

**Inputs to the Special Court Report on
the independence of Judges and
Attorneys,
for the report on the independence of
judicial systems in the presence of
contemporary challenges to democracy**

presented by the

LA JUSTICIA QUE QUEREMOS

collective

**Focusing on the judging people
Mexico, January 2024**



**LA
JUSTICIA
QUE
QUEREMOS**

Collective #LaJusticiaQueQueremos

It is an articulation of organizations, collectives of victims and other allies and allies with a recognized track record in the defense and promotion of justice in Mexico and the region, whose general objective is to achieve equal justice for all people, and that impunity ceases to be customary in the country.

Our general objective is to visualize the deficiencies and areas of opportunity in the functioning of the institutions of diligent management and administration of justice to contribute to their improvement, to substantive equality in the justice system and to the eradication of impunity, through active participation and the demand for rights.

Report coordinated by: [Foundation for Justice and the Democratic State of Law \(FJEDD by its Spanish acronym\)](#).

Organizaciones que contribuyeron a este documento: México Evalúa (Mexico Evaluates), Observatorio de Designaciones Públicas (ODP) (Public Designations Observatory), Fundación para el Debido Proceso Legal (DPLF) (Due Process of Law Foundation).

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Introduction

La Justicia Que Queremos Collective presents inputs to the report of the *Special Court Reporter on the Independence of Judges and Attorneys*, Ms. Margaret Satterthwaite, based on the premise that the concepts of democracy, the rule of law and human rights are interdependent, and that the violation of judicial independence constitutes a threat to their validity, as recently pointed out by the Inter-American Commission on Human Rights (IACHR)[1].

For this reason, we consider that practices such as i) budget reduction; ii) reductions in the mandate of justice operators; iii) dismissals or political trials based on ambiguous figures or summary processes; iv) gender-based harassment, harassment, threats, criminal or disciplinary investigations in retaliation for their independent judicial activity; and, v) functional designations to specific interests and not based on merits; constitute attacks on judicial independence, which in turn attack the separation of powers and, therefore, democracy.

1) Have judges played an active role in safeguarding democracy and upholding fundamental democratic rights in your country?

Historically in Mexico, the Judiciary has at times been a fundamental piece in the protection of democratic rights and practices (right to abortion, equal marriage, recognition of unconstitutional practices in the legislative process of the approval of an electoral package), but in others it has been timid and in some cases complacent with the Political Power by refusing to defend its autonomy and independence as essential elements of democracy. This diagnosis is verified both at the federal level and in state judiciaries.

In 2021, faced with a series of criticisms directed by the President of the Republic towards the Judiciary and the Supreme Court of Justice, the then Chief of the Court, who at the same time presided over the Council of the Federal Judiciary, Arturo Zaldívar, presented a package of reforms to the Judiciary (which included reforms to the Constitution and some secondary laws, in addition to proposing to repeal the Organic Law of the Federal Judiciary to propose a new one, and to issue a Judicial Career Law of the Federal Judiciary, which until now did not exist) that was supported by the Executive. Two years later, in November 2023, Minister Zaldívar[2] submitted his resignation without invoking any of the causes allowed in the Constitution, to join the political project of the governing party, which precipitated an early selection and designation process that allowed the Executive Branch to expand its political control over the Supreme Court, defrauding the temporary mandate that the Constitution assigns to the position, but also affecting the staggered renewal of the highest court, which is one of the guarantees of its independence from Political Power. Even though civil society organizations filed lawsuits (Writs of Amparo) on these facts, the Judiciary refused to know about these situations[3].

2) Do judges face obstacles, risks or challenges in their country in fulfilling this role? If yes, provide examples and highlight whether judges face particular obstacles, risks, or challenges because of their gender, racial identity, or other characteristics protected by human rights laws.

Yes, in Mexico it has become common for the President of the Republic and other political figures at the federal or state level to publicly disqualify Judges or Courts when they issue sentences unfavorable to their interests or policies. These allegations range from criticisms of sentences and other judicial decisions to attacks and direct qualifications against Judges and Ministers of the Supreme Court of Justice, including requests for corruption investigations, requests for political trials [4] or indications for the Council of the Judiciary to initiate disciplinary investigations.

The Collective began as of January 2023, monitoring attacks on the independence of the Federal Judiciary[5]. This exercise revealed that during the last year the main aggressor has been the President of the Republic through public accusations during his daily press conferences. From there, both the Judiciary, especially at the federal level, as well as Judges and Magistrates have been publicly pointed out as corrupt and insensitive to the demands of justice of the population.

These accusations tend to the public stigmatization of the affected people, by political leaders such as the President of the Republic[6], which in turn are replicated by other political spokespersons both in the Executive Branch and in Parliament, exposing the affected people in their personal integrity, and undermining citizen trust in justice institutions.

A recent example has been the attacks on the current president of the Supreme Court of Justice, Norma Piña, as of January 2023. Since his designation by the Court in plenary, President Andrés Manuel López Obrador made at least 30 statements during his daily press conferences criticizing the Judiciary, the Supreme Court of Justice of the Nation and the Minister-Chairperson. After these statements, threats were identified against the integrity of Minister Piña, without information to date on the investigation and punishment of the persons responsible[7].

Similarly, it has become common for authorities of the Executive Branch to openly criticize justice operators for releasing people accused of being alleged criminals, as occurred for example with statements by the governors of the states of Veracruz and Michoacán, Cuitláhuac García Jiménez[8] and Alfredo Ramírez Bedolla[9] respectively, and recently in the Ayotzinapa case, where the Judiciary changed the precautionary measure against the accused due to the deficient work of the Prosecutor's Office[10].

3) Is there a specific role played by the Judiciary in democratic elections?

Yes, in Mexico there is an Electoral Tribunal of the Federal Judiciary (TEPJF by its Spanish acronym) as a specialized body of the Judiciary at the federal level, in charge of resolving disputes in electoral matters, protecting the political-electoral rights of citizens and finally accrediting the presidential election. At the level of the states of the Federation, there are also Electoral Tribunals. However, to date, the TEPJF has presented two vacant positions in its Superior Chamber since October 31, 2023, in addition to 40 pending designations in the Local Electoral Tribunals[11] of 31 different states –which represents 38% of the total of the 126 electoral magistratures– and another eight more in each of the five Regional Chambers and its Specialized Chamber. These vacant positions remain undesignated within the framework of the largest electoral process in the history of Mexico, which will be held in June 2024 and which, if not resolved, will undermine the legitimacy of the post-election resolutions that occur in each of the Chambers and Courts. Even, to endorse the result of the presidential election, a minimum of 6 people are required in the Superior Chamber and currently only has 5 members[12].

In addition, in December 2023, three judges of the Superior Chamber of the TEPJF pressured the then president of the Court to resign before the end of his term, even though the regulations do not provide for a procedure to dismiss the president. According to press reports, a lawyer representing the interests of the party in the government intervened to obtain this de facto dismissal[13].

4) Are there policies or institutional arrangements that limit the role of judges in safeguarding democracy?

Yes, there are policies and public policy implementation threats that can limit the independence of justice and thereby limit its ability to defend democracy and human rights. There are also legislative initiatives that threaten to increase political influence over the justice system, undermining guarantees of access to independent and impartial courts.

For example, in the state of Aguascalientes, the Local Congress approved in August 2023[14] a reform to the Political Constitution of the State, which increased the number of judges of the Supreme Court from seven to eleven, in addition to reducing the time of designation and allowing the ratification of its holders. Likewise, the composition of the Council of the Judiciary was reduced from seven to five members. Similar reforms were approved in Yucatan and Chihuahua in 2022[15].

On the other hand, at the federal level, the President of the Republic announced that he would present on February 5 a series of **constitutional reform initiatives**, one of which would seek to modify the process of designating Federal Ministers and Judges to be designated by popular vote [16].

In other contexts, practices that constitute "covert sanctions" against independent justice operators have been evidenced, limiting the internal independence of the Judiciary itself. Likewise, omissions have been identified on the part of the Judiciary or the Executive Branch or the Senate when designating suitable persons to decision-making or management positions, privileging political commitment over merits and capacities as a strategy to damage independence or simply omitting a designation due to the lack of political agreement to fill vacancies in the Judiciary[17].

An example of this practice has been the recent designation of the Minister of the Supreme Court of Justice. During the selection process, the Executive Branch, far from presenting candidates with suitable and independent profiles, presented politically related people privileging partisan militancy over professional and personal credentials and enabling clear situations of conflict of interest that can lead to the political cooptation of the highest court in the country. In general, the five designations made to date at the proposal of President López Obrador (two of these for unjustified and anticipated resignations), present serious conflicts of interest, with respect to the president and his political project, which represents an obstacle for the Supreme Court to be able to act in defense of the separation of powers and the Rule of Law, against political power, and in an effective defense of the rights of citizenship.

In this sense, all the persons proposed in the two shortlists of three candidates sent by the President to the Senate in November and December 2023, were in high positions within the Executive Branch[18] at the time of their nomination. The decision of the Senate to reject the shortlist twice, activated the competence of President López Obrador to directly define the person who would fill the vacancy.

Similarly, the designations-especially- of Ministers Lenia Batres, Yasmín Esquivel Mossa and Loretta Ortíz Ahlf have been highly questioned both for their qualifications or personal profiles[19] and for the very process of their designation, for the speed with which they were made and because they were not carried out in a transparent manner, with substantive citizen participation, with objective mechanisms of evaluation and accountability by the Senate[20].

5) What are the approaches taken to protect judges in this role?

Although the Constitution and Federal Laws, as well as State Constitutions and Laws in general recognize guarantees of independence of the Judiciary, such as budgetary autonomy, own judicial governing bodies and guarantees of immobility and designation of judges, in general there are practices from the legislative and executive powers, both at the federal level and in specific states, that threaten to violate these guarantees. An example of this are public speeches aimed at undermining the credibility of the judicial institution or direct attacks on judicial institutions, criticisms of sentences contrary to political power and legislative initiatives aimed at limiting or weakening the guarantees established in the Constitutions. During the year 2023

alone, at least 135 cases of public speeches by President Andrés Manuel López Obrador against the Judiciary were identified [21].

6) Are there any additional issues you would like to raise with the Special Court Reporter in this context?

We draw the attention of the Post of Court Reporter to the frequent mention of accusations by members of the Executive Branch, specifically the President of the Republic, against the Judiciary, accusing it of corruption. Likewise, the effectiveness of the Council of the Judiciary to combat corruption in the Judiciary is questioned, pleading a lack of transparency and questioned privileges within said institution. These accusations seek to undermine confidence in the Judiciary and legitimize political interventions to advance a reform process that jeopardizes the guarantee of an independent judicial system and compromises the protection of rights and democracy in the country. In addition, these allegations could cover up undue external pressures on the Judiciary.

In this sense, it is essential that the Judiciary acts as a guarantor of democracy, human rights and the Rule of Law, defending its autonomy and institutional and individual independence from each judge in the country, and acting with due transparency and accountability.

Any initiative to reform the Judiciary must observe international standards in this area, strengthening transparency, accountability and access to impartial and independent justice. These reforms should not be processes of cooptation or political capture, explicit or implicit, in order to endorse political projects that put democratic guarantees, the Rule of Law and the human rights of citizens at risk.

NOTES

[1] “[I]n this triad, [democracy, Rule of Law, and human rights] the independence of the judicial system, is clothed in special protection by acting as a safeguard against abuses of power, preventing discrimination, and ensuring equality before the law. An independent judicial system helps prevent impunity in cases of human rights violations.” Inter-American Commission on Human Rights. Press release 283/2023, “Día internacional de los derechos humanos: CIDH llama a proteger la independencia judicial y la democracia” (International Human Rights Day: IACHR calls to protect Judicial Independence and Democracy), December 10, 2023. Available at <https://www.oas.org/es/CIDH/jsForm/?File=/en/cidh/prensa/comunicados/2023/283.asp>

[2] Mexico, Senate of the Republic, “Senado aprueba renuncia de Arturo Zaldívar como ministro de la Suprema Corte de Justicia de la Nación” (Senate approves resignation of Arturo Zaldívar as Minister of the Supreme Court of Justice of the Nation), November 15, 2023. Available at <https://comunicacionsocial.senado.gob.mx/informacion/comunicados/7454-senado-aprueba-renuncia-de-arturo-zaldivar-como-ministro-de-la-suprema-corte-de-justicia-de-la-nacion>

[3] Decision 1948/2023 of the Fifteenth District Court in Administrative Matters in Mexico City. See El Economista, “Juez desestima amparo de ONG contra renuncia de Arturo Zaldívar” (Judge dismisses amparo of NGOs against the resignation of Arturo Zaldívar), November 23, 2023. Available at: <https://www.eleconomista.com.mx/politica/Juez-desestima-amparo-de-ONG-contra-renuncia-de-Arturo-Zaldivar-20231123-0112.html>

[4] Ministry of the Interior, “Gobierno de México solicita juicio político en contra de juez federal por probables actuaciones ilegales que han favorecido a grupos criminales” (Government of Mexico requests impeachment against a Federal Judge for probable illegal actions that have favored criminal groups). Statement 030/2024, of January 30, 2024. Available at: https://twitter.com/SEGOB_mx/status/1752468490223583254?t=CISS6DfndHZ2bsnj8fBg9g&s=08

[5] **The attack matrix can be consulted at the following link:** <https://docs.google.com/spreadsheets/d/1ZVxTFHHILyWOG3sIFotG6JsMQT81Oc4m/edit?usp=sharing&oid=116352897630069669921&rtpof=true&sd=true>.

Likewise, this document presents a summary of the findings derived from the analysis of the matrix: https://docs.google.com/document/d/15n8ZY95Z_9zZB7BZt2XHehy23FuL1dsuZ6hVRDOTuY4/edit?usp=sharing

[6] El Universal, “AMLO abrió fuego contra los jueces” (AMLO Opened Fire on Judges), March 16, 2021. Available at: <https://www.eluniversal.com.mx/opinion/salvador-garcia-soto/amlo-abrio-fuego-contra-los-jueces>

[7] El Sol de México, “Las consecuencias de las palabras presidenciales” (The consequences of presidential words), March 9, 2023. Available at: <https://www.mexicoevalua.org/las-consecuencias-de-las-palabras-presidenciales/> and Proceso, “Por una normalización de los contrapesos en la Corte” (For a normalization of counterweights in the Court), May 17, 2023. Available at: <https://www.proceso.com.mx/opinion/2023/5/17/por-una-normalizacion-de-los-contrapesos-en-la-corte-307205.html>

[8] El Economista, “Gobernador de Veracruz denuncia corrupción judicial” (Governor of Veracruz denounces judicial corruption), August 16, 2023. Available at <https://www.eleconomista.com.mx/politica/GobernadordeVeracruzdenunciacorrupcionjudicial-20230816-0096.html>; Milenio “Cuitláhuac García acusa al Poder Judicial de liberar a delincuentes para atentar contra estabilidad” (Cuitláhuac García accuses the Judiciary of releasing criminals to attack stability), August 16, 2023. Available at <https://www.milenio.com/estados/cuitlahuac-garcia-acusa-judicial-liberar-delincuentes>

[9] Millennium “Gobernador sobre liberación de autodefensas en Michoacán” (Governor on the release of self-defense groups in Michoacán), September 20, 2023. Available at <https://www.milenio.com/estados/gobernador-sobre-liberacion-de-autodefensas-en-michoacan>

[10] See El Financiero “Liberación de militares en caso Ayotzinapa: Esta es la carta que envió Segob a Norma Piña” (Release of military personnel in the Ayotzinapa case: This is the letter sent by Segob to Norma Piña), January 23, 2024. Available at:

<https://www.elfinanciero.com.mx/nacional/2024/01/23/liberacion-de-militares-en-caso-ayotzinapa-esta-es-la-carta-que-envio-segob-a-norma-pina/>

[11] Congressional Channel “Nombramientos pendientes en el Senado” (Designations pending in the Senate), December 26, 2023. Available at <https://www.canaldelcongreso.gob.mx/noticias/17454/NombramientospendientesenelSenad>
[o](#)

[12] Additionally, we see that the designation processes in Mexico have had a setback in terms of their quality and precision. There is an accumulation of more than 150 pending designations in various institutions and autonomous bodies, among which are multiple courts, such as those on electoral matters and those on administrative matters. In the latter (Federal Court of Administrative Justice), for example, there are 5 vacancies out of 16 Magistratures in its Superior Chamber and another 71 Magistratures of Regional Chambers. The foregoing shows that there is a deliberate strategy of weakening the judicial powers through the omission of designating their holders.

[13] El País, “Crisis en el Tribunal Electoral: la caída en cámara lenta del magistrado Reyes Rodríguez” (Crisis in the Electoral Tribunal: the slow-motion fall of Magistrate Reyes Rodríguez), January 16, 2024. Available at: <https://elpais.com/mexico/2024-01-17/crisis-en-el-tribunal-electoral-la-caida-en-camara-lenta-del-magistrado-reyes-rodriguez.html>

[14] El Heraldo “Cocinan nuevas reglas para el Poder Judicial” (Cooking new rules for the Judiciary), June 27, 2023. Available at <https://www.heraldo.mx/cocinan-nuevas-reglas-para-el-poder-judicial/> "Avanza sin turbulencias reforma al Poder Judicial" (Reform of the Judiciary advances without turbulence), 19 August 2023. Available at <https://www.heraldo.mx/avanza-sin-turbulencias-reforma-al-poder-judicial/>. “Llega a la Corte la Reforma Judicial” (Judicial Reform comes to Court), September 13, 2023. Available at <https://www.heraldo.mx/llega-a-la-corte-reforma-judicial/>

[15] Animal Político, “Golpes desde lo local a la independencia judicial” (Blows from the local level to judicial independence), July 1, 2022. Available at <https://www.animalpolitico.com/analisis/organizaciones/lo-que-mexico-evalua/golpes-desde-lo-local-a-la-independencia-judicial>

[16] Aristegui Noticias, “AMLO presentará reforma a Poder Judicial e INE el 5 de febrero” (AMLO will present reform to the Judiciary and INE on February 5), January 12, 2024. Available at: <https://aristeguinoticias.com/1201/mexico/amlo-presentara-reforma-a-poder-judicial-e-ine-el-5-de-febrero/>

[17] The Economist “Pendientes en el Senado, un centenar de nombramientos” (Pending in the Senate, a hundred designations) November 2, 2023. Available at <https://www.economista.com.mx/politica/Pendientes-en-el-Senado-un-centenar-de-nombramientos-20231102-0006.html>; Congressional Channel “Nombramientos pendientes en el Senado” (Designations pending in the Senate), December 26, 2023. Available at <https://www.canaldelcongreso.gob.mx/noticias/17454/NombramientospendientesenelSenad>
[o](#)

[18] Inter-American Commission on Human Rights. Press release 269/23: CIDH llama a seguir estándares internacionales en la selección de la persona integrante de la Suprema Corte de Justicia de la Nación (IACHR calls to follow International Standards in the selection of the Member of the Supreme Court of Justice of the Nation), November 21, 2023. Available at: <https://www.oas.org/es/CIDH/jsForm/?File=/en/cidh/prensa/comunicados/2023/269.asp>; Mexico, Senate of the Republic. "Notifica el Ejecutivo al Senado que designa a Lenia Batres como ministra de la SCJN" (The Executive notifies the Senate that designates Lenia Batres as Minister of the Supreme Court of Justice of the Nation), December 14, 2023. Available at <https://comunicacionsocial.senado.gob.mx/informacion/comunicados/7849-notifica-el-ejecutivo-al-senado-que-designa-a-lenia-batres-como-ministra-de-la-scnj>; Mexico, Secretary of the Interior, Statement 619/2023 "Se congratula Gobernación por la designación de Lenia Batres como ministra de la Suprema Corte de Justicia de la Nación" (The Government congratulates itself on the designation of Lenia Batres as Minister of the Supreme Court of Justice of the Nation), December 14, 2023. Available at: <https://www.gob.mx/segob/prensa/se-congratula-gobernacion-por-la-designacion-de-lenia-batres-como-ministra-de-la-suprema-corte-de-justicia-de-la-nacion?idiom=es>

[19] WOLA. "Oposición al nombramiento de Yasmin Esquivel a la Suprema Corte en México" (Opposition to the designation of Yasmin Esquivel to the Supreme Court in Mexico), March 15, 2019, Available at <https://www.wola.org/es/2019/03/nombramiento-yasmin-esquivel-mexico-ministros-scnj-derechos-humanos/https://www.wola.org/es/2019/03/nomramiento-yasmin-esquivel-mexico-ministros-scnj-derechos-humanos/>

[20] Political index, "Colectivo denuncia falta de consenso en el Senado y critica designación de Lenia Batres como Ministra de la SCJN" (Collective denounces lack of consensus in the Senate and criticizes the designations of Lenia Batres as Minister of the Supreme Court of Justice of the Nation), December 15, 2023. Available at: <https://indicepolitico.com/colectivo-denuncia-falta-de-consenso-en-el-senado-y-critica-designacion-de-lenia-batres-como-ministra-de-la-scnj/>

[21] Own press monitoring.

Signatory organizations and collectives of the Collective "La Justicia que Queremos":

Fundación para la Justicia y el Estado Democrático de Derecho (FJEDD) (Foundation for Justice and the Democratic Rule of Law),
Mexico Evalúa (Mexico Evaluates),
Observatorio de Designaciones Públicas (ODP) (Observatory of Public Designations),
Fundación para el Debido Proceso Legal (DPLF) (Due Process of Law Foundation)
Plataforma por la Paz y la Justicia en Guanajuato (Platform for Peace and Justice in Guanajuato),
Impunidad Cero (Zero Impunity),
BÚSCAME BUSCANDO DESAPARECIDOS MÉXICO (LOOK FOR ME LOOKING FOR MISSING PEOPLE MEXICO),
Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH) (Mexican Commission for the Defence and Promotion of Human Rights)
Observatorio Nacional Ciudadano de Seguridad, Justicia y Legalidad (ONC) (National Citizen Observatory of Security, Justice and Legality),
Justicia Pro Persona (Pro-Person Justice),
Asilegal,

México Unido contra la Delincuencia (Mexico United against Crime),
Borde (Border),
Derechos Humanos y Litigio Estratégico Mexicano (DLM) (Human Rights and Mexican
Strategic Litigation),
Mexiro,
Morelos Rinde Cuentas (Morelos Accountable),
Cyrus R. Vance Center For International Justice