



APQSA: Advisory Panel on the Question of South America

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Issue: Maintaining judicial independence and accountability in Bolivia

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Committee: Advisory Panel on the Question of South America (APQSA)

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I. Introduction

A nation's judicial system is vital for safeguarding human rights and upholding the rule of law. Judges, attorneys, and prosecutors play a crucial role in protecting those affected by human rights violations and ensuring that those responsible for such abuses are held accountable. These significant judicial figures also uphold the right to a fair trial and are tasked with making sure that both the executive and legislative branches adhere to international human rights standards and maintain the rule of law.

While Bolivia was under General Hugo Bánzer Suárez's rule from 1971 to 1978, the government suppressed organized labor to implement state-driven capitalist development. This approach deepened class conflict over the following two decades, as the state's economic model failed to raise living standards or diversify an economy reliant on a single export commodity. During Bánzer's administration, economic growth depended heavily on foreign loans.



Bánzer's regime also introduced significant judicial reforms, collectively known as the "Bánzer Codes." Enacted by decree, these reforms included the Law on Court Organization, the Criminal Code, the Family Code, the Civil Code, the Commercial Code, and the Code of Criminal Procedure, spanning from 1972 to 1977. These changes reshaped Bolivia's legal framework and represented the most comprehensive judicial reforms of the twentieth century in Bolivia. Despite the democratic transition in 1982, the Bánzer Codes were neither repealed nor formally ratified by the Bolivian legislature, resulting in lasting legal influences from the military era.

After the revolution and subsequent military governments failed to achieve their political and economic objectives, Bolivia faced worsening regional, ethnic, and class divisions. By the late 1970s, as the military began to step back from politics, these divisions complicated Bolivia's transition to democracy. This



instability led to a series of elections and coups, revealing the deterioration of institutional life. Bolivia's fragmented political landscape saw nearly seventy parties registered for the 1978 general elections, with numerous factions within even major parties like the MNR. In a context where no party could secure a majority in the elections of 1979, 1980, and 1985, the legislature became the central arena for political maneuvering, with small factions wielding significant influence. This complex political scene highlighted Bolivia's ongoing struggles to stabilize its democratic institutions and address the military's enduring influence, particularly in relation to corruption and human rights abuses from the Bánzer years.

On July 17, 1980, General Luís García Meza led a coup that interrupted Bolivia's transition to democracy for two years. His regime was marked by deep corruption, close ties with drug traffickers, and alliances with terrorists. Internationally isolated and widely opposed domestically, García's government relied on brute force to maintain control. In 1982, disputes among officers, along with pressure from political parties, the private sector, and labor, forced García and his successors to reconvene the Congress elected in 1980. Congress subsequently elected Hernán Siles Zuazo of the Democratic and Popular Unity (UDP) coalition as president, a significant event after his previous electoral defeats.

Siles assumed office with strong popular support, committed to populist reforms. The military and its allies, widely discredited, no longer posed a political threat. However, Siles inherited a severe economic crisis characterized by fiscal deficits and a precarious balance of payments. The UDP's promises of equitable development and addressing demands for higher wages and benefits soon encountered challenges as the crisis deepened. Political tensions escalated, particularly between populist and anti-populist factions within the Congress, which was dominated by a de facto alliance between Paz's MNR and Bánzer's ADN. Conflict between Congress and the executive branch had been evident since the democratic transition began, with legislative coalitions often undermining the government.

As the economic crisis worsened, Siles attempted to implement a stabilization program to satisfy both international creditors and Bolivia's private sector. However, labor unions, often backed by peasants and civic groups, resisted through strikes and demonstrations. This conflict forced the government to dilute its economic stabilization efforts with wage increases and subsidies, negating any progress towards stabilization and sparking criticism from both the CEPB and the IMF. By 1984, Bolivia faced hyperinflation, with annual rates surpassing 24,000 percent and debt-service obligations reaching 70 percent of export earnings. Siles' government, lacking congressional support and facing pressure from labor, business, and regional groups, became immobilized and, by December 1984, neared collapse. New elections were subsequently scheduled for July 1985.

Bolivia's democratic revival brought renewed attention to judicial independence, yet political patronage remained influential. Court appointments became spoils for the party or coalition in power rather



than being based on merit, perpetuating the politicized judiciary. The 1985 election highlighted Bolivia's complex political landscape: Bánzer won a narrow plurality but lost in the Congress to Paz Estenssoro, who formed a coalition with the MIR. Bánzer accepted the outcome, safeguarding his long-term political interests, while Paz resumed the presidency for the fourth time since 1952.

II. Involved Countries and Organizations

Bolivia

As the nation directly impacted, Bolivia has struggled to establish a truly independent judiciary. Historically, political interference, insufficient resources, and prolonged use of temporary judges have undermined the judicial system's autonomy. Recent governments have faced challenges in implementing reforms that could ensure fixed-term appointments and reduce politicization within the judiciary. The Bolivian government has acknowledged the need for judicial reforms, but action towards implementing these reforms is often criticized as inadequate or biased. In recent years, Bolivian leaders have expressed a commitment to improving judicial independence but still continue to face criticism for continued political influence in the judiciary. Former Bolivian President Evo Morales stated, "We need a judicial system that is fair and accessible to all Bolivians," yet his government faced accusations of using the judiciary to target political opponents; on top of this instance, the Ministry of Justice has claimed, "The Bolivian government is committed to judicial reform in accordance with constitutional mandates," though international observers argue that reforms have been limited in scope.

Colombian Commission of Jurists (CCJ)

This organization has engaged with Bolivia's judiciary to promote respect for human rights and the rule of law. The Commission has contributed by offering expertise and monitoring, particularly during periods when Bolivia's legal system has faced criticism for political interference. Their advocacy highlights the importance of judicial integrity and independence as a means to secure human rights protections within Bolivia. The CCJ strongly advocates for a depoliticized judiciary in Bolivia, emphasizing that judicial independence is crucial to uphold human rights and the rule of law. The Commission has been vocal in condemning practices that undermine judicial neutrality.

International Commission of Jurists (ICJ)

The ICJ has played a vital role in supporting judicial independence in Bolivia by issuing statements, conducting investigations, and recommending reforms. Through reports and advocacy, the ICJ has called for Bolivia to implement international standards for judicial independence, such as transparent judge appointments and protections against political pressure. The ICJ's input serves as a reference point for



reforms aligned with global best practices in judicial independence. The ICJ has further urged Bolivia to strengthen its judiciary by ensuring fixed-term appointments and reducing political influence since the ICJ sees judicial independence as essential for a functioning democracy. The ICJ has called for Bolivia to adopt such policies to promote judicial transparency and impartiality.

Inter-American Commission on Human Rights

As a key human rights body in the Americas, the IACHR has regularly assessed Bolivia's judiciary to ensure it upholds citizens' rights and adheres to international human rights standards. Through reports and hearings, the IACHR has highlighted issues such as political influence, lack of resources, and delays in appointing permanent judges. The Commission's recommendations urge Bolivia to protect judicial autonomy, emphasizing the judiciary's role in the protection of democratic principles and human rights within the country. The organization views judicial independence as fundamental to democratic governance and human rights protections in Bolivia. It has frequently criticized Bolivia for political influence within its judiciary, delayed judge appointments, and inadequate resources, which it sees as barriers to fair trials and human rights protection.

III. Focused Overview of the Issue

1. Lack of Adequate Resources to Carry Out Judicial Responsibilities

In January 2021, judges and judicial staff across the country of Bolivia noticed that their salaries were reduced following the enactment of Financial Law 1356 on December 28, 2020. This legislation led to a budget reduction for the judicial branch by around \$26 million USD. While intended as a temporary



measure due to the economic crisis triggered by the COVID-19 pandemic, the budget for the judiciary was not restored to previous levels as was the case for the other branches of government. Over the last three years, the judicial branch's budget, including the Public Prosecutor's Office, has remained below 0.5% of the total national budget. Despite assurances that judicial salaries would be reassessed and adjusted after the cuts in 2020, this has not yet happened, and judges were

excluded from the public sector salary increases of 2022. These sustained budgetary constraints impede



the development of robust judicial institutions and deter qualified professionals from joining or remaining in the judiciary. The inadequate funding and low salaries for judges and court staff bear the possibility of increasing the risk of corruption within the judicial system as well.

The United Nations Basic Principle 7 on Judicial Independence mandates that States allocate sufficient resources for the judiciary to fulfill its role independently, without reliance on other government entities for financial support. The Inter-American Commission on Human Rights has also pointed out that states lacking legal provisions to secure a set percentage of the national budget for the judiciary face significant risks to judicial independence. The Special Rapporteur on the Independence of Judges and Lawyers has recommended that judicial funding be adequate to meet its needs, with budgets regularly reassessed and ideally constituting a fixed percentage of the national budget, between 2% and 6%. Even in times of economic hardship, the financial needs of the judiciary should be prioritized, as stated in Principle 42 of the Beijing Principles. The Inter-American Commission has warned that judicial budget cuts can impair access to justice, lead to delays in permanent appointments, and increase reliance on temporary staff.

Furthermore, the ongoing financial constraints on the Bolivian judiciary not only fall short of international standards but also conflict with national legal protections. According to Article 178 of the Bolivian Constitution, budgetary independence is fundamental to preserving judicial autonomy. The Bolivian Judges Association (Asociación de Magistrados de Bolivia, AMABOL) and various local bar associations have voiced concerns about the reductions in judicial salaries with this objective; however, these appeals have so far gone unanswered by the authorities.

2. Extended Reliance on Temporary Judges and Delays in Appointing Fixed-Term Judges

The judicial career established by Bolivia's 2009 Constitution aims to protect judicial independence. Governed by Law 025 of 2010, it grants judges fixed terms provided they meet ethical and professional standards through regular evaluations. Transition Law 212 of 2011 introduced guidelines for shifting to the new judiciary created by the 2009 Constitution, temporarily converting all permanent judicial seats to temporary ones. This transition period was expected to last only two years while the judicial career was fully developed and implemented.

In 2018, the Rules of Judicial Career were issued, outlining two entry paths for judges: (a) completion of a training course by the Escuela de Jueces del Estado (the Bolivian School of State Judges), which trains and educates judges, or (b) via public competition. However, the Consejo de la Magistratura, which is the body overseeing judicial affairs, finances, and disciplinary actions against judges, has appointed many temporary judges under Transition Law 212 of 2011, bypassing the fixed-term appointment process. Since the enactment of the law in question in 2010, many Bolivian judges have held temporary positions for



over fourteen years. Only two rounds of public recruitment for the judicial career have taken place since then, resulting in just about 300 judges securing fixed-term positions. It was evident that of Bolivia's 1134 judges, 47% remain in temporary roles with a high reliance on interim judges jeopardizing judicial independence.

The extensive use of temporary judges violates UN Basic Principle 12 on Judicial Independence, which states that “Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office.” In Bolivia, many judges have served in temporary roles for over a decade, some for as long as 15 to 20 years. Any steps to alter this situation, whether this is by promoting temporary judges to fixed-term roles or replacing them with fixed-term judges, must account for the rights of these judges and adhere to Basic Principle 10, which mandates that “Any method of judicial selection shall safeguard against judicial appointments for improper motives.”

The Inter-American Commission on Human Rights (IACHR) has argued that temporary appointments compromise judicial independence, as they may incentivize judges to rule in favor of those in power who can grant fixed-term positions. Additionally, the potential for arbitrary removal can induce fear of retribution. The IACHR previously expressed concern over Bolivia's reliance on temporary judges until the establishment of a formal judicial career under the Judicial Transition Act. The Inter-American Court of Human Rights has similarly affirmed that temporary appointments should be brief and only used in exceptional cases. It has also strictly stressed that judicial permanence requires a structured promotion system and safeguards against arbitrary removal, as stability and security are key to internal and external judicial independence. As a result of the circumstances at hand, the reliance on provisional judges affects not only their employment rights and work conditions but also Bolivian citizens' access to impartial as well as independent justice across Bolivia.

On August 26, 2022, the Consejo de la Magistratura announced a process inviting temporary judges to apply for 489 fixed-term positions, involving three stages: merit evaluation, a knowledge and skills exam, and a final interview. Independent legal organizations criticized this process, suggesting that executive influence, notably from the Ministry of Justice, could lead to the “institutionalization” of judges. One challenge or potential problem with the Consejo de la Magistratura's proposed process is that it permits citizens to file complaints against judges applying for fixed-term roles. The Bolivian Judges Association (AMABOL) has raised concerns that unverified complaints could disqualify judges based on minor or unfounded allegations, without due process protections like the right to present evidence, an investigation, or an appeals process. Relying on unverified complaints gives birth to the risk of random and possibly politicized decision-making. As authorities work to reduce the dependence on temporary judges and appoint fixed-term judges, they must consider that many temporary judges have served in this capacity for over a decade. Evaluating these judges based on merit and a knowledge exam should align with



international standards for judicial evaluation and promotion. Notably, local judges have highlighted the absence of robust evaluation mechanisms for fixed-term judges, as well as a promotion process based on evaluations and other objective criteria. Such mechanisms are essential for judges seeking fixed-term appointments and those up for reappointment. The Inter-American Commission on Human Rights has recommended standards for judicial evaluations and promotions. According to Principle 13 of the UN Basic Principles, “promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity, and experience.” Promotion criteria should be clear and specific to avoid vague standards that may allow excessive government discretion in judicial appointments or removals.

IV. Key Vocabulary

Judicial Independence: The principle that the judiciary should be free from external pressures, including political, executive, or legislative influence, to make impartial decisions based on the law.

Temporary Judges: Judges appointed on a provisional or non-permanent basis, often without tenure security, making them vulnerable to removal or influence by those in power.

Tenure Security: The protection given to judges and prosecutors in their positions, allowing them to serve without fear of arbitrary dismissal.

Inter-American Commission on Human Rights (IACHR): A regional human rights body that promotes and defends human rights in the Americas, including advocating for judicial independence.

GIEI (Interdisciplinary Group of Independent Experts): A body formed through an agreement with the Bolivian government and IACHR to investigate human rights abuses during the 2019 political crisis.

Constitutional Coup: A term describing actions within a legal or constitutional framework that are used to remove or manipulate leaders, often undermining democratic processes.

Code of Criminal Procedure: A set of rules governing criminal trials, including arrest, detention, prosecution, and sentencing.

Judicial Accountability: The mechanisms by which judges and judicial officers are held responsible for their actions and decisions.

V. Important Events & Chronology



Date	Event
6 November 1826	Simon Bolívar's constitution was adopted by the Constituent Assembly.
31 August 1831	General Andrés Santa Cruz Calahumana's constitution was adopted and abolished most of the innovative features of the first, such as the tricameral legislature with proportional representation and the lifetime president.
9 April 1952	The National Revolutionary Movement (MNR) leads the Bolivian National Revolution.
21 August 1971	General Hugo Bánzer Suárez takes control in a military coup, beginning a period of authoritarian rule. Under his regime, the judiciary is heavily controlled by the executive, limiting its independence.
1 July 1972	General Bánzer enacts the Law on Court Organization, the Criminal Code, and the Code of Criminal Procedure, intending to reform the judicial system; however, the judiciary is still kept under executive influence.
21 August 1978	Bánzer steps down, leading to a period of political instability with multiple short-lived governments.
10 October 1982	Civilian rule is re-established under President Siles Zuazo, marking Bolivia's return to democracy.
18 February 1994	The Bolivian government enacts the Judicial Reform Law, aiming to enhance judicial independence and establish merit-based judicial appointments.
16 October 2011	Bolivia holds its first popular elections for high-ranking judges as mandated by the 2009 Constitution.
3 January 2012	Gonzalo Miguel Hurtado Zamorano was elected President of the Supreme Court of Justice.
4 January 2012	Cristina Mamani was elected by her peers as the first President of the Judiciary Council.
3 December 2017	The Bolivian government conducts its second round of elections for judicial positions.

VI. Past Resolutions and Treaties



Visit to the Plurinational State of Bolivia: report of the Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán, A/HRC/50/36/Add.1

<https://digitallibrary.un.org/record/3974232?ln=en&v=pdf>

Report of the Special Rapporteur on the Independence of Judges and Lawyers, Param Kumaraswamy, E/CN.4/1998/39 <https://digitallibrary.un.org/record/251399?ln=en&v=pdf>

Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, submitted in accordance with Commission resolution 2003/43: addendum, E/CN.4/2004/60/Add.1

<https://digitallibrary.un.org/record/516719?ln=en&v=pdf>

Human rights in the administration of justice: draft resolution, A/C.3/41/L.90

<https://digitallibrary.un.org/record/124635?ln=en&v=pdf>

Situation of human rights in the Bolivarian Republic of Venezuela: draft resolution, A/HRC/45/L.43/Rev.1

<https://digitallibrary.un.org/record/3885202?ln=en&v=pdf>

Although there has been a substantial effort in tackling the issue of judicial independence in the Bolivian justice system, the reports and resolutions published by the United Nations (UN) have not made a certain successful impact on the matter at hand. Today, UN experts and authorities continue to address the deficiencies in the judicial system and express grave concern about the delayed election process for Bolivia's highest judicial authorities.

VII. Failed Solution Attempts

The Morales and Áñez administrations appeared to use politically motivated charges against their opponents. After winning the presidency in October 2020, President Arce expressed support for a justice system independent of politics; however, his administration has yet to implement concrete reforms to achieve this. A May 2022 report from the UN Special Rapporteur on Judicial Independence highlighted the long-standing issue of external interference in Bolivia's justice system and shed light on the fact that as of February, nearly half of judges and 70 percent of prosecutors in Bolivia were still classified as “temporary.” Lacking secure tenure, these officials may be subject to retaliatory actions including arbitrary dismissal if their decisions conflict with the interests of those in power.

In August 2021, the Interdisciplinary Group of Independent Experts (GIEI), which was formed through an agreement between the Bolivian government and the Inter-American Commission on Human Rights, released a report documenting 37 deaths during protests sparked by the disputed October 2019 elections. The report noted that the Morales administration instigated acts of violence, including but not



limited to injuries, kidnappings, and torture of protesters and observed that police failed to protect people from violence by both groups for and against Morales.

The report also found that under the Áñez administration, security forces killed 20 pro-Morales protesters and injured over 170 in massacres in Sacaba, Cochabamba, and Senkata. It documented further abuses across Bolivia, which consisted of illegal detentions, sexual assault and systematic torture by police in the predominantly indigenous city of El Alto.

The GIEI criticized deficiencies in investigations of these abuses, urging the Attorney General's Office to once again open the cases closed without proper investigation. By October 2022, no one had been held accountable; however, Congress and the government were discussing reparation measures for victims. Afterwards, in March, the government and IACHR agreed to establish an international body to monitor GIEI's recommendations, though a nationwide monitoring mechanism as suggested by the GIEI was not created.

VIII. Possible Solutions

The primary step that should be taken in order to handle the provided issue is to focus on the transitioning of judges and prosecutors from temporary to permanent positions to reduce vulnerability to political pressure. With the purpose of accomplishing this, merit-based and transparent appointment processes with clear criteria to reinforce judicial stability must be implemented. Moreover, judicial appointment authority should be shifted to an independent council or judicial commission, ensuring that selection is based on professional qualifications rather than political loyalty, drawing a clear line between politics and jurisdiction.

On top of the above-mentioned solution, an independent council responsible for the selection, evaluation, and discipline of judges could be formed to closely monitor the activity of such judicial figures and ensure accountability in the justice system. This council could include various respected members from civil society, legal experts or potentially international observers alongside the United Nations to ensure neutrality and credibility. The establishment of a permanent international monitoring mechanism is a possible solution as well. Partnering with organizations such as the Inter-American Commission on Human Rights or the International Commission of Jurists to monitor judicial practices and assess the independence of the judiciary would be beneficial for the corruption in the judicial system to come to an end. Lastly, securing funding and technical assistance from international organizations to support judicial reforms, including measures that promote independence and counter corruption for the mentioned international supervision mechanism or authority could further ameliorate and accelerate the resolution of the issue.



IX. Useful Links

<https://www.hrw.org/news/2019/04/29/bolivia-dozens-judges-arbitrarily-dismissed>

<https://www.ohchr.org/en/press-releases/2024/01/bolivia-un-expert-concerned-about-delay-judicial-elections>

<https://caj.fiu.edu/publications/monographs/bol-mono.pdf>

<https://latinoamerica21.com/en/judicial-elections-and-bolivias-fragile-rule-of-law/>

<https://digitallibrary.un.org/?ln=en>

<https://www.icj.org/bolivia-independence-of-the-judiciary/>

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