

A Democratic Mandate to Overhaul Mexico's Judiciary?

Mariana Velasco Rivera

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In [past posts](#) on this blog, I pointed out how the Mexican Supreme Court was about to face an existential threat. I predicted what was inevitable: things would only get worse for that institution as it continued to do its work (e.g., reviewing the constitutionality of legislation) in an increasingly politically hostile environment. The President and his party, MORENA, time and again made clear their lack of commitment to basic values and principles of constitutional democracy, such as a limited exercise of public power, public accountability, the rule of law, and a system of checks and balances. In such a context, the Supreme Court had very little room for maneuvering to avoid the escalation of attacks against the judiciary: inasmuch courts kept handing down decisions against the government's agenda, the attacks and contempt would keep growing. Unfortunately, I was right. It's happening. Mexico's federal *and* local judiciary as we know it will most likely disappear as MORENA prepares an overhaul [not seen in a century](#).

As the reader may remember, the idea of overhauling the judiciary became an electoral promise in May 2023, right after the Supreme Court [struck down one of two parts of what came to be known as "Plan B"](#) (i.e., the modification and adoption of a total of six pieces of legislation through which the government, [among other things, sought to undermine the electoral watchdog](#)) in a 9-2 decision on the grounds of violations of procedural rules of the legislative process. Picking up on that idea, right before the start of the presidential campaign in February this year, President López Obrador presented a set of constitutional amendment proposals to, [among other things, overhaul the judiciary, eliminate proportional representation in the electoral system, and dissolve independent agencies](#). This is, of course, a [story that has become too familiar](#) where political leaders, aided by their parties, seek to do away with constitutional constraints on the exercise of public power.

In particular, the constitutional amendment proposal to reform the judiciary 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. President López Obrador's proposal would introduce the popular election of all sitting judges across the Federal Judiciary, including Supreme Court justices, every 9 and 12 years respectively. As a result, the constitutional amendment would remove about 1600 sitting judges. The amendment would also reduce the Supreme Court membership from 11 to 9 Justices, abolish the Judicial Council and replace it with a judicial administration body and a *Tribunal de Disciplina Judicial* (Judicial Discipline Tribunal). That body would be in charge of overseeing and sanctioning judges, including removing them from office for ["going against the public interest"](#) and filing of criminal proceedings against those suspect of ["being complicit or of covering up](#)

[criminals](#)". The decisions of said tribunal would be final and not subject to appeal. The same model is proposed to be replicated at the local level.

As concerning as the proposals were, at the time the hope was that MORENA [would not win the necessary seats in Congress in the June election to have the required qualified majorities to amend the constitution](#) on their own. But they did.

A democratic mandate to overhaul the judiciary?

After [a landslide victory last June](#), MORENA and its allies will have the required majorities in Congress and State Legislatures this coming September to amend the Constitution. For this reason, individuals across the political spectrum have claimed that, for better or worse, MORENA [has a democratic mandate](#) to proceed and put the federal judiciary on its head. But is that so?

President López Obrador and his party have shown no respect for the rule of law, the system of checks and balances, or a meaningful commitment to the limited exercise of power and public accountability. The judiciary was one of the few institutions that time and again halted the government's constitutionally questionable policymaking decisions. A prime example is the government's attempt to give full control of the *Guardia Nacional* (the institution in charge of public safety at the federal level) to the military, which the [Supreme Court struck down](#) for going against the constitutional mandate that establishes that public safety institutions should be civil in nature. This is precisely why the President and his party have long been (so far unsuccessfully) trying to delegitimize and [capture](#) one of the few institutions able to hold them accountable. President López Obrador and his party spent the last six years deploying a vicious campaign aiming at delegitimizing the judiciary, spreading lies and disinformation about the court system, individual judges, and court decisions to sow a generalized feeling of contempt and distrust of the judiciary. Said campaign often included accusing judges, without evidence, of being [complicit with criminal interests](#) for court decisions he disagreed with. With June's landslide victory in their pocket, they now say they're bound to their electoral promises—which respond to the "social discontent" towards the judiciary. Mexico's judiciary is far from perfect, but the reasons for the electoral victory are certainly not univocal. Conflating their electoral victory with a confirmation of a public demand for the overhaul of the judiciary, when the government and its pundits were the only actors peddling the idea that the judiciary is broken and untrustworthy for an entire presidential term, seems far-fetched.

To be sure, I am not saying that the popular election of judges is bad in and of itself. However, there are at least two things that, against the backdrop of the Mexican context, make the policy choice questionable. First, the ulterior motivations to change the method to select judges: that is, undermining one of the institutions in charge of checking and ensuring that public power is not exercised arbitrarily for having been an obstacle in the advancement of the government's agenda. Second, thrusting the selection of federal judges into Mexico's electoral democracy processes is, at least, a risky move in that it will likely immerse the selection of judges into already dysfunctional electoral and partisan dynamics such as those associated

with candidate selection, [drug cartels' influence in politics](#), and political corruption. For instance, according to the amendment proposal, two-thirds of the candidates for the Supreme Court will be selected by the President, and the two Chambers of Congress.

The path forward

Some commentators and observers hope for Claudia Sheinbaum, the President-elect, to distance herself from her predecessor, honor her scientific background and, therefore, govern as a technocrat. In particular, members of the judiciary, [led by Chief Justice Norma Piña](#), have reportedly tried to open a dialogue with her and the party to modify the most concerning aspects of the judicial reform. Those efforts have so far materialized in [public forums](#) where the sitting Justices of the Supreme Court were given the opportunity to speak to legislators to voice their concerns about the amendment proposal. For the observer, however, the event gave the impression of having been set up to publicly humiliate the Justices. At the end of the Justices' interventions, the person who gave the closing speech was Arturo Zaldívar, the former Chief Justice [who resigned from office to join Claudia Sheinbaum's presidential campaign](#). In his private citizen capacity, Zaldívar took his speech as an opportunity to publicly disparage them and the judiciary.

If anything, so far, it has been clear that Sheinbaum will participate in the efforts to overhaul the judiciary. A clear example of this is that at the start of her presidential campaign, she required all MORENA congressional candidates of her electoral coalition (i.e., MORENA, PVEM, and PT) to [sign a letter vowing to pass, without reservations](#), the amendment proposals President López Obrador presented in February.

Those hoping for the goodwill of Sheinbaum or MORENA have not been paying attention. Sheinbaum has shown no signs of being willing to engage in a genuine constructive dialogue with the judiciary. Quite the opposite. It is time to take the present threat as what it is: the most serious threat to Mexico's constitutional democracy at least since the slow start of the democratic transition in the late 1970's. The constitutional amendment to the judiciary will translate into an incommensurable retrocession in terms of professionalization and judicial independence building. The day after the amendment is passed, Mexico will officially be less democratic and more authoritarian in that the scrutiny of the exercise of public power would have been put at great risk. The professionalized bureaucratic apparatus that has been slowly built across the span of three decades will have its days counted. Dark times are coming for the judiciary and constitutional democracy in Mexico.

