

NGO SHADOW REPORT CONCERNING THE INDEPENDENCE
OF THE JUDICIARY IN MEXICO (ARTICLE 14.1 OF THE
COVENANT) AND ITS EFFECTS ON THE ACCESS TO AN
EFFECTIVE REMEDY (ARTICLE 2.3 OF THE COVENANT)

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I. INTRODUCTION

1. This report is submitted by the following NGOs: the Inter-American Institute on Social Responsibility and Human Rights (“IIRESODH”¹), the Federación Mexicana de Colegios de Abogados, A.C. (“FEMECA”); Asociación Derechos Humanos para las Américas (HR-Américas), and the Instituto de Justicia Procesal Penal, A.C.

2. The facts and concerns included in this report were not included in the List of Issues prior to reporting (LOIPR), as the events started in October 2018 and have continued from then on. Given that the facts presented are of a recent and relevant nature, the custom of the Human Rights Committee establishes that they can be included in the constructive dialogue with the State Party, especially taking in consideration that the mentioned acts could refer to the international responsibility of Mexico for the systematic threats and effective negative impact to the independence of the Judiciary, one of the most important pillars of the Rule of Law, and the baseline of the general structure of the human rights’ protection system as envisioned by article 14(1) of the Covenant.

3. Since the election of the new government in July 2018, the official, pro-government Party (*Morena*²) has an absolute majority in both chambers of Congress. The legislative coordinators work closely with the Executive, President Andrés Manuel López Obrador. This has proved effective for the adoption of legal and constitutional reforms, as well as for the creation of new laws. The cross-cutting pledge of the new government is to carry out major changes to the legal and political framework (a movement called *The Fourth Transformation* or *4T*), characterized by the principle of “republican austerity”, which consists in drastically diminishing State’s expenses, with no technical justification for such measures whatsoever. This has resulted in mass removals of government authorities and harsh reductions in State’s budget. The Fourth Transformation also proposes to make a “change of regime”, taking advantage of the control of the Executive and Legislative Powers, trying to control de Judiciary by means of legal and constitutional amendments. In this sense, the main congressmen in charge of executing the *4T* have acknowledged that the present circumstances (such as the overwhelming parliamentary majority of *Morena*) represent the perfect juncture to “shake” or “shock” the Judiciary³.

4. For the elaboration of this report, more than one thousand judicial officers have been contacted and have submitted information of their personal experience and their legal knowledge, as well as of the individual claims by means of “amparo” remedies that are part of a strategic litigation process. Out of reasonable fear of retaliatory measures, their names are not mentioned in the report.

¹ www.iioresodh.org

² Short for Movement of National Regeneration, for its acronym in Spanish language.

³ Ricardo Monreal in a speech before the Senate, April 5 2019: <https://www.youtube.com/watch?v=LYDt3-UVKCc> (5:44-6:00 min)

II. EXECUTIVE SUMMARY

5. The Judiciary in Mexico is under constant attack, mainly by acts of the Executive and the Legislature, which constitute a breach of the obligations contained in article 14(1) of the Covenant, concerning everyone's right "to a fair and public hearing by a competent, independent and impartial tribunal". This situation also negatively affects the right to "have an effective remedy" within Mexican jurisdiction, contrary to article 2(3)(a) of the Covenant. The situation does not only affect the interests of the judicial officers, but also those of the actual and potential users of the federal and local justice system in Mexico.

1. Main areas of concern

6. Regarding the Judiciary, the threats to its independence stem from three main sources: (1) external pressures in the form of public declarations by the Head of the Executive and by some high profile legislators. These pressures go hand in hand with subjecting the remuneration for Judges and other judicial officers to that of the President, considerably reducing it in spite of a constitutional norm establishes a prohibition of doing so⁴; (2) a series of new laws, which hinder and interfere with a threat-free exercise of the jurisdiction, and (3) the imminent risk of several draft acts and legal and constitutional reforms that would undermine the independence of the judiciary, that are being discussed in Congress and that could be approved at any given time, considering the absolute majority of members of Morena.

7. As to the **first issue**, the attacks on the independence consist in direct and indirect external pressures over federal judicial officials. The President has constantly and publicly asserted that the activities of the Judiciary are corrupt, and he has suggested that he has the power to influence and change the way in which judicial disputes could be resolved. This exposes Magistrates, Judges, clerks and registrars to a dangerous personal vulnerability, provoking at the same time a serious damage to the general public perception of the Judiciary.

8. A further evident example of the pressures exerted by the Executive is the subjection of the Judiciary's salaries to that of the President. The Executive reduced his own almost by half (46%), in an arbitrary manner, devoid of objective criteria⁵. This was approved without substantive debate by members of the Congress, within 24 hours. This imposition has a "trickle down" effect, as it does not only establish the maximum possible wage for high ranking judicial officers, but it also automatically reduces the salaries of lower-ranked officials. In order to ensure their independence, thousands of judicial

⁴ Article 94 of the Federal Constitution of Mexico. This prohibition is the object of a reform being discussed in the Legislative, in order to approve its repeal.

⁵ As explained below, this has been carried out by the approval of the *Public Servants Federal Remuneration Act*, and its interpretation and application in the *2019 Federal Budget*.

officers have undertaken legal actions against the proposed measures, both on the domestic and international level. The defense of their rights was harshly criticized by Mr. López Obrador, who considers it a “legal sabotage” and an attempt of the Judiciary to legislate in favor of its “abusive” and “offensive” privileges.

9. When confronted with judicial decisions of the Supreme Court (*SCJN*) preventing the drastic reduction of wages, Mr. López Obrador has hinted that the government will not comply with those judgments, allegedly because, in his opinion, those decisions are contrary to the public interest. Moreover, some *de facto* measures are already happening via administrative decisions, for example: budgetary reductions that impair the correct functionality of the courts (lack of paper, ink, etc), the elimination of licenses of maternity leave and the provisional substitution of officers who are on sick leave. Additionally, the suspension of the effects of the law concerning the wages might only be temporary, as Mr. López Obrador and parliamentary members of Morena have already announced that a new maximum salary draft legislation is in the works, in order to adjust the criteria of the proposed reduction. Finally, the Supreme Court is undergoing some relevant changes in its composition, by means of newly appointed, politically-partial Minister Judges.

10. Moreover, the pressures do not only stem from outside the Judiciary. Information made public in the recent months reveals that the Chief Justice of the Supreme Court, Mr. Arturo Zaldívar, as well as other members of the Supreme Court, have urged judges and magistrates to desist their right to judicial protection by withdrawing their *amparo* applications and to refrain from informing these issues at the international level⁶.

11. As to the **second issue**, significant concerns arise regarding legislation that was approved and brought into effect since the past elections. As mentioned before, the *Public Servants Federal Remunerations Act (PSFRA)* and the *Ordinary Budget of the Federation for the Fiscal Year 2019 (2019 Federal Budget)* have the objective of reducing all judicial wages to at least 46% of the amount that was established in the budget for the 2018 fiscal year. Even though temporarily suspended by a Supreme Court decision, the threat of this reduction persists, as the President has insisted that his enforcing of austerity measures is imminent, regardless of any judicial drawback. Another legal reform that threatens to undermine the independence of the Judiciary is the broadening of the circumstances in which automatic pretrial detention is to be ordered. Despite an intense and clear condemnation of such a reform by human rights mechanisms and NGOs, Mexican Congress changed the wording of article 19 of its Federal Constitution. This article, by itself, does not comply with international human rights disposition, as it obliges courts and judges to order pretrial detention by the single accusation of one of the criminal offenses mentioned in it, without a previous case-by-case analysis, ignoring other alternative, less grave precautionary measures. Such a disposition neglects the court’s competence to independently judge the situation, and encouraging noncompliance with the accused’s presumption of innocence. Moreover, this constitutional disposition could

⁶ Journal “El Universal”. *La disputa por el poder de los jueces*, 9 June 2019: <https://www.eluniversal.com.mx/columna/roberto-rock-1/nacion/la-disputa-por-el-poder-de-los-jueces>

also apply to public servants who receive any remuneration greater to the President's salary, which is actually the case of several judicial officers at the moment.

12. **The third and last issue** refers to the collective emotional and psychological unease caused to judicial officers by means of many draft legislations concerning the functioning of the Judiciary, that could imminently be enacted **without any consultation** or previous communication. The proposed reforms include the following: (i) constitutional reform to repeal the existing independence safeguard which establishes the irreducibility of salaries of some judicial officers (Ministers, Magisters and Judges) during their mandate; (ii) changing the actual designation procedure of members of the Council of the Federal Judiciary (*Consejo de la Judicatura*), from a procedure in which members of the branches of government are involved, to one in which only the (pro-Morena) Senate assumes the designation; (iii) establishing the mandatory turnover of judicial authorities, in which no Judge nor Magistrate could work in the same jurisdiction for more than 6 years, but also establishing the possibility of such a turnover happening every 3 years; (iv) the adoption of overly intrusive mechanisms to control the admission to the Judiciary, as well as in the advancement in their judicial career, such as “trust evaluations” and other unreasonable tests (lie detector, toxicological profiling, etc.); (v) the creation of a new judicial division of the Supreme Court, which would increase the number of Minister Judges -all elected during this presidential term- and that could serve as a means for selective “court-packing”, and (vi) the adoption of the vaguely justified *Law of Republican Austerity*, which would further eliminate salary provisions, such as life and health insurances, as well as security safeguards -which in the Mexican context, could be catastrophic for their life and personal integrity-⁷. The fact that all of the reforms have been proposed by Morena -or other Parties that are in coalition with it- in a time span of less than three months after the election, and that the hegemony of the official Party in Congress allows it to approve any given legislation, is worrying. Thus, the aforementioned reforms represent a latent, impending mean of intimidating the members of the Judiciary.

13. All of the above reinforce the notion that the State is suffering an ongoing practice, headed by the Executive and the Legislative, that seeks the subordination and the impairment of the Judiciary, in order to eliminate judicial controls. This is done with the help of reforms to the legal framework, as well as of *de facto* measures. Most of the concerns exposed in this report were the object of a thematic audience before the Inter-American Commission of Human Rights in February 2019⁸, but the State has not shown interest in generating a real dialogue in order to find a solution to the problem. Therefore,

⁷ In her country visit to Mexico, the former Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, stated that the country “is confronted with escalating violence, primarily on the part of groups with links to organized crime, [... which] makes it all the more important to have a sound, independent and effective judiciary”. A/HRC/17/30/Add.3, summary, para. 2.

⁸ Inter-American Commission of Human Rights. *México: Reformas constitucionales*, 13 de febrero de 2019: <https://www.youtube.com/watch?v=zx6WYO9Gss8&t=224s>

the NGOs that submit this report deem it constructive if the members of the Committee raised these points during Mexico's periodic review.

III. THREATS TO THE INDEPENDENCE OF THE JUDICIARY IN MEXICO

1. Overview of the legal framework concerning the Federal Judiciary Organization

14. Public power in Mexico is divided in the Executive, Legislative and Judicial branches⁹. The exercise of judicial authority is vested in the Supreme Court of Justice (*SCJN*), the Electoral Tribunal, the Circuit Courts (both those presided over by a panel of judges and those in which a single judge presides), and the District Courts¹⁰. The Council of the Federal Judiciary is the judicial organ in charge of the administration, oversight and disciplinary action within the Judiciary¹¹.

15. The Constitution establishes that the salary of all members of these organs cannot be reduced during the term for which they were appointed¹² (*principle of irreducibility*). This principle has been enshrined in article 94 the Constitution since it was enacted in 1917 and has never been changed throughout its history. Judicial authorities that compose the Federal Judiciary have the prohibition of accepting any other paid position, and cannot litigate before the Federal Judiciary within the next two years after the conclusion of their mandate¹³. Additionally, the Constitution establishes that public servants, such as judicial officers, cannot have a salary that exceeds the salary of the President¹⁴. Also, the salary cannot be higher than that of its immediate superior in the hierarchical order¹⁵.

16. As to the election of the members of the Judiciary, the proceedings depend on the chamber, tribunal or court for which they are elected. The Supreme Court consists of eleven sitting judges, who are elected by the Senate, which chooses from a list of three candidates proposed by the President¹⁶. The members of the Tribunals and of the District Courts are appointed and assigned to a court for a period of six years by the Council of the Federal Judiciary; after the end of that time, they may be confirmed or promoted. Their designation relies on means of an internal or open competitive process, based on written examinations and an oral examination¹⁷. The Council of the Federal Judiciary has

⁹ Federal Constitution of Mexico, arts. 49 and 116.

¹⁰ Federal Constitution of Mexico, art. 94, para. 1. The members of the Circuit Courts are called *Magistrados de Circuito* and the members of the District Courts are called *Jueces de Distrito*.

¹¹ Federal Constitution of Mexico, art. 94, para. 2.

¹² *Ibid*, art. 94, para. 12.

¹³ *Ibid*, art. 101.

¹⁴ *Ibid*, art. 127 (II).

¹⁵ *Ibid*, art. 127 (III).

¹⁶ *Ibid*, art. 96.

¹⁷ Federal Judiciary Organization Act, art. 112. See also article 114 of the same Act, which provides that the written examination involves the preparation of written decisions on given cases. In making its evaluation, this aspects are also taken into account: courses taken by the applicants in the Institute of the Federal Judiciary, length of service in federal courts, performance, academic degrees and any refresher or specialized courses.

seven members, which are: a) the Chief Justice of the Supreme Court, who also presides over the Council (*Consejo de la Judicatura*); b) three circuit court or district court judges appointed by the Supreme Court in Plenary; c) two members designated by the Senate, and d) one member appointed by the President of the Republic¹⁸.

17. This legal framework -naturally- has its flaws, as noted by the UN Special Rapporteur on the independence of judges and lawyers, who observed that “persistent structural and organizational flaws in the judicial system, especially at the level of federative entities, have an impact on the independence and autonomy of judicial authorities”¹⁹. However, most of the abovementioned dispositions are subject to change, further undermining the safeguards and guarantees for the independence of the Judiciary. The specific reforms and draft legislation aimed at doing so are explained in the substantive analysis of this report.

2. *Actions of the Mexican authorities that do not comply with the implementation of the provisions in the ICCPR: public declarations, new legislation and legal reforms that undermine the Independence of the Judiciary*

18. In this section, three main concerns are laid out: i) the public declarations of State authorities, in order to unduly influence the jurisdictional activity; ii) the subordination of the Judiciary to the Executive and the Legislative by radically and arbitrarily reducing the remuneration of its officials and the elimination of personal security measures and other work benefits, and iii) the control of the judicial decisions by a constitutional disposition that constrains judges of complying with the ICCPR’s standard of properly evaluating the proportionality and necessity of pretrial detention in certain cases.

i. Public declarations by State authorities against the Federal Judiciary Organization and internal threats

19. Public authorities from all State’s branches have made declarations that represent external pressures to the work of the judges and other judicial officials. The President is in an ongoing campaign of discrediting the judges, depicting them as corrupt because of their decisions and because of the wages they earn. This view is shared by the main coordinators of the government’s Party in the Senate, as they recognize that they have the power to “rock” the Federal Judiciary. Moreover, the pressures do not only stem from outside of the Judiciary, as high-ranking Justices have tried -and succeeded- to hinder judicial authorities from defending their fundamental human rights, on the basis of considerations of political nature.

¹⁸ Federal Constitution of Mexico, art. 100.

¹⁹ Report of the former Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, on her country visit to Mexico, 18 April 2011. A/HRC/17/30/Add.3, Summary, para. 3.

20. Before continuing with the analysis of the declarations, it must be informed that all translations of the public declarations contained in this report are unofficial and were made to the best of their knowledge by the NGOs involved in its elaboration, and with the purpose of doing it as accurate as possible. In the case of words or expressions that do not have an exact translation, its Spanish version is included in a footnote and its definition is further explained.

a) Public declarations by the President of Mexico that represent external undue pressures on judicial officials and damage the public perception of the organization

21. The current President of Mexico has continuously made negative declarations related to the Federal Judiciary and its officials. This has been a recurrent topic in his political discourse, for example when alleging in a public event (*ExpoFraud*) that the Electoral Tribunal had incurred in legal “artifices”, “guiles” or “ruses”, when deciding that he had lost the presidential elections in 2012²⁰. In 2014 he also challenged the integrity of members of the Supreme Court and characterized them as vulgar and corrupt²¹. In this sense, he maintained that their wages respond to the “Mafia of Power”, which wants judges to decide according to its desire²².

22. Since he was elected as President of Mexico, such declarations have increased in amount and harshness. Every weekday, the President starts its itinerary with a 2-hour morning speech (*El Mañanero Diario*), in which he addresses several topics, including the situation of the Federal Judiciary.

23. During one of those morning programs, on 4 February 2019, he affirmed that a dispute before the Supreme Court had been resolved in a different manner, since he “intervened” in the proceedings²³. The President affirmed that he knew the draft a Justice had made for the decision, in which the plaintiffs (the former shareholders of a private-owned company: Modelo) would get a compensation by the State, but that Mr. López Obrador’s participation reversed that decision. He also claimed that having decided otherwise (in benefit of the plaintiff), would have amounted to fraud and white-collar crime²⁴. In a similar fashion of trying to interfere in judicial decisions and creating a

²⁰ Public statement of Mr. Andrés Manuel López Obrador in El Zócalo, during the event called “Expo Fraude”, 12 August 2012: <https://lopezobrador.org.mx/2012/08/12/no-aceptamos-ninguna-argucia-legaloide-que-permita-cualquier-violacion-a-la-constitucion-amlo/>

²¹ *AMLO responds to the Supreme Court: the Justices are vulgar and corrupt*. “Sin Embargo” Journal, 20 October 2014: <https://www.sinembargo.mx/30-10-2014/1155971>

²² Speech by Mr. López Obrador (*Los magistrados están bien maiceados*), 11 April 2018: <https://www.youtube.com/watch?v=nWD72Cip-bo>

²³ Journal “Milenio”. *AMLO reconoce intervención en Caso Modelo; “el pueblo se cansa de tanta pinche transa”*, 4 February 2019: <https://www.milenio.com/politica/amlo-ejecutivo-evito-fallo-corte-devolver-isr-socios-grupo-modelo>

²⁴ Journal “El Economista”. *Se evitó devolución de 35.000 millones de pesos a ex accionistas de Grupo Modelo: AMLO*, 31 January 2019: <https://www.economista.com.mx/politica/Se-evito-devolucion-de-35000-millones-de-pesos-a-ex-accionistas-de-Grupo-Modelo-AMLO-20190131-0070.html>

hostile environment towards judges, he claimed that the fact that preventive custody was not ordered for many defendants and that they would be “freed too quickly” (3 to 5 days) responded to legal “excuses” based on due process²⁵. He further declared that he would take legal actions and publicly punish those judges who rely on those “pretexts”²⁶. In the context of the judicial proceedings for the case of Ayotzinapa, the Subsecretary of Human Rights announced that Mr. López Obrador ordered him to present legal action against the judges who ordered the liberation of someone presumably involved in case²⁷. According to them, the judicial authorities used a lax interpretation of the law in order to declare inadmissible some evidence that was obtained through illegal means and stressed that the work of the judges is “not interpreting the law, but to deliver justice”²⁸.

24. Mr. López Obrador has stated that the branches of State “must be cleansed, [...] swept from top to bottom”²⁹. More recently, on 4 September 2019, he added that “it is time to make an in-depth reform of the Judiciary” because it is an institution that “has been ruined”³⁰.

25. Regarding the remuneration of judges, the President stated that their salaries are dishonest and, in his opinion, constitute an act of corruption³¹. He went on to affirm that Mexican judges were “the best paid public officials in the world” and gave false information about their wages, overstating their salary³². This information was categorically denied by the Supreme Court³³, but the President has opted to continue using the false information when referring to the remuneration of the Federal Judiciary³⁴ and used the false information to call them “dishonest” and “corrupt”³⁵. This has led part of the public opinion to adopt the President’s discourse against the “corrupt” Judiciary.

²⁵ Press conference of Mr. López Obrador, 13 March 2019: <https://twitter.com/ImagenTVMex/status/1105462195561717760/video/1>

²⁶ The President uses the term “*argumentos legaloides*”, which does not have a precise translation to English language. It is a derogatory definition for what he assumes is a complicated decision based on a legal loophole.

²⁷ Journal “El Economista”. *Se investigará a funcionarios y jueces por caso Ayotzinapa: Encinas*, 4 September 2019: <https://www.eleconomista.com.mx/politica/Se-investigara-a-funcionarios-y-jueces-por-caso-Ayotzinapa-Encinas-20190904-0028.html>

²⁸ Press conference by Mr. López Obrador, 4 September 2019: <https://www.youtube.com/watch?v=PLvID53mjrM>

²⁹ Press conference by Mr. López Obrador, 12 March 2019: <https://twitter.com/ImagenTVMex/status/1105462195561717760/video/1>

³⁰ Journal El Universal. *Llegó el momento de una reforma a FGR y Poder Judicial: AMLO*, 4 September 2019: <https://www.eluniversal.com.mx/nacion/llego-el-momento-de-una-reforma-fgr-y-poder-judicial-amlo>

³¹ Press conference of Mr. López Obrador. *Es corrupción ganar \$600 mil mensuales*, 5 December 2018: <http://www.cronica.com.mx/notas/2018/1103011.html>

³² Press conference of Mr. López Obrador, 5 December 2018: <http://www.cronica.com.mx/notas/2018/1103011.html>

³³ Official communication of the Supreme Court, via Twitter: <https://twitter.com/SCJN/status/1072137377454440448?s=20>

³⁴ Daily Press Conference of Mr. López Obrador, 17 July 2019:

³⁵ See footnote 28, *supra*.

26. He has also made declarations that could be generally understood as an intention of not complying with judicial decisions. In the case of the suspension of the construction of a new airport, Mr. López Obrador affirmed that the suspension was the result of a “legal sabotage”³⁶, that there is no reason to stop its construction and that he will resort to prioritize the nation’s interest³⁷. On other occasions, the President has used *memoranda* in order to request that a legal reform is not to be held effective, and that he would also issue another if the Republican Austerity Act is not approved swiftly³⁸.

27. Finally, once the Senate approved the *PSFRA* and reduced the salary of the President by 46% in comparison with the previous year³⁹, thousands of officials of the Federal Judiciary brought legal actions against that reduction⁴⁰. At that moment, Mr. López Obrador publicly challenged that course of action and stated that they “should apologize to the Mexican people” because their “extravaganzas” -making reference to the their wages- are offensive⁴¹. Once again, in July 2019, he characterized them as corrupt public servants⁴² for bringing the legal actions, stating that “the Judiciary [...] is trying to legislate and is not upholding to what the Constitution clearly states”⁴³. He also mentioned that, when confronted with legal “chicanery” or “trickery” used to badly interpret the Constitution⁴⁴, he would propose a new draft of the *PSFRA*, which -as presented in section III (2) (ii)- he did.

b) Public declarations by important Senators that belong to the government’s Party

28. The declarations of the President are backed by legislators that were elected as members of the governing Party. One of them, the Coordinator of Morena’s legislative

³⁶ Infobae. *Suspensión de las obras en Santa Lucía es un “sabotaje legal”*: López Obrador, 16 August 2019:

<https://www.infobae.com/america/mexico/2019/08/16/suspension-de-las-obras-en-santa-lucia-es-un-sabotaje-legal-lopez-obrador/>

³⁷ Journal “Milenio”. *AMLO dice tener ‘otro recurso’ ante amparos contra aeropuerto San Lucía*, 23 August 2019: <https://www.milenio.com/politica/amlo-recurso-amparos-aeropuerto-santa-lucia>

³⁸ Journal “El Economista”. *AMLO amenaza con emitir memorándum si aprobación de Ley de Austeridad se retrasa*, 25 April 2019: <https://www.eleconomista.com.mx/politica/AMLO-amenaza-con-emitir-memorandum-si-aprobacion-de-Ley-de-Austeridad-se-retrasa-20190425-0048.html>

³⁹ This is explained in detail in Section 2(ii) of this report.

⁴⁰ Journal “El Financiero”. *Ya hay más de 500 amparos del Poder Judicial contra reducción salarial*, 3 December 2018, in which it is detailed that 2,835 officials brought legal action against the Act and the 2019 Budget: <https://www.elfinanciero.com.mx/nacional/ya-hay-mas-de-500-amparos-del-poder-judicial-contra-reduccion-salarial>

⁴¹ Journal “Excelsior”. *Descarta López Obrador freno a reducción de salarios*, 14 February 2019: <https://m.excelsior.com.mx/nacional/descarta-lopez-obrador-freno-a-reduccion-de-salarios/1296459>

⁴² Journal “Milenio”. *AMLO tacha de corruptos a quienes se ampararon contra ley de salarios*, 28 July 2019: <https://amp.milenio.com/politica/amlo-critica-a-quienes-se-amparan-contra-ley-de-salarios>

⁴³ Journal “Nación 321”. *AMLO se lanza contra el Poder Judicial por resistirse a la reducción de sueldos*, 16 July 2019: <https://www.nacion321.com/gobierno/amlo-se-lanza-contra-el-poder-judicial-por-resistirse-a-la-reduccion-de-sueldos>

⁴⁴ Press conference of Mr. López Obrador, 17 July 2019: <https://www.milenio.com/politica/amlo-amaga-reforma-salarios-evitar-amparos>

faction and President of the Political Coordination Committee (*JUCOPO*) of Morena has stated, when referring to the Judiciary, that it could be necessary to “reform it” by an external force, as an initiative of another branch of the State⁴⁵. He also affirmed that Mexico is at a moment, in which this can be made possible, as the Federal and local Congresses have “the conditions to begin a reform of large magnitude”⁴⁶. It must be taken into account that his declarations are not only a form of expressing his opinion, but are usually accompanied by the presentation of draft legislation to that effect. When presenting it to the Senate, he mentioned that it was time to “rock/shock” the Judiciary⁴⁷. He is the author of most of the proposed reforms presented in section III (3) of this report and on 15 August he stated that will present a new proposal to comprehensively reform the judicial system, arguing that the judges feel “untouchable” and that the Judiciary, as it is at the moment, represents “a burden on the change of regime”⁴⁸.

29. Other Senators of the governing Party have also made public declarations that incite hate against the Judiciary. For instance, Senator Félix Salgado Macedonio is a clear example of this, having stated that if judicial officials do not agree to reduce their salaries, he will send a proposition to the President, aimed at replacing or even disappearing the entire Supreme Court, arguing that the Executive and the Legislative have a sort of predominance over the Judiciary⁴⁹.

30. The intimidation against the Judiciary does not only occur in public declarations, but also in the form of legislative acts of varied nature. As a first response to the initial legal actions against the Remunerations Acts, Congress adopted a *Point of Agreement*, in which several members assert that no judge complies with the objective elements of impartiality to decide the dispute presented to them, and asked them to recuse themselves⁵⁰. A few weeks later a similar *Point of Agreement* was issued, but this time making an estrangement to the Federal Judiciary as a whole, mainly because of the declarations that several judges made in which they suggested that their independence and autonomy was being violated by the acts of the Legislative⁵¹. Moreover, when the Supreme Court ordered the temporary suspension of effects of the Remunerations Act, Morena’s members of Congress went as far as presenting a request for political judgment

⁴⁵ Opinion article by Morena Senator Ricardo Monreal Ávila. *The Judiciary and The Fourth Transformation*, 16 October 2018, published in Diario Milenio: <https://www.milenio.com/opinion/ricardo-monreal-avila/antilogia/el-poder-judicial-y-la-cuarta-transformacion>

⁴⁶ Ibid.

⁴⁷ Ricardo Monreal in a speech before the Senate, April 5 2019: <https://www.youtube.com/watch?v=LYDt3-UVKCc> (5:44-6:00 min)

⁴⁸ Journal “Excelsior”. *Morena va a ‘meter mano’ en el Judicial*, 15 August 2019: <https://www.excelsior.com.mx/opinion/francisco-garfias/morena-va-a-meter-mano-en-el-judicial-es-un-lastre-para-el-cambio-monreal>

⁴⁹ Journal “Nación 321”. *Senador de Morena amenaza con desaparecer la Suprema Corte*, 8 August 2019: <https://www.nacion321.com/congreso/senador-de-morena-amenaza-con-desaparecer-la-suprema-corte>

⁵⁰ Point of Agreement, published in the *Gaceta Parlamentaria* 5164-VI, 27 November 2018: <http://gaceta.diputados.gob.mx/Gaceta/64/2018/nov/20181127-VI.html>

⁵¹ Point of Agreement, published in the *Gaceta Parlamentaria*, 13 December 2018: <http://gaceta.diputados.gob.mx/PDF/64/2018/dic/20181213-VII.pdf>

against de Justice in charge of the decision, arguing that he violated the Constitution and “justified the unjustifiable” for his own benefit⁵².

31. All of this is particularly troubling, as members of the Congress have been trying to interfere with the exercise of the jurisdiction, when the results are contrary to their interests. These are serious external pressures that impact on each of the individual judges and on the Judiciary as a whole.

c) Concerns

32. The constant public attacks on the Judiciary and its officials in the morning conferences use generalizations based on false information and subjectivities that delegitimize the exercise of the jurisdiction, specially the judicial oversight, when the judicial decisions are contrary to the will of the President and the governing Party. This kind of discourse is a threat to the independence in two ways. For once, it polarizes Mexico’s population -which was already polarized by the increasing inequality and perception of corruption-, provoking a violent rejection of the democratic institutions, particularly the Judiciary and its members. This also affects the security and integrity of the judicial officers, as they fear of being attacked just for the sake of belonging to the Judiciary. The situation within the judicial organization also results in fear of deciding each case in an independent and objective manner, as the judges and other officials are afraid of upset their superiors, feeling pressured to resolve in a political manner, and avoid retaliation.

33. As to the violent reactions of the population, on 13 December 2018 – the day of the annual work report of the former Chief Justice of the Supreme Court, and when the discussion of the *Public Servants Remunerations Act* was making the headlines-, an official of the Judiciary was attacked in his car when leaving the premises of the Supreme Court in Ciudad de Mexico, as he was mistaken for a Justice of that judicial organ⁵³. His car was not allowed to pass by a group of demonstrators, who hit and kicked the vehicle, and also throwing different objects, while yelling that the passenger was a “Nation’s traitor”, a “rat”, and also demanding his resignation.

34. More recently, a post was published on social media in order to call for protests against the Judiciary with the hashtag #FueraJuecesCorruptos (in english: Out with the Corrupt Judges), following the President’s reasoning that all Judges are corrupt. On 18 August 2019 a large demonstration took place, particularly calling for a complete change of the members of the Supreme Court, characterized by the organizers as “trash”⁵⁴.

⁵² Journal “El Universal”. *Morena presentó juicio político contra Pérez Dayán por Ley Federal de Remuneraciones*, 18 December 2018: <https://www.eluniversal.com.mx/nacion/politica/morena-alista-juicio-politico-contra-perez-dayan-por-ley-federal-de-remuneraciones>

⁵³ Journal “Sin Embargo”. *VIDEO: Manifestantes atacan auto en el que viajaba funcionario; lo confundieron con Ministro*, 13 December 2018: <https://www.sinembargo.mx/13-12-2018/3510764>

⁵⁴ **Annex A:** social media publications los flyers calling for a demonstration against the Judiciary.

35. These pressures by the public and by external powers have resulted in the creation of an environment of fear and lack of trust between judges. In their communications with this NGO, most of the judges and judicial officers have confirmed that they have fear, and that within their offices they have heard that their colleagues want to decide according to political considerations, or that it is needed to use flexible and loose criteria those legal actions against state authorities. Also, it has come to our attention that a significant amount of *amparos* against the Remunerations Act are being dismissed. Additionally, the lack of a strong response by the Supreme Court has made them feel vulnerable.

ii. Subordination of the Judiciary by drastically changing its officials' work conditions

36. On 5 November 2018, the Federal Congress approved the *PSFRA*, which was subsequently enacted by the President and came into effect the day after. It regulates articles 75 and 127 of the Constitution, which provide that public servants cannot earn a salary higher to that of the President⁵⁵ nor of their immediate superior⁵⁶. It also establishes that the salary of the President shall be included in the Federal Budget of each fiscal year. The *PSFRA* considers that members of the Federal Judiciary are contained in the definition of public servant. The Act was later reformed in about 90%, in order to avoid the *amparos* regarding the first version to be discussed, but the substantive dispositions affecting the independence of the Judiciary remained the same⁵⁷.

37. The *PSFRA* also creates mechanisms of administrative and political responsibility for those who are given a higher remuneration. It creates two new articles of the Federal Criminal Code (articles 217Ter and 217Quater). Depending on the amount of the surplus, there are economic sanctions and prison sentences, that are in the range of 30 to 3000 minimum wages, and 3 months up to 12 years of prison⁵⁸.

38. More than one thousand judicial officers brought legal action against the *Remunerations Act*, claiming that it affects the independence of the Judiciary⁵⁹. The National Commission of Human Rights⁶⁰ and some members of Congress⁶¹ followed, by

⁵⁵ *PSFRA*, art. 6.

⁵⁶ *Ibid*, art. 7.

⁵⁷ Reform and additions to the *PSFRA*, published in the *Diario Oficial de la Federación*, 12 April 2019: https://dof.gob.mx/nota_detalle.php?codigo=5557707&fecha=12/04/2019

⁵⁸ Federal Criminal Code, arts. 217 Ter and 217 Quater. It makes reference to the *Unidad de Medida y Actualización*, which is how the minimum wage is calculated in Mexico.

⁵⁹ Journal "El Financiero". *Ya hay más de 500 amparos del Poder Judicial contra reducción salarial*, 3 December 2018, in which it is detailed that 2,835 officials brought legal action against the Act and the 2019 Budget: <https://www.elfinanciero.com.mx/nacional/ya-hay-mas-de-500-amparos-del-poder-judicial-contra-reduccion-salarial>

⁶⁰ CNDH. *Demanda de acción de inconstitucionalidad*, 21 November 2018: http://www.cndh.org.mx/sites/all/doc/Acciones/Acc_Inc_2018_105.pdf

⁶¹ Journal "El Universal". *Senadores presentan ante Corte acción de inconstitucionalidad contra Ley de Remuneraciones*, 5 December 2018: <https://www.eluniversal.com.mx/nacion/politica/senadores-presentan-ante-corte-accion-de-inconstitucionalidad-contra-ley-de>

appealing the unconstitutional nature of the Act (*acción de inconstitucionalidad*). Judges and other judicial officers outside 30 federal judicial buildings around the Mexican territory, for a total of about 1.410 public servants, stopped for a few minutes their normal activities and read a communication in defense of the independence of the Judiciary and the division of powers⁶². On top of that, civil society has been active in condemning the situation⁶³ and a thematic audience on this topic took place before the Inter-American Commission of Human Rights in February 2019, for which the Commissioners offered their guidance in the drafting and discussion of legislation⁶⁴. This topic was further communicated to the several special procedures of the United Nations⁶⁵.

39. As reported in Section III (2) (i) (a), the President reacted with hostility to the legal actions brought against the act, and the Chief Justice of the Supreme Court harshly criticized the actions on the international level as he considered that it would impair his political negotiations with the President.

40. The Supreme Court decided to temporarily suspend the effects of the Act, while the complaints were decided in the merits⁶⁶, a decision that was appealed by the Congress but maintained by the Court⁶⁷. In July 2019, the Court issued a judgment on the merits of the actions brought by the National Commission of Human Rights and the Congress, and declared the partial invalidity of articles 6 and 7 of the Public Servants Remunerations Act, as well as the invalidity of articles 217Ter and 217Quater of the Federal Criminal Code⁶⁸.

41. Nevertheless, this judicial decision does not mean that the proposed effects of the law will not eventually proceed, as the governing authorities have insisted that they will continue legislating in order to reduce the salaries. Because of this, a new constitutional reform was proposed by the President. The draft legislation includes a transitory disposition that mentions that remunerations of members of autonomous State organizations, such as the Federal Judiciary, when higher than the wages of the President,

⁶² Journal “El Universal”. *Crece tensión entre el Poder Judicial y AMLO*, 11 December 2018: <https://www.eluniversal.com.mx/nacion/crece-tension-entre-el-poder-judicial-y-amlo>

⁶³ For example, the Mexican Bar Association: <https://heraldodemexico.com.mx/pais/bma-considera-inapropiado-que-lopez-obrador-intervenga-en-asuntos-jurisdiccionales/>

⁶⁴ Inter-American Commission of Human Rights on Youtube, *Mexico: Reformas constitucionales*: <https://www.youtube.com/watch?v=zx6WYO9Gss8&t=3s>

⁶⁵ **Annex B:** *OL presented to the Special Rapporteur on the Independence of Judges and Lawyers and to the Special Rapporteur on the situation of human rights defenders, regarding the situation in Mexico*, 15 August 2019.

⁶⁶ Journal “La Jornada”. *Suspende la Corte Ley de Remuneraciones*, 7 December 2018: <https://www.jornada.com.mx/ultimas/2018/12/07/suspende-la-corte-ley-de-remuneraciones-3539.html>

⁶⁷ Journal “Excelsior”. *Corte ordena mantener suspensión a Ley de Salarios*, 26 April 2019: <https://www.excelsior.com.mx/nacional/corte-ordena-mantener-suspension-a-ley-de-salarios/1293526>

⁶⁸ Supreme Court of Justice of the Nation. Judgment regarding the *acciones de inconstitucionalidad* 105/2018 and 108/2018, 20 May 2019, published in the Official Diary on 19 July 2019: http://www.dof.gob.mx/nota_detalle.php?codigo=5566183&fecha=19/07/2019

will be adjusted or reduced in the corresponding budget⁶⁹. He declared that the objective is that there is no doubt or interpretation that could allow for a public servant, even with the safeguard of irreducibility of their remunerations, to be exempt of complying the *Public Servants Remuneration Federal Act*⁷⁰. This only confirms that the Executive will not stop trying to interfere with the working conditions of the members of the Judiciary. Moreover, draft legislation has been presented to eliminate their economic safeguards (*irreducibility of remuneration* contained in article 94 of the Constitution), as will be explained in Section III (2) (iii) of this report.

a) Concerns and Recommendations regarding public declarations, the PSFRA and the 2019 Federal Budget

42. Thus, we express our concern on how independence of the Judiciary is progressively weakening in Mexico as a consequence of the acts perpetrated by the Executive. In particular, the President and congressperson's public statements against the Judiciary, as a whole, have promoted a climate of intolerance against judges that harms their independence. Moreover, the reduction of judges' work conditions, without consulting with the Judiciary, affects their independence, subjecting their salaries to the Executive's arbitrariness. We are further concerned that, despite the Judiciary has determined that the PSRFA is partially unconstitutional, the Executive has stated that it will adopt all possible measures to make sure it is enacted.

43. In summary, the public declarations by State officials that do not belong to the Judiciary represent threats, attacks and offenses to the judicial organization. This weakens the public image and the independence of the Judiciary and of its officials. The acts are contrary to the international standards of the matter and negatively affect the judicial government and administration at the expense of individuals that rely on the judicial system, thus representing a failure of compliance with articles 14(1) and 2(3) of the Covenant.

44. We propose the Committee recommend Mexico to refrain from adopting measures that weaken its Judiciary. In particular, the Mexican Executive and congresspersons should refrain from making statements attacking the Judiciary. Moreover, Mexico should refrain from adopting legislation that could hinder the work conditions of judges, unless an adequate consultation process is followed.

⁶⁹ Draft legislation proposed by Mr. López Obrador on 14 August 2019, published in the *Gaceta Parlamentaria 5344-II*, 19 August 2019: <http://gaceta.diputados.gob.mx/PDF/64/2019/ago/20190819-II.pdf>

⁷⁰ Journal "El Economista". *Hay inconformidad de algunos mexicanos con el Poder Judicial*, 12 August 2019: <https://www.eleconomista.com.mx/politica/Hay-inconformidad-de-algunos-mexicanos-con-Poder-Judicial-AMLO-20190812-0044.html>

iii. Control of the judicial decisions and obstacles for judges to decide in conformity with the dispositions of the ICCPR, especially regarding the personal liberty of criminally accused persons

45. Article 19(2) of the Federal Constitution reads as follows (unofficial translation):

*“[...] The judge will order **automatic preventive custody** in the cases of sexual abuse or sexual violence against minors, organized crime, intentional homicide, femicide, rape, kidnapping, human trafficking, household robbery, use of social programs for electoral purposes, corruption in the cases of illicit enrichment and abusive exercise of functions, every modality of robbery of cargo transportation, crimes concerning fossil fuels, petroleum products and petrochemicals, crimes of force disappearance and disappearance committed by private individuals, crimes committed by violent means such as arms and explosives, crimes with firearms and explosives of exclusive use of the Military, the Armed Forces and the Air Force, as well as those serious crimes against the nation’s security, the free development of personality and health, as determined by law.”*

46. Besides the negative implication that this has regarding the principle of presumption of innocence, in detriment of the defendant’s liberty⁷¹, automatic preventive custody also threatens the independence of the Judiciary. Article 19 requires judges to avoid considering other less restrictive, alternative measures to pre trial detention, excluding the possibility of the judge to analyze the specific circumstances of each case, restricting his scope of exercising jurisdiction. The existence of such a disposition, has been used in Mexico in such a manner that a independent, impartial and fair judgment cannot be possible, as evidenced by case-law of the UN Working Group on Arbitrary Detention (WGAD)⁷².

47. The WGAD analyzed Mexico’s legal framework and concluded that article 19 of the Constitution “deprives judicial authorities of one of its essential functions as independent tribunal, mainly, making an individualized analysis about the necessity and proportionality of the detention in each particular case”⁷³. Similarly, the Inter-American Commission of Human Rights considered that automatic preventive custody “constitutes an illegitimate interference of the legislator in the power of judgment/assessment that are competence of the judicial authority”⁷⁴ (unofficial translation). As a result, judges are forced to not comply in certain cases with the dispositions of the ICCPR regarding personal security and liberty of persons (article 9 of the Covenant), also negatively

⁷¹ For example, see: CCPR. *General Comment 35, Article 9 (Personal Liberty and Security)*, CCPR/C/GC/35, 16 December 2018, para. 38.

⁷² Working Group on Arbitrary Detention. *Opinion 1/2018, concerning Pedro Zaragoza Fuentes and Pedro Zaragoza Delgado (Mexico)*, A/HRC/WGAD/2018/1, 12 July 2018, para. 63.

⁷³ Ibid, paras. 66 and 81.

⁷⁴ Inter-American Commission of Human Rights. *CIDH llama al Estado mexicano a abstenerse de adoptar medidas legislativas contrarias a estándares internacionales en materia de prisión preventiva*, 9 January 2019. Spanish version available at: <http://www.oas.org/es/cidh/prensa/comunicados/2019/003.asp>

affecting the judicial guarantee of independence of the tribunal (article 14 (1) of the Covenant).

48. Finally, it is important to note that, in this regard, Mexico has acted deliberately against the opinion of those important human rights organisms. When the broadening of the wording of article 19 was still being discussed in Congress, the Office of the High Commissioner of Human Rights in Mexico, the Working Group on Arbitrary Detention and the Inter-American Commission of Human Rights expressed their concerns and condemned the possibility of increasing the scenarios of judges not being able to assess the preventive custody⁷⁵. Nevertheless, knowing that in doing so the State could incur in international responsibility, the Congress approved the reform on 19 February 2019 in both of its chambers. This was followed by the approval of more than half of the local Congresses, thus coming into force the actual wording of article 19. On 12 September 2019, the Senate approved another reform of the “Ley Federal contra la Delincuencia Organizada”, the “National Security Act” and the National Criminal Procedures Codes in order to further add the crime of “false receipt and ghost enterprises” to be subject to article 19 of the Constitution⁷⁶.

a) Concerns and recommendations

49. IIRESODH is particularly concerned by Mexico’s lack of will to implement provisions of the ICCPR, as well as decisions from the WGAD concerning the right to personal liberty. This hinders the judge’s independence to freely apply, or not, pretrial decision. IIRESODH is further concerned on the fact that Mexico has adopted measures that directly contravene ICCPR and WGAD standards, by broadening the spectrum of cases in which pretrial detention must be applied mandatorily. IIRESODH recommends Mexico to comply with ICCPR standards and with WGAD decisions. Thus, IIRESODH recommends Mexico to adopt measures to assure that pretrial detention is never mandatory.

3. Other proposed imminent changes to the domestic legal framework that would further exacerbate the compliance with the ICCPR

50. As mentioned before, a significant number of draft legislation has been presented in the Congress in order to change the actual framework in which the independence of the Judiciary is regulated in Mexico. These changes are, in fact, serious threats to the judicial

⁷⁵ OHCHR in Mexico. *La ONU-DH lamenta extensión de delitos a los que se aplica la prisión preventiva oficiosa*, 20 February 2019: https://www.hchr.org.mx/index.php?option=com_k2&view=item&id=1234:la-onu-dh-lamenta-extension-de-delitos-a-los-que-se-aplica-la-prision-preventiva-oficiosa&Itemid=265, and WGAD. *OL MEX 18/2018*, 30 November 2018, p. 2.

⁷⁶ Forbes Mexico. *Senado aprueba prisión preventiva por facturas falsas y empresas fantasma, 13 de septiembre de 2019*: <https://www.forbes.com.mx/senado-aprueba-prision-preventiva-por-facturas-falsas-y-empresas-fantasma/>

independence, as they affect each judge as an individual and will ultimately affect the judicial system as a whole, especially making access to effective remedies even more difficult than it is today. The proposed reforms include dispositions that would include arbitrary, subjective criteria in the way judges are elected and in the way they could advance in their judicial career; eliminate economic safeguards of judicial independence; politicization of the election of the members of the judicial organ in charge of disciplinary actions and oversight; arbitrarily affect the budget for the operation of the Judiciary, and increasing the number of Justices in the Supreme Court, all of which would be elected during the actual presidential term. All of this in an actual and imminent threat to the independence of the Judiciary, given that the Federal Congress' composition is made of a vast majority of members of the governing Party, whose hegemony allows to approve draft legislation without real opposition, as occurred with the *Public Servants Remunerations Act* and the reform to article 19 of the Constitution, as confirmed by Section III (2) (ii) of this report.

i. Existence of a legislative hegemony in Congress

51. Prior to explaining each one of the proposed reforms, proper attention should be given to the composition of the Congress and the way it has been working since July 2018. The Congress works as a bicameral system, and the reform process requires the approval of at least two thirds of the attending members of that particular day in each of the chambers⁷⁷, in the case of constitutional reforms, and the approval of 50% plus 1 (*mayoría absoluta*) of the attending members of both chambers, in the case of legal reforms⁷⁸. Thus, the exact number of Congresspersons needed to approve a reform varies depending the number of attending members the day it is voted. The governing Party has 46% of the Senate and 51.6% of the *Cámara de Diputados*. Nevertheless, Morena made an alliance with two other Parties (*Juntos Haremos Historia*, with the presence of the governing Party, the *Partido Encuentro Social* and *Partido del Trabajo*, and not officially the *PVEM*), that has permitted a *de facto* majority, in which the alliance has always voted as a block, representing the majority needed to approve the reforms⁷⁹. Additionally, the alliance also has the majority in 17 out of 32 Federative States, which is also a requirement in order to approve constitutional reforms⁸⁰. Debates, then, have become formal procedures. The majorities do not seek consensus or dialogue with other political parties. They landslide their proposals.

ii. Elimination of the irreducibility of the salary

52. The governing Party wants to reform articles 116 and 94 of the Constitution, in order to eliminate the disposition that prohibits the reduction of the salary of Justices of

⁷⁷ Federal Constitution of Mexico, art. 135.

⁷⁸ Rules of Procedure of the *Cámara de Diputados*, art. 3.1.XIII, which is analogically applied to the *Cámara de Senadores*.

⁷⁹ **Annex C:** Breakdown of the votes for legal and constitutional reforms in both chambers of the Federal Congress (in Spanish)

⁸⁰ Federal Constitution of Mexico, art. 135.

the Supreme Court, Electoral, District and Circuit Judges, as well as of the members of the Council of the Federal Judiciary. The justification for such a reform is that republican austerity is needed for the *Fourth Transformation* and that public servants mentioned in those articles have become a sort of “noble caste” with exaggerated privileges⁸¹.

53. This elimination aggravates the risk of external powers interfering in the independence of the Judiciary, as the its members would lose their current protection and could be the subject of a general and arbitrary reduction, as was intended with the 2019 Federal Budget. Such a proposed reduction could only be made in very exceptional cases, and only when adequate consideration has been given to its necessity, reasonability and proportionality

iii. Reform to the election proceeding of the members of the Council of the Federal Judiciary and the elimination of the Councils of the State Judiciaries.

54. The *Partido del Trabajo*, member of the political alliance with Morena, proposes a constitutional reform to article 100, in order to modify the way in which the members of the Council of the Federal Judiciary are elected. In its actual version, article 100 contains a procedure in which the members of the organ are: a) the Chief Justice of the Supreme Court, who also presides over the Council; b) three circuit court or district court judges appointed by the Supreme Court in Plenary; c) two members designated by the Senate, and d) one member appointed by the President of the Republic. The reform, if approved, would give the Plenary of the Senate the power to appoint all seven members of the Council⁸². It would also broaden the powers of the Council, so that it can also suspend judges as a disciplinary measure⁸³.

55. Such a reform, instead of strengthening the appointment procedure, would open the possibility of the members of the Council being elected for political reasons. The change of a mixed system of election to a Congress-directed procedure also means that the Senate could further exert pressure over the Judiciary, by controlling the organism in charge of the oversight, administration and discipline. The statements of members of the Legislative and the Executive show that they are already trying to use pressure against the judicial officers, and the approval of this reform would only further open a legal door to do so. Mexico already has a problem with the “elevated grade of politicization of the systems of election and appointment of judicial officials”⁸⁴, and the proposed reform to article 100 of the Constitution would only worsen the situation.

⁸¹ Draft legislation proposed by Morena Congresswoman, María Chávez Pérez, 14 August 2019, published in the *Gaceta Parlamentaria* 5345-I, 20 August 2019: <http://gaceta.diputados.gob.mx>

⁸² Draft legislation proposed by Senators of the *Partido del Trabajo*, 6 November 2018: http://www.senado.gob.mx/64/gaceta_del_senado/documento/85524

⁸³ Ibid.

⁸⁴ Unofficial translation of the Report of the Inter-American Commission of Human Rights. *Garantías para la independencia de las y los operadores de justicia: Hacia el fortalecimiento del acceso a la justicia y el estado de derecho en las Américas*. 5 December 2013, para. 79.

56. On the level of the federative entities, the governing Party has proposed the total elimination of the institution of the Council of the Judiciary in each state. The administration, discipline, oversight and judicial career would be exercised by the Higher Court of each state⁸⁵.

iv. Obligatory rotation of judges: working in different offices and territorial judicial circumscriptions every 3 to 6 years

57. Morena plans to reform the Federal Judiciary Organization Act in order to establish a system that would impose the obligatory rotation of circuit and district judges. By changing the wording of articles 81 and 112 of the aforementioned Act, a Commission (“*Comisión de Adscripción*”) -which is part of the Council of the Federal Judiciary- would make sure that federal judges do not stay in the same territorial jurisdiction for more than 6 years nor less than 3 years, according to the service necessities of the organization⁸⁶.

58. This reform affects the independence of the Judiciary in several different ways. For once, it affects the principle of *guaranteed tenure*⁸⁷, even if the judges are not removed from their job position, but because the working conditions would change radically every few years and in an arbitrary manner. The rotation of judges is not new to the Mexican judicial system, as it already exists in its legal framework, however, such a system has already shown to be used as a mean of coercion against judges, by very broadly interpreting the term “service necessities”, both in the case of judges and in the case of public defenders⁸⁸. By making rotation compulsory, this could negatively affect the principle of immediacy of judicial proceedings, provoking that several different judges could handle the case before it is decided. All of this is particularly concerning, taking into consideration that the governing party also plans to politicize the Council of the Federal Judiciary, further weakening the independence of the Judiciary.

v. Election of judges and advancement in their judicial career subject to “trust/confidence evaluations” and other subjective criteria

59. Senators of the governing Party proposed a reform of articles 81 and 112 of the Federal Judiciary Organization Act, in order to establish new conditions for the acceptance, permanence and promotion in the judicial career. According to their proposal,

⁸⁵ Draft legislation presented by Ricardo Monreal Ávila, 26 June 2019: http://www.senado.gob.mx/64/gaceta_del_senado/documento/96788

⁸⁶ Draft legislation presented by several member of Morena in Congress, 18 October 2018: http://www.senado.gob.mx/64/gaceta_del_senado/documento/84629

⁸⁷ *Basic Principles on the Independence of the Judiciary*, endorsed by UNGA Resolutions 40/32 and 40/146, para. 12.

⁸⁸ This is the case of some judges in the State of Tabasco, who presented their case before the Human Rights Committee, as they were rotated without a due process. Also, the Public Defense tried to relocate some of its officials without reason, but it was later prevented by the Supreme Court: <https://amp.milenio.com/politica/ifdp-empleados-denuncian-cambios-adscripcion-injustificada>

those who want to be appointed in the Judiciary, and those who want to further advance within the organization, will have to pass a “trust control”, composed of several evaluations, which include the analysis of their property, their social environment and psychometry. They would also be subject to a polygraph and a toxicology test, as well as to “any other evaluation established by law”⁸⁹. These evaluations would be conducted by the Council of the Federal Judiciary.

60. The criteria proposed cannot be regarded as objective nor transparent, as they include several evaluations that do not mean to really assess the merits nor the capacity of the applicant, but to intrude their personal life. This could be seen as a mean of intimidation, for example with the use of the polygraph and the toxicologic test. It is hard to see a correlation between all those evaluations and the objective of the application, which is to evaluate their merits; therefore, the proposal cannot be regarded as proportional nor necessary, which are essential elements for restricting a fundamental right (in this case: the right to access to public office). It is also unnecessary because Mexico already has a proper system for the admission and advance to the judicial career, consisting of an open competitive process, based on written examinations and an oral examination⁹⁰. Finally, it is important to note that the proposed reform leaves an open possibility to “any another evaluation”, which means that the process is not made of an exhaustive list, but rather of an unforeseeable group of tests.

vi. Appointment of Supreme Court Justices by popular election

61. The Labor Party (*Partido del Trabajo*), which is allied to the governing Party, proposed to reform the Constitution, in order to designate the Justices of the Supreme Court by popular vote⁹¹. The election would be based on a list of candidates proposed by the Senate, which would then be presented to the National Electoral Institute (NEI). Afterwards, the NEI would organize the voting procedure, with the same rules that are used for the election of the President of the Republic and members of Congress. The candidates cannot hold electoral campaigns, but the NEI will be in charge of making their merits publicly available. It also reduces the length of their tenure to 6 years.

62. It is concerning that such a reform would be against the international standard that judges’ election should be solely motivated on their merits and that, when elected, the mandate should be aimed to last until the age of retirement⁹². Popular election, even if the

⁸⁹ Draft legislation proposed by Morena Senators, 18 October 2018: http://www.senado.gob.mx/64/gaceta_del_senado/documento/84629

⁹⁰ Federal Judiciary Organization Act, art. 112. According to article 114 of the Federal Judicial Organization Act, the written examination involves the preparation of written decisions on given cases. In making its evaluation, this aspects are also taken into account: courses taken by the applicants in the Institute of the Federal Judiciary, length of service in federal courts, performance, academic degrees and any refresher or specialized courses.

⁹¹ Draft legislation proposed by the Labor Party, 11 December 2018: http://www.senado.gob.mx/64/gaceta_del_senado/documento/87527

⁹² International Bar Association. *Minimum Standards of Judicial Independence*, arts. 22 and 23.

merits of the candidates are made public, is usually politically motivated and most of the voters are not familiar with the judicial system nor with legal reasoning. This means that the judges of the most important chamber would be elected by a group of people that is unfit to do so. Additionally, the work of the judges is of a technical nature (e.g.,; exercise the jurisdiction in and independent and impartial manner) and cannot be compared to the work of a Senator or that of the President. The legitimacy of a judge does not rely on its public image or its popularity -which would be the result of the proposed election method-, but by making decisions according to the law.

vii. Court Packing of the Supreme Court

63. On April 2019, the legislative coordinator of Morena announced the presentation of a proposal that would create a new Anti-Corruption Chamber, composed of 5 Justices and that would be part of the Supreme Court, changing its actual composition from 11 to 16 members⁹³. Mr. Monreal argues that the new chamber is needed because corruption is one of the most relevant and problematic topics in today's Mexico, and also in order to reduce the time of resolving legal issues.

64. However, this justification does not seem valid enough for various reasons. First, because the average of cases of corruption and responsibility of public servants currently in the Supreme Court is of only 35 per year, which amounts for less than 1% of all files in that tribunal⁹⁴. The increase of Justices would also mean the increase in personnel (about 300 new officials), which would imply a bigger bureaucracy in a Court which does not have a significant lag in the resolution of cases. Finally, Mexico's legal framework already has a *National Anticorruption System*, which includes a specialized prosecutor and judges of the Federal Tribunal of Administrative Justice⁹⁵. The proposal seems rather like a strategy to increase the number of the Plenary of the Supreme Court, as it has the powers to decide the constitutionality of many acts of the Executive and the Legislative. Taking into consideration that the actual composition of the Plenary has stopped a relevant number of projects of the governing party, the increased number of members of the Supreme Court could amount to *Court-packing*⁹⁶, especially given that the procedure of appointment of judges relies on the President and the Senate, with the possibility that the President elects a judge of his own choosing if the Senate does choose any of the options presented by him⁹⁷.

⁹³ Journal "ADN Político". *Monreal propone crear una sala anticorrupción en la Suprema Corte*, 4 April 2019: <https://adnpolitico.com/congreso/2019/04/04/monreal-propone-crear-una-sala-anticorrupcion-en-la-suprema-corte>

⁹⁴ Nexos. *¿Una sala anticorrupción en la Suprema Corte? Una mala y peligrosa idea*, 8 April 2019: <https://eljuegodelacorte.nexos.com.mx/?p=9719>

⁹⁵ It is true that the Anticorruption system has not started working yet, but that is because of the omission of the government to do so. Nevertheless, a judicial decision of a district court has already asked the Senate to rectify the legal issues that prevent the system from working.

⁹⁶ This practice has proven to be a problem in Hungary and Venezuela.

⁹⁷ Federal Constitution of Mexico, art. 96.

viii. Republican Austerity Act⁹⁸, which impacts the operation of the Federal Judiciary

65. Scheduled for discussion in September 2019, the governing Party proposed legislation that imposes several budget cuts and prohibits some of the actual work benefits for judicial officers, such as the possibility of contracting insurance services of private entities and subjects their pensions to the *ISSSTE (Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado)*. Other social and economic rights of the judicial officers are also affected. It also impairs the powers of the Federal Judiciary to administrate its budget according to its needs, as it will not be possible for the Organization to utilize trusts and the benefits of the existing trusts will be directed exclusively to the payment of public debt. Additionally, it regulates even the kind of software that has to be used in the Judiciary, and prohibits the purchase of new equipment for the first years of the entry into force of the Act. The content of the Act was not consulted with the judicial Organization, contravening the standards of independence of the Judiciary. This was the subject matter of an *Other Letter* sent to a group of special procedures of the UN.

ix. Property confiscation proceedings based on vague dispositions that unduly restrict the exercise of the jurisdiction

66. On 25 July, Congress approved the National Act on Property Confiscation⁹⁹ (NAPC), which allows the seizure of assets (“asset recovery”) whose lawful origin is not justified and that are associated with crimes of corruption or crimes committed by public servants, among other crimes¹⁰⁰. While useful for addressing the problem of corruption and drug trafficking, the NAPC, as approved, is a threat to legal certainty, to the presumption of innocence and the crimes subject the application of the Act are vaguely defined.

67. The NAPC could be applied to all those acts of corruption included in Chapter I, Title 10 of the Federal Criminal Code, which would include the proposed crimes in the *Remunerations Act¹⁰¹*, e.g.: the crime of illegal remuneration for those public servants that have a salary higher than that of the President. Furthermore, the NAPC could pose a problem in the case of federative entities because the crimes included in the Act make reference to broad penal categories (“acts of corruption”; “crimes committed by public servants”), which not necessarily correlate to the same criminal classification in each state. Additionally, it creates the possibility for the advanced sale of the assets, regardless of the existence of a guilty verdict.

⁹⁸ **Annex D:** *UL and OL concerning the imminent approval of the Republican Austerity Act*, 18 July 2019.

⁹⁹ Cámara de Diputados. Expedición de la Ley Nacional de Extinción de Dominio, 25 July 2019: <http://gaceta.diputados.gob.mx/PDF/64/2019/jul/20190725-I.pdf>

¹⁰⁰ *Ibid*, art. 1.

¹⁰¹ This is the case of the proposed reform to the Federal Criminal Code in order to include arts. 217Ter and 217Quater, which is still pending.

x. Concerns and Recommendations

68. We would like to highlight our concern of this current state of “imminent threat” that impacts the Judiciary every day. The State’s parliamentary hegemony makes it very feasible for swift legal and constitutional modifications that could directly diminish the judge’s independence and work conditions. Moreover, practice shows that the Executive and Legislature fail to have adequate consultations with relevant representatives of the Judiciary when doing any sort of modification.

69. It is also preoccupying that some of these reforms, while not yet approved, already have effects. Since March 2019, the Council of the Federal Judiciary has increased the recurrence of rotating judges to another territorial jurisdiction. This practice has been commonly referred to as “Terror Wednesday” by the judges and consists in the Council taking the decision to change 20-70 judges to a different territorial jurisdiction without prior notice and without a previous proceeding. On those days, the authority to be changed receives a phone call in the evening, informing the decision. The proceedings take place without the participation of the involved judicial officer, who does not have the option to present arguments against the decision. In some cases, it can be seen as a sanction and judges are sometimes given a short period of time to make all the necessary arrangements, such as searching for a new home and moving in, finding schools or universities for their kids, among others. Moreover, the term ‘needs of service’ is used as a general and discretionary justification, which cannot be regarded as a valid nor sufficient reasoning behind the decision to rotate a judicial officer.

70. We suggest the Committee to recommend Mexico to adopt measures to archive the draft reforms indicated in this chapter of the report. Moreover, we insist on the need for adequate consultations with the Judiciary (in its different levels) of all sorts of legislation that may affect, directly or indirectly, their independence. We also recommends that the State takes the necessary measures to ensure that the decisions of the Council of the Federal Judiciary are made in compliance of the international standards related to disciplinary and administrative proceedings (Article 14.1), especially when those decisions involve possible negative effects in the judicial authorities’ private and family life, or hidden disciplinary sanction without due process. The term ‘needs of service’ should be interpreted strictly and the decisions based on such considerations should be duly justified.

IV. GENERAL CONCLUSIONS AND RECOMMENDATIONS

71. It is clear that the Judiciary in Mexico is under a constant attack by public authorities, which are using the public arena and their legislative majority in order to undermine judicial decisions. Judges and other judicial officers are receiving undue pressures from outside the Judiciary and also from internal high ranking authorities, therefore affecting the dispositions contained in articles 14 (1) and 2 (3) (a) of the Covenant.

72. The Federal Judiciary is in threat of facing a radical change of its legal framework, without due consultation, which would weaken its guarantees of independence because:

- The exercise of the jurisdiction is being interfered by external actors by means of public and private pressures, in order to adjust their decisions to the interests of the governing Party;
- The work conditions of judicial officers are being radically modified in a negative way, including the drastic reduction of their salary and the proposed and *de facto* reduction of health and security benefits;
- The discipline and oversight organism of the Judiciary is facing a dangerous politicization. This could result and intimidation of officials for deciding contrary to the interests of the governing Party;
- The decisions of the Supreme Court are in threat of being intervened by increasing its composition with judges of the choosing of the President; and
- Most of the proposed reforms are of imminent approval, as the Executive and the Legislative act in a coordinated manner and most of the draft legislation has been presented by members of the governing party or of parties that are in coalition with it.

73. For these reasons, we propose the following ideas of recommendations that this honorable Committee could issue:

- To cease the verbal and public attacks of public authorities on the Judiciary and its officers, and to take all reasonable measures to prevent the generalized name-calling, as it affects the institutional integrity and the personal, family and work life of the judicial officers.
- To refrain from approving the abovementioned draft legislation and to follow the due legislative process, especially taking into account the effective participation and consultation of the Federal Judiciary, as well as to adequate the content of the proposed reforms to the international human rights standards. If the members of the Committee consider it reasonable, this recommendation should apply to all of the legal and constitutional reforms mentioned in Section III (3) of this report.
- To ensure that the draft legislations are sufficiently and effectively discussed in Congress, with special attention to the previous consultation to the Federal Judiciary. The discussion should also aim to involve civil society and academia, including judicial associations and Bar Associations.
- To observe the rights of the parliamentary minorities, according to the democratic processes, and to avoid the approval of legislation almost automatically and with a short notice.

- To uphold the work conditions of the judicial officers, without unreasonably or arbitrarily reducing their wages or eliminating their health and life insurances. This is particularly important for the case of the security measures for those judges who are in a special situation of danger for their work.
- To ensure that the austerity measures do not negatively affect the functioning of the justice system. This includes that a sufficient work force should always be in charge of each territorial jurisdiction and that the courts have all the office supplies needed to exercise their jurisdiction.
- Finally, as a follow-up to the concerns presented in the thematic audience before the Inter-American Commission of Human Rights (february 2019), to assess the acceptance of the legal and technical assistance offered by that regional organism, especially in orden to accomplish an integral dialogue, based on good faith, with the aim of strenghtening the safeguards of the independence of the Judiciary.

Geneva, México and El Salvador, 16 September 2019,



Víctor Manuel Rodríguez Rescia
President
IIRESODH



Ángel Ortiz
Representative
FEMECA



Carlos Rafael Urquilla Bonilla
Presidente
HR-Americas



Javier Carrasco
Director
Instituto de Justicia Procesal Penal