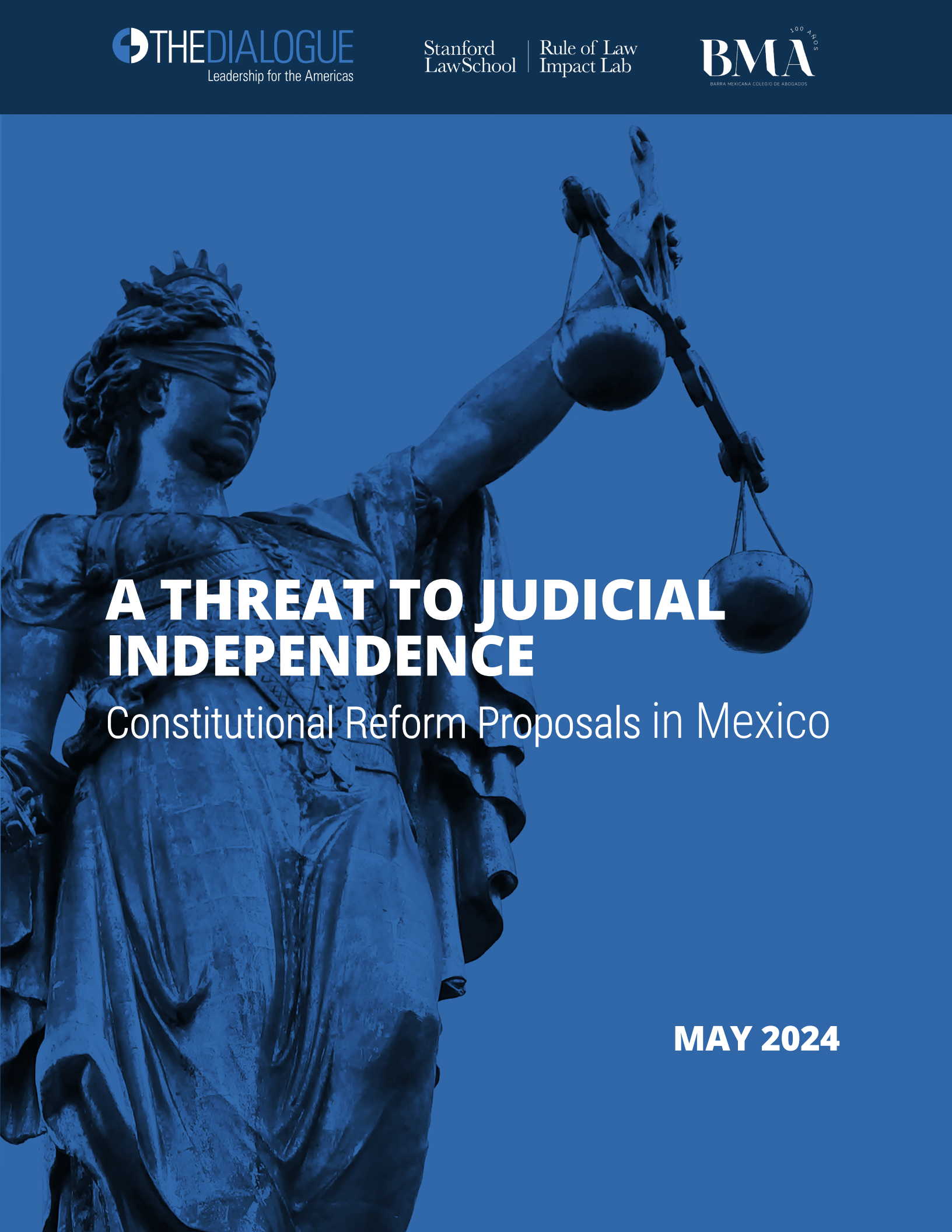




A THREAT TO JUDICIAL INDEPENDENCE

Constitutional Reform Proposals in Mexico

MAY 2024

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

On February 5, 2024, President Andrés Manuel López Obrador presented to the Mexican Congress constitutional reform proposals directed at electing judges by popular vote, reducing their terms of office, tying their salaries to those of the executive branch, and creating a judicial disciplinary tribunal whose members are elected by popular vote. These proposals constitute a direct threat to judicial independence and endanger the rights of minorities. They violate international legal standards on the independence, impartiality, and competence of the judiciary. If approved, these proposals would undermine the foundation of the rule of law in Mexico.

The constitutional reform proposals are the most recent example in a series of attacks by the executive branch on the authority of the courts to constrain executive action. Indeed, they were initiated after the Supreme Court invalidated a number of the government's legislative proposals as unconstitutional. The constitutional reform proposals would eliminate the separation of powers and the system of checks and balances crucial for the survival of a constitutional democracy. The proposals would also violate international legal standards in several ways.

First, electing Supreme Court justices, federal judges, and magistrates by popular vote would incentivize them to issue decisions to win votes and satisfy political constituencies instead of impartially deciding cases solely based on the facts and the law. This would violate international legal standards which require the selection of judges to be free from political interference and to be based on merit and suitability. The comparative experience of Bolivia and the United States—the only two countries in the world to elect judges to constitutional courts—confirms that judicial elections compromise the independence and impartiality of the judicial system. Instituting judicial elections in Mexico would also increase the influence of money in judicial decision-making, including through campaign contributions from organized crime.

Second, reducing judicial tenure to coincide with the six-year presidential term and requiring sitting judges to

step down when newly elected judges take office violates international legal standards. The proposals reduce the tenure of all judges in the Federal Electoral Tribunal from nine to six years, so that their terms of office coincide with that of the President of the Republic. They also require all Supreme Court justices, magistrates, and judges currently in office to conclude their term when newly elected judges are sworn in, thereby eliminating security of tenure for sitting judges. International legal standards establish that the law must guarantee the tenure of judges and that they cannot be removed from office arbitrarily or without just cause. The guarantee of tenure is crucial for protecting judicial independence since it allows judges to exercise their functions without fear of losing their jobs. Requiring the Federal Electoral Tribunal's terms of office to coincide with the presidential election cycle would further undermine its independence by exposing it to political influence.

Third, creating an elected Judicial Disciplinary Tribunal whose term would coincide with the presidential term and whose decisions would be final and unappealable, would violate international legal standards. International legal standards require disciplinary tribunals to be competent, independent, and impartial. Electing members of the Judicial Disciplinary Tribunal by popular vote would not meet these standards. Instead, it would expose the Tribunal to political influence, thereby undermining the Tribunal's independence and impartiality. The disciplinary process could be weaponized against judges—including Supreme Court justices—if they were to issue judgements adverse to the government of the day. Requiring Tribunal members' terms of office to coincide with the presidential term would only exacerbate these risks. Furthermore, deeming the Tribunal's decisions as final and unappealable would violate the right of judges to appeal and receive adequate and effective judicial review.

Fourth, tying judicial salaries to the salary of the President of the Republic would violate international legal standards. The proposals would prohibit the salaries of Supreme Court justices, circuit magistrates, district judges, members of the Judicial Disciplinary Tribunal, electoral magistrates, and other federal judicial personnel from exceeding the

salary of the President of the Republic. The President's salary is determined by the executive branch through the federal budget. Tying judicial salaries to the President's salary would, in effect, give the executive branch the power to increase or decrease judicial remuneration at its discretion. This would violate international legal standards that require sufficient and stable judicial funding, independent of political fluctuations. The proposals would compromise the economic independence of the judiciary, and as such, its functional autonomy. A lack of adequate remuneration could also cause the judiciary's performance to deteriorate and deprive people of access to justice.

RECOMMENDATIONS

To ensure that Mexico preserves the rule of law and complies with its international obligations regarding judicial independence, it is recommended that Mexican authorities:

1. Ensure that judges are selected not by popular vote, but on the basis of merit and abilities.
2. Ensure that the method for selecting judges enables them to make impartial decisions based solely on the facts and the law and protects their decisions from external influences.
3. Ensure that judicial tenure is secure, sufficiently lengthy, and unconnected to the executive branch's term, and that judges can only be removed for just cause previously established by law, with sufficient procedural protections, including the right to appeal and judicial review.
4. Ensure the independence of the disciplinary control body, eschewing members' appointment by popular vote and terms coinciding with those of the executive branch.
5. Ensure the economic independence and stability of the judiciary, eschewing tying judicial salaries to those of other branches of government with the power to determine their own remuneration.

INTRODUCTION

In recent years, President López Obrador's government has sought to undermine independent institutions crucial for safeguarding democracy and the rule of law in Mexico. In particular, it has continued to attack the federal judiciary. The government has sought to alter the composition of the Supreme Court in its favor, slashed the federal judiciary's budget by thirty percent, and used the President's morning press conferences to publicly rebuke the judiciary for decisions that guard against the abuse of executive power.¹

On February 5, 2024, President López Obrador unveiled his latest assault on the federal judiciary, in the form of constitutional reform proposals submitted to the Mexican Congress.² The proposals aim to elect federal judges—including Supreme Court justices—by popular vote, reduce their terms, tie their salaries to those of the executive branch, and create a judicial disciplinary tribunal whose members are elected by popular vote for terms that coincide with the six-year presidential term. This report analyzes these proposals in light of Mexico's international legal obligations relating to judicial independence.

Judicial independence refers to the autonomy of judges to make impartial decisions based solely on the facts and the law, free from any extraneous influences.³ This principle allows the courts to act as a true counterweight to the executive and legislative branches of government. It is essential in a democracy to prevent abuses of executive power, to ensure that government decisions adhere to the law, and to protect fundamental rights, especially those of minorities, from the will of the majority.

International law requires Mexico to guarantee judicial independence. According to the American Convention on Human Rights and the International Covenant on Civil and Political Rights, both ratified by Mexico, every individual has the right to a fair hearing by a "competent, independent and impartial" tribunal.⁴ The Inter-American Court of Human Rights (I/A Court H.R.) has determined that States must guarantee the independence of all judges, especially those who are responsible for interpreting the Constitution.⁵ These guarantees include an adequate appointment processes, a fixed term of office, and protection against external pressures, so that judges can make decisions

impartially, without fear of reprisals or undue external influences.

As explained below, the judicial reform proposals present a direct threat to judicial independence. They violate international legal standards on the independence, impartiality, and competence of the judiciary. If approved, these proposals would undermine the foundation of the rule of law in Mexico.

I. THE CONTEXT: UNDERMINING DEMOCRATIC INSTITUTIONS

The constitutional reforms are proposed in a context marked by persistent attempts by the executive branch to systematically undermine institutions essential for safeguarding democracy in Mexico. These institutions include the National Electoral Institute (INE), the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI), and the federal judiciary. The executive branch's attacks have taken the form of legal reform proposals, budget reductions, and virulent public criticism directed at these institutions.

A. THE NATIONAL ELECTORAL INSTITUTE (INE)

The National Electoral Institute (INE), which oversees federal elections in Mexico, is among the most independent and highly regarded electoral commissions in the world. President López Obrador, however, publicly attacked INE in his morning press conference, describing it as a “kept body, good for nothing.”⁶

The President's attacks were not limited to public rebukes. In 2022, he presented a constitutional reform proposal known as “Plan A,” which sought to eliminate a significant percentage of INE's staff and compromise its ability to monitor elections.⁷ “Plan A” failed as a constitutional amendment because it was not supported by a two-thirds majority in Congress. Subsequently, the government proposed “Plan B,” to significantly reduce INE's budget and staff through reforms to secondary laws, which only required the approval of a simple majority in Congress.⁸

The first part of “Plan B,” approved by Congress, consisted of modifying the General Law of Social Communication and the General Law of Administrative Responsibilities, especially regarding governmental propaganda.⁹ This part was challenged by a group of deputies and invalidated by the Supreme Court due to serious violations of the legislative procedure.¹⁰

The remainder of “Plan B” modified various legal provisions regulating INE procedures.¹¹ This eliminated more than eighty percent of INE's professional staff, severely limiting its

ability to monitor elections, and allowed the executive branch to interfere with INE's budgetary and structural matters, internal decisions, and electoral rolls.¹² These reforms were challenged by political parties and INE, and invalidated by the Supreme Court, again due to irregularities in the legislative procedure.¹³

INE, INAI and the Judiciary face similar challenges in Mexico: the Executive Branch's attempts to weaken them through budget cuts and reform proposals that compromise their independence.

After “Plan B” also failed, President López Obrador included within the reform package sent to Congress on February 5, 2024, a proposal to eliminate INE and local electoral bodies and replace them with a single national electoral body. The new body would be governed by the principle of austerity, which implies a drastic reduction in resources and personnel for administering federal and local elections.¹⁴

B. THE NATIONAL INSTITUTE OF TRANSPARENCY, ACCESS TO INFORMATION AND PROTECTION OF PERSONAL DATA (INAI)

The President has also directed attacks at the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI), an independent body charged with guaranteeing data protection and access to public information in Mexico.¹⁵ He has urged INAI's

elimination and criticized it during his morning press conferences for being useless and spending too much.¹⁶ In reality, INAI's budget has declined in real terms since 2018.¹⁷

In March 2023, the President vetoed the appointment of two new INAI commissioners, paralyzing its operations because it did not have the minimum of five members needed to function.¹⁸ INAI filed a constitutional controversy challenging this situation, and the Supreme Court ruled that, in order to guarantee the rights of access to information and protection of personal data, INAI could operate with only four commissioners while the other appointments were pending.¹⁹

More recently, the President's February 5, 2024, constitutional reform proposals recommended that INAI be eliminated.²⁰

C. THE INDEPENDENCE OF THE JUDICIARY

During his term in office, President López Obrador and his party, Morena, have proposed several legislative initiatives aimed at undermining judicial independence.²¹ These proposals included the expansion of the number of justices of the Supreme Court with a view to altering its composition, as well as the extension of the mandate of the former president of the Supreme Court, Arturo Zaldívar, who is perceived as being aligned with President López Obrador's positions.²² A year before completing fifteen years as a Supreme Court justice, Zaldívar resigned to join the campaign team of Claudia Scheinbaum, the presidential candidate for Morena.²³

In addition to these legislative initiatives, the judiciary, especially the Supreme Court and its president, has also been the target of public attacks by President López Obrador during his morning press conferences.²⁴ These accusations range from allegations of corruption and bias to criticisms of overstaffing and over-budgeting.²⁵ In addition, the President's party, Morena, initiated and passed legislation to reduce the federal judiciary's 2024 budget by about thirty percent.²⁶ Finally, the President presented as "Plan C" proposals for constitutional reform which, among other measures, require judges to be selected by popular vote. Some of these proposals are discussed below.

II. CONSTITUTIONAL REFORM PROPOSALS DIRECTED AT THE FEDERAL JUDICIARY

The executive branch's constitutional reform initiative claims that its purpose is to "reform the Mexican judicial system and incorporate in the Political Constitution of the United Mexican States safeguards and democratic mechanisms that allow citizens to actively participate in the election process of the Ministers of the SCJN [Supreme Court of Justice of the Nation], Circuit Magistrates, District Judges and Magistrates of the Electoral Tribunal of the Federal Judiciary (TEPJF), as well as those who integrate the disciplinary bodies of the Judicial Power of the Federation, with the purpose that its members are responsible for the decisions they adopt before society and that they are sensitive to the problems that afflict the citizenship, representing the cultural, social and ideological plurality that make up the nation to have a power of the State that constitutes an open, transparent, participatory, free and with an authentic vocation of public service legal pluralism."²⁷

The principal elements of the constitutional reform are (a) electing judges by popular vote; (b) reducing judges' terms of office; (b) establishing a judicial disciplinary tribunal by popular vote; and (d) tying judges' salaries to executive branch salaries. Each of these elements are analyzed below in light of international legal standards.

A. ELECTING JUDGES BY POPULAR VOTE

Currently, pursuant to Article 96 of the Constitution, the President of Mexico nominates three candidates for each vacancy on the Supreme Court, and the Senate approves one of them. The reform initiative intends to change this appointment mechanism to a direct and secret election process, through which the citizens would elect the justices of the Supreme Court.²⁸ The reform contemplates the following stages:

- a. Call for nominations: In the first regular session of the year prior to the election, the Senate will be in charge of the comprehensive description of the process, including dates and deadlines.

- b. Nomination process: The executive branch may propose up to ten candidates; the legislative branch, up to five from each chamber by a qualified majority; and the federal judicial branch, through the plenary of the Supreme Court, up to ten by majority vote.
- c. Verification and organization: The Senate shall verify compliance with the constitutional and legal eligibility requirements of the candidates, sending the final list to the National Institute of Elections and Consultations for the organization of the electoral process.
- d. Election and proclamation of results: The Electoral Administrative Body will be in charge of counting the election results, which will be announced by the Senate. The Superior Chamber of the Electoral Tribunal of the Federal Judicial Power will be responsible for resolving controversies, qualifying the electoral process, and declaring the results prior to the inauguration of the elected ministers before the Senate.

In relation to the appointment of magistrates and federal judges, the reform intends to replace the current competitive process for selecting judges with that of selecting judges by popular vote.²⁹

Finally, with respect to electoral magistrates, the reform initiative modifies the current selection process provided for in Article 99 of the Constitution, which establishes their appointment by the Senate based on proposals from the Supreme Court.³⁰ According to the reform initiative, each branch of the Union—executive, legislative, and judicial—will nominate candidates, and disputes arising from these elections will be adjudicated by the Supreme Court instead of the Electoral Court. The electoral magistrates for the regional chambers will be elected by direct and secret ballot, with specific terms and modalities established by the new electoral legislation.³¹

These proposals do not comply with Mexico's international legal obligations. According to the American Convention on Human Rights and the International Covenant on Civil and Political Rights, both ratified by Mexico, every individual has

the right to a fair hearing by a “competent, independent and impartial” tribunal.³² The I/A Court H.R. has indicated that the purpose of guaranteeing the independence of judges is to prevent the judicial system in general, and its members in particular, from being subjected to possible undue restrictions on the exercise of their functions by bodies outside the judiciary or even by those judges who exercise review or appellate functions.³³ According to the jurisprudence of the Court, the following guarantees derive from judicial independence: a proper appointment process, irremovability in office, and the guarantee against external pressures.³⁴

In relation to the appointment process, although international law does not establish a specific procedure for the selection of judges, it does recognize a series of minimum requirements that such a procedure must meet to guarantee an independent judiciary. These requirements include that the selection procedures for judges should be public, objective, and fair, that they should be based on merit and in particular with regard to qualifications, integrity, capacity, efficiency, impartiality, and independence, and that they should be transparent and accessible.³⁵

Electing judges by popular vote compromises their independence and impartiality by aligning judicial decisions with popular opinion rather than the law.

Both the United Nations Basic Principles on the Independence of the Judiciary,³⁶ and the Bangalore Principles on Judicial Conduct³⁷ establish integrity, suitability, and appropriate legal training or qualifications as preponderant elements in the appointment of judges.³⁸ Similarly, the I/A Court H.R.³⁹ and the United Nations Human Rights Committee⁴⁰ have recognized that the selection of judges should be made exclusively on the basis of personal merit and professional capacity, through objective selection and tenure mechanisms that take into account the specific nature of the functions to be performed.

In order to ensure that the selection is based on merit and abilities, the United Nations Special Rapporteurs on the independence of judges and lawyers have recommended that the selection processes be carried out by an independent authority⁴¹ and guarantee the effective participation of civil society and citizens.⁴² The Inter-American Commission on Human Rights (IACHR) has established that public competitive examinations and merit evaluations are appropriate mechanisms for the appointment of judges.⁴³ Notably, the current system for the appointment of district judges and federal magistrates entails a rigorous selection process that includes open competitions and examinations, focusing on merit and capacity.⁴⁴

In contrast to the international standards described above, the election of judges by popular vote does not ensure that judges are selected on the basis of merit or competence. Nor does it guarantee that an independent authority is in charge of judicial nominations in order to ensure an accessible, objective and independent selection process.⁴⁵ In fact, various international bodies have expressed concern about the negative impact of electing judges by popular vote on the independence and impartiality of the judiciary.⁴⁶ Although the reform initiative establishes that candidates for judges, magistrates and Supreme Court justices must demonstrate efficiency, capacity and integrity, it does not detail a transparent, independent and accessible mechanism to verify compliance with these requirements during the nomination process.⁴⁷

The United Nations Human Rights Committee has established that to comply with their obligations under the International Covenant on Civil and Political Right to guarantee the right of access to justice, States must protect judges from any form of political influence when issuing a decision, through a clear procedure and objective criteria for their appointment.⁴⁸ The United Nations Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, has warned that the rules relating to the selection and appointment of judges cannot be changed to prioritize political affiliation over ability and integrity.⁴⁹

The popular election of judges compromises their independence and impartiality by creating an incentive for judges' positions, and eventually their decisions, to be aligned with popular opinion rather than strictly adhering to the law. An independent judiciary is necessary precisely to apply the law independently of majority will and political currents, and campaigning for elections directly undermines this principle.

Influence by external pressures also stems from electoral financing. In a system where judges are selected through elections, there is an increased risk that candidates will actively seek the endorsement and financial support of political parties or interest groups. This can lead to significant politicization of the judicial process and undermine the ability of the judiciary to act as an independent counterweight to the executive and legislative branches. In this regard, the Consultative Council of European Judges (CCJE) has pointed out that, while the selection of judges via popular election may confer some democratic legitimacy, it means that candidates campaign, engage in politics, and may be tempted to buy or sell favors.⁵⁰ This aspect is particularly concerning in the context of the significant power of organized crime in Mexico.⁵¹

Popular election generates a high risk that judicial decisions will be made based on the preferences of those who finance candidates' electoral campaigns, or on the majority opinions of the population. The need to secure votes or financial support during election campaigns can negatively influence the decision-making process, and undermine public confidence in the judicial system.

B. REDUCING JUDGES' TERMS OF OFFICE

The reform initiative seeks to reduce the term of office of Supreme Court justices from fifteen to twelve years.⁵² It also reduces from nine to six years the term for the seven new magistrates of the Superior Chamber of the Federal Electoral Tribunal and those of the regional chambers.⁵³ Significantly, this six-year term would coincide with the six-year presidential term. In the case of magistrates and district judges, the reform seeks to increase the term of office from six to nine years with the added possibility of re-election for successive terms.⁵⁴

In addition, the reform initiative establishes that those who are in office will conclude their term of office simultaneously with the swearing-in of the newly elected public servants.⁵⁵

The reform proposal to reduce the term of office of Supreme Court justices, magistrates, and judges, including the Federal Electoral Tribunal, raises significant concerns. It undermines the guarantee of security of tenure required to ensure judicial independence,⁵⁶ and promotes the

politicization of the judicial system by allowing judges' terms of office to be synchronized with the presidential term.

With respect to the guarantee of tenure, the I/A Court H.R. has recognized that this translates into a right of permanence in office and reinforces guarantees of stability.⁵⁷ In other words, a judge cannot be removed from office arbitrarily or without just cause.⁵⁸ In this sense, the United Nations Basic Principles,⁵⁹ and the United Nations Special Rapporteurs on the independence of Judges and lawyers,⁶⁰ have recognized that the law should ensure the permanence of judges during their appointed terms, and that their irremovability should be guaranteed until they reach the age of mandatory retirement or the term for which they have been appointed expires.

The guarantee of tenure recognizes that judges cannot be removed from their position in an arbitrary or unjustified manner.

Although the reduction of the term of office proposed in the reform initiative may seem minimal and technically may not contradict international standards that advocate longer terms,⁶¹ it is important to note that short terms of office weaken the justice system and affect judicial independence and professional development.⁶²

Moreover, the reform initiative is particularly concerning because it allows the possibility of synchronizing the terms of office of members of the Federal Electoral Tribunal with the presidential cycle. Viewing the reform proposal to elect judges by popular vote together with the reform proposal to reduce the term of office makes it evident that the proposals would politicize the process of selecting judges. By synchronizing judicial mandates with the electoral cycle, particularly with the presidential election, the reform proposal allows political and partisan preferences that dominate presidential elections to influence the election of judges.

At election time, voters may be susceptible to political

rhetoric and partisan campaigning, which could lead them to associate the selection of a judge with their political preference for a specific presidential candidate. Thus, the selection of judges becomes an extension of the political agenda of the presidential candidates and the ruling party which has access to the state information machinery.

By aligning judicial terms with the electoral cycle, the reform initiative encourages the politicization of the judiciary.

The guarantee of tenure plays an essential role in the protection of judicial independence and the rule of law, since it allows judges to exercise their functions autonomously, free from external interference or political pressure.⁶³ Hence, by virtue of this guarantee, the removal of judges from office would only be justifiable in two circumstances: upon the expiration of the term of appointment or the age of mandatory retirement; and upon an independent disciplinary evaluation of their suitability for the exercise of their office.⁶⁴

The reform initiative violates the guarantee of irremovability insofar as it intends to remove thousands of judges in the country before the end of their terms as provided for in the Constitution and the law. In addition, early termination could have an impact on the stability of the interpretation and application of the law, which is fundamental for legal certainty and the coherence of the judicial system. When judges are removed arbitrarily it can lead to instability in jurisprudence and delays in the resolution of cases. This negatively impacts users of the justice system and undermines public confidence in the system.

C. ESTABLISHING A JUDICIAL DISCIPLINARY TRIBUNAL

The constitutional reform proposes the creation of a Judicial Disciplinary Tribunal as part of the Federal

Judiciary, in place of the Federal Judiciary Council for disciplinary proceedings.⁶⁵ This tribunal, composed of five members, would be elected directly by the citizenry after a nomination process involving the executive, legislative, and judicial branches of the Federation. Candidates would have to meet eligibility requirements relating to their professional capacity, honesty, and honorability, would have a six-year term, and would be replaced in a staggered manner without the possibility of being reelected for a new term.⁶⁶

The Judicial Disciplinary Tribunal would be responsible for investigating and sanctioning acts or omissions of public servants of the judicial branch (including the justices of the Supreme Court), that are against the law, the public interest, or the administration of justice, such as in cases of corruption and nepotism. Although the reform specifies that justices will continue to be removed through the impeachment process, it also provides that this tribunal will rule on administrative misconduct of justices with respect to which the sanction is not removal.⁶⁷ The decisions of this tribunal would be final and not subject to appeal.

According to the reform initiative, the reason for establishing this tribunal is “to modify the design and structure of the administrative and disciplinary bodies of the judicial branch with the objective of guaranteeing their autonomy, independence and technical specialty, as well as to detach the judicial function from . . . the sanctioning and disciplinary functions of the personnel, which today are in charge of the presidency of the SCJN and of councilors of the judiciary who do not necessarily have the necessary tools, aptitudes and independence to fulfill the enormous responsibilities of such a relevant body for the proper functioning of the Judicial Branch of the Federation.”⁶⁸

This reasoning errs by failing to recognize that judicial independence, competence and impartiality must also be satisfied by the authorities that conduct disciplinary proceedings against judges.⁶⁹ Thus, the selection of members of a disciplinary authority, such as the Judicial Disciplinary Tribunal, should be based on criteria such as personal merit and professional capacity, determined through independent, transparent, accessible and objective processes led by an independent authority.

By proposing the popular election of its members, the present initiative could lead to candidates for the Judicial Disciplinary Tribunal being chosen based on political considerations instead of professional and ethical suitability. This could result in the inclusion of members with particular political affinities, which would compromise the independence of the disciplinary authority and its ability

to make impartial decisions. This would open the door for the disciplinary process to be transformed into a political instrument against judges who decide against the interests of the government of the day.

The politicization of the selection process could lead to members of the Judicial Disciplinary Tribunal being subject to political pressure by the groups or parties that supported them during the election and financed their campaign. This pressure could influence disciplinary decisions, putting at risk the guarantee of stability and tenure of judges subject to disciplinary control by the tribunal.

The election of members of the Judicial Disciplinary Tribunal by popular vote could lead to the selection of candidates based on political considerations rather than their professional and ethical competence.

In addition, the possible coincidence between the Judicial Disciplinary Tribunal's term and the presidential cycle raises concerns that the election of the tribunal's members will inevitably be influenced by the political and partisan preferences dominant during the presidential elections. The election of its members will become an extension of the political agenda, affecting the independence of the disciplinary authority. This possibility is heightened by the fact that the proposal provides for the election of the members of this Tribunal during the upcoming presidential election after the approval of the amendment.

Furthermore, by establishing that the decisions of the Judicial Disciplinary Tribunal would be final and unappealable, the present reform initiative violates the right of judges subject to disciplinary control to appeal the tribunal's decision. The United Nations Basic Principles on the Independence of the Judiciary,⁷⁰ and the United Nations Special Rapporteurs on the independence of judges and lawyers⁷¹ have recognized the right to a review of the decision resulting from a disciplinary sanction procedure,

especially when that decision has an impact on the status of a judge.

The rights to appeal a judgment and to have an adequate and effective judicial remedy are expressly recognized in the American Convention on Human Rights, to which Mexico is a State party.⁷² The I/A Court H.R. has recognized that the right to appeal a judgment guarantees that decisions may be reviewed by a different authority of higher rank, through an exhaustive examination of both the factual and legal aspects of the appealed decision.⁷³ Moreover, the right to an adequate and effective remedy requires that the remedy be provided for by the Constitution or the law and be formally admissible, and that it be suitable for establishing whether a violation has occurred.⁷⁴

Unlike the reform initiative, which does not provide for any recourse to challenge or review the decisions of the Judicial Disciplinary Tribunal, the current judicial system guarantees that the decisions of the Council of the Federal Judiciary regarding the appointment, assignment, ratification and removal of magistrates and judges may be reviewed by the Supreme Court.⁷⁵

D. TYING JUDGES' SALARIES TO EXECUTIVE BRANCH SALARIES

Article 94 of the Constitution clearly establishes the prohibition on reducing judges' salaries during their term of office, precisely to safeguard their financial independence. This constitutional provision recognizes the importance of guaranteeing the economic stability of judges as an essential element in maintaining the integrity and impartiality of the judiciary.

The reform initiative seeks to tie the remuneration of Supreme Court justices, circuit magistrates, district judges, members of the Judicial Disciplinary Tribunal, electoral magistrates and other federal judicial personnel to the salary of the President of the Republic.⁷⁶ The reform prohibits the income of these judicial officers from exceeding the salary of the President of the Republic, as determined in the federal budget, which is established by the executive branch itself.

This undermines the financial autonomy of the judiciary. In relation to judicial autonomy, the I/A Court H.R. has recognized the international obligation of States to allocate sufficient resources for the functioning of the justice system based on objective and transparent criteria.⁷⁷

Likewise, the IACHR has pointed out that in order to guarantee the institutional independence of the judiciary and the conditions of service of justice operators, the budget allocated to them cannot depend on other powers or entities,⁷⁸ or political fluctuations.⁷⁹

By tying the salaries of the Judiciary to that of the President, the reform initiative compromises the Judiciary's financial autonomy, granting the Executive significant control over the Judiciary's resources.

Furthermore, international law recognizes the right of judges to enjoy a remuneration sufficient to safeguard their economic independence,⁸⁰ not subject to reductions,⁸¹ commensurate with their responsibilities and functions,⁸² and paid without unjustified delays to enable them to lead a dignified life.⁸³ Judicial salaries and benefits must also be set by an independent body and be maintained over time. Adequate remuneration and benefits, as well as the allocation of support staff and human and material resources are essential elements for the effective and transparent functioning of the judiciary and the effective guarantee of the individual independence of judges.⁸⁴

By tying the salaries of judges to the President's salary, which in turn is proposed by the executive branch and approved by the Chamber of Deputies, the reform initiative effectively gives the executive branch financial control over the judiciary. In addition, it creates a risk that judges may be affected by political decisions, which undermines independence and objectivity in dispensing justice. This measure also breaches the principle that judges' salaries should be commensurate with their specific responsibilities and workloads, adding to concerns about the fairness and adequacy of judicial compensation.

III. COMPARATIVE EXPERIENCE IN ELECTING JUDGES

Very few countries in the world elect judges by popular vote.⁸⁵ Of these, only Bolivia and the United States use judicial elections to select judges for courts with constitutional jurisdiction. The proposed reform initiative alludes to these two countries in its justification.⁸⁶ However, the comparative experience of Bolivia and the United States demonstrates the problems with selecting judges by popular vote.⁸⁷

A. BOLIVIA

After its 2009 constitutional reform, Bolivia became the only Latin American country to implement the election of judges by popular vote.⁸⁸ However, the 2011 and 2017 judicial elections revealed significant problems. In both elections, the preselection of candidates was influenced by political considerations rather than technical merits.⁸⁹ The failure of the Plurinational Legislative Assembly to pre-select suitable candidates generated discontent and questions about the legitimacy of the process.⁹⁰ Likewise, the high percentage of null and blank votes, which constituted the majority, reflected citizens' distrust and lack of interest in the system of election by popular vote, undermining the argument that the appointments were democratic in nature.⁹¹

The politicization of the selection process has led to a lack of transparency and the selection of candidates who may not be the most suitable for judicial office. This problem has been compounded by low voter participation and a lack of civil society participation in the pre-selection process.⁹²

International organizations such as the United Nations Human Rights Committee⁹³ and the Interdisciplinary Group of Independent Experts (GIEI)-BOLIVIA⁹⁴ have questioned this mechanism and have recommended to Bolivia that the selection process for judges be transparent, independent, and based on objective criteria of suitability and professional merit, to avoid political interference in the functioning of the judiciary.

B. UNITED STATES

As part of its federal system of government, the United States has a federal judiciary and a state judiciary for each of its fifty states. State judges make up ninety-four percent of all U.S. judges, and hear more than ninety percent of cases in the country.⁹⁵ Thirty-nine states elect at least some judges by popular vote,⁹⁶ and about ninety percent of state court judges face some form of popular vote election.⁹⁷

In Bolivia, the politicization of the process and low citizen participation has eroded the legitimacy of judicial elections. In the US, judicial elections are infected with the influence of money and partisanship.

Judicial elections are the subject of significant public debate in the U.S. as interest groups, political parties and candidates spend increasing amounts of money on these elections.⁹⁸ The American Bar Association (ABA) has opposed judicial elections, warning of the "corrosive effect of money in judicial election campaigns, where [parties] interested in the outcomes of cases decided by judges try to buy advantage in the courtroom by influencing who will be a judge at the ballot box."⁹⁹ Instead, the ABA has long supported "merit selection" systems for state judges, in which they are selected from a pool of candidates whose qualifications have been reviewed and approved by an independent body.¹⁰⁰

The ABA's reasons are that (i) the administration of justice should not depend on the outcome of popularity contests, since a good judge is one who is independent enough to uphold the law impartially, regardless of his or her popularity with voters; (ii) the initial appointment reduces the corrosive influence of money on judicial selections by sparing candidates the need to solicit contributions from people with potential interests in the cases the candidates will later decide as judges; (iii) the cost of conducting judicial campaigns excludes from the pool of viable candidates those with limited financial means who lack access to contributors with significant financial resources; and (iv) the need to solicit contributions and be publicly pressured to take positions on issues they will later decide as judges discourages many capable and qualified individuals from seeking judicial office.¹⁰¹ The ABA has also opposed reelection processes because the prospect of another term creates an incentive for judges to "do what is politically popular rather than what is required by law."¹⁰²

Similarly, the Brennan Center for Justice has noted that electoral pressures on judges "create a morass of conflicts of interest that threaten the appearance, and reality, of fair decision-making" and prevent qualified candidates who cannot access "multimillion-dollar networks" from becoming judges.¹⁰³ The Center has called for replacing elections to state supreme courts with appointments through an independent nominating commission and requiring all judges to serve a single, long-lasting term.¹⁰⁴

Moreover, some empirical studies confirm that campaign contributions predispose judges to decide cases in favor of their donors, especially when they seek reelection.¹⁰⁵ These studies also conclude that state high court judges are less likely to rule in favor of individuals accused of crimes when judicial elections are approaching.¹⁰⁶ In addition, the proximity of reelection makes judges more likely to impose harsher penalties, including the death penalty, on people accused of serious crimes.¹⁰⁷

IV. CONCLUSION AND RECOMMENDATIONS

The foregoing analysis of the February 2024 constitutional reform proposals directed at the federal judiciary explains how the proposals present a direct threat to judicial independence and violate Mexico's international legal obligations.

To ensure that Mexico preserves the rule of law and complies with its international obligations regarding judicial independence, it is recommended that Mexican authorities:

1. Ensure that judges are selected not by popular vote, but on the basis of merit and abilities.
2. Ensure that the method for selecting judges enables them to make impartial decisions based solely on the facts and the law and protects their decisions from external influences.
3. Ensure that judicial tenure is secure, sufficiently lengthy, and unconnected to the executive branch's term, and that judges can only be removed for just cause previously established by law, with sufficient procedural protections, including the right to appeal and judicial review.
4. Ensure the independence of the disciplinary control body, eschewing members' appointment by popular vote and terms coinciding with those of the executive branch.
5. Ensure the economic independence and stability of the judiciary, eschewing tying judicial salaries to those of other branches of government with the power to determine their own remuneration.

ENDNOTES

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³ United Nations Office on Drugs and Crime (UNODC) (2018), [The Bangalore Principles on Judicial Conduct](#). Annex, Value 1, para. 1.1.

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¹³ Plenary of the Supreme Court of Justice (22/06/2023). [Sentencia sobre la Acción de Inconstitucionalidad 71/2023 y sus acumuladas 75/2023, 89/2023, 90/2023, 91/2023, 92/2023 y 93/2023](#). Justice: Min. Javier Laynez Potisek, paras. 73, 196.

¹⁴ Chamber of Deputies, [Initiative of the Federal Executive With draft decree, by which various provisions of the Political Constitution of the United Mexican States are amended, added and repealed, in electoral matters](#). Parliamentary Gazette N°6457-11, pages 2-8.

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²⁷ Op. cit., [Initiative with Draft Decree reforming, adding and repealing various provisions \(...\)](#), pp. 1-2.

²⁸ Ibid., p. 44.

²⁹ Ibid., p. 44. The text proposes "to modify the eighth paragraph of article 94 of the Constitution to specify that open competitions for the integration of jurisdictional bodies will be governed by the procedures, requirements and terms established by secondary legislation, with the exception of the positions of Circuit Magistrate and District Judge, whose election will be carried out by direct and secret vote of the citizens".

³⁰ Ibid., p. 50.

³¹ Op. cit., [Chamber of Deputies, Initiative of the Federal Executive With draft decree \(...\)](#), pp 2-8. As mentioned above, among the proposals for constitutional reform is the proposal to eliminate the state and federal electoral bodies and unify them into a single electoral institution.

³² [American Convention on Human Rights](#), arts. 8.1, 25; [International Covenant on Civil and Political Rights](#), art. 14

³³ I/A Court H.R. [Case of the Constitutional Tribunal \(Camba Campos et al.\) v. Ecuador](#). Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2013. Series C N°268, Paragraph 188.

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⁵⁵ Ibid., p. 49.

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⁵⁸ I/A Court H.R. [Case of Apitz Barbera et al \("Corte Primera de lo Contencioso Administrativo"\) v. Venezuela](#). Preliminary Objection, Merits, Reparations and Costs. Judgment of 5 August 2008. Series C N° 182, para. 43; Op. cit., I/A Court H.R., [Case of Reverón Trujillo v. Venezuela](#), para. 77.

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⁶⁴ Op. cit., IACHR, [Guarantees for the Independence of Justice Operators \(...\)](#), para. 186.

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⁸⁶ Op. cit., Chamber of Deputies, [Initiative with Draft Decree reforming \(...\)](#), pp. 15, 16, 17.

⁸⁷ Some Swiss cantons and French municipalities elect their judges; some Latin American countries, such as Peru, Venezuela and Costa Rica, elect lower court judges or justices of the peace; and Japanese judges face uncontested retention elections at the end of their terms. Op cit. Burnham, M. and Nelson, M. (...), in [Oxford Handbook of Comparative Judicial Behaviour](#).

⁸⁸ The magistrates of the Plurinational Constitutional Tribunal, the Agro-environmental Tribunal, the Council of the Magistracy and the Supreme Court of Justice are elected by universal suffrage, with a six-year term without the possibility of reelection. National Congress (February 7, 2009), [Political Constitution of the State of Bolivia](#), Articles 183 and 198.

⁸⁹ "The Bolivian experience shows that, despite the fact that the 'democratizing' discourse placed the axis of the new mechanism in the citizen vote, in fact decision-making was in charge of the Plurinational Legislative Assembly, in the pre-selection stage of candidates." Fundación para el Debido Proceso, [Judicial Elections in Bolivia: did we learn our lesson?](#) (2020), p. 25.

⁹⁰ Pábara. L. (n.d.), [Judicial elections in Bolivia. Una inédita experiencia](#), Fundación para el Debido Proceso Fundación Construir, pp. 2, 3.

⁹¹ Op.cit. Fundación para el Debido Proceso, [Judicial Elections in Bolivia: did we learn \(...\)](#), pp. 23-24.

⁹² UN: Human Rights Council, [Visit to the Plurinational State of Bolivia. Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán](#), A/HRC/50/36/Add.1 (May 11, 2022), paras. 75-76. According to the former Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán, more than ten years after the first election by universal suffrage of high court judges in Bolivia, the selection of magistrates has the following problems: 1) the system has been politicized and has not always led

to choosing the most suitable people; 2) the process of pre-selection of candidates to be submitted to popular vote is conducted and decided by a political body, the Plurinational Legislative Assembly; 3) the Judiciary Council and the Bar Associations are the only ones involved in the pre-selection and elaboration of exams, without the participation of civil society; 4) There is a low voter turnout, in 2017 the turnout was 78%, furthermore, most of the votes were null or blank.

⁹³ UN: Human Rights Committee, [Concluding observations on the fourth periodic report of the Plurinational State of Bolivia*](#), CCPR/C/BOL/CO/4 (June 2, 2022), para. 26 and 27.c.

⁹⁴ Interdisciplinary Group of Independent Experts (GIEI)-BOLIVIA, [Final Report on the acts of violence and human rights violations that occurred between September 1 and December 31 2019](#) (July 23, 2021), p. 257.

⁹⁵ Kang, M. & Shepherd, J. (2023). [Free to Judge: The Power of Campaign Money in Judicial Elections](#), p. 6.

⁹⁶ Brennan Center for Justice (08/05/2015). [Significant Figures in Judicial Selection](#).

⁹⁷ Shepherd, J. M. (2009). [Money, Politics, and Impartial Justice](#). Duke Law Journal, pp. 623, 625.

⁹⁸ Keith, D. (29/01/2024). [The politics of judicial elections, 2021-2022](#). Brennan Center for Justice.

⁹⁹ American Bar Association (ABA) (Jun, 2003). [Justice in Jeopardy: Report of the American Bar Association Commission on the 21st Century Judiciary](#). Open Society Foundations.

¹⁰⁰ Ibid., pp. 93-94.

¹⁰¹ Idem.

¹⁰² Ibid., pp. 95-96.

¹⁰³ Bannon, Alicia (10/10/2018). [Choosing states judges: A Plan for Reform](#). Brennan Center for Justice.

¹⁰⁴ Idem.

¹⁰⁵ Op. cit., [Kang, M. & Shepherd, J.](#), pp. 133, 150.

¹⁰⁶ Berry, Kate (2015). [How Judicial Elections Impact Criminal Cases](#). Brennan Center for Justice, p. 8.

¹⁰⁷ Ibid., p. 13.



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