



MIO
Honduras

Misión Internacional de Observación del **Proceso de Selección de la Corte Suprema de Justicia** en Honduras

PRELIMINARY REPORT

Election Process of Supreme Court Justices in Honduras

Initial Selection Stage by the Nominating Board

Visit # 1: November 14-18 and Observation of the process until December 06, 2022

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BACKGROUND ON THE INTERNATIONAL MISSION AND THE PROCESS OF ELECTION OF SUPREME COURT JUSTICES IN HONDURAS

The International Mission for the Observation of the Selection Processes of High-Level Authorities of the Justice Systems in Latin America

The International Mission to Observe the Selection Processes of High-Level Justice Authorities in Latin America is an **initiative of national and international civil society participation**, inspired by previous and successful experiences in the independent evaluation of the profiles of candidates for national and international bodies and courts, as is the case of the panels of experts that evaluate candidates for Inter American commissioners and judges, as well as those promoted to monitor the election of national high courts in El Salvador, Mexico, Peru and Costa Rica.

Sponsoring Organizations

Due to the success of previous experiences in the independent evaluation of profiles of candidates to Supreme Courts and other judicial bodies, the International Observation Mission comes to Honduras at the request of the Due Process of Law Foundation (DPLF), the Centre for the Study of Democracy (CESPAD) and Lawyers Without Borders Canada (ASFC), but with a totally independent character in its deliberations, positions and decisions.

Target

The International Observation Mission (**MIO-Honduras or Mission**), in its conformation arranged to accompany the selection process of members of the Supreme Court of Justice (CSJ) in Honduras, **has the objective of** promoting that the process is carried out in accordance with international standards and good practices in terms of judicial independence, transparency and access to information. The Mission also seeks to verify the commitment of the bodies in charge of carrying out the selection process to their own regulations.

The result of this evaluation will be reflected in partial pronouncements and in a Final Report that will be publicly presented to the Honduran society.

Integration of the MIO-Honduras

The MIO-Honduras¹ is composed of international specialists **Edison Lanza** (Uruguay), former Special Rapporteur for Freedom of Expression of the Inter American Commission on Human Rights (IACHR); **Claudia Martin** (Argentina) co-director of the Academy of Human Rights and International Humanitarian Law and resident professor at the American University Washington School of Law (Washington D.C), expert in international human rights law; **Juan Jiménez Mayor** (Peru), former spokesperson for the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH); and **Jaime Arellano** (Chile), former Executive Director of the Justice Studies Center of the Americas (JSCA), former Vice Minister of Justice of Chile and founding partner of Justice Latin America (JUSLAT), who is responsible for the Mission's **executive secretariat**.

The Process of Election of CSJ Justices in Honduras

The CSJ of Honduras

The Supreme Court of Justice (CSJ in Spanish) is the highest jurisdictional body in Honduras, and is also responsible for directing and administering the Judicial Branch, in accordance with Articles 308 and 313 of the [Constitution of Honduras \(CPH in Spanish\)](#)².

Pursuant to Article 311 of the CPH, the Supreme Court is composed of **fifteen (15) Justices**³, elected by the [National Congress \(NC\)](#), with the favorable vote of **two thirds** of all its members **from a list of at least forty-five (45) candidates proposed by a Nominating Board**⁴.

The Nominating Board

The **Nominating Board** is composed of⁵:

- 1) A representative of the Supreme Court elected by the favorable vote of two thirds (2/3) of its members;
- 2) A representative of the Bar Association, elected in Assembly;
- 3) The National Commissioner for Human Rights;
- 4) A representative of the Honduran Council of Private Enterprise (COHEP), elected in Assembly;

¹ For more details about the members of MIO-Honduras, please see <https://www.dplf.org/es/resources/mision-csj-honduras>.

² Decree No. 131-1982. Political Constitution of the Republic of Honduras. Published in La Gaceta No. 23,612 of January 20, 1982.

³ Art. 308 of the Political Constitution of Honduras (CPH).

⁴ Three (3) for each of the judges to be elected.

⁵ Art. 311 inc. 3° CPH.

- 5) A representative of the law schools of the country, whose proposal will be made through the National Autonomous University of Honduras (UNAH);
- 6) One representative elected by civil society organizations; and,
- 7) A representative of the Workers' Confederations.

The organization and operation of the Nominating Board is regulated by the "[Special Law on the Organization and Operation of the Nominating Board for the Nomination of Candidates for Judges of the Supreme Court of Justice](#)", Decree No. 74-2022, published in La Gaceta No. 35,980 of July 20, 2022.

The organizations that make up the Nominating Board were summoned on **July 28, 2022** by the **President of the National Congress** to accredit their representatives and alternates. As of that date, the election process of the representatives of the various strata began. On **September 14, 2022**, having verified the election of representatives and communicated this to the NC, the president of Congress swore in the members of the Nominating Board, which began its operation on that date.

Regulations and Technical Instruments developed by the Nominating Board

During October 2022, the Nominating Board issued the following legal and technical instruments: [Regulations of the Special Law on the Organization and Functioning of "The Nominating Board for the Nomination of Candidates for Supreme Court of Justice"](#)⁶; the [Nominating Board Schedule](#)⁷; the [Profile of the Supreme Court Justice](#)⁸; the [Protocol of the Selection Process](#)⁹; and the [Technical Evaluation Matrix](#)¹⁰.

⁶ Resolution No. 01-2022-JN. Published in La Gaceta No. 36,050 of October 13, 2022.

⁷ Nominating Board Timeline. Nominating Board of Honduras 2022-2023.

⁸ Profile of the Supreme Court Justice. Instrument: JN-2022-IT-02. 13.10.2022. Nominating Board of Honduras 2022-2023.

⁹ Protocol of the Selection Process. Instrument JN-2022-IT-03, 14.10.2022. Nominating Board of Honduras 2022-2023.

¹⁰ Technical Evaluation Matrix. Published in La Gaceta No.36,051 of 10.14.2022. Nominating Board of Honduras 2022-2023.

MIO-Honduras. Partial Report on the Election Process of Judges of the Supreme Court of Honduras: Initial Stage of Selection by the Nominating Board.

Nominating Board Timeline

In accordance with the schedule originally published by the Nominating Board, the following phases have already been completed:

- Phase 1: Call for applications
- Phase 2: Receipt of Applications
- Phase 3: Documentary and legal review
- Phase 4: Application of Tests (11/14 to 11/24/2022)

According to the same schedule, the following phases remain:

- Phase 5: Complete Candidate Screening (11/25 to 12/19/2022)
- Phase 6: Receipt of objections and complaints (12/19/2022 to 01/11/2023)
- Phase 7: Interviews (12/23/2022 to 01/14/2023)
- Phase 8: Evaluation and selection (15/01/ to 16/01/2023)
- Phase 9: Submission of list and report to the National Congress (01/17 to 01/23/2023)

Pursuant to article 312 of the Honduran Constitution, the **Nominating Board** shall deliver its proposal to the National Congress on **January 23, 2023**. The **maximum deadline is January 25, 2023, in order** for the Plenary of the National Congress to carry out the election.

Requirements to apply for Supreme Court Justice

Pursuant to article 309 of the CPH, to be a Supreme Court Justice, the following is required:

- 1) To be Honduran by birth;
- 2) Citizen in the enjoyment and exercise of his rights;
- 3) Duly registered notary public;
- 4) Over thirty-five (35) years of age; and,
- 5) Have been a member of a court for at least five (5) years, or have practiced law for at least ten (10) years.

ACTIVITIES OF THE INTERNATIONAL MISSION DURING VISIT # 1 TO TEGUCIGALPA

Acknowledgments

We thank all the institutions involved in the process that agreed to meet with the MIO-Honduras in its Visit # 1, starting with the Nominating Board, the different Commissions of the NC that have been in charge of the debate and the elaboration of the rules of the process, the representatives of the United Nations System and the diplomatic corps accredited in the country, the civil society organizations, the business and workers' associations, as well as the academia involved in the process.

MIO-Honduras was unable to meet by the Board of the NC on this occasion and expects to do so at the next meeting, since this branch of government plays an essential role in the final selection of magistrates.

Activities in Tegucigalpa, Honduras

Visit #1 of the MIO-Honduras was extended between November 14 and 18, 2022.

Upon its arrival in the Honduran capital, MIO-Honduras immediately began its meetings with key organizations to gather and expand the information that will enrich its oversight.

In addition to visiting the Nominating Board and reviewing the rules of the process, MIO-Honduras requested meetings with NC Commissions, Honduran civil society organizations, international cooperation agencies present in Honduras, the United Nations system and other key bodies that are closely following this election, to learn their views on the development of this first stage of election process, as well as their perspectives on what may happen in January when the NC elects the 15 justices and analyze the recommendations that can be made.

PROGRESS FOUND AT THIS STAGE

We wish to acknowledge the important advances, mainly regulatory and active participation of civil society, aimed at strengthening the selection process of the CSJ Justices in Honduras.

In particular, the MIO-Honduras highlights the committed work carried out by all the members of the Nominating Board (both proprietary and alternate), who have had to overcome budgetary obstacles, as well as acknowledge the short time allowed by the law to set up the mechanism, develop the secondary regulations and procedural aspects. Likewise, this Mission highlights the support provided by the National University of Honduras for the operation of the Nominating Board.

Adoption of Decree No. 74-2022 by NC, which regulates the operation of the Nominating Board

The "Special Law on the Organization and Functioning of the Nominating Board for the Nomination of Candidates to the Supreme Court of Justice", Decree No. 74-2022, published in *La Gaceta* No. 35,980 of July 20, 2022, was approved by the National Congress to regulate the functioning of this key body in the selection process at hand.

The initiative of this new regulation was submitted by the Secretariat of Transparency and Anticorruption of the Executive, and included advanced standards such as gender parity in the integration of the SCJ, a better integration and selection of civil society organizations in the composition of the Nominating Board.

The approved regulation also included the principles and criteria to be applied by the Nominating Board to evaluate the merits (suitability and capacity) of the candidates, when selecting the list to be submitted to the NC.

The text underwent an interesting debate of ideas for its improvement, but unfortunately the initiatives aimed at shielding the list of candidates in their independence and probity were not maintained or incorporated, and the most relevant provisions were finally blocked, as will be seen below.

Adoption by the Nominating Board, among others, of Resolution No. 01-2022 to complement the Decree 74-2022, the CSJ Magistrate Profile, and the Protocol of the Selection Process

These instruments approved by the Nominating Board are important advances for Honduras, and eventually for the region, on the road to implementing a meritocratic selection process that must be free from undue interference and that guarantees a final result that respects transparency and allows the best candidates to be elected to the CSJ.

However, as this Mission has observed, the process has revealed the need to incorporate improvements for the future, which are detailed below, as well as to ensure that the remaining stages are carried out without undue interference.

Involvement and essential work of civil society organizations in this process, collaborating with the role of the Nominating Board and the NC

The MIO-Honduras would like to make a special acknowledgement to the civil society organizations that have been committed to monitor the different stages of the selection process and that have actively collaborated with the work of the Nominating Board through their representatives and will continue to do so in the stage that will be carried out by the NC.

This Mission is convinced that its work will have an impact in guaranteeing the transparency and the final result of process.

CHALLENGES FACING THE PROCESS AT THIS STAGE (BEFORE THE NOMINATING BOARD) AND THE NEXT STAGE (BEFORE THE NATIONAL CONGRESS)

A. In the general process

The mechanism for the selection of Supreme Court Justices in Honduras has not undergone substantive changes for 20 years

The mechanism for the selection of CSJ Justices has been used in the processes of 2002, 2009 and 2016, with modifications that have been introduced during said period, including the most recent ones.

The mechanism for the selection of CSJ Justices constitutes an advance in issues such as gender parity. However, it requires urgent constitutional and legal modifications.

The current law has contributions from civil society organizations, international organizations and representatives, constituting a step forward on issues such as gender parity.

However, there are aspects of the selection process that in our opinion require urgent constitutional and legal modifications, as detailed below.

The constitutional provision of total renewal of the CSJ is only present in Honduras, Guatemala and Bolivia, and encourages political disputes between the parties present in the CN for the control of the highest court

The constitutional provision that demands the total renewal of the composition of the CSJ in a single instance every seven years is a model that most of the countries of the region have overcome. Only Guatemala, Bolivia and Honduras renew all the supreme justices in one single process.

The total renewal of the members of the CSJ leads to a "political power dispute", because the leadership of one power (the Judiciary) is entirely renewed by another (the CN), a process marked by the history and custom of political practice in Honduras, encouraging a "distribution" of members of the highest court, identified with the two traditional parties: the National Party and the Liberal Party.

The irruption of other political forces in the NC and now in the Executive Branch, has involved other actors that add to the risk of "distribution" of the positions in the CSJ, which requires in the current circumstances partisan detachment and maturity to guarantee a meritocratic and independent court.

For MIO-Honduras it is evident that, in compliance with international standards aimed at guaranteeing the independence of the Judiciary, which is built on the independence of each judge -in this case, Supreme Court justices-, it would be advisable to modify the constitutional mechanism that establishes the total renewal of the members of the highest court, by other alternatives such as partial renewals or depoliticizing the selection of judges, as occurs in other countries.

The constitutional mechanism that establishes the total renewal of the CSJ should be modified, replacing it with a mechanism of partial renewals.

The constitutional requirement that applicants to the CSJ must be public notaries is unreasonably discriminatory and restrictive of participation

There are approximately thirty thousand (30,000) lawyers in Honduras. Of these, approximately 1,700 are notaries, although about 1,200 are registered as active, and only about 700 are practicing notaries. Of those 700, only 267 are women.

The constitutional requirement that a person must be notary in order to apply for a Supreme Court Justice position, unduly restricts the access of women and members of ethnic groups and other vulnerable groups, since only a small portion of them have had access to obtain this qualification, which clearly does not pass the test of reasonableness in relation to the merits necessary to the high magistracy.

In addition, and according to the information gathered during the Mission's visit, the procedure for requesting the qualification of *notary* in Honduras lacks transparency, and the access is based on discretionary decisions of the president of the CSJ, which does not guarantee equal access to all persons who have the necessary competencies to apply to become members of the highest court.

The constitutional requirement that applicants must be notaries should be eliminated, as it is unreasonably discriminatory and restrictive of participation.

Given the disproportionate impact of this requirement on women applicants and applicants from ethnic groups and other vulnerable groups, it may be considered discriminatory under international human rights standards.

On the other hand, the notary requirement also favors in an unbalanced way the access of professionals

residing in the area of the capital city, since the number of people who have access to the notary's office in other regions of the country is significantly lower.

The selection mechanism must ensure the independence of the CSJ Justices

During the debate of the draft of the Decree 74-2022 at the NC, essential issues for the selection process were considered, most of them aimed at ensuring the independence of the supreme court justices, preventing the appointment of people linked to organized crime, and excluding applicants whose behavior and personal trajectory were incompatible with the delicate work of adjudicating justice at the highest level.

The draft presented to debate, for example, sought to prohibit the selection of persons who have held executive positions in political parties in the last two years, who have links to organized crime, or who have been accused of corruption, gender violence and/or sexual harassment.

Likewise, the need to establish a mechanism to disqualify representatives who have unresolved conflicts of interest due to, for example, having open cases that should be heard by the courts of justice, from voting was also raised. This was intended to prevent congressmen and congresswomen from selecting their own future judges.

Unfortunately, in the vote on the bill in the NC, these elements aimed at ensuring the independence of the CSJ and to prevent private interests from influencing appointments were eliminated from the version that was finally approved.

The selection mechanism must ensure the independence of Supreme Court justices, prohibiting the candidacies of persons who have held executive positions in political parties, who have links to organized crime, corruption, gender-based violence and sexual harassment.

Advancing gender parity in the composition of the CSJ requires proactivity from civil society, state agencies and the international community

As previously mentioned, the Decree No. 74-2022. incorporated advanced parameters in terms of gender parity.

First, the provision regarding the composition of the Nominating Board establishes that the seven organizations represented in this body must appoint a woman as a member or alternate. This rule has resulted in the composition of the Board itself being parity. Secondly, Article 21 of the same law instructs the Board that the final list of at least 45 candidates to be sent to the NC shall be composed of 23 women and 22 men, for which purpose it shall propose two separate lists, one of female candidates and one of male candidates. Although the regulation is not clear as to whether the Board will draw up a single list at the end of the process, it does state that "[i]n no case may the proportionality between women and men be varied". Similarly, Article 22 of the

Decree states that in the final election the NC "shall maintain gender parity by electing not less than seven (7) women as justices of the Supreme Court". These gender parity parameters also represent the concrete implementation by Honduras of international obligations arising from human rights treaties ratified by the State, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹¹

Notwithstanding these significant legislative advances, the MIO-Honduras considers that guarantees in practice that gender parity is complied with in the final composition of the new CSJ requires that various actors committed to the process closely monitor its different stages.

Civil society organizations in general and women's organizations in particular are responsible for ensuring that the process before the Nominating Board and the National Congress fully respects the legislative and regulatory norms in order to comply with gender parity in the final composition of the new Supreme Court.

In particular, we believe that civil society organizations in general and women's organizations in particular are responsible to monitor that the process carried out by the Nominating Board fully respects the legislative and regulatory provisions that require that the final composition of the list of at least 45 candidates must maintain the gender parity and that the NC elects at least 7 women as CSJ justices.

We likewise call on the State bodies directly involved in the selection process, in particular the Nominating Board and the NC, to comply with the gender parity parameters expressly established in the law and in

international human rights obligations applicable to Honduras, so that the final composition of the new CSJ respects such equitable representation.

Finally, MIO-Honduras considers that the international community, through its various political or legal mandates, should also play a supervisory role in this area, particularly through the monitoring by human rights bodies at the universal and regional levels of Honduras' compliance with its international commitments.

The lack of state funding guaranteed by law in establishing the Nominating Board jeopardized the material functioning, equitable representation and autonomy of this important body

The budget to finance the operation of the Nominating Board has been a challenge for the process.

¹¹ See Articles 8 and 4 of the Convention on the Elimination of All Forms of Discrimination against Women. MIO-Honduras. Partial Report on the Election Process of Judges of the Supreme Court of Honduras: Initial Stage of Selection by the Nominating Board.

According to the Decree 74-2022, "the Board's operating expenses, as well as its logistical operations, will be covered and distributed equitably and proportionally to its means among the seven (7) member institutions and organizations (...) if necessary, the Nominating Board will receive resources from the National Congress if and when it so requests".

In meetings held with various civil society groups, it was pointed out that this rule placed the representatives of these groups in a weak position, since these organizations lacked the necessary economic resources to contribute to the process. Fortunately, the issue of funding was resolved, either through various contributions from organizations and international cooperation and, finally, through the granting of additional funds by Congress,

The operation of the Nominating Board should be endowed with public funds from the State, to guarantee its autonomous, neutral and unimpeded operation. And subsidiarily be open to receive funds from international cooperation with transparency and accountability.

MIO-Honduras considers that in the future the operation of the Nominating Board should be endowed with public funds from the State to guarantee its autonomous, neutral and unhindered operation. And subsidiarily be open to receive funds from international cooperation with transparency and accountability.

The very tight deadlines set forth in the Constitution and the Law make it difficult for the Nominating Board to work in a quality, transparent and public manner

The Nominating Board prepared a schedule of its activities, in accordance with the constitutional and legal provisions, which it made public, adjusting it to the reality it encountered when it took office and identified, among other difficulties, the absence of adequate funding. Said schedule reveals the extremely tight deadlines within which the Nominating Board must perform its duties.

By way of example, we highlight some tasks and activities, both of the Nominating Board itself, as well as those of the applicants, which evidently require more time and dedication than the current constitutional and legal design allows:

- a) Selection and provision of adequate premises for the work of the Nominating Board, custody of information, public hearings, live transmission of sessions and hearings, taking of examinations and interviews of applicants, press conferences and administrative, technological and communicational support activities, etc.
- b) Selection and provision of technological equipment to support the activities of the Nominating Board;
- c) Selection, design and implementation of services for the Nominating Board to have a transparency portal, platforms for applications, receipt of background information, exams and interviews, development of remote meetings, social media accounts, etc.
- d) Planning and development of the Nominating Board's calendar of activities;
- e) Elaboration of complementary regulations to the Decree 74-2022;
- f) Elaboration of the profile of the Supreme Court Justice;

- g) Elaboration of the selection process protocol;
- h) Elaboration of the protocol for taking examinations;
- i) Elaboration of the protocol of *objections* and complaints;
- j) Elaboration of the protocol for the development of institutional background check;
- k) Elaboration of the interview protocol;
- l) Design, development and preparation of the evaluation of knowledge exams;
- m) Design, development and preparation of the evaluation of other examinations;

The constitutional and legal regulation of the selection process for Supreme Court justices should be reviewed in order to establish general deadlines and intermediate milestones that allow for the development of this highly relevant and complex activity, within much broader time parameters, associated with funding to support it.

- n) Obtaining by the applicants of the required background information and documentation;
- o) Execute all the planned activities indicated above, including sufficient time for: background analysis, objections; background contrast; taking and evaluation of exams and interviews; preparation of reports and rankings; preparation, substantiation, drafting and communication of resolutions and possible appeals, and preparation and submission of the final list to the NC.

In turn, as part of the selection process, it is advisable that the NC should interview, with the appropriate methodology, transparency and dedication, all the candidates included in the list

proposed by the Nominating Board.

This would also require planning and publicizing a schedule of NC activities that would allow sufficient time for the development of at least the following activities:

- a) Analysis of the complete report submitted by the Nominating Board with the background of the candidates;
- b) Elaboration of an interview protocol;
- c) Preparation of a battery of questions to be asked to all candidates;
- d) Development of individual interviews;
- e) Protocol of the pre-selection process and collective proposal of 15 postulants to the Plenary;
- f) Protocol of the decision process regarding the proposal of a list of 15 persons proposed collectively to the Plenary;
- g) Protocol for the single-person decision process in the event that no agreement is reached on the 15-person collectively proposed roster;
- h) Preparation, substantiation, drafting and communication of the proposal of postulants to the Plenary;
- i) Preparation, substantiation, drafting and communication of the final decision by the National Congress.

MIO-Honduras considers that the constitutional and legal framework should be reviewed, to establish general deadlines and intermediate milestones that allow the development of this highly relevant and complex activity, within much broader time parameters, associated with public funding to support it, as indicated above.

Draft of and Interpretative Bill aimed at altering the rules of the selection process, lowering the minimum passing score for the written test

On November 24, 2022, while the current selection process was underway, the Union of Notaries of Honduras (UNH) submitted to the NC an initiative to interpret Article 17 of Decree 74-2022. The draft actually sought to modify the rule of the minimum passing score of the written test, lowering it from 75% to 60%.

This intended to affect the logic of the process. If approved, this reform would have been an impertinent and objectionable interference, which would have favored easily identifiable persons, after the presentation of the evidence.

MIO-Honduras considers that the rules established for the process once it begins should not be modified, much less for the clear benefit of a group of participants, as this alters the conditions of the competition and risks disrupting the process.

It is not pertinent to reform the rules of a selection process when it has already begun, and the pre-established conditions must be respected in order to provide legal certainty and clarity as to how everyone will be evaluated equally.

The possible effect of *amparo* remedies filed before the CSJ by candidates in competition regarding the selection process

The *amparo* remedies filed by some candidates -which have not yet been admitted or rejected by the CSJ- may affect the selection process carried out by the Nominating Board, which also has a constitutional responsibility. There should not be any event that may affect the tight schedule of the process, with the Nominating Board guaranteeing the safeguarding it to the pre-established rules.

Some candidates who failed the written test filed *amparo* remedies before the CSJ challenging the questions and events related to this evaluation. This does not seem to be a good practice, since it implies that the applicants, having known beforehand the "rules of the competition", and after the unfavorable results they have obtained went public, seek a change in the rules of the process for their benefit, to achieve their approval, and for this purpose they question the legal framework and standards that have regulated the written exam.

The MIO-Honduras considers that judicializing the selection process of the Nominating Board may disrupt it and cause serious damage in case it is decided to

suspend it or revert it to previous stages, all of which would affect the established schedule, given that there are very tight deadlines to reach the dates established by the Constitution.

It is important to act prudently and not to affect the work of the Nominating Board, which has a responsibility established in the Constitution.

The possibility of installing a CICIH in Honduras depends in part on the existence of an independent CSJ to resolve on corruption cases

The recent experience of what happened with the Support Mission against Corruption and Immunity (MACCIH) in relation to corruption cases submitted to justice, reveals the need for and importance of having an independent CSJ that does not respond to political guidelines and that is only subject to the Constitution and the law. This is a demand of the Honduran society that seeks a change towards integrity in the management of public affairs by its authorities, which requires an end to the impunity that has characterized the country and has rightly outraged the population.

Along these lines, MIO-Honduras maintains that political parties should understand that a sincere fight against corruption requires the election of a CSJ aligned with these goals, which will contribute to restore the confidence of the population, as well as the international community interested in supporting the country in this national purpose. However, we consider that, although the election is a decision of the Congress, the Executive Branch is not exempt from this responsibility, due to its function of general direction of the State, having to offer wise decisions for the rescue of the country's institutions and, specifically, to free the judges from political subjugation. The government itself must guarantee that it will not have the purpose of influencing the CSJ election in order to give adequate signs that generate the possibility of the installation of a CICIH.

Judicial independence is fundamental for the installation of a CICIH, since only a CSJ subject to the Constitution and the Law and away from political guidelines can guarantee a fight against corruption and trust in the international concert for this national objective required by the population.

B. Before the Nominating Board

Greater active transparency -and in real time- is required regarding the information on applicants background so that the public can actively monitor the process.

Although MIO-Honduras recognizes that there has been significant progress in implementing a transparent selection process, there are still some concerns that should be addressed by the Nominating Board. In particular, this body complied with transmitting and opening its sessions to the press, implementing a transparency portal to publish a series of documents (active transparency) and has been responding within the legal deadlines to requests for access to information.

However, several stakeholders have pointed out that the Board was slow in publishing essential documents on the candidates who have applied for the process. In particular, at the time of the visit of the MIO-Honduras (November 14-18, 2022), it was claimed that the Nominating Board had not made public the complete file of each of the applicants, limiting itself to sharing only their resume or CV. The Board, which appointed a transparency officer, claimed that the files had to be scanned to upload them to the web, and that they found themselves lacking equipment and personnel for the task, although they were in that purpose.

It is essential and an obligation of transparency that the Nominating Board must fulfill to upload to the Transparency Portal all the public files of the CSJ magistrate applicants, safeguarding only those sensitive personal data. Likewise, it must keep the files on the Portal updated with all new information received from state agencies.

A critical moment in the selection process is the stage of background investigation, challenges and complaints. As of December 7, 2022, the public files of the candidates for CSJ justices have not yet been uploaded to the Transparency Portal of the Nominating Board, with all the information they submitted in their application, safeguarding only their sensitive personal data

We reiterate, as we said in our visit to Honduras at the beginning of November, that to be able to monitor and denounce, citizens and civil society organizations must be able to exercise their right of access to the public records of the candidates, which is a minimum

international standard. Those who apply to hold the highest office in a state power are subject to a higher standard of scrutiny than other citizens, which, as is well known, involves publicizing aspects of their personal and professional life necessary to ensure their capacity, suitability, independence and probity.

This right of access should be exercised through the Transparency Portal of the Nominating Board, without the need to review physical files in Tegucigalpa City and with no other basis than the exercise of a right. The lack of access to this information may constitute a serious breach of international standards and become an insurmountable obstacle for those who intend to file objections and complaints.

In the opinion of MIO-Honduras, it is essential and a transparency obligation that the Nominating Board must comply with, to upload to the Transparency Portal all public files of the candidates, safeguarding only those sensitive personal data. Likewise, the Mission propose the need to keep these files updated in the Transparency Portal with all the new information received from state agencies that respond to the requirement letters.

In general, MIO-Honduras recommends the ["First Oversight Report: Process of Election of Magistrates of the Supreme Court of Justice, Stages of Swearing-in, Organization, Operation and Convening"](#), which in due time was made public by the consortium organizations: CESPAD, DPLF and ASFC.

It is required to maintain practices and appearance of transparency and equal treatment of all candidates

Regarding the practices of openness to consultations and approaches from candidates or interested sectors, the MIO advises the Nominating Board or any of its members to not hold private meetings with a partial number of candidates or organizations representing them during the selection process.

In case it is necessary to receive applicant petitioners or organizations, it must be ensured:

- a) Transparency and publicity of the request for a hearing, as well as on the petitioners, and the subject matter to be discussed.
- b) Opportunity for other candidates and interested organizations to attend the hearing to express their opinion on the matter discussed or consulted.
- c) Conduct the hearing in a public and transparent manner, as is customary with the activity of the Nominating Board.

MIO advises to maintain practices and appearance of transparency and equal treatment of all candidates, avoiding private meetings with a partial number of applicants throughout the process, to contribute to the overall confidence in the process and its results.

The above maintains practices and appearance of transparency and equal treatment to all candidates, contributing to the overall confidence in the process and its results.

Similarly, the MIO-Honduras requested in a timely manner that the Nominating Board order an investigation into the allegations of leaks of part of the questions that were prepared for the knowledge exam. A lesson learned from this process is the need to establish clear protocols for future traceability of documents that should not be disclosed before the corresponding tests are administered.

The promotion of women to the CSJ does not imply disregarding the requirements established in the profile of Supreme Court Justice prepared by the Nominating Board

As noted above, the Decree 74-2-22 establishes clear guidelines with specific mandates for the Nominating Board and the NC to ensure gender parity in the composition of the CSJ, requiring that at least 7 women be appointed as justices of the highest court.

To this end, the Decree clearly states that the parameters established in the Technical Evaluation Matrix must be applied, "taking into account the criteria of [gender] equity and the inclusion of vulnerable groups".

The Decree establishes specific parameters for the Nominating Board and Congress to guarantee gender parity in the composition of the new Supreme Court. To this end, the technical evaluation matrix requires that the criteria used to evaluate the candidates take into consideration gender equity as one of the elements to be weighed in the final selection

The MIO-Honduras emphasizes that, although these gender parity norms represent a significant advance in guaranteeing women's access to these public positions of central relevance to the State, the selection of female candidates must also take into consideration the requirements outlined in the profile of Supreme Court Justice prepared by the Nominating Board.

These requirements include, in addition to academic, professional and labor competence, ethics and moral integrity, independence and impartiality, a commitment to democratic values and human rights, in particular a demonstrated respect for the principle of equality and non-discrimination and gender equity. The latter are demonstrated when the applicant "applies standards of

gender equity in all his or her jurisdictional and administrative resolutions, as well as in the different activities he or she performs" and "seeks full respect for human rights in both the jurisdictional and administrative spheres."

The integrity of the candidates must be evaluated as an essential element in the selection process of the 45 finalists selected by the Nominating Board and the 15 justices finally elected by the NC

The Nominating Board shall evaluate the integrity of the candidates according to parameters that include good professional conduct, professional esteem, recognition in the public forum, the repercussions of their professional performance, and not having been convicted of domestic violence or failure to meet their child support obligations.

Likewise, professional ethics must be verified based on the existence or not of disciplinary and judicial processes and their results, as well as taking into account the relations of the applicants with their clients, users or companies in the exercise of their profession. In the opinion of the MIO-Honduras, although it is not a legal obstacle for the nomination of a candidate the existence of complaints, investigations or judicial proceedings on corruption, links with organized crime or sexual and gender violence of any nature, these aspects should be considered in the evaluation by the Nominating Board at the time of rating the integrity, professional ethics and suitability for the position of the candidates.

The existence of complaints, investigations or judicial proceedings regarding corruption, links to organized crime or sexual and gender violence of any nature should be rigorously evaluated by the Nominating Board and given the appropriate weight when rating the integrity, professional ethics and suitability of the candidates for the position.

It is an essential requirement to occupy the highest judicial office to have a track record of probity, and this type of complaints and the context in which they were resolved, should be an element to be considered among the candidates who pass the various elimination stages.

It should also be kept in mind that one of the main objectives of this process is to prevent the CSJ from being co-opted or infiltrated by actors linked to organized crime and structural corruption schemes that have caused serious damage to Honduran society and the State.

The institutional investigation of candidates must be proactive, strategic and with broad collaboration of the Honduran State bodies

A special request for information should be made to the Special Unit on Corruption Networks (UFERCO) to ensure that, with the information it obtains, it can develop an appropriate assessment of the requirements of integrity, professional ethics, and suitability for the position of all candidates.

The resolution of the Nominating Board that regulates the Decree 74-2022 determines that the candidates "will be subjected to a phase of investigation of their personal, professional and patrimonial trajectory."

For such purpose, the Nominating Board shall request information from a number of public entities and agencies listed in its Article 28 and shall also reserve the possibility of requesting such information from "any other institution agreed upon by the Nominating Board."

In the opinion of the MIO-Honduras, the Nominating Board should also make a special request for information to the Special Prosecutorial Unit against Corruption Networks (UFERCO) to ensure that, with the information it obtains, it can develop a proper evaluation of the requirements of integrity, professional ethics and suitability for the position of all candidates.

In turn, for the institutional investigation stage to be effective and useful, it is essential that all Honduran State institutions required to provide information by the Nominating Board submit it in a complete and usable form and within the time period established by law.

Methodology for the design of written knowledge exam questions, their evaluation and the security of the Nominating Board's written exam platform

MIO-Honduras believes that the mechanism used by the Nominating Board to develop the written exam could have been better designed to avoid contingencies that could disrupt the process. It does not seem a good formula that the questions were elaborated through a distribution of quotas among the members of the Nominating Board, generating diverse sources, styles and methodologies in the sections of the test. In addition, there were several channels for handling this confidential information.

In our opinion, the knowledge questions of the written exam should have been commissioned to specialized entities, which can guarantee the technical relevance of the test, as well as the security mechanisms in its design, implementation and evaluation.

Part of the security in the management of the written test undoubtedly involves a clear and careful protocol of access to the question material before and during the test, and robust platforms and procedures that do not admit exceptions to the way in which the test must be taken by all candidates.

The knowledge questions of the written exam should have been entrusted to specialized entities, which can guarantee the technical relevance of the test, as well as the security mechanisms in its design, implementation and evaluation.

As has been seen, this issue has generated debate and controversy. Good faith doubts can be reduced by reinforcing confidence in the process by reviewing its design and application along the lines described above.

C. Before the National Congress

The Congress must select the 15 Supreme Court Justices exclusively from the list of 45 or more candidates submitted by the Nominating Board

According to the Honduran Constitution, the Congress must vote the list offered by the Nominating Board in its entirety, but if the required special majorities are not reached, the game is open for a candidate-by-candidate vote, under an unnominated vote.

In this regard, MIO-Honduras urges the NC to comply in the final selection process with the requirements clearly established in Article 22 of Decree No. 74-2022 which determines that "it may not elect any person who is not included in the list submitted by the Nominating Board."

It would be a serious attack on the construction of the rule of law in Honduras to reject the list submitted by the Nominating Board and resort to a political-partisan negotiation to appoint the new CSJ.

Likewise, that it "maintain gender parity by electing no less than seven (7) women as justices of the Supreme Court of Justice."

The MIO-Honduras encountered distrust and fear in several sectors of civil society, even supported by public statements of different political leaders, regarding the possibility of acting in a way that deviates from the legal mandate and that the NC chooses future justices

outside the list submitted by the Nominating Board. After this body fulfills its legal mandate, and having sent the list of 45 or more selected persons, would constitute a serious attack on the construction of the rule of law in Honduras, to dismiss the aforementioned priority list and resort to a political-partisan negotiation to designate the new SCJ.

Members of Congress should disqualify themselves if they have conflicts of interest or are subject to investigations that should be decided by CSJ

MIO-Honduras considers that the final selection of magistrates by the NC should be guided by the fulfillment of minimum requirements that guarantee the legitimacy of the process.

In particular, this requires that NC members exclude themselves from voting on this election on regard of specific candidacies, in the following circumstances:

- a) When they have a conflict of interest with respect to specific candidates; or
- b) When they are under investigation for acts of corruption, relations with organized crime or sexual and gender violence.

The self-exclusion of representatives from the decision-making process is appropriate in the event of conflicts of interest with respect to candidates, or the possibility of choosing their own judges in a future review of serious cases currently under investigation against them.

The self-exclusion of representatives from the decision-making process is what is necessary to ensure that the NC's decision is made in the best interest of Honduras, and that no conflicts of interest with respect to specific candidates, or the possibility of choosing their own judges in a future review of a case currently being investigated against them, interfere with it.

Representatives should have immediate access to the public folders of candidates for CSJ justices to study their backgrounds in a timely manner

The Nominating Board, in accordance with the provisions of the law, sends to the NC all the public files of the candidates for CSJ justices, once the nomination period closes.

The Board of the Congress must make available to all representatives the public files of the candidates for CSJ justices that have been received.

MIO-Honduras considers that the Board of the Congress should make available to all deputies the public files of the candidates for CSJ justices that have been received.

This ensures that all the members of the NC have the time to study the background of those who participate in the selection process, and duly prepare their decision-making process, which should be complemented with the interviews of the 45 people selected.

The NC must maintain the same degree of transparency as in the stage before the Nominating Board: public debates, televised and broadcast online; publicity, roll call vote and substantiation of decisions

The rules approved by the NC to regulate the process of electing judges to the CSJ established a high degree of transparency and publicity of the activities carried out before and by the Nominating Board, as well as the decisions adopted by said preselection body.

The same standard, at a minimum, is expected of the activity and decisions adopted by the NC during this process.

In this line, to favor the transparency of the process, representatives should conduct public and transparent interviews to all the persons included in the list of finalists, make their vote public in all instances and scenarios in which they must make a decision, and justify the reasons for their decision in all cases.

Representatives should conduct public and transparent interviews with all the persons included in the list of candidates, make their vote public in all instances and scenarios in which they must make a decision, and justify the reasons for their decision in all cases.

The commitment of all political parties present in the Congress is required to elect the most suitable persons for the CSJ

One of the country's long-standing problems is the control that political parties exercise over the country's institutional control bodies, which has been one of the factors that has led to impunity for corruption offenses.

The Executive Branch must exercise the leadership required, acting in an assertive and transparent manner in this process and thus avoid any undue influence over the Supreme Court selection process, a traditional tendency of the region's Executives.

In the Mission's opinion, a serious reflection is required on the part of the political actors in the current historical moment of the country regarding the election of the CSJ in order to achieve a Court that is parity and made up of first-class jurists that guarantee the independence of the judiciary.

Beyond this goal is ultimately the responsibility of the Congress, the role of the Executive Branch should not be overlooked, as it can exercise the leadership

required for this great decision, acting in an assertive and transparent manner in this process and thus avoiding any undue influence over the Supreme Court selection process, a traditional tendency of the region's Executives.

CONCLUSIONS AND RECOMMENDATIONS

We recognize the important advances, mainly in terms of regulations and active participation of civil society, aimed at strengthening the selection process of the members of the Supreme of Honduras.

We highlight the committed work carried out by all the members (owners and alternates) of the Nominating Board, who have had to overcome budgetary obstacles, as well as acknowledge the short time allowed by the law to set up the selection process, develop the secondary regulations and procedural aspects.

The MIO-Honduras would like to give special recognition to the civil society organizations that have been committed to monitoring the different stages of the selection process and that have actively collaborated with the work of the Nominating Board through their representatives and will continue to do so in the stage before the National Congress.

The mechanism for the selection of Supreme Court justices constitutes an advance in fundamental issues such as gender parity. However, it requires urgent constitutional and legal reforms

The constitutional provision that establishes the total renewal of the composition of the CSJ should be modified, replacing it with a mechanism of partial renewals.

The constitutional requirement that applicants must be public notaries should be eliminated, as it is unreasonably discriminatory and restrictive of participation.

The selection mechanism must ensure the independence of the Supreme Court justices, prohibiting the selection of persons who have held executive positions in political parties, who have links to organized crime, corruption, gender violence and sexual harassment.

It is especially incumbent upon civil society organizations in general and women's organizations in particular to ensure that the process before the Nominating Board and the National Congress fully respects the legislative and regulatory norms to ensure gender parity in the final composition of the new Supreme Court.

The operation of the Nominating Board should be endowed with public funds from the State, in order to guarantee its autonomous, neutral and unimpeded operation. And subsidiarily, it should be open to receive funds from international cooperation with transparency and accountability.

The constitutional and legal regulation of the selection process for Supreme Court justices should be reviewed in order to establish general deadlines and intermediate milestones that allow for the development of this highly relevant and complex activity, within much broader time parameters, associated with funding to support it.

It is not acceptable to reform the rules of a competition process for CSJ justices when it has already begun, and the pre-established conditions must be respected to provide legal certainty and clarity as to how everyone will be evaluated equally.

The *amparo* remedies filed by some candidates -which have not yet been admitted or rejected by the CSJ- may affect the selection process under the responsibility of the Nominating Board. There should not be any event that may affect the tight schedule of the process, with the Nominating Board guaranteeing the safeguarding of the process according to the pre-established rules.

Judicial independence is fundamental for the installation of a CICIH, since only a CSJ subject to the Constitution and the law and away from political guidelines, can guarantee a fight against corruption and trust in the international concert for this national objective required by the population.

It is essential and an obligation of transparency that the Nominating Board must fulfill, to upload to the Transparency Portal all the public files of the candidates, safeguarding only those sensitive personal data. Likewise, it must keep the files on the Portal updated with all new information received from state agencies.

The MIO advises to maintain practices and appearance of transparency and equal treatment to all candidates, avoiding meetings with a partial number of them throughout the process, in order to contribute to the overall confidence in the process and its results.

The Decree 74-2022 establishes specific parameters for the Nominating Board and Congress to guarantee gender parity in the composition of the CSJ. To this end, the technical evaluation matrix requires that the criteria used to evaluate the applicants take into consideration gender equity as one of the elements to be weighed in the final election.

The existence of complaints, investigations or judicial proceedings regarding corruption, links with organized crime or sexual and gender violence of any nature should be rigorously evaluated by the Nominating Board and given the appropriate weight when rating the integrity, professional ethics and suitability for the position of the candidates.

A special request for information should be made to the Special Unit on Corruption Networks (UFERCO) in order to ensure that, with the information it obtains, it can develop an appropriate assessment of the requirements of integrity, professional ethics and suitability for the position of all candidates.

In our opinion, the knowledge questions of the written exam should have been entrusted to specialized entities, which can guarantee the technical relevance of the test, as well as the security mechanisms in its design, implementation and evaluation.

It would be a serious attack on the construction of the rule of law in Honduras to disregard the list submitted by the Nominating Board and resort to a political-partisan negotiation to appoint the new Court.

The self-exclusion of representatives from the decision-making process is appropriate in the event of conflicts of interest with respect to specific candidates, or the possibility of choosing their own judges in a future review of a case currently being investigated against them.

The Board of the Congress must make available to all representatives the public files of the candidates for CSJ justices that have been received.

Congress should conduct public and transparent interviews with all the persons included in the list of candidates, make their vote public in all the instances and scenarios in which they must make a decision, and justify the reasons for their decision in all cases.

The Executive Branch must exercise the leadership required, acting in an assertive and transparent manner on regard to this process and thus avoid any undue influence over it.

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