Mexico's Constitutional Democracy Under Threat

The Judicial Overhaul Is Only the Beginning

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The final act of Mexican President López Obrador will be in collaboration with the president-elect Claudia Sheinbaum and the newly elected Congress, after the landslide victory of MORENA's coalition last June. The lame-duck President seems as powerful as ever. The newly elected Congress did everything to ram through a constitutional amendment overhauling the judiciary at the federal and state level, which was passed by both chambers of Congress in just a few days. Reportedly, MORENA (*Movimiento de Regeneración Nacional*) Senators, who were one vote short from having the required qualified majority in the Senate, resorted to heinous measures to coerce members of the opposition into voting in favor of the amendment. Having cleared the hurdle in the Senate in the early hours of 11 September, the judicial overhaul was ratified by 17 out of 32 State Legislatures in less than 24 hours. With its publication in the government gazette, and in defiance of an injunction ordering not to publish it, the amendment was officially enacted in the evening of 15 September 2024. Constitutional challenges against the reform have already been brought to the courts and more are likely to come. The amendment undoes the judicial reform of 1994 that sought to consolidate the Supreme Court as a constitutional tribunal and created the Judicial Council, the body in charge of overseeing federal judges to guarantee judicial independence.

Among other things, in a move that goes beyond anything found in other prominent backsliding states such as Hungary or Poland, it introduces the popular election of *all* sitting judges across the Federal Judiciary, including Supreme Court Justices, every 9 and 12 years respectively. The constitutional amendment will remove about 1600 sitting judges. The amendment will also reduce the Supreme Court membership from 11 to 9 Justices, and abolish the Judicial Council – replacing it with a judicial administration body and a Judicial Discipline Tribunal. That body will be in charge of overseeing and sanctioning judges, including removing them from office for the unspecified behavior of "going against the public interest" and filing criminal proceedings against those suspected of "being complicit of or covering up criminals". The decisions of the Tribunal will not be subject to appeal. The same model is proposed to be replicated at the local level. The amendment also introduces faceless judges to hear organized crime cases.

At this critical juncture, in the open letter below, legal scholars, judges, policymakers and practitioners from various regions of the world have expressed deep concern over the potential consequences that the popular election of judges may have on judicial independence, the rule of law, and the safeguarding of rights and freedoms in Mexico.

Unfortunately, the judicial overhaul is only the beginning of what looks like a very difficult chapter for Mexico's constitutional democracy which will continue to be dismantled. Last February, President López Obrador submitted a package of 18 constitutional amendment proposals that, if passed, would reshape Mexican state beyond recognition. In addition to dismantling the judiciary, the proposed constitutional changes call for the dissolution of seven of Mexico's independent agencies (*órganos constitucionales autónomos*), including the National Institute for Transparency, Access to Information, and Data Protection (INAI) and the Federal Economic Competition Commission (COFECE). The responsibilities of these agencies would be transferred to ministries within the federal public administration, significantly diminishing their independence. The reforms also propose abolishing proportional representation in the electoral

system, streamlining the legislative branch by eliminating 200 deputies and 64 senators, all currently elected through proportional representation, thereby further consolidating the ruling party's power.

Moreover, defying national and international human rights' protection standards and international court decisions against the Mexican State, the proposals also include the constitutionalization of two widely questioned policies. That is, the expansion of the catalog of crimes subject to the pre-trial detention scheme (*prisión preventiva oficiosa*) and the perpetuation of the use of the military for public safety purposes by permanently transferring the control of the *Guardia Nacional* (the federal body in charge of public safety, which on paper is supposed to be civilian in nature, but in practice has been largely staffed by members of the military forces) to the Secretary of Defense. Both of which have already been deemed unconstitutional at the domestic level by the Supreme Court and/or against the Inter-American Convention of Human Rights by the IACtHR (see here, here, here).

In light of this unfolding crisis and given the limited international coverage so far, three of us created a portal on DEM-DEC to provide access to English-language analysis, policy documents, and press releases to help anyone interested on the matter get a general overview: https://www.demoptimism.org/crisis-in-mexico

We will continue to update the site as things develop. It is a collaborative resource, therefore everyone is encouraged to submit content suggestions. The submission link is also available on the main portal.

An earlier version of this post was originally published on the IACL Blog

The following is the open letter signed by legal scholars, judges, policymakers and practitioners by 15 September 2024. The letter remains open for signatures. Should you wish to sign, please do so here.

Open letter on Mexico's judicial reform seeking to introduce the popular election of judges

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As scholars dedicated to the study and practice of constitutional law, we express our deepest concern about the constitutional reform of the judiciary that is currently under consideration by the Mexican Congress. A measure that, only at the federal level, will impact around 1600 federal judges and the eleven members of the Supreme Court. In particular, we are concerned about the implications that the popular election of judges will entail for judicial independence, the rule of law, and the protection of rights and liberties in Mexico.

Judicial independence is the cornerstone of constitutional democracies and the rule of law. It guarantees stability, predictability, and impartiality in the process of judicial decision-making. Replacing a merit-based judicial selection process—where aspiring judges are required to pass rigorous exams and assessments—with a system that disregards relevant experience and allows candidate selection to be driven by electoral and party politics not only contravenes the safeguards that judicial independence seeks to protect, but also undermines the republican values that uphold a constitutional democracy. If judicial independence cannot be guaranteed, the ability of Mexico's legal system to impartially administer justice as well as to protect the rights and liberties of its citizens will also be severely threatened.

We also want to express our solidarity with the members of Mexico's federal judiciary, students, professors, and the rest of the legal community who are demonstrating and advocating for an open, inclusive, plural, and constructive democratic deliberation, to correct existing flaws of and refine the justice system, in general, and the judicial branch, in particular.

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