comply with the mandate within the time indicated, the Public Ministry will be informed in order to initiate legal proceedings against the mandataria and the DOF

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, 101-102.

[45] Víctor Fuentes and Érika Hernández, "Van 70 suspensiones contra reforma al PJ", *Luces del Siglo*, October 5, 2024, https://lucesdelsiglo.com/2024/10/05/van-70-suspensiones-contra-reforma-al-pj-nacional/.

[46] Víctor Fuentes and Érika Hernández, "Van 70 suspensiones contra reforma al PJ", 2024.

official, by virtue of the crime set forth in Section III of Article 262 of the Amparo Law."[47]

In response to this, the President of the Republic indicated[48] that the reform to the Judicial Power will not be reversed, since such resolution is contrary to the Rule of Law and violates the Amparo Law, since such Law establishes in its first article that the amparo is not applicable for constitutional changes. Furthermore, he pointed out that he will appeal to the Federal Judiciary Council, the body that sanctions judges, to make it known that the laws are being violated.

None of the suspensions have been complied with, neither by the President of the Republic, the INE or the DOF. On the contrary, in the press conference held every morning by the President of the Republic, a space was set aside for the Legal Advisor of the Presidency to explain:

> Judge Nancy Juarez's decision is an act of gross overreach coupled with the astounding attribution of illegal powers in order to invade the scope and independence of one of the three branches of government of the Union. The determination issued through the order of October 16, 2024, is in itself aberrant, illegal and improper, for which reason it may be subject to liability under the terms of Article 263 of the Amparo Law.[49]

An official communication space of the federal government has been used to disqualify the work of the judges who have ruled against the objectives of the Judicial Branch reform, in the midst of a process in which none of the more than 70 suspensions have been complied with, putting red flags and red lights on the actions of the Legislative Branch, the Federal Executive Branch and the agencies involved. A relevant decision will be made soon in the plenary session of the SCJN, which will resolve the constitutionality of the reform.

a) The role and significance of *amparo* suits in challenging the reform

During the accelerated process of constitutional reform, different organizations, citizens and heads of jurisdictional bodies filed **amparo lawsuits** against the different stages of the reform process to suspend it.

The first **amparo lawsuit 1190/2024** of the Third District Court of Amparo and Federal Lawsuits in Chiapas was filed for the responsible authorities, which were the Chamber of Deputies and the Senate, to stop the reform. The resolution was that the

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[47] Carolina Carrasco, "Jueza otorga nueva suspensión definitiva contra reforma judicial; da al ejecutivo un plazo de 24 horas", *Infobae*, October 17, 2024. https://www.infobae.com/mexico/2024/10/17/jueza-otorga-nueva-suspension-definitiva-contra-reforma-judicial-da-al-ejecutivo-un-plazo-de-24-horas/.

[48] *Judges violate laws and violate the rule of law: President Claudia Sheinbaum on appeals against reforms to the Judiciary. Government of Mexico* (Communiqué), October 21, 2024, Presidency of the Republic, https://www.gob.mx/presidencia/prensa/jueces-y-juezas-violentan-leyes-y-vulneran-estado-de-derecho-presidenta-claudia-sheinbaum-sobre-amparos-contra-reforma-al-poder-judicial.

[49] *El Sol de México,* "En debate | Reforma Judicial", October 25, 2024, https://www.elsoldemexico.com.mx/mexico/en-debate-reforma-judicial-12764847.html.

authorities would continue with the legislative process but that in the case of the eventual approval of the constitutional reform decree, they would refrain from sending it to the local legislatures for the corresponding approval, until the definitive suspension was resolved. The Court eventually granted the definitive suspension, which was confirmed by a Collegiate Court in Administrative Matters of the Twentieth Circuit.

The second suspension was issued by the Fifth District Court in the State of Morelos, in the **indirect injunction 1251/2024**. This court granted the suspension to the effect that the Chamber of Deputies would not discuss and vote on the initiative.[50] The judge in charge of the case decided to grant the suspension due to the irreparable damage that the reform could cause to the rights of the petitioners, who were federal judges who would be removed from their positions without the right to a hearing or compensation.

The third suspension was issued by the Collegiate Court of the Thirty-Second Circuit in Colima, in the appeal 911/2024, derived from the **indirect injunction 1125/2024** and was granted so that the discussion in the Chambers would not take place and the reform would not be published in the Official Gazette of the Federation.

Failure to comply with suspensions is provided for in Article 262 of the Amparo Law, which may be punished by 1) imprisonment for 3 to 9 years, 2) removal from office or 3) disqualification from holding another office for 3 to 9 years. These offenses are prosecuted by the Attorney General's Office. However, the suspensions were not complied with by the legislators and by the authorities involved in the reform process, even though they increased to around 70 resolutions issued by different jurisdictional bodies throughout the country.

During those days some relevant members of Congress made broad calls not to obey the resolutions of the judiciary. For example, Ricardo Monreal who is leader of Morena in the Chamber of Deputies, rejected the two suspensions granted by federal judges, and warned that "this legislative majority categorically and energetically determines that it does not and will not submit to the jurisdiction of the court or courts that order it because they have no competence for it, because the analysis, discussion and in its case approval of the ruling regarding the constitutional reform in judicial matters cannot be suspended".[51]

Subsequently, when the reform was approved and it was now up to the electoral authority to prepare the election of new judges, the current president-elect Claudia Sheinbaum asked the INE councilors not to respect the suspensions during the morning conference on October 17, 2024. The president pointed out that since it is a decision of the people of Mexico "the councilors must follow what the Constitution

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[50] *López-Dóriga Digital,* "Juez otorga suspensión para que dictamen de la reforma judicial no se discuta en el Pleno de San Lázaro", August 31, 2024, https://lopezdoriga.com/nacional/jueza-otorga-suspension-para-que-dictamen-de-la-reforma-judicial-no-se-discuta-en-el-pleno-de-san-lazaro/.

[51] See: Ricardo Monreal A. (@RicardoMonrealA), August 31, 2024, "Es inadmisible e improcedente toda resolución de cualquier juez o autoridad sobre el desempeño constitucional jurídico del Congreso General de los Estados Unidos Mexicanos, que violente la Constitución y el principio de legalidad, e invada facultades y funciones del Legislativo", *X*, https://x.com/RicardoMonrealA/status/1829987025014915569.

establishes, there is no amparo that can prevent the election from being carried out successfully".[52]

Failure to comply with these judicial stays significantly undermined the rule of law. The rule of law is traditionally based on the idea that all actors, both public and private within a country, are subordinate and must submit to the laws in force, including judicial decisions. In this case the systematic disobedience presented and acclaimed by different relevant political actors undermined these principles in different ways as discussed below.

The rule of law requires predictability and certainty in the application of the law. The refusal of authorities, both legislative and executive, to obey suspensions creates an environment of uncertainty and institutional chaos. This ultimately has devastating effects on the legal system. When these judicial decisions are ignored and the challenged acts continue their course, the ability of the judicial system to act as a guarantor of fundamental rights is undermined. Furthermore, Claudia Sheinbaum's statement in her capacity as president urging electoral authorities not to abide by suspensions distorts the concept of popular sovereignty. In a state of law, the will of the people is expressed within the framework of the Constitution and the laws themselves. Ignoring suspensions under the argument of democratic legitimacy is tantamount to substituting the law with an arbitrary notion of popular will that eliminates the predictability of the system.

On the other hand, disobeying judicial resolutions implied that the legislature placed itself above the Constitution, which violated the principle of legality. The principle of legality is another fundamental pillar of the rule of law and refers to the fact that all government actions must be based on the law. Judicial suspensions are intended to stop the execution of an act that may violate fundamental rights or be illegal until the merits of the case are resolved. Failure to respect these suspensions implied that the responsible authorities acted outside the law and publicly disregarded the principle of legality established in Article 16 of the Constitution.

When the rule of law is violated by disobeying judicial rulings, a dangerous cascade effect can be generated where other political and social actors feel entitled to ignore legal rulings, weakening the very structure of the legal system. In fact, this was what eventually happened in Jalisco, where the local Congress defied different suspensions and approved the appointments of different administrative magistrates[53.] In this case, it was not members of the Morena party who defied the resolutions, nor was it an issue related to the constitutional reform of the judiciary. Hence the seriousness of the fact that different actors encouraged the generalized contempt for judicial decisions.

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[52] Miriam Meza, "Elección de jueces y ministros en vilo: INE pone pausa al proceso debido a suspensiones", *Radio Fórmula*, October 17, 2024, https://www.radioformula.com.mx/nacional/2024/10/17/eleccion-de-jueces-ministros-en-vilo-ine-pone-pausa-al-proceso-debido-suspensiones-837293.html.

[53] *Milenio*, "Diputados de Jalisco aprueban nombramientos pese a suspensiones", October 5, 2024, https://www.milenio.com/politica/votan-nombramientos-judicial-jalisco-pese-amparos.

The failure to enforce stays in the context of constitutional reform in Mexico constituted a direct violation of the rule of law. To maintain the integrity of the system, it is essential that all judicial decisions, including stays, be respected by all government actors and that any disagreement be challenged through previously established legal channels.

VI. Regulations

The transitory regime of the reform contemplates a term of **90 calendar days** for the Congress of the Union to make the necessary **adjustments** to the federal laws to comply with the reform. The respective period expires on December 14, 2024, therefore, the Legislative Power amended the General Law of Electoral Institutions and Procedures and the General Law of the Electoral Appeals System, in general terms, to incorporate to such legislation the processes of popular elections of judges and the mechanisms to challenge such processes.

The reform initiatives were presented by the head of the Federal Executive before the Senate on October 8, 2024.

The initiative to reform the **General Law of Electoral Institutions and Procedures** was approved by the Senate two days after its presentation, with some modifications. Subsequently, it was turned to the Chamber of Deputies, as revising Chamber, and approved there on October 13, 2024. Finally, it was turned again to the Executive for its publication[54] and published in the Official Gazette of the Federation on October 14, 2024.[55]

The amendments to this norm are mainly focused on the establishment of rules for the celebration of the electoral process of judges and, in an extraordinary manner, it proposes in its third transitory article the terms in which the authorities involved in the extraordinary electoral process of judges in 2025 must carry out the actions to carry out these elections.

In addition, it leaves in the hands of the Evaluation Committees the definition of the rules for their operation and empowers them to enter into agreements with public institutions to assist in the evaluation process. In other words, the Committees will oversee issuing and publishing the calls for applications so that people may participate in the evaluation and selection process.

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[54] *History of the Initiative that reforms and adds various provisions of the General Law of Electoral Institutions and Procedures, regarding the election of judges of the Federal Judiciary*, Sistema de Información Legislativa, Secretaría de Gobernación, http://sil.gobernacion.gob.mx/Librerias/pp_ReporteSeguimiento.php?SID=e159614a75642321f797639ac18a355e&Seguimiento=4782817&Asunto=4780864.

[55] *Decree amending and adding various provisions of the General Law of Electoral Institutions and Procedures, regarding the election of judges of the Federal Judiciary*, October 14, 2024, Diario Oficial de la Federación, https://www.dof.gob.mx/nota_detalle.php?codigo=5741085&fecha=14/10/2024#gsc.tab=0.

To this end, they must design the methodology for the evaluation of suitability that will be used to select the candidates, define the dates and deadlines within the time frame established by the call of the Senate of the Republic and establish the mechanisms and means of contact to register for the selection process, as well as for its follow-up. Therefore, there will be no homogeneous criteria for the selection of candidates.

The legislation on electoral institutions and procedures sets forth the order of the evaluation procedure that the Evaluation Committees shall carry out to draw up the list of potential candidates:

- The Committees shall publish their calls for applications.
- They shall verify that the candidates comply with the constitutional eligibility requirements, through the documentation they submit.
- Subsequently, they will draw up their respective lists of persons who met the requirements and will proceed to qualify their suitability.
- They will conduct public interviews of applicants to assess their suitability, technical expertise, honesty and good public reputation.
- The best evaluated profiles will be selected, and lists will be compiled with the best evaluated persons.
- The Committees shall conduct the public call for nominations and adjust the number of nominations.
- Once the lists have been purged, they must be approved by the Powers of the Union.
- Subsequently, they must be sent to the Senate of the Republic no later than February 1 of the year of the corresponding election.

This evaluation procedure contains several problems, starting with the fact that it does not establish whether the reasoning behind the decision making of the Evaluation Committees will be public, that is, whether the public will have access to a reasoned and substantiated determination explaining the selection of the candidates.

In the same sense, it does not indicate how the candidates will have access to public interviews, in which their technical knowledge for the performance of the position in question will be evaluated.

Nor does it clearly define the criteria that the members of the Committees will use to evaluate the suitability of the candidates, since although the regulation proposes the use of interviews for this purpose, it still leaves the design of the calls for applications, the methods to receive the documents from the candidates and the design of the criteria to evaluate the candidates in the hands of each Committee.

The amendment to the **General Law of the Electoral Appeals System** was approved by the Senate on October 10, 2024, and by the Chamber of Deputies on the following October 14, 2024. Once approved by both Chambers, it was sent to the

Executive for its enactment and publication[56] and published in the Official Gazette of the Federation on October 15, 2024.[57]

The amendments essentially consist of the addition of a seventh Book which regulates the procedure of the Electoral Judgment to challenge acts and resolutions that restrict the right of persons participating in the judicial election to be voted. In addition, it adds the grounds for nullity of the elections of judges of the Judicial Power of the Federation.

Notwithstanding the foregoing, there is ambiguity as to the acts and resolutions with respect to which the Electoral Suit may effectively proceed, since it only states that they will be those acts that restrict the right of the persons who will participate in the judicial elections to vote.

In this regard, it must be considered that within the process for judicial elections there will be different moments in which the right of persons to vote may be restricted, and the fact of not having an exhaustive list of assumptions for this trial may generate multiple challenges, hindering the system of justice in electoral matters.

The Chambers of the Electoral Tribunal and the Supreme Court will be in constant resolution of these challenges that are filed in the months of November to February (little time), impeding their work in the resolution of the functions they perform on a daily basis. This may further infringe on the participants' right to vote if both Courts do not manage to resolve all the challenges in time, before the conclusion of this nomination process by the Powers of the Union.

In addition, it is important to point out that in this trial it will not be possible to offer or provide evidence regarding the acts or resolutions that are being challenged, which may leave the persons who resort to the challenge in a state of defenselessness.

VII. Replication of the Reform in Federal States

The transitory regime of the reform contemplates the obligation for the 32 Local Legislatures to adjust their **local constitutions** within a term of **180 calendar days**, adding that the renewal of all elected positions of the local Judicial Branches must conclude in the ordinary federal election of 2027. It also provides that the local elections must coincide with the date of the extraordinary election of 2025 or the

[56] *History of the Initiative that amends and adds various provisions of the General Law of the Electoral Appeals System, regarding the updating of the means of appeal in the election process of the members of the Federal Judiciary*, Sistema de Información Legislativa, Secretaría de Gobernación,http://sil.gobernacion.gob.mx/Librerias/pp_ReporteSeguimiento.php?SID=0c6bfd35ff00fb4b11acda3a8b6faa4a&Seguimiento=4782820&Asunto=4780867.
[57] *Decree amending and adding various provisions of the General Law of the Electoral Appeals System,* October 15, 2024, Diario Oficial de la Federación, https://www.dof.gob.mx/nota_detalle.php?codigo=5741187&fecha=15/10/2024#gsc.tab=0.

ordinary election of 2027. The period established to carry out the legislative harmonization expires on March 14, 2025.

In addition to replicating the format for electing judges at the state level, this reform contemplates the creation of a Court of Judicial Discipline and a judicial administration body in each state, in accordance with the bases established in the Constitution for the Federal Judicial Branch, as well as the admission, training and permanence of those who serve in the judicial branches of the states.

In response to the above, the states of Campeche and Michoacán have presented various initiatives to harmonize their domestic legislation with the constitutional reform.

In the case of Campeche, independent congressman Noel Juárez Castellanos and the Governor of the state, Layda Elena Sansores San Román, presented an initiative to reform the Constitution, the Organic Law of the Judiciary and the Organic Law of the Attorney General's Office.[58]

In the State of Michoacán, two initiatives were presented that seek to reform the Local Constitution, the first one proposed by the head of the Executive Branch of the State[59] and the second one by Congressman Juan Carlos Barragán Vélez.[60] Both replicate the model of election by free and secret vote of judges at the state level.

In the case of the Judicial Branch of the State of Chihuahua**, it is estimated that more than 250 judges of first instance and 30 magistrates who hear cases in second instance will be removed.** The local Judicial Branch has courts for almost all matters, distributed throughout the state, and has even created courts specialized in gender violence and with addiction treatment approaches.

VIII. Effects of the Reform on Judicial Careers and Labor Rights

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[58] *Opinion of the Permanent Deputation regarding the initiatives to amend various provisions of the Political Constitution; the Organic Law of the Judiciary and the Organic Law of the Attorney General's Office, all of the State of Campeche, promoted by the independent deputy. Noel Juárez Castellanos and the Constitutional Governor of the State, Licda. Layda Elena Sansores San Román*, September 27, 2024, Gaceta Parlamentaria, https://www.congresocam.gob.mx/wp-content/uploads/adjuntos_sitio/SG/LXIV/GACETAS/TERCER_ANO_EJERCICIO/006_TERCER_PERIODO_RECESO/219_GACETA_28SEPTIEMBRE2024.pdf.pdf.

[59] *Initiative with draft Decree reforming, adding and repealing various articles of the Political Constitution of the Free and Sovereign State of Michoacán de Ocampo, regarding the Judicial Branch, presented by the Head of the Executive Branch of the State,* October 17, 2024, http://congresomich.gob.mx/file/Gaceta-008-XLI-N-bis-10-10-2024.pdf.

[60] *Initiative with Draft Decree through which various provisions of the Political Constitution of the Free and Sovereign State of Michoacán de Ocampo are reformed, added and repealed, regarding the Judicial Branch, presented by Deputy Juan Carlos Barragán Vélez, member of the Parliamentary Group of the Morena Party*, October 17, 2024, http://congresomich.gob.mx/file/Gaceta-008-IX-I-10-10-2024.pdf.

In 1994, one of the most important reforms to the Federal Judicial Branch (PJF) was carried out, which established the judicial career system as a guarantee for the people to have professional, impartial courts and judges selected by objective, transparent and equitable methods. Subsequently, in 2021, the PJF underwent another structural reform, which resulted in important regulatory and institutional changes; The judicial career was once again placed at the center of the reform to be regulated by a specific law on the matter, and the Federal School of Judicial Training was established as an auxiliary body of the Federal Judiciary Council (CJF), at the constitutional level, as the institution in charge of implementing the processes of education, training and updating of PJF personnel, as well as carrying out competitive examinations to access the different categories of the judicial career and developing research to strengthen the PJF (Escuela Federal de Formación Judicial, 2024).

The fundamental purpose of this system is to achieve professional, impartial, quality justice, with technical independence and social sensitivity on the part of its operators, i.e., it was intended to eliminate nepotism and discretionary appointments. The judicial career has been perceived as a way of professional development based on merit, continuous evaluation and training. According to an investigation by México Evalúa[61] , it was found that the judicial career, both at the federal level and in the states that have implemented it, has had a positive impact on the professionalization of judicial officials, and that its consolidation is a key element for the rule of law.

The same study identified three levels of impact of the judicial career:

● **Institutional level**: the judicial career provides legitimacy to the judiciary and contributes to its efficiency to the extent that the processes of selection, promotion, evaluation, assignment and permanence are clearly established and tend to the professionalization of the institution's personnel.

● **Individual level:** the judicial career provides members of the Judicial Branch with jurisdictional guarantees that allow them to be certain that the mechanisms for selection and promotion, evaluation, assignment, ratification and permanence are based on meritocratic criteria and not on arbitrary decisions. Therefore, the judicial career also involves two important elements: job security and mobility, since it is based on the idea that there is the possibility of climbing the ladder to reach the top.

● **Social level:** the judicial career guarantees the right of access to justice because it allows the population to have independent judges, with suitable profiles for the position, selected on merit, with transparent and objective criteria.

Notwithstanding the value that the judicial career has implied, the approved reform dismantles the institutional system in charge of regulating the processes of admission, training, promotion, performance evaluation, permanence and separation of public servants of a jurisdictional nature of the Judicial Branch of the Federation, based on merit and equal opportunities (Judicial Career Law, 2021); as well as the labor rights of 1,719 judges (as of July of this year), including judges (464), female judges (289), magistrates (685) and female magistrates (211).

[61] México Evalúa, *20 recommendations to consolidate the judicial career* (Mexico, May 2021), https://www.mexicoevalua.org/wp-content/uploads/2021/05/carrera-judicial-final.pdf.

Despite the fact that the judicial career system has demonstrated throughout history that it could be the best way to guarantee access to justice, not to mention its areas of opportunity, the reform eliminates key elements of professionalization of the PJF from the regulations.

a) Upholding merit-based selection processes and rigorous quality standards in the judiciary.

The judicial career is the system responsible for the entry, training, evaluation, promotion, permanence and dismissal of Judicial Branch personnel. Through a system of this type, with competitive examinations, academic programs, evaluations and incentives, the selection of suitable profiles to perform different jurisdictional positions is encouraged, based on merit and through rigorous, transparent and objective processes.

Likewise, the judicial career fosters a sense of identity and commitment to the role of the Judicial Branch: to protect rights and impart justice in a manner that is effective and sensitive to people's circumstances. While the judicial career has as one of its main objectives the development of the technical skills and specialization necessary to perform the judicial function, it does not stop there. It also has as a fundamental component the teaching of certain administrative and managerial skills that cannot be overlooked for the proper performance of judicial work.

Thus, the judicial career is responsible for strengthening knowledge, skills and competencies, both in the different areas of law and those specific to the jurisdictional function and those related to administrative and judicial management. In this sense, the requirements set forth in the approved reform are insufficient to ensure the necessary knowledge and competencies to perform the judicial function among those who are elected.

Contrary to popular election, the judicial career and judicial irrevocability means that members of the judiciary do not need to be linked to associations, de facto powers, parties or political authorities to ensure job opportunities or professional development. Their promotion in the judicial career depends mainly on their ability to pass exams and courses.

b. The impact of the popular election model on judicial careers

The popular election of judges, magistrates and ministers can generate several adverse effects on the judicial career and its relationship with judicial independence and labor rights, as shown below:

- **Lack of due process.** Article 25.1 of the Convention contemplates the obligation of the States Parties to guarantee, to all persons under their jurisdiction, a simple and prompt judicial recourse before a competent and effective judge or court against acts that violate their fundamental rights. The reform does not clarify the processes that will be individually filed against judges to justify the termination of their positions, nor does it mention due

process or how the international obligations of integral reparation will be implemented, including the right of restitution to their positions and other forms of integral reparation according to the Inter-American jurisprudence, such as material damage, non-material damage, other forms of reparation and the right of non-repetition.

- **No judicial career.** The current reform does not explain how there will be guarantees for the judicial career and the principle of irrevocability in the position of judicial officials.

- **Violations of Labor Rights.** The non-regression of human rights and the respect of acquired rights and consolidated legal situations of all judicial officers will be affected by the implementation of the judicial reform. The reform also fails to explain how the Mexican State will respect and guarantee structural and salary obligations if all current trusts, funds, mandates or analogous contracts are eliminated and by which regular budgetary instrument those trusts will be substituted.

Finally, as the Inter-American Court of Human Rights has pointed out, the co-optation of judicial bodies by other branches of government affects the entire democratic institutionality, and to that extent constitutes a risk for the control of political power and the guarantee of human rights, since it undermines the institutional guarantees that allow the control of the arbitrary exercise of power. In this sense, any demerit or regression in the guarantees of independence, stability and irrevocability of judges is undesirable insofar as its effect may translate into an equally regressive systemic impact on the rule of law, institutional guarantees and the exercise of fundamental rights in general.

IX. Petitions

In view of the foregoing, we respectfully request that this Illustrious Commission:

1. - The State is requested to submit a report on the reform of the Judiciary, which, due to the relevance of the situation, we request that it be made public.

2. - Prepare a report on the subject and formulate recommendations for the State to adopt progressive measures and install a Special Follow-up Mechanism.

3. - Offer the State its advice and technical assistance through its Rapporteur ship on Human Rights Defenders and Justice Operators.

4. - Make a public pronouncement on the reform; if it deems it appropriate, do so jointly with the UN Special Rapporteur on the Independence of Judges and Lawyers.

5. - Include in its next annual report to the OAS General Assembly a special section on the reform of the Judicial Branch in Mexico.

6. - Exercise its good offices, so that the State accepts to carry out an on-site observation.

7. - In accordance with Resolution 4/23, adopt a policy for prioritizing petitions and cases on this topic.

8. - Request an Advisory Opinion from the Inter-American Court on Inter-American standards on judicial independence in cases of judicial reform processes where the division of powers and the rule of law are at risk.

9. - In the face of a serious breakdown of the democratic and constitutional order, urge the Secretary General of the OAS to activate, immediately, the mechanisms provided for in the Inter-American Democratic Charter.

10. - Reconsider the criteria for the adoption of precautionary measures when in structural situations, such as the present one, democratic institutionality is at risk; in this sense, it is urgent that the Commission address the State in order to stop the massive and arbitrary dismissal of all judges in Mexico.

11. - Convene a follow-up hearing at its next session.

12. - Urge the State to refrain from any action of persecution against those of us who participated in this hearing.

X. Annexes

- Colectivo La justicia que queremos, "Aportes a la Relatora Especial sobre la Independencia de los Magistrados y Abogados, para el informe sobre la independencia de los sistemas judiciales frente a los desafíos contemporáneos a la democracia", January 2024. Available at: https://lajusticiaquequeremos.org/wp-content/uploads/2024/02/Aportes-Relatora-Especial-Enfoque-Personas-juzgadoras.pdf
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- Foundation for Justice and the Democratic Rule of Law. "Note: executive summary of the process following the approval of the reform to the Federal Judiciary", November 6, 2024.
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- México Unido contra la Delincuencia, "Análisis del proyecto de resolución de las Acciones de Inconstitucionalidad relacionadas con la reforma al Poder Judicial (AI 164/2024 y sus acumuladas 165/2024, 166/2024, 167/2024 y 170/2024)," October 30, 2024. Available at: https://www.mucd.org.mx/wp-content/uploads/2024/10/Analisis-proyecto-de-resolucion-RPJ.pdf

Report prepared by the following organizations of the "La Justicia Que Queremos" Collective:

- Foundation for Justice and the Democratic Rule of Law (FJEDD),
- Mexico Evalua,
- Mexico United Against Crime (MUCD),
- Public Designations Observatory,
- Transitional Justice for Mexico, Strategies against Impunity,
- Mexiro, A.C.,
- Heinous Crimes Research Center,
- Cyrus R. Vance Center for International Justice

Signatures of adherent organizations, collectives and associations:

- Search for me, looking for missing persons Mexico,
- Centro de Investigación Morelos Rinde Cuentas A.C.,
- Justicia Pro Persona, A.C.,
- Practice: Laboratory for democracy,
- Zero Impunity,
- Derechos Humanos y Litigio Estratégico Mexicano, A.C. (DLM),
- Institute of Criminal Procedural Justice,
- Stanford Law School's Rule of Law Impact Laboratory
- Platform for Peace and Justice in Guanajuato,
- Colegio de Abogadas del Estado de Oaxaca, A.C.,
- Mexico Chapter of the International Association of Women Judges, AC.
- Centro Universitario por la Dignidad y la Justicia "Francisco Suárez S.J." del ITESO