



Due Process of Law Foundation
Fundación para el Debido Proceso Legal

April 26, 2011

Dr. Arturo Valenzuela
Assistant Secretary of State
Bureau of Western Hemisphere Affairs
United States Department of State

Dear Dr. Valenzuela:

Thank you very much for your March 24 letter in which you reacted to the letter that DPLF and nine of our partner organizations sent to the Guatemalan authorities, expressing our concern about the selection of Constitutional Court judges in that country. We are very pleased to hear that the United States shares our sentiments on the need to ensure transparent selection processes for judges, and we are genuinely looking forward to cooperating with the Department of State on these and other issues regarding the rule of law in Latin America.

Despite that we have not yet had the pleasure of exploring possibilities of cooperation and information sharing; we deem it important to draw your attention to an issue of interest. Having been made aware of the importance the United States attaches to transparent selection processes for judges in your March 24 letter to DPLF and learning of the visit of President Ricardo Martinelli of Panama to the United States from April 27 to 29, we believe it is important to share DPLF's position on the current situation of the rule of law in Panama.

1) The rule of law in Panama has been negatively affected since President Martinelli came into office

Panama is in a dire situation as regards the rule of law and judicial independence. In particular, the selection process for Supreme Court judges is characterized by its lack of transparency and the lack of formal meritocratic requirements for appointments. We are attaching a letter that DPLF sent to President Martinelli in December 2009, on the selection process that took place in that year. Moreover, the report that DPLF and its partner organization, the *Alianza Ciudadana Pro Justicia*, prepared for the Inter-American Commission on Human Rights for the thematic hearing it held on judicial independence in Panama in March 2010, might also be of interest.

The dire situation in Panama's judiciary can be exemplified by the fact that the United States decided to revoke the visa of two (then) Supreme Court judges because of a major corruption scandal in 2005. It is important to mention that Panama has recently suffered from yet another major corruption

scandal in its Supreme Court – which has led to the recent resignation of a Supreme Court justice, José Abel Almengor. Even in Panama, this is an unprecedented event. Nevertheless, despite of this crisis and the resulting decline of public confidence in the independence of the judiciary, President Martinelli has demonstrated to ignore the previously established parameters on the selection of Supreme Court judges in last week’s selection of a nominee to fill the resulting vacancy in the Supreme Court. As in the 2009 appointment process, the President ignored the procedure agreed on by the State in the 2005 State Pact for Justice (*Pacto de Estado por la Justicia*), which was the result of consultations between different State institutions and civil society after a previous major corruption scandal in the Supreme Court. Worryingly, this time, President Martinelli has even decided to derogate the decree that regulates the selection process of Supreme Court justices,¹ which provides for several very basic parameters of transparency and public participation in the process. Last week’s nomination has not seen any transparency or possibility of public participation or scrutiny whatsoever.

2) The appointment of President Martinelli’s nominee for the Supreme Court would violate the Constitution

Possibly even more worrying is the fact that the appointment of President Martinelli’s candidate to the Supreme Court, Mr. Harry Alberto Díaz González, would violate Panama’s constitution. The Constitution establishes in its Article 203(2) that the appointment of people that have exercised executive positions (*‘cargos de mando y jurisdicción en el Órgano Ejecutivo’*) in the current constitutional period is prohibited. Previously, the Supreme Court has established that positions of Ministers and Vice Ministers are considered to be such executive positions,² as do Article 3 and 5 of Law No. 97 of December 21, 1998.³ Since Mr. Díaz González has had twelve temporary appointments as a *chargé d’affaires* of the Vice Minister for Finances (*Vice Ministro de Finanzas encargado*) in the Martinelli administration, it is obvious that his appointment to the Supreme Court would constitute a violation of the Constitution. Needless to say, this would be a severe blow to the rule of law and the legitimacy of Panama’s institutions.

3) The transparent and meritocratic selection of five new members of the Supreme Court is in jeopardy

Given the fact that President Martinelli will appoint five more Supreme Court judges before the end of the year (three in the Constitutional Chamber (*Sala Quinta de Garantías Constitucionales*); two in other chambers of the Supreme Court), the current deeply flawed, opaque and unregulated selection process provides for an extremely worrying precedent. The appointment of Supreme Court justices by means of opaque selection processes that do not pose any formal requirements of merits and experience not only damages the little trust that remained in the judiciary as an institution in Panama, it also further erodes the rule of law in the country. The refusal to let civil society participate in these

¹ Cabinet Resolution No. 121 of September 18, 2009 (*Resolución de Gabinete No. 121 del 18 de septiembre de 2009*).

² Judgment of January 14, 1994.

³ *Ley No. 97 del 21 de diciembre de 1998.*

processes and to provide the public with information about the proposed candidate for the position is extremely worrying. In addition to this, the appointment of a judge in violation of the Constitution will only further jeopardize the already fragile rule of law in Panama. Even more so, it will erode the public's perception of judicial independence in the country.

It is undeniable that the refusal of President Martinelli to use a formal, transparent, participative procedure for the selection of Supreme Court judges constitutes a threat to the rule of law and judicial independence in the country. Moreover, legal certainty will be severely compromised when candidates are appointed that have held executive positions, or otherwise have a demonstrated proximity to the Executive.

We hope this information will be of use to you. Should you require any additional information or clarification of the information provided in this letter, please do not hesitate to contact us. For your further reference, you might be interested in reading several publications that DPLF issued on the judiciary in Panama, all available on our website www.dplf.org: a report on [judicial corruption in Central America](#), in which Panama has a separate chapter (2007): in Spanish; a report on [judicial independence in Panama](#) (2009), in Spanish; executive summary in [English](#); a letter to President Martinelli in which DPLF expressed its concern about the [selection process of Supreme Court judges in 2009](#), in Spanish; and a report by DPLF and the Alianza Ciudadana Pro Justicia on the Panamanian judiciary, presented to the [Inter-American Commission on Human Rights](#) (2010), in Spanish.

Sincerely,

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