

FINAL REPORT

# The situation of the **Peruvian National Board of Justice** and the process of electing its members

October 2024



**MIO**  
Perú

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sobre la Junta Nacional de Justicia  
del Perú**

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# 1. Executive summary

The International Observation Mission on the National Board of Justice of Peru (MIO-Peru) is an international initiative that has closely followed the situation of the National Board of Justice (JNJ) and the selection process of its members. The Mission emphasizes that the process took place in a climate of fragility of the rule of law and democratic institutions in the country, marked by political polarization and a series of Congressional initiatives aimed at affecting the functioning of the justice institutions, affecting their independence. In this context, there have been attempts to modify and suppress the JNJ, and some of its members were constitutionally accused by the Congress, all of which generated great instability in the system. This, despite the fact that it is the most important institution of the judicial and electoral government in the country.

The selection process took place within this context -which seems to have affected the participation of applicants-, also marked by significant degrees of opacity and mere formalism. In this sense, the MIO concludes that the selection process of the JNJ was carried out without complying with minimum standards of transparency, publicity, citizen oversight, openness to scrutiny, technical criteria in the preparation of the knowledge tests, as well as trust and equality of conditions for the participants.

The Mission laments the lack of openness and collaboration by the Special Commission (CE) in charge of the selection process of the members of the JNJ, to meet with the panel of independent experts, with the objective of exchanging ideas and recommendations on international standards and the best practices applicable to this type of process. In contrast, the Peruvian Ministry of Foreign Affairs opened its doors to this Mission, facilitating our work, explaining the government's objectives and meeting with our panel whenever requested. The same openness was shown by the Peruvian Attorney General, who during the first and second visits received the MIO-Peru in a formal meeting. The then president (S) of the Constitutional Tribunal (now president) offered to receive MIO-Peru during the first visit of the Mission. Due to a miscommunication, it was not possible to arrange this meeting. Likewise, the MIO was received by international organizations, diplomatic missions and various members of Peruvian society -including businessmen, NGOs, the Catholic Church and Bar Associations-, which allowed for a fruitful exchange to learn more about the challenges for this process.

Since its preliminary reports, the MIO publicly pointed out the lack of transparency and access to information regarding previous actions, such as the formation of the Special Commission, its decisions and institutional management instruments, and the design of the competition rules and regulations. This lack of transparency, together with unilateral decisions, has seriously affected public confidence and the legitimacy of the process, which surely had an impact on the reduced number of applicants with the suitability and experience to occupy a position in the JNJ. Likewise, the MIO draws attention to the lack of incentives and affirmative measures in the framework of the competition, which were aimed at providing the JNJ with gender parity and ethnic-racial diversity in its composition.

A critical aspect for the transparency and independence of the CE identified by the Mission is the transformation of the position of Technical Secretary of the Commission from a function subject to public competition and appointment by the full body, to a position of exclusive trust of the Ombudsman, who ultimately has led the entire process. This was followed by an event that surprised observers of the process, which was related to the removal and replacement of the official who had initially been appointed as Technical Secretary, without technical justification or public motivation, undermining confidence in the technical criteria and impartiality of this key player in the process.

The Mission also expressed its concern about the questionable designation of a private university to form a committee of experts in charge of preparing the bank of questions to develop the knowledge test. In fact, there were no clear protocols regarding the audit of the university's management or the methodology used. Furthermore, the questions designed were of a basic level, inappropriate for an evaluation of the magnitude required for the selection of the members of the JNJ.

The Mission also observed a lack of transparency in the procedure for filing objections. Indeed, not enough information was published on the number of objections presented by the citizens, the grounds presented and the candidates' arguments. The resolutions of the Special Commission, which dismissed all the objections presented, were not reasoned or motivated, which adds uncertainty and distrust in the development of the process.

The interview phase, on the other hand, lacked a protocol and known technical criteria to guide the time offered to each applicant, as well as chapters with questions that kept a certain equivalence and comparability, in order to deepen the knowledge, plans and expectations of the applicants in an eventual exercise of the position of member of the JNJ. This situation is aggravated by the relative weight of the score given to this phase (40 out of a total of 100), which determines the result in the scoring table. It is noteworthy that the 15 interviews were conducted in a single day, with different times and questions for each applicant, and that it was not known how to collect and deliberate on the score that each member of the CE would grant.

The Mission has repeatedly expressed its concern over various legislative attempts to undermine the independence, autonomy, and very existence of the JNJ. These bills submitted to the Congress attempt to modify the mandate and functions of the body without having been submitted to public consultation or to a technical and exhaustive analysis and evaluation of the first years of the JNJ's operation.

The MIO wishes to emphasize that a transparent and merit-based selection process for high-level justice authorities is a necessary, although not sufficient, element to guarantee an independent justice system and electoral authorities. In this sense, the context described here and the way in which this selection process was developed, leave the country with the need to continue strengthening the National Board of Justice and the independent functioning of the institutions that make up the justice system.

This report offers a final assessment of the selection process, detailing the mechanism used, the regulations applied, the challenges faced, and the recommendations suggested to improve this procedure in the future.

## 2. Context in which the election of the Peruvian National Board of Justice takes place

During the last years Peru has faced a remarkable institutional and democratic weakening, characterized by recurrent political crises and a growing social polarization, to the point that the country has had 6 presidents and 3 parliaments in a span of approximately 8 years; added to more than 50 deaths during protests outside the capital between December 2022 and March 2023.<sup>1</sup> Organized crime, both transnational and internal, has grown, and with it has grown citizen insecurity, which led to a national strike on October 23.<sup>2</sup>

The institutional crisis has generated, among its most worrisome consequences, the weakening of the justice system in Peru just when independent and effective justice is most needed. Mistrust in judicial institutions has been exacerbated by allegations of corruption and political manipulation that have permeated the system. In addition, political interference in crucial judicial cases has affected judicial independence and the impartiality of the judicial justice system, as well as accountability. Congress has passed laws that hinder the criminal prosecution of corruption and organized crime cases, including provisions related to special investigative methods, such as effective collaboration, restrictions on raids and the assignment of autonomous powers to the Peruvian National Police for criminal investigation.<sup>3</sup> All of this has created an environment that favors impunity for acts of corruption, human rights violations and crimes linked to organized crime. In this context, it is remarkable and commendable that some members and teams of the judiciary, the prosecutor's offices, and the national police continue to investigate and prosecute important cases of corruption and organized crime.

In the context of this institutional crisis, there are actions that jeopardize the independence and the very existence of the National Board of Justice. Among them are the multiple sanctioning procedures against members of the JNJ carried out by the Congress through impeachment procedures.<sup>4</sup> The members of the JNJ have been subject to several

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<sup>1</sup> Inter-American Commission on Human Rights, [Situation of Human Rights in Peru in the Context of Social Protests](#): approved by the Inter-American Commission on Human Rights on April 23, 2023; paras. 34, 181 et seq.

<sup>2</sup> Global Initiative against Transnational Organized Crime: "[Global Organized Crime Index](#)," Peru; Erika Solis Curi and Yhasira Elisa Fabián Terreros, [Dynamics of organized crime and corruption: approximations to a characterization based on Supreme Court pronouncements from 2018 to 2022](#), pp. 7-8.

<sup>3</sup> Law No. [32130](#) amending the Code of Criminal Procedure.

<sup>4</sup> IACHR, [Peru: IACHR expresses concern about constitutional accusations against justice operators and calls for respect for due process guarantees](#). Communiqué of June 21, 2023; United Nations Special Rapporteur on the independence of judges and lawyers, Communication sent to the Republic of Peru,

accusations before Congress in order to obtain the removal of their positions and the disqualification to exercise public functions for up to 10 years.<sup>5</sup> These proceedings have been widely criticized for having been carried out without respecting minimum due process guarantees, lacking a specific legal basis and being based on political motivations. It should be noted that, according to the media, more than half of the members of Congress could have been or are being investigated for different cases that could be decided precisely in proceedings before judges whose appointment, evaluation and confirmation depend on the JNJ.

Likewise, since January 2023, a series of legislative initiatives for legal and constitutional reform have been presented that, if approved, will seriously affect the independence and autonomy of the JNJ. These are related to modifications to the procedure that affect the integration of the JNJ and the Special Commission in charge of its appointment. In addition to these, there are constitutional reform initiatives to replace the JNJ with a National School of Magistrates<sup>6</sup>, and to reorganize the JNJ and the Attorney General's Office, removing their current incumbents.<sup>7</sup>

In addition, in the context of the election of the JNJ in Peru, an amendment to the New Constitutional Procedural Code was proposed, promoted by the Constitutional Commission of Congress. This proposal, approved in Congress, included two controversial changes: first, to reduce the number of votes needed in the Constitutional Court to resolve conflicts of competence, from five to four, just when Congress had presented a jurisdictional dispute over the permanence of two judges of the JNJ; and second, to establish that the decisions of Congress in constitutional impeachment proceedings cannot be subject to judicial review, which would have the effect in practice of shielding Congressional decisions.<sup>8</sup>

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September 18, 2026 ([AL PER 6/2023](#)), pp. 1 and 2; IACHR, [Peru: IACHR expresses concern about investigation against the National Board of Justice and calls for respect for due process](#). Communiqué of September 25, 2023; [Peru: IACHR expresses concern about congressional interference in the functioning of other branches of government](#). Communiqué of June 7, 2024.

<sup>5</sup> United Nations Special Rapporteur on the independence of judges and lawyers, Communication sent to the Republic of Peru, September 18, 2026 ([AL PER 6/2023](#)), pp. 1-4.

<sup>6</sup> [Predictamen](#) relapsed in the bills 6816/2023-CR, 06281/2023-CR, 06280/2023-CR, 06211/2023-CR, 06169/2023-CR, 05001/2022-CR, 04891/2022-CR, 04890/2023-CR, 04890/2023-CR, 04890/2023-CR, 03894/2022-CR and 02889/2022-CR, Constitutional Reform Law of Articles 142, 147, 147, 150, 151, 152, 152, 153, 154, 155, 156, 157, 158, 182 and 183 of the Political Constitution of Peru, and incorporating Articles 144-A and 150-A, to create the National School of the Magistracy and the Council of Interinstitutional Coordination of the Justice System, and to constitutionally regulate the National Authority of Control of the Judiciary of the Judicial Branch and the National Authority of Control of the Prosecutorial Function of the AG's Office.

<sup>7</sup> Constitutional Reform Bill declaring the reorganization of the National Board of Justice and the Attorney General's Office No. [8040/2023-CR](#).

<sup>8</sup> Bill amending Articles 110, 111 and 112 of Law 31307, New Constitutional Procedural Code, No. 04145/2022-CR. [04145/2022-CR](#). Approved by Congress in [second vote](#) on October 17, 2024. The deadline for signature or veto by the President of the Republic is ongoing, until October 29, 2024.

These changes take place in an environment of clear interest of the Congress to modify and reduce the independence of the judicial system, evidenced by the constitutional accusation and disqualification of two of the members of the JNJ. Although they were temporarily returned to their positions by means of a precautionary measure, Congress challenged this decision before the Constitutional Court, which - in turn - rejected the jurisdictional claim in a decision adopted on October 18, 2024.<sup>9</sup>

To these are added other actions, such as the exhortation of the Congress addressed to the Executive Branch, in order that, together with the Ombudsman's Office, the Constitutional Court, the Attorney General's Office and the Judicial Branch, it develops and presents a project of integral law reform to the justice and penitentiary system;<sup>10</sup> the enactment of modifications to the Law against organized crime;<sup>11</sup> and, the initiation of constitutional accusations against all the Supreme Prosecutors Members of the Board of Prosecutors.<sup>12</sup> Although these initiatives and reforms do not directly affect the functioning of the National Board of Justice, they form a context and are part of important recent proposals or modifications that put undue pressure on the Peruvian justice system. Given the composition and design of the CE, these actions could represent an indirect and current pressure on its members.

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<sup>9</sup> Infobae, "[Inés Tello and Aldo Vásquez continue in the National Board of Justice, despite congressional modifications to regulations](#)".

<sup>10</sup> Congress

of Peru, [Motion No. 13696/2024](#).

<sup>11</sup> Law [32138](#) amending the Law against Organized Crime (Law 3007).

<sup>12</sup> [Multiparty constitutional complaint](#), filed on October 23, 2024 before the Subcommittee of Constitutional Accusations of the Congress.



### **3. Background on the International Observation Mission and the election process of the National Board of Justice of Peru**

#### **3.1 International Observation Missions for the selection of high-level authorities of the justice systems in Latin America**

The International Observation Missions for the selection processes of high authorities of the justice systems in Latin America are an effort of the national and international civil society. This project is inspired by successful experiences of independent evaluation of selection processes of members of national and international judicial courts, particularly the panel created for the appointment of judges of the International Criminal Court.

Since 2015, the Due Process of Law Foundation (DPLF) has promoted or integrated panels of international experts to observe the elections of members of the Inter-American Commission on Human Rights (IACHR), judges of the Inter-American Court of Human Rights, and high court judges in countries such as El Salvador, Mexico, Peru, Costa Rica, Honduras, Ecuador, and Guatemala.

These panels are comprised of international experts in areas such as justice, transparency, human rights and anti-corruption. The experts act with full independence from DPLF and other sponsoring entities, which guarantees that their positions, deliberations and decisions are not subject to interference of any kind.

#### **3.2 International standards applicable to the selection process of high-level judicial authorities**

According to international human rights law and comparative law, the selection of high-level judicial authorities is governed by standards designed to guarantee the independence, impartiality and effectiveness of the judiciary, which are essential for the protection of human rights and the strengthening of the rule of law. These standards also seek to ensure that the processes for the appointment of such authorities are conducted with transparency, objectivity, and based on criteria of merit, suitability and the diversity of applicants. Consequently, States have the obligation to establish and implement selection procedures that are free from undue interference, are accessible to citizen participation and public scrutiny, promote equal opportunities and guarantee the selection of the best qualified persons for the exercise of the position. This contributes to safeguarding the integrity of the justice system and citizen confidence in it.

The international standards developed by the bodies of the international protection systems at the universal and inter-American levels are relevant for the Peruvian State to the extent that they are the product of the international legal obligations to which the State

has sovereignly bound itself.<sup>13</sup> We will refer in detail to these international standards below.

### ***3.2.1. Transparency, access to information and publicity***

Transparency is an essential component in the selection process of justice authorities. Transparency and publicity of the process ensure the participation of applicants under equal conditions and contribute to the legitimacy of the process and of the persons selected. In addition, it is a duty of the State to implement mechanisms that allow the public to know the criteria applied in the selection process of justice authorities, as well as all phases of the procedure, so that different social sectors can exercise adequate scrutiny and public evaluation.<sup>14</sup>

The State must guarantee maximum transparency and publicity in its actions, ensuring that the application of these principles is effectively material and not merely formal. This includes the design of the regulations applicable to the selection processes, as well as the execution of all stages of these and with regard to the complete information of the applicants' portfolios.

The principles of transparency and publicity contribute to guarantee the effective validity of the right to access public information, which implies the obligation to provide public information in a timely, complete and accessible manner, both actively (free access and without request) and passively (upon request).<sup>15</sup> This right is also recognized in the Peruvian Constitution.<sup>16</sup>

It should be noted that applicants to a high responsibility of a public power, such as the performance of a position in the justice system, voluntarily submit themselves to public

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<sup>13</sup> Vgr.: American Declaration of the Rights and Duties of Man (1948); Universal Declaration of Human Rights (1948); International Covenant on Civil and Political Rights (1966); American Convention on Human Rights (1969); Convention on the Elimination of All Forms of Discrimination against Women (1979); United Nations Basic Principles on the Independence of the Judiciary (1985); Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará) (1994); Bangalore Principles on Judicial Conduct (2003); I/A Court H.R., Case of the Constitutional Tribunal vs. Peru. Judgment of January 31, 2001 Series C No. 71; I/A Court H.R., Case of Apitz Barbera et al. v. Venezuela. Judgment of August 5, 2008. Series C No. 182; I/A Court H.R., Case of López Lone et al. v. Honduras, Judgment of October 5, 2015, Series C No. 302; I/A Court H.R., Case of Ríos Avalos et al. v. Paraguay, Judgment of August 19, 2021, Series C No. 429; IACHR, Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas. OEA/Ser.L/V/II. Doc. 44, 5 December 2013; IACHR, Corruption and human rights: inter-American standards, OEA/Ser.L/V/II. Doc. 236, 6 December 2019; among others.

<sup>14</sup> IACHR, [Guarantees for the Independence of Justice Operators: Toward Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc. 44, 5 December 2013, paras. 79 and 80.

<sup>15</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [The Right to Information in the Inter-American Legal Framework](#), OEA/Ser.L/V/II. IACHR/RELE/INF.9/12, 2012, p. 9.

<sup>16</sup> [Political Constitution of Peru](#), Article 2 numeral 5.

scrutiny on various aspects of their civic behavior, professional career, moral suitability, and even aspects of their private life. In this sense, the alleged tensions between the guarantee of the principle of transparency and publicity and the right to privacy should tend to favor the former, without prejudice to the protection and confidentiality of personal and sensitive data, such as family information, bank accounts, among others.

On the other hand, specific mechanisms for citizen participation must be guaranteed. Citizen participation is an essential element of the principle of transparency in the selection processes of high judicial authorities, since it allows organized civil society to provide valuable information about the candidates and to point out aspects that could require further investigation. Through the possibility of suggesting requests for information to State institutions, or the possibility of formulating accusations or substantiated complaints, civil society not only promotes a rigorous scrutiny of the candidates, but also opens relevant lines of investigation that strengthen the integrity of the selection process. This public collaboration mechanism ensures that the selection bodies have a comprehensive perspective on the background and conduct of the candidates, facilitating the evaluation of their ethics and suitability for the position. For this stage to be effective, it is essential to regulate a procedure with sufficient deadlines for its materialization, active and passive transparency of relevant information, timely coordination with the state entities responsible for collecting and providing complete and accessible information on the candidates within the deadline, allowing the persons indicated to respond to complaints and present their disclaimers in a fair and transparent manner, in addition to the debate and motivated and public decision by the body in charge. This active citizen participation not only reinforces the legitimacy of the process, but also helps to consolidate public confidence in the justice system.

### ***3.2.2. Selection based on technical criteria, merit and suitability of the applicants***

The selection processes for justice authorities must be based on criteria of merit and professional capacity, ensuring that the persons selected to occupy positions of such relevance have the appropriate training, experience and technical competencies for the exercise of their functions. In addition, it is necessary to select people of integrity and unquestionable track record, following the highest standards of suitability. Both criteria are crucial to ensure that the people selected exercise their positions properly and act independently from political and factual powers.<sup>17</sup>

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<sup>17</sup> [United Nations Basic Principles on the Independence of the Judiciary](#) (1985), Principle 10.

The evaluation of the merits and trajectory of the applicants must be based on objective and reasonable criteria that guarantee equal opportunities in the selection process.<sup>18</sup> Merit-based competitive examinations are one of the mechanisms that would allow selection based on merit, but their mere existence or design does not guarantee a selection process that adheres to such standards. They must be designed and executed in such a way that the weighting factors emphasize elements relevant to the profile or position to be filled, that the evaluation criteria are rigorous, susceptible to objective measurement and supervision, and that the rules of procedure ensure the nomination of the most suitable candidates.

Ensuring the standard of moral suitability involves assessing the integrity of applicants based on key parameters, such as professional conduct, ethics and respect in the professional environment, and the impact of their actions and decisions in the public forum. In addition, consideration should be given to the existence of disciplinary records, the nature of their professional relationships, and the possible repercussions of their actions with clients, users, or any other related party. Likewise, although the mere existence of investigations or legal proceedings on issues such as corruption, links with organized crime, or gender violence does not necessarily constitute a legal impediment to nomination, these aspects are relevant elements in the evaluation of the candidate's integrity and ethics. The consideration of these factors in the selection for such relevant functions endowed with such broad powers strengthens the credibility of the justice system, reaffirms its impartiality and consolidates citizen confidence in it.

### **3.2.3. *Judicial independence and impartiality***

The independence and impartiality of the judiciary are fundamental pillars of the principle of separation of powers inherent to the rule of law. In addition, it is an essential condition for the protection of human rights, as it allows justice operators to act without external or internal influences that may compromise their impartiality and objectivity.<sup>19</sup> This principle is expressly recognized in the Peruvian Constitution, which prohibits any interference by other powers of the State in the jurisdictional function.<sup>20</sup>

Independence must be preserved both at the institutional level, ensuring that the Judiciary remains autonomous from the other branches of government (external independence), and at the individual level, protecting the integrity and autonomy of each judge in the

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<sup>18</sup> I/A Court H.R., [Case of Reverón Trujillo v. Venezuela](#). Judgment of June 30, 2009. Series C No. 197, paras. 72-74; IACHR, [Guarantees for the Independence of Justice Operators: Toward Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc. 44, 5 December 2013, para. 75 et seq; [Report of the Special Rapporteur on the independence of judges and lawyers](#), A/69/294, 11 August 2014, para. 80.

<sup>19</sup> I/A Court H.R., [Case of Apitz Barbera et al. v. Venezuela](#). Judgment of August 5, 2008. Series C No. 182, para. 55 and 56.

<sup>20</sup> [Political Constitution of Peru](#), Article 139.

performance of his or her duties (internal independence).<sup>21</sup> Impartiality requires that justice operators approach each case without bias and with sufficient guarantees of transparency to avoid any reasonable doubt about the objectivity of the judicial process, which includes not only impartial performance, but also the appearance of impartiality.<sup>22</sup>

To guarantee independence and impartiality in material terms, judges must have protection mechanisms that shield them from criminal, professional or labor reprisals. These guarantees must prevent external pressures from state actors, politicians or other entities seeking to influence their decisions. Thus, judges can perform their functions without fear of threats or arbitrary sanctions, or criminalization, ensuring their ability to act impartially and in accordance with the law.

Regarding selection processes, it is essential to avoid the nomination of individuals with possible conflicts of interest that have not been adequately resolved or that substantially interfere with the function to be performed, active or hidden connections with political parties, active or hidden connections with criminal organizations, or a history of conduct incompatible with the judicial function, such as corruption or gender violence.

The rules, the process, but above all the character and conduct of the persons selected, must guarantee that those who occupy positions in the justice system are free of commitments to those who elected them, promoting the exercise of the principle known as the "duty of ingratitude". This means absolute independence with respect to interests outside the justice system, including - and especially - with respect to the persons or bodies in charge of the appointment. This implies that those who integrate the high authorities of justice, from the moment of their appointment, must act without considering that they have political debts or previous commitments that may condition their judgment or impartiality, with loyalty only to the constitution and the laws they have sworn to comply with, resolving in accordance to them and the facts of the case they are called upon to hear. This way, they fulfill their "duty of ingratitude" towards those who have supported, selected and appointed them.

In addition, the persons who are members of high judicial authorities must have guarantees of stability and immovability in their positions, avoiding arbitrary dismissals. Removal processes should be exceptional, proceeding only in serious cases and on grounds previously established by law. These processes, as in the case of political trials against judicial authorities, must be respectful of the due process guarantees and be carried out within an impartial legal framework, preventing them from becoming tools for arbitrary political control.<sup>23</sup> Removal from office should be justified only by objective and

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<sup>21</sup> I/A Court H.R., [Case of López Lone et al. v. Honduras](#), Judgment of October 5, 2015, Series C No. 302, para. 194.

<sup>22</sup> Bangalore Principles of Judicial Conduct (2003), principle 1.3.

<sup>23</sup> I/A Court H.R., [Case of Ríos Avalos et al. v. Paraguay](#), Judgment of August 19, 2021, Series C No. 429, para. 87, 95 et seq.

legal criteria, with reasoned decisions, and strict respect for the principles of legality, defense, and with an opportunity for review of the decision.

### ***3.2.4. Gender parity and integration of historically discriminated groups***

Another international standard that is important to observe in the election processes of the highest authorities of justice systems is the inclusion of women and the promotion of diversity, to ensure that the justice system reflects the plurality of the society it serves.

Gender parity is considered an indicator to measure the quality of democracy in countries, hence the need to guarantee a balanced participation and representation of women and men in positions of power and decision-making in all spheres of a nation's life - political, economic and social - including the justice system.<sup>24</sup>

Because of this and understanding parity as an instrument at the service of equality, this right has been gaining substantive relevance in some Latin American countries compared to others.

Thus, we find that countries such as Ecuador, Bolivia and Costa Rica have taken important steps to promote the balanced participation of men and women in their democracy. In 2008, Ecuador constitutionalized parity in nomination and public office positions. Meanwhile, in 2009, Bolivia included in its Constitution equal political participation and conditions between men and women, and the Electoral Law mandates parity. On the other hand, Costa Rica's Electoral Code stipulates that the lists must be composed of 50% men and 50% women<sup>25</sup>. Similarly, in Honduras, a mechanism was established to guarantee equitable gender representation in the Nominating Commission that proposes to Congress at least 45 candidates for 15 positions of magistrates of the Supreme Court of Justice, as well as in the Court itself. This mechanism requires that at least 23 of the 45 persons proposed to the Supreme Court be women, always maintaining an equal proportion in the selection of magistrates.<sup>26</sup>

In addition, it is important that specific mechanisms are in place to ensure that persons belonging to historically discriminated groups can compete under fair conditions. Plurality in the integration of the justice system allows for an administration of justice that responds

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<sup>24</sup> [Convention on the Elimination of All Forms of Discrimination against Women](#) (1979), Article 7 and [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women \(Belém do Pará\)](#) (1994) Article 4.j).

<sup>25</sup> International Institute for Democracy and Electoral Assistance, "La apuesta por la paridad: democratizando el sistema político en América Latina. Los casos de Ecuador, Bolivia y Costa Rica", Beatriz Llanos (editor), Lima: Asociación gráfica educativa, 2013.

<sup>26</sup> Special Law for the Organization and Functioning of the Nominating Board for the Nomination of Candidates for Magistrates of the Supreme Court of Justice, [Decree No. 74-2022](#).

to the diverse realities of the population, addressing structural discrimination and promoting a more equitable justice.<sup>27</sup>

It is important to note that when the regulations that include the participation of women are of constitutional rank, this implies that important steps are being taken towards parity. Although Article 2 of the Peruvian Constitution prohibits all forms of discrimination and recognizes the right to equality of all persons, there are no specific norms that guarantee parity and diverse representation in the organs of justice.

It should be emphasized that guarantees for the inclusive participation of historically excluded groups should not compromise the selection of the best candidates who meet the necessary requirements and merits. Even so, as part of the objective criteria to be evaluated, it is essential that those who aspire to these positions demonstrate effective respect for the principle of equality and non-discrimination, as well as the application of gender equity standards in their decisions, thus ensuring that human rights are fully respected in all areas of their jurisdictional and administrative actions.

### **3.3 The International Observation Mission on the National Board of Justice of Peru**

The purpose of the **MIO-Peru** is to provide technical and independent monitoring of the situation of the JNJ and the selection process of its members. In addition, it aims to evaluate the degree of commitment of the entities responsible for carrying out the selection process with the application of the respective applicable regulations, and to promote that the process is carried out in accordance with national and international standards and best practices in terms of judicial independence, transparency and access to information.

MIO-Peru was established at the request of the DPLF. The Mission conducts all its activities and deliberations independently, without any influence that would interfere with the integrity and objectivity of its observation.

The work of the MIO-Peru was carried out by the following internationally recognized experts: **Thelma Aldana** (Guatemala), former Attorney General and former Justice of the Supreme Court of Guatemala; **Edison Lanza** (Uruguay), former Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR); **Stephen McFarland** (United States), retired diplomat stationed twice in Peru, and former U.S. Ambassador to Guatemala; 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 Justicia Latinoamérica (JUSLAT), who is responsible for the Mission's Executive Secretariat.

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<sup>27</sup> Human Rights Council, [The independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers](#), Resolution A/HRC/RES/35/12 of 10 July 2017, para. 2.

The importance of international observation of the JNJ election process extends beyond the justice system. It is certainly related to the correct selection, appointment, evaluation and sanctioning processes of its High Authorities and each of its members. These authorities include judges of the High Courts,<sup>28</sup> , the highest authorities of the criminal prosecution system,<sup>29</sup> and those who make up the institutions in charge of managing the judicial and prosecutorial careers.<sup>30</sup>

In addition, the JNJ manages the judicial and prosecutorial career processes, plays a crucial role in the designation and ratification of key positions in the electoral system, which oversees the election of the authorities of the Executive Branch, Congress and municipalities. This makes the role and situation of the JNJ and the selection process of its authorities of particular concern at the international level.

Therefore, the relevance of the JNJ is not only related to the rule of law and democracy in Peru, but also to the impact that its situation has on the overall development of the country and on the well-being of the population and citizen security, especially of vulnerable groups. The independence of the Judiciary, the Attorney General's Office and the electoral system has a direct impact on the legal security necessary for Peru's development.

This independence of the Judiciary, the Attorney General's Office and the Electoral Power from the political power is what guarantees: (a) the adequate control and sanctioning of corruption, ensuring that public resources are destined to the needs of the citizenry and are not unduly diverted; (b) the independent, technical and effective investigation, prosecution and sanctioning of organized crime in all its forms, avoiding its installation in the communities and especially within the organs of the State and the political power in particular; and, finally, c) the aforementioned independence guarantees that there will be an independent development, recount and qualification of the electoral processes, ensuring that the persons for whom Peruvians have voted are declared elected, avoiding electoral frauds, and investigating and sanctioning them when appropriate.

The lack of this judicial independence may also generate barriers or produce obstacles in terms of compliance to guidelines and standards required to incorporate Peru into organizations that group the most relevant economies, such as the OECD, or to access credit and trade agreements, as recently recalled by the International Monetary Fund (IMF). It could also lead to regional or global questions about the legitimacy of future elections and their results, with possible repercussions of political and economic isolation.

For all these reasons, this Mission considers it essential to pay special attention to the current situation of the Peruvian National Board of Justice and related processes.

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<sup>28</sup> Supreme, Superior or Constitutional Courts.

<sup>29</sup> Prosecutors or attorneys general, national or higher.

<sup>30</sup> Councils, Boards, Academies and Schools of the Judiciary.



### 3.4 MIO-Peru activities

Since its constitution, MIO-Peru has been gathering information on the situation of the JNJ and on the selection process of the people who would be part of the Board as of 2025. This includes monitoring, recording and analyzing the progress and incidents related to the situation of the JNJ, as well as the process of appointing its members.

In addition, MIO-Peru conducted three observation visits to the country. The first took place between May 6 and 10, the second between August 12 and 16, and the third between October 18 and 23, 2024.

During each of the on-site missions, a variety of meetings were held to gather information in order to enrich the monitoring process. The analysis of this information and of the applicable national regulations contributed to the formation of the MIO-Peru's opinion on the situation of the JNJ, the process of appointing its members, and the recommendations contained in this report. At the end of the first and second visits, the Mission shared its preliminary observations and recommendations with the interested Peruvian State organizations and international community,<sup>31</sup> which were systematized in two partial reports.<sup>32</sup> At the conclusion of its third visit, MIO-Peru formulated the conclusions and recommendations included in this report.

During the visits, the Mission held meetings with the National Board of Justice, the Peruvian Attorney General's Office<sup>33</sup>, the Peruvian Ministry of Foreign Affairs, as well as diplomatic representations, the United Nations System and the Office of the United Nations High Commissioner for Human Rights (OHCHR). It also met with the Bar Associations of Lima, Ayacucho and Cusco and with representatives of various social sectors such as the Platform for Democracy, the Lima Chamber of Commerce and other representatives of the business sector, the President of the Peruvian Episcopal Conference and the media. The mission highlights the relevance of the participation and oversight of diverse civil society actors in relation to the status of the JNJ and the selection process of its members, as well as in monitoring legislative changes and other actions that could influence democracy and the rule of law in Peru.

While thanking the Ministry of Foreign Affairs and other state actors that have received this mission on several occasions, MIO-Peru expresses its regret for not having been able to meet with other key actors in this process, despite having requested meetings in advance. These Peruvian State bodies are particularly important, as their decisions, in a context of high polarization, could affect the independence and autonomy of the selection

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<sup>31</sup> The communiqués and reports issued by MIO-Peru are available at this link: <https://dplf.org/mision-internacional-de-observacion-sobre-la-junta-nacional-de-justicia-del-peru-2/>.

<sup>32</sup> MIO-Peru, [First Progress Report](#) and [Second Progress Report](#).

<sup>33</sup> The interim Attorney General, Juan Carlos Villena, and the new head of the entity, Delia Espinoza, appointed on October 18, 2024.

process of the JNJ and its functioning. Among those who could not be met during the three visits were the different parliamentary benches and the President of the Congress.

In particular, the Mission expresses its disappointment upon not having been received at a meeting by the members of the Special Commission in charge of the selection and appointment of the members of the JNJ. This, despite their formal requests for such meetings through various channels. Although a preparatory meeting was held with the Ombudsman on January 26, 2024 when the Mission had not yet been formed, it should be noted that none of the requests for meetings during the three visits were accepted. Notably, the request made on October 1, 2024, prior to the third visit, was answered in a negative manner on October 14, 2024, under the argument that the President of the Special Commission had received the MIO-Peru in a previous session, which is not true.

It was only possible to hold a virtual meeting during the second visit with the then Technical Secretary of the CE and some representatives of the full members. At that meeting, MIO-Peru transmitted its observations, concerns and recommendations, which were extensively detailed in the corresponding partial report.<sup>34</sup>

In all of their visits, the members of the MIO-Peru held press conferences and interviews with journalists and media interested in the process. During these visits, the preliminary recommendations were disseminated and the audience was reminded of the international standards applicable during the critical moments of the process.<sup>35</sup>

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<sup>34</sup> MIO-Peru, [Second Partial Report](#).

<sup>35</sup> A total of 134 press articles, opinion columns and blogs about MIO-Peru and its activities were recorded in a media monitoring conducted between May 6 and September 18, 2024.

## 4. Regulatory framework and development of the election process of the National Board of Justice of Peru

### 4.1. The National Board of Justice

The JNJ is an independent body in charge of the selection and appointment of judges and prosecutors at all levels in Peru, except in cases where they are elected by popular vote.<sup>36</sup> It is also in charge of evaluating the performance and carrying out disciplinary proceedings against judges and prosecutors.<sup>37</sup> On the other hand, it is in charge of appointing the head of the National Office of Electoral Processes (ONPE)<sup>38</sup> and the head of the National Registry of Identification and Civil Status (RENIEC).<sup>39</sup>

It is composed of seven regular members, who are selected through a merit-based competitive examination and serve for a period of five years. Alternates are called according to the order of merit obtained in the competition.<sup>40</sup>

The members of the JNJ can be removed only for serious cause and with a two-thirds majority of the legal number of members of the Senate.<sup>41</sup>

It is important to note that the JNJ has constitutional status and was established after a constitutional plebiscite put to the consideration of the citizenship in 2018, which had the support of 89% of the electoral roll. On the other hand, the reform that originated this new institutionality was preceded by a public scandal, after the revelation of political influence and private interests in the extinct National Council of the Magistracy.

### 4.2. The Special Commission

The merit and competitive examination is carried out by a Special Commission, composed of: the Ombudsman, the President of the Judiciary, the Attorney General, the President of the Constitutional Court, the Comptroller General, a rector elected in a vote by the rectors of the public universities with more than fifty years of seniority, and a university rector, elected in a vote by the rectors of the private universities with more than fifty years of seniority. The CE is supported by a Specialized Technical Secretariat.<sup>42</sup>

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<sup>36</sup> [Political Constitution of Peru](#), Article 150, amended by Law No. 30904, published on January 10, 2019.

<sup>37</sup> *Id.*, Article 154.

<sup>38</sup> *Id.*, Article 182.

<sup>39</sup> *Id.*, Article 183.

<sup>40</sup> *Id.*, Article 155.

<sup>41</sup> *Id.*, Article 157.

<sup>42</sup> *Id.*, Article 155.

The CE is presided over by the Ombudsman, who also has the power to appoint the head of the Specialized Technical Secretariat, following the reform of the Organic Law of the JNJ carried out shortly before the beginning of the current selection process. The reform eliminated the need for a public competition to appoint the head of this Secretariat within the CE.<sup>43</sup>

On June 6, 2024, the final conformation of the Special Commission in charge of the public competition of merits and opposition for the election of the members of the JNJ for the year 2025 was approved.<sup>44</sup> By virtue of the appointment of César Enrique Aguilar Surichaqui as Comptroller General by the Congress, on August 1, 2024, the Presidency of the Special Commission approved the modification of the conformation of the body.<sup>45</sup> The composition of the CE was modified again on September 6, 2024, following the appointment of the new President of the Constitutional Court.<sup>46</sup> On October 18, 2024, Delia Espinoza was appointed by the Board of Supreme Prosecutors as Attorney General.

### **4.3. Application requirements to become a member of the JNJ**

To be a member of the JNJ, one must: be Peruvian by birth; be a practicing citizen; be over 45 years of age and under 75; be a lawyer with professional experience or a university professor for at least 25 years, or a researcher in legal matters for 15 years; not have been convicted of an intentional crime; and have a recognized professional career and moral suitability.<sup>47</sup>

The following persons are disqualified from being members of the JNJ:

- Senior government authorities, officials of the Judiciary, Attorney General's Office, and others who exercise political authority while in office and up to six months after leaving office.
- Affiliates of political organizations without a license to run.
- Those sanctioned, separated or expelled from a professional association.
- Those convicted of felonies or conviction proceedings.
- Those convicted of gender or family violence.

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<sup>43</sup> [Law No. 30916](#), Organic Law of the JNJ. Article 77.

<sup>44</sup> Presidency of the Special Commission for the election of members of the JNJ, [Resolution 001-2024-CE-P](#).

<sup>45</sup> *Id.*, [Resolution 002-2024-CE-P](#).

<sup>46</sup> Comisión Especial para la elección de miembros de la JNJ, ["Modifican conformación final de la Comisión Especial con la incorporación de la Presidenta del TC"](#).

<sup>47</sup> [Political Constitution of Peru](#), Article 156, amended by Law No. 30904, published on January 10, 2019; [Law No. 30916](#), Organic Law of JNJ. Article 10.

- Those sanctioned by the Comptroller's Office.
- Those dismissed for serious misconduct in the public or private sector.
- Those affected by the inabilities of the judicial and fiscal laws.
- Judges or prosecutors dismissed or not ratified.
- Those judicially disqualified.
- Those with debts in coercive or judicial collection.
- Those declared in culpable or fraudulent bankruptcy.
- Those incapacitated from exercising the functions of the position.
- Those enrolled in registers of maintenance debtors, sanctioned for malpractice, civil reparations, serious crimes (terrorism, trafficking, rape), among others.
- Those convicted for maintenance obligations or extramarital filiation.<sup>48</sup>

The profile established in the competition rules states that the persons that integrate the JNJ must have, at least, a democratic trajectory and ethical principles, academic solvency and exercise their functions with independence and impartiality. In addition, they are required to be "honest people, with a democratic trajectory of integrity, proven and suitable [and who maintain] a profile of constant fight against corruption, with specific knowledge in various areas of law."<sup>49</sup>

#### 4.4. Regulations and Technical Instruments elaborated by the CE

The selection process is regulated by the Organic Law of the National Board of Justice, which provides for citizen participation in all the stages of the process.<sup>50</sup>

The applicable internal regulations contemplate two **mechanisms for citizen participation**: the presentation of **objections** during the curriculum evaluation procedure, due to non-compliance with the requirements set forth in the law, which includes the possibility of challenging the solvency and moral probity requirement; and the presentation of duly substantiated **complaints**.<sup>51</sup>

The objections must be submitted in writing with the respective evidence and the applicant has the opportunity to present his or her arguments before the Special Commission.<sup>52</sup> According to the Organic Law of the JNJ, the Plenary of the Special Commission must resolve the objections in a reasoned manner prior to the written tests

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<sup>48</sup> [Law No. 30916](#), Organic Law of the National Justice Board. Article 11.

<sup>49</sup> Comisión Especial para la elección de miembros de la JNJ, Bases del concurso público de méritos para la elección de los miembros de la Junta Nacional de Justicia, Resolución No. 002-2024-CE. [002-2024-CE](#). p. 3 - 4, Annex II.

<sup>50</sup> [Law No. 30916](#), Organic Law of the National Justice Board, Article 51.

<sup>51</sup> *Id.*, Articles 51 and 52.

<sup>52</sup> *Id.*, Articles 54 and 55.

of the candidates.<sup>53</sup> The Plenary is also competent to hear and resolve appeals for reconsideration.<sup>54</sup>

The Special Commission is in charge of approving the **competition rules**, which must observe the six stages provided by law: call for applicants, knowledge evaluation, curriculum evaluation, confidence tests,<sup>55</sup> personal interview,<sup>56</sup> publication of the merit list, in that order. In addition, the bases must guarantee the publicity of all the stages, including the live broadcasting of the personal interviews, and citizen participation in all stages.<sup>57</sup> The law obliges the Special Commission to consider the results of the confidence tests for the issuance of its final decision and to give reasons for all its decisions.<sup>58</sup>

On July 15, 2024, the CE resolved to modify Articles 8, 12, 16 and 24, and the First Final Provision of the Internal Regulations of the Special Commission.<sup>59</sup> In addition, on the same day, the CE approved the terms and conditions of the contest<sup>60</sup>, which includes a timeline of the contest<sup>61</sup>, and resolved to call for the election process of the members of the JNJ. It ordered the publication of the announcement and the rules in the official newspaper El Peruano and other media.<sup>62</sup> These changes to the rules of the contest were made without publicity or prior consultation with civil society, academia and other actors interested in the process, which will be analyzed in the following chapter.

According to the Internal Regulations of the Special Commission and the competition rules, the evaluation is based on a total of 100 points distributed as follows:

• Knowledge evaluation	30%
• Curricular evaluation	30%

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<sup>53</sup> *Id.*, Article 56.

<sup>54</sup> *Id.*, Article 57.

<sup>55</sup> *Id.*, Article 92. The confidence tests include: patrimonial test, socioeconomic test, and psychological and psychometric test. The results of the confidence tests are public, with the exception of the "extremes protected by the fundamental rights of the applicant".

<sup>56</sup> *Id.*, Article 93. The interview is of a public nature and has the purpose of examining the personal conditions, professional background, perspectives and knowledge of the justice system of the applicant.

<sup>57</sup> *Id.*, Article 86.

<sup>58</sup> *Id.*, Article 93.

<sup>59</sup> Special Commission for the election of members of the JNJ. [Resolution 001-2024-CE](#). The amended articles refer to the functions of the EC, the formalization and notification of agreements, the Specialized Technical Secretariat and the functions of its holder as responsible for access to public information, and the institutional web portal of the EC.

<sup>60</sup> *Id.*, Bases of the public merit-based competition for the election of the members of the National Board of Justice. Resolution No. 002-2024-CE. [002-2024-CE](#).

<sup>61</sup> *Id.*, [Timeline](#).

<sup>62</sup> *Id.*, Resolution No. 002-2024-CE. [002-2024-CE](#).

- Personal interview evaluation **40%**

The **knowledge evaluation** is composed of 50 multiple-choice questions, including the resolution of 15 cases, and must follow this distribution:

• Knowledge in law	<b>50%</b>
• Knowledge in public management	<b>30%</b>
• Knowledge in general culture	<b>40%</b>

The minimum score to pass the knowledge evaluation stage is 20 points.<sup>63</sup>

The **curricular evaluation** stage consists of the verification of compliance with the legal requirements to be a member of the JNJ, through the supporting documents submitted and the assignment of scores according to the rubric approved in the competition bases.<sup>64</sup>

The **confidence testing** phase does not contain a score determination and its results are referential. The tests include:

<b>Asset test</b>	Aimed at verifying the applicant's asset situation and contrasting it with the Sworn Statement of Income and Assets. The test is in charge of the Office of the Comptroller General.
<b>Socioeconomic test</b>	Aimed at identifying the social and economic environment surrounding the applicant, in order to detect possible personal, labor, economic and/or financial conflicts of interest. The test is conducted by the Office of the Comptroller General.
<b>Psychological test</b>	Aimed at identifying personality traits of applicants that allow estimating their future job performance.
<b>Psychometric test</b>	Designed to measure the intellectual abilities and aptitudes of the applicants that allow them to be related to the function for which they are called.

The results are uncontested and are delivered personally to the applicant. This evaluation does not suppose elimination and its results may be invoked by the CE members during the personal interviews.<sup>65</sup>

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<sup>63</sup> *Id.*, p. 8.

<sup>64</sup> *Id.*, p. 8 - 9, Annex III.

<sup>65</sup> *Id.*, p. 9.

The evaluation of the **personal interview** must include as "gravitating and defining elements" the probity and suitability of the applicant,<sup>66</sup> in addition to analyzing his/her professional trajectory in accordance with the profile of the position. The interview is an eliminatory round, requires a minimum score of 25 points, and the decision declaring the applicant suitable or not must be adopted with the affirmative vote of two thirds of the CE. The personal interview evaluates:

Results of confidence tests: patrimonial, socioeconomic, psychological and psychometric.	No score
Professional trajectory: achievements in the different professional stages, learning, opportunities for improvement.	12 points
Solvency and suitability: values and principles governing their lives, integrity, among others. Analysis of the applicant's legal logic reasoning.	16 points
Personal projection: expectations and proposals in case of assuming the position, performance and communication skills.	12 points
<b>TOTAL</b>	<b>40 points</b>

According to the competition bases, the **complaints** filed by citizens based on questions about the suitability of the applicants must be evaluated during the personal interview.<sup>67</sup>

Once the interview stage is concluded, the CE must publish the **final merit table** with the final qualifications of all the persons who passed all the stages of the competition. Subsequently, the CE must proceed with the corresponding vote, which requires the affirmative vote of 5 members of the CE,<sup>68</sup> and summon those who achieved a vacancy as a full member of the JNJ for the **proclamation and swearing in**.<sup>69</sup>

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<sup>66</sup> [Internal Regulations of the Special Commission in charge of the public merit-based competition for the election of the members of the National Judicial Board](#). Articles 18 and 20.

<sup>67</sup> Special Commission for the election of members of the NJB. Bases of the public merit-based competition for the election of the members of the JNJ. Resolution No. 002-2024-CE. [002-2024-CE](#). p. 10 and 12, Annex IV.

<sup>68</sup> [Internal Regulations of the Special Commission in charge of the public merit-based competition for the election of the members of the National Board of Justice](#). Article 10.

<sup>69</sup> Special Commission for the election of members of the NJB. Bases of the public merit-based competition for the election of the members of the National Judicial Board. Resolution No. 002-2024-CE. [002-2024-CE](#). p. 11.



## 5. Main findings of the MIO-Peru on the situation of the National Board of Justice and the process of electing its members

### 5.1. Legislative reform initiatives affecting the independence of the JNJ

***MIO-Peru has closely followed and has warned in different communications its concern in relation to various legislative attempts to undermine the independence, autonomy and even the very existence of the JNJ. In fact, various bills - submitted to the Congress - are aimed at substantially modifying the mandate and functions of this constitutional institution. None of them has been preceded by a public consultation process or an exhaustive study of the first years of the JNJ's operation. However, they could be successful due to a parliamentary context that is adverse to the current functioning of the body.***

Judicial independence and the autonomy of the Attorney General's Office constitute a fundamental pillar of the rule of law and democracy. In order to preserve these principles, it is crucial that the political power refrains from exerting any kind of interference or pressure on judicial and prosecutorial functions. Only through this manner can the rights and freedoms enshrined in constitutional texts and international commitments be protected, in addition to guaranteeing effective control over the public authorities to prevent them from imposing themselves arbitrarily.

In Peru, this manifests itself, among other ways, through undue interference in the appointment of its high authorities, the push for constitutional reforms, the use of impeachment mechanisms to remove high-ranking judicial officials, or through judicial processes that result in rulings that interpret the Constitution in a way that undermines judicial independence. These actions of political power on the selection and functional independence of the Judiciary and the Attorney General's Office constitute an undue intervention in a democratic system and an attack against the rule of law.

#### 5.1.1. *The proposal to replace the JNJ with a new agency*

***The National Board of Justice has the nature of a judicial council, and as such plays a fundamental role in the defense of the independence of the justice system. It is a body created and incorporated into the Constitution through a constitutional reform backed by the approval of an overwhelming majority of 86% of the participants of the 2018 referendum.***

As is public knowledge, the Congress has activated the processing of an initiative to reform the constitutional text, eliminating the JNJ and replacing it with a different institution.

As has been pointed out, the JNJ has the power to carry out fundamental processes of the judicial and prosecutorial careers at all levels, in addition to guaranteeing independence in the appointment and ratification of the heads of two bodies of the electoral system. The modification of its institutional design and, even more, its replacement by another institutional framework, is a major public policy issue. It is a decision that it is not advisable to improvise or rush, even less so in view of the proximity of the election of its new authorities.

An institution as young as the JNJ requires a serious technical study - carried out with national consultation, international assistance and social participation - that diagnoses its functioning, identifies its strengths in order to enhance them, and also its weaknesses in order to introduce the necessary corrections, be they management improvements, budget increases, organizational redesign, etc. To date, we have not been able to learn of any technical studies that make diagnoses and well-founded proposals suggesting the elimination of the JNJ, replacing it with another institution, whose creation has not been technically justified either.

As is well known, the crisis of legitimacy of the National Council of the Judiciary and part of the Peruvian high judiciary involved in serious acts of corruption (the "Cuellos Blancos del Puerto" case), led to the proposal before the legislative body first, and then before the citizenry, of the replacement of said Council by a National Board of Justice. The decision, as mentioned above, was overwhelmingly in favor of its establishment (86% approval with 92% citizen participation). It does not seem reasonable then, that without technical support, the decision of the sovereign people should be disregarded, and that this institution should be removed only by a Congressional decision.

It should be added that the debate on this constitutional reform initiative - together with other regulatory amendments that could reduce the autonomy and independence of the JNJ and the electoral system from the political power - have affected the context in which the process of selection and appointment of the persons who will be part of the Board as of 2025 should take place. Such initiatives are mentioned by different experts and observers as one of the causes that have discouraged the participation of quality professionals in the selection process of the JNJ, who may fear that their appointment will be ephemeral or be plunged into institutional chaos.

### ***5.1.2. Legal reform initiatives undermining the autonomy and independence of the JNJ***

***This Mission has observed with concern the progress of a series of legal reform initiatives aimed at shifting and concentrating power to the Congress or other bodies such as the Ombudsman, to the detriment of the autonomy and independence of the JNJ.***

Mainly, the proposed reforms seek to: modify the Constitution in order to reduce the number of votes required for the removal of the members of the National Justice Board;<sup>70</sup> reform the Organic Law of the JNJ so that the Special Commission in charge of the election of the members of the JNJ is chaired by the person who presides the Constitutional Court (TC), instead of the person in charge of the Ombudsman's Office;<sup>71</sup> to establish the immediate termination of the members of the JNJ who reach 75 years of age so that they may be replaced by their substitute.<sup>72</sup>

Another of the proposed reforms would enable those who were not selected to be members of the JNJ -neither as full or substitute members- to be promoted to the position of Board member.<sup>73</sup> This initiative contradicts universal principles that sustain the autonomy and independence of the JNJ, such as the meritocratic principle in the selection of its members, and could lead to the disregard of the process that the citizens, through their direct will, explicitly outlined in the Constitution, establishing the way in which the members of the JNJ are selected and the competent entity for this purpose, which is the Special Commission.

Similarly, since there is already a list of persons in this situation, what could be approved is a legal norm that would allow specific individuals (not abstract contestants) to access a position for which they were not selected. Furthermore, in practice, this would mean that their appointment would not have been made by the Special Commission but by the Congress, exercising a power that has not been granted to it by the Constitution.

In addition, this Mission expresses its concern over the legal reform introduced on May 17, 2024 that allowed the Technical Secretariat of the Special Commission to cease to be a position defined by public competition, and to become a position of trust of the Ombudsman. The original regulation requiring a public competition aimed at avoiding the preponderant influence of one member of the Special Commission over the others, with the understanding that an institutional framework was established to guarantee the autonomy and independence of its members in the selection process of the National

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<sup>70</sup> Constitutional reform bill that modifies various articles of the political constitution of Peru and reduces the number of votes for the removal of members of the national board of justice, election and removal of the ombudsman and the election of judges of the constitutional court, No. 03894/2022-CR. [03894/2022-CR](#). The bill also seeks to reduce the number of votes required for the election or removal of the head of the Ombudsman's Office and the members of the Constitutional Court.

<sup>71</sup> Bill amending Articles 71 and 73 of Law 30916, Organic Law of the National Justice Board, No. [04890/2022-CR](#).

<sup>72</sup> Bill proposing a constitutional reform that modifies article 156 numeral 3 of the Political Constitution of Peru to establish the immediate dismissal of magistrates upon reaching 75 years of age and to allow the entry of the alternate to the JNJ, No. [05001/2022-CR](#).

<sup>73</sup> Bill [7716/2023-DP](#) amending Article 9 and incorporating the Thirteenth Transitory Complementary Provision in the Organic Law of the JNJ - Law No. 30916, to improve its operation and sustainability.

Board. As a result of the reform, the person is appointed directly by the Ombudsman, without necessarily responding to the confidence of the collegiate body of the Special Commission, nor does the latter have the power to establish whether the person chosen has the knowledge and technical qualifications to carry out this function.

On the other hand, MIO-Peru points out the recent exhortation made by the Congress to the Executive Branch to coordinate with the Ombudsman's Office, the Constitutional Court, the Attorney General's Office and the Judicial Branch the presentation of a bill for a comprehensive reform of the justice and penitentiary system.<sup>74</sup> It is worrying, on one hand, the general scope of the content of the possible bill that has an implicit judgment on the justice system, which is not affirmed in a serious technical study that identifies its strengths and weaknesses, and proposes solutions and a public policy calendar that can implement them, backed by a financial report that estimates its costs and identifies the sources of financing. Equally worrisome and revealing of the lack of technical support for the Congress' request is the 20-day deadline established by the legislature within the exhortation to undertake a public policy of such magnitude.

### ***5.1.3. Impeachment trial of the Congress against members of the JNJ***

***This Mission has gathered information that reveals an unusual and repeated pattern of impeachment use -through the figure of constitutional accusation- against members of the JNJ, which undermines the independence and autonomy of the institution and the justice system.***

Impeachment should be a last resort in the face of a notable abandonment of functional duties by the holders of a State organ, since the political-legal control should be exercised by the Congress with caution and deference towards the powers of another State organ. There is a universal consensus that the impeachment trial must be subject to the standards of due process and, above all, be initiated based on strict grounds that satisfy the principle of legality. These standards are stricter when the high authorities who are subject to this mechanism are members of the organs of the justice system, since they enjoy a reinforced protection, due to the tasks they perform. This protection requires that the regulated grounds refer to serious offenses, and that they cannot be punished for the content of the decisions they adopt.

The political proceedings against members of the JNJ observed have not met, in our opinion, the standard of due process, which presupposes, among other elements, a clear accusation, individualized in its elements, referring to an explicit cause that describes those serious offenses and is supported by evidence. In such proceedings, it does not appear that individualized charges have been established, but rather collective or general

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<sup>74</sup> Congress of Peru, [Motion No. 13696/2024](#).

charges, nor strict and previously established grounds have been accredited; lacking, in addition, a sufficient foundation on behalf of each congressman who has sustained and approved them.

There are also serious allegations about possible negotiations of congressmen to vote in favor of sanctioning members of the JNJ in exchange for obtaining benefits in criminal investigations in which they are involved. Such allegations have led to the opening of investigations by the criminal justice system, and call into question the guarantee of impartiality of those who must decide in these proceedings.

The information gathered after the first visit leads this Mission to consider that the impeachment proceedings against members of the National Board of Justice, and the decisions adopted in those proceedings, have been far from satisfying the constitutional guarantees of legality of the accusation, due process and a decision based on law.

The lack of an adequate regulation that guarantees due process and the principle of legality, together with a repeated and not very deferential use of the powers of another branch of the State, undermine the independence and autonomy of the JNJ in the face of the political power expressed in the parliament, thus affecting the rule of law and the effectiveness of jurisdictional control over the political power, precisely delegitimizing the Peruvian political system.

These political trials -carried out with no apparent factual grounds that could be considered serious- have altered the composition of the JNJ, by disqualifying two of its members and, thus, the composition of the decision-making criteria within the collegiate body, and the viability of adopting key decisions by affecting the majorities and the quorum required for its regular operation.

The alteration of the composition of the JNJ, as a result of the recent disqualification of two of its members by the Congress through impeachment, is a matter of particular concern for MIO-Peru. This Mission has considered that the repeated initiatives to remove or politically disqualify members of the JNJ is a worrisome pattern that undermines its independence and that of the justice system. It should also be noted that this occurred when the Board was supposed to meet to make important decisions for the country, such as the decision on the ratification of the head of the ONPE, as well as the decision on the disciplinary responsibility of the former Attorney General of the Nation, on serious charges.

An example of this can be seen in the process of ratification of the head of the ONPE, for not having reached the majority of votes required by law in the first instance - despite the fact that there were positive references of his performance -, it occurred in the framework of a Board that had a reduced quorum, which facilitates the conditions for a minority to have the ability to block a collegiate decision, in contrast to the conditions that would exist if the collegiate was in session with all its members. After a second vote, the continuity of the mandate of the head of the ONPE was ratified, despite the reduced composition due to the cases opened by the Congress against several members of the JNJ.

This Mission is therefore concerned about the impact that the decisions of Congress, which have reduced the composition of the JNJ, may have on the independence of the electoral system and the justice system. Likewise, the recent application of the sanction of removal from office of the former Attorney General of the Nation, and the future decisions of high public interest that the JNJ must adopt with a reduced quorum, generate justified doubts to this mission about the impact that the actions of the Parliament may have on the Judiciary, the Attorney General's Office and the electoral bodies. This reinforces the recommendation to act with strict adherence to international standards to avoid undue interference.

## **5.2. The lack of openness and cooperation of the Special Commission for the observation of the process by the MIO-Peru**

***The International Observation Mission deeply laments the lack of openness and collaboration with international bodies on behalf of the Special Commission in charge of the selection process of the members of the JNJ. This lack of openness, which is even expressed towards organizations that Peru integrates as part of the international community, has an impact on public confidence and perception of the transparency of the selection process.***

This attitude contrasts significantly with the experience in other countries in the region, such as Ecuador and Honduras, where the authorities in charge of the selection processes have facilitated access to international observation, allowing for transparent scrutiny in line with international standards of justice and judicial independence.

Regarding this Mission, the Special Commission refused to accept the meetings requested, there was no possibility of establishing a dialogue regarding international standards related to the selection of high-level justice authorities, and it did not allow on-site access to the personal interviews.

International observation is a crucial component in guaranteeing the transparency and legitimacy of such sensitive processes as the selection of the highest authorities of the justice systems. In addition, international observation contributes to strengthening citizen confidence in national institutions and to ensuring that appointments are made in accordance with international standards and based on the principles of merit, impartiality and transparency.

### 5.3. The formation of the Special Commission, its operation and the preparation of the competition rules.

***Through its partial reports, the Mission has pointed out the opacity that characterized the preliminary actions of the selection process, such as the formation of the Special Commission, its actions and institutional management instruments, as well as the design of the competition rules and regulations.<sup>75</sup>***

Firstly, MIO-Peru notes that there was no further publicity about the steps taken for the formation of the Special Commission, nor the election of the representatives of the public and private universities, until the approval of the final composition carried out on June 6, 2024. The publication of said resolution by the Ombudsman, as President of the CE, is the first official action published on the Commission's website. There was also no publication of the CE's agenda or schedule of sessions.

Since then, the meetings and deliberations of the CE have not been announced in advance and their content has not been widely disseminated, beyond the publication of summarized minutes of their meetings.<sup>76</sup> The CE has also not published the institutional and financial management documents, nor the cooperation and collaboration agreements with public and private institutions for the implementation of the different stages of the selection process.

MIO-Peru emphasizes that the absence of information surrounding the budget and its execution, as well as the conditions of the agreements, may generate doubts about the correct administration of resources and the influence of external actors in the process. Transparency in these aspects is crucial to avoid conflicts of interest and ensure responsible and equitable management. Guaranteeing the publicity of financial and institutional information is also essential to maintain public confidence and legitimacy of the process and to allow adequate monitoring of the process.

The opacity of the process was also evidenced by the fact that the Regulations and Rules of the Competition were neither socialized nor publicly consulted by civil society organizations and specialized agencies. In contrast, in the 2019 process, a public consultation of these documents was carried out, which allowed specialized public institutions and social actors to make contributions and observations to strengthen their content. By limiting the possibility of receiving and considering contributions from various sectors of society through a consultation, an opportunity to incorporate significant improvements and adopt good comparative practices in judicial selection was lost.

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<sup>75</sup> MIO-Peru. [Press Release](#) and [Second Progress Report](#).

<sup>76</sup> Special Commission for the election of the members of the NYJ. [https://www.comisionespecial-jnj.gob.pe/categoria\\_normas\\_2024/actas/](https://www.comisionespecial-jnj.gob.pe/categoria_normas_2024/actas/)

The lack of active transparency from the early stages of the process has limited access to public information and, consequently, the capacity of civil society to scrutinize on the actions of the body in charge of the selection process of the JNJ. The Mission emphasized through various communications that civil society participation and oversight is crucial to identify and correct deficiencies in the management of the CE and the selection process.

As a result, the rules approved for the current competition did not show significant improvements compared to those corresponding to the 2019 process and lacked clear protocols for the evaluation of applicants in its different stages. These design deficiencies had a negative impact on the objectivity and rigor of the selection process.

It should be added that during the second visit, on the same day that the virtual meeting was held between the MIO-Peru and the then Technical Secretary of the CE, the latter was dismissed.<sup>77</sup> Even more disturbing is that the decision to remove the Technical Secretary and appoint his replacement was taken unilaterally by the Ombudsman, without public justification or publicly available information. There was also no evidence that this decision was consulted with the other heads of State institutions that were members of the plenary of the Special Commission.

On the other hand, it is important to note that since the CE is made up of the heads of different public institutions, its composition may vary while the CE is in office. These changes are a consequence of the regulations that establish the term of office of the head of each agency. The MIO recognizes that these changes are inherent to the renewal of authorities of the respective agencies and that they were probably not considered when designing the functioning of the CE. Beyond that, this Mission notes that these changes in the composition of the CE also generated questions in the public opinion about the development of the process. During the current process of appointment of the members of the JNJ, the composition of the CE was modified due to the new appointments of the Comptroller General (César Enrique Aguilar Suricachi), the President of the Constitutional Court (Luz Pacheco Zerga), and, potentially, the Attorney General (Delia Espinoza Valencia).

In addition, there are other aspects that have generated additional questions. One of them is the fact that the CE is chaired by the head of the Ombudsman's Office (Josué Gutiérrez Córdor) who has been pointed out for alleged links with the political party Perú Libre.<sup>78</sup> In addition to this, there is the aforementioned modification in the way of appointing the Technical Secretary of the CE, as well as the debate on whether the competence to appoint the person who would exercise the functions of magistrate of the JNJ in the

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<sup>77</sup> Through resolution [0104-2024/DP](#) dated August 13, 2024.

<sup>78</sup> Infobae, "[Josué Gutiérrez Córdor, ex-lawyer of Vladimir Cerrón, was elected as the new Ombudsman](#)". Questions include the fact that the Ombudsman had previously been a lawyer for Vladimir Cerrón, who has been the subject of fiscal investigations for money laundering and criminal organization, [convicted for corruption](#) and is a fugitive from justice.



absence of any of its members -for example in cases of disqualification- falls on the JNJ itself or on the CE.

These unilateral decisions and the lack of transparency in the removal process of the Technical Secretary undermine confidence in the technical judgment and impartiality of a key actor in the selection process, which affects the legitimacy of the JNJ selection process. In addition, sudden changes in the rules of the selection process and in the composition of the bodies involved generate uncertainty about the stability and consistency of the ongoing process.

#### 5.4. Call for applications

***The Mission found that the stage regarding the call for applications and nominations was also characterized by a lack of transparency and a lack of substantive effort to call for and encourage the registration of persons with the best qualities and knowledge to occupy such important positions in the administration of justice. Likewise, the call did not include mechanisms to promote the participation of women and other historically discriminated groups.***

The original deadline for receiving applications for the JNJ selection process was August 13, 2024. However, that same day, the Special Commission announced that the deadline was extended to August 14, 2024.<sup>79</sup> The Mission observes that the CE based this decision on an alleged connectivity failure in the fiber optic service, which would have affected the operation of the Postulation System for one hour, without providing technical support. The Mission also notes that during this additional period, according to media reports, two additional persons, questioned for their alleged previous links with political sectors, submitted their nominations.<sup>80</sup>

On August 15, 2024, the list of 51 registered applicants was published.<sup>81</sup> The Mission is disappointed by the limited number of applications submitted, as opposed to the 150 people who applied in 2019. In the Mission's opinion, several factors discouraged the participation of people with potentially suitable profiles. Among them, the following stand out: the lack of active dissemination of the call for applications through traditional media and social networks, the actions taken by the political power against the current members of the JNJ, and the progress in the processing of the constitutional reform projects aimed at eliminating the Board.

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<sup>79</sup> Special Commission for the election of members of the JNJ. [Communiqué 001-2024-CE](#).

<sup>80</sup> La República, "Interviews for the JNJ with weak transparency".

<sup>81</sup> Special Commission for the election of members of the JNJ. [Communiqué 002-2024-CE](#).

Furthermore, the Mission regrets the fact that the CE made no effort to include in the technical regulations governing the process specific mechanisms to guarantee access, participation and equal representation of women, rural communities, geographic representation, indigenous peoples and other marginalized groups during the selection process.

Although the Constitution, the Organic Law of the National Board of Justice and the Internal Regulations of the Special Commission do not contemplate express obligations in relation to this matter, it should be noted that the guarantee of inclusive participation in this type of process, from the regulatory design and development of the process, is crucial to ensure a plural and representative institution.

The importance of diversity in the formation of justice entities lies in the need to build institutions that reflect the diversity of society and ensure that all sectors, especially the historically excluded, have a voice in decision-making at all levels. This obligation is not satisfied solely by the existence of general regulations prohibiting discrimination at the constitutional or legal level. In fact, part of MIO-Peru toured the country during the last few weeks and was able to observe the criticism of the process from the bar associations in the different regions of Peru.

Furthermore, gender parity is a key indicator for assessing the quality of democracy in countries. Therefore, it is essential to ensure a balanced participation and representation of women and men in positions of power and decision-making in all spheres of a nation's life: political, economic and social. The Mission laments the absence of concrete efforts by CE to promote equal participation of women in the selection process, reflected in the fact that, of the 51 applicants, only 8 were women.

## 5.5. Curriculum evaluation

***MIO-Peru highlights that the curricular evaluation stage was also affected by a lack of active transparency, evidenced by an initial decision of the Special Commission not to publish the candidates' portfolios, followed by a late and incomplete publication of the same. In addition, it notes a deficient regulatory design for the curricular evaluation, which lacks objective criteria to ensure that the JNJ is made up of the best applicants. These shortcomings impacted citizen confidence in the process and the capacity of civil society to exercise oversight functions from the early stages of the process.***

Since its first visit to Peru, the Mission has insisted that the publication of the candidates' portfolios is a fundamental requirement of the selection process, despite the fact that during the second visit the Technical Secretariat of the CE had informed that this would not occur. It should be noted that the publication of the curricula vitae and some documents of the applicants was verified only on August 23, 2024, that is, 9 days after the presentation of the candidacies. During that time, despite the preliminary

recommendations made by this Mission at the conclusion of its second observation visit and the complaints from civil society, the EC had only published the list of the names of the candidates.

In addition to the delay in the publication of the individual portfolios, MIO-Peru considers that the information published has been incomplete. The folders only contain documentation supporting the academic background and professional experience of the applicants. Finally, the Special Commission and its Technical Secretariat have not published other indispensable documents to evaluate the quality and requirements of the candidates, such as: academic theses, the absence of conflicts of interest form, declarations of sponsorship, and certificates of criminal record.

The Mission also notes that the regulatory design of the evaluation in this phase of the competition is deficient in terms of the clarity and consistency of the criteria used to evaluate the merit and abilities of the applicants. The competition rules only contain quantitative evaluation criteria, which essentially consist of years of professional experience. However, there is no mention or detail of qualitative evaluation criteria that would allow for an objective and comprehensive evaluation of the merits and quality of the applicants. All this generates uncertainty about the objectivity and fairness of the decisions.

The Mission emphasizes that the existence of objective selection criteria clearly defined in advance and the transparency and publicity of the information submitted by the applicants contribute to public confidence in the process. In addition, these factors are essential for society to be fully aware of the background, merits and the candidates' potential conflicts of interest, for the purpose of exercising the oversight function to which it is entitled.

## 5.6. Knowledge test

***The Mission identifies that the knowledge evaluation stage was marked by the designation of the law school of a private university, questioned for having formed a committee of experts with little or no professional experience to prepare the bank of questions. Likewise, there is no evidence suggesting the existence of clear protocols regarding an audit of the management of said University by the Special Commission, nor on technical criteria or methodology for the elaboration of the questions, nor their chain of custody. In addition, it is noted that the questions prepared correspond to a basic level of legal training and are inappropriate for an evaluation of the level that would be required for the evaluation of potential members of a body of the importance of the JNJ.***

On August 15, 2024, it was informed that the written knowledge test would take place on August 25, 2024, and that a form would be available on the web portal

[www.comisionespecial-jnj.gob.pe](http://www.comisionespecial-jnj.gob.pe) for the submission of complaints about the integrity, suitability and moral solvency of the applicants.<sup>82</sup>

On August 23, 2024, the Special Commission published the instructions for the knowledge evaluation.<sup>83</sup> In addition, on the same day, it published the folders with the supporting documents for each of the 51 applicants<sup>84</sup>.

The knowledge test was held on Sunday, August 25. Of the total of 47 applicants who took the test, only 23 reached the minimum score of 20 points to pass and advance to the next stage of the competition.<sup>85</sup>

The knowledge test consisted of 50 multiple choice questions and lasted 120 minutes. On September 2, 2024 the Special Commission published the ballot of questions and their answers.<sup>86</sup>

The questions were distributed as follows:

<b>Theoretical questions</b>	
General Culture	7 questions
Human Rights	3 questions
Constitutional Law	4 questions
Criminal Law	3 questions
Civil Law	4 questions
Administrative Law	4 questions
Public Management	10 questions
<b>Questions with hypothetical cases</b>	
Criminal Law	3 questions
Civil Law	2 questions
Constitutional Law	3 questions
National Policy and Modernization	7 questions

On September 2, 2024, the scores of the 16 applicants who passed the curricular evaluation stage were published, with the criteria of education, training, research and professional experience.<sup>87</sup>

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<sup>82</sup> *Id.* [Comunicado 002-2024-CE](#).

<sup>83</sup> *Id.*, [Comunicado 004-2024-CE](#).

<sup>84</sup> *Id.*, Resumes. Link: <https://www.comisionespecial-jnj.gob.pe/hojas-de-vida/>

<sup>85</sup> *Id.*, [Comunicado 005-2024-CE](#).

<sup>86</sup> *Id.*, [Comunicado 006-2024-CE](#).

<sup>87</sup> *Id.*, [Comunicado 007-2024-CE](#).

Although the CE published the questions and answers of the knowledge test after the date on which it was conducted, the CE did not previously publish the criteria or methodology applicable to it. The CE's response to a request for information made by a congresswoman in relation to this aspect was limited to mentioning that this type of evaluations are reserved and that it was conducted by a university with ISO standards.<sup>88</sup>

The Mission notes that information from an investigative media ([Ojo Público](#)) indicates that the design of the knowledge test was entrusted to the Law School of ESAN University.<sup>89</sup> And that this university formed a commission of lawyers, made up of professionals with very little work and academic experience, which would have been in charge of the preparation of the battery of tests. This information has not been denied or clarified neither by ESAN University, nor by the CE, which is extremely worrisome.

In any case, in the opinion of this Mission, the questions asked in the knowledge examination correspond to a basic level of legal training, which does not seem appropriate for the evaluation of persons who will potentially be part of the body in charge of the administration of the judicial career in Peru. This could be due, as already indicated, to the little or no professional experience of the persons who would have formed the committee in charge of preparing the questions, among which there would be three law graduates in the year 2022, according to the press information already mentioned and not clarified or denied.<sup>90</sup>

The procedures used to guarantee the chain of custody in relation to the knowledge test questions have not been published either. This deficiency in the active transparency and publicity of information limited the possibility for applicants to know in advance the criteria applicable to their evaluation, as well as the scrutiny by civil society and competent agencies, contributing to the opacity of the process.

On September 18, 2024, the CE published the final scores of the curricular evaluation, in a document dated September 16, 2024.<sup>91</sup> At this stage, 15 applicants obtained the minimum score to move on to the psychological evaluation phase.<sup>92</sup> On September 26,

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<sup>88</sup> President of the Special Commission for the election of the members of the JNJ, Oficio No. 2341-2024-CEP of September 17, 2024. <https://tinyurl.com/bdh5r2ny>

<sup>89</sup> Ojo Público, "[The history of sanctions against the university that developed the exam for the JNJ competition](#)".

<sup>90</sup> *Id.*, "[Inexperienced Lawyers and a Witness in Cocktails Case Behind the JNJ Exam.](#)"

<sup>91</sup> Special Commission for the election of members of the NJB. The EC issued the following individual resolutions of reconsideration: [008-2024-EC](#), [009-2024-EC](#), [010-2024-EC](#), [011-2024-EC](#), [012-2024-EC](#), [013-2024-EC](#), [014-2024-EC](#), [015-2024-EC](#), [016-2024-EC](#), [017-2024-EC](#).

<sup>92</sup> *Id.*, [Comunicado 009-2024-CE](#).

2024, the Special Commission published the list of the 15 applicants, ordered according to the sum of the scores of the knowledge test and the curricular evaluation.<sup>93</sup>

## 5.7. Confidence tests

***The MIO-Peru identifies that the CE did not publish any instrument related to the design, application and evaluation of the confidence test entrusted to the Office of the Comptroller General. Nor was any type of informative or normative documentation issued regarding the technical details that would allow validating the usefulness and adequacy of the confidence tests applied in the selection process of the members of the JNJ. This lack of transparency has prevented adequate scrutiny of this stage and the verification of whether the tests meet the necessary standards to support informed and technical decisions on the applicants.***

Psychometric tests are very useful tools for identifying behavioral traits, skills, abilities and attitudes in order to verify whether they fit the job profile sought in applicants for a position. This requires prior professional design and technical agreement on the elements that will make up the profile of the JNJ member's position. Once a clear profile has been established, it is reasonable to use a psychometric test designed ad hoc for the profile, as a tool to support the technical selection decision by the CE. All this should be contemplated in the terms of reference on the basis of which a public tender is called to provide the service, under strict supervision of the CE. The providers must be technical, independent and professional entities that guarantee impartiality and quality work, with support and experience, and that deliver as a product a well-founded, documented and conclusive report that contributes to the credibility and intangibility of the process.

The CE, for its part, should be able to properly interpret the report and make decisions based on the information and recommendations contained therein, or weight the information within a more complex matrix, if that is the policy design considered.

On September 16, the instructions for the psychometric evaluation, to be taken on September 17, 2024, were published.<sup>94</sup> It was announced that the evaluation would consist of: (i) the formulation and answering of questions printed in a booklet and (ii) the answering of questions on a computer.

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<sup>93</sup> *Id.*, Scores obtained in the knowledge and curricular evaluation. Link: <https://www.comisionespacial-jnj.gob.pe/wp-content/uploads/2024/09/Resultado-de-evaluacion-de-conocimientos-y-curricular.pdf>

<sup>94</sup> *Id.*, [Comunicado 008-2024-CE.](#)

On September 18, the instructions for the psychological evaluation, scheduled for September 19, 2024, were published. The psychological evaluation lasted 90 minutes. It consisted of a 40-minute interview and a 50-minute personality test.<sup>95</sup>

As stated in the [Second Progress Report](#), this Mission recommended that the CE develop and disseminate a detailed protocol to regulate the design, application and evaluation of confidence tests. This is necessary to guarantee the availability of a methodology, application and report that is useful and consistent with the technical standards of the area, which will allow the use of such reports in an informed, technical and well-founded decision-making process.

The EC informed that the design and application of the confidence test had been entrusted to the Office of the Comptroller General (hereinafter, indistinctly CGR), given its experience on the matter. However, no technical details of this test were disclosed to verify its validity and usefulness. For example, it was not informed whether the design was carried out by a specialized unit of the CGR itself or whether it was outsourced. In the latter case, the terms of reference or bidding conditions of the assignment and the awarding process are not known, which would allow verifying the preparation of the unit of the CGR or of the private party to whom the assignment was made. It has not been reported whether a test was designed especially adjusted to the profile sought for the JNJ, or whether a test already used by the CGR for its personnel was adapted. It is also not known which team applied the test, both the written questions and the interview, and the order in which these were applied.

In conclusion, there has not been adequate transparency to determine the validity and usefulness of the confidence test for recommending, observing or not recommending applicants for the JNJ member profile.

## 5.8. Objections

***The Mission notes with concern that the lack of transparency that has characterized the entire selection procedure was also manifested in the procedure for filing objections related to the lack of compliance with the legal requirements of the candidates. In effect, the Special Commission and its Technical Secretariat did not publish the number of objections filed, which candidates received objections, the complete documents containing the basis for the objections filed, nor a summary of the same, the arguments presented by the candidates, nor the presentation of requests for reconsideration. The only information available on the CE's web portal regarding the objections is the timetable and the resolutions issued by the CE without the respective motivation.***

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<sup>95</sup> *Id.*, [Communiqué 010-2024-CE](#).

Thanks to the information disseminated by 61 civil society organizations, it is known that 9 candidates were struck off, out of a total of 16 who were still in the competition up to that moment.<sup>96</sup> Of the 9 crossed-out candidates, up to the publication of the results of the curricular evaluation, 7 were still in the selection process. Given that the CE published the objections filed until the date of publication of the resolutions, it was not known whether there were other objections filed with respect to the same applicants or the other persons who continued in the process.

On September 30, 2024, the Special Commission published the decisions on the objections filed against the candidates, from which it can be inferred that a total of 10 objections were filed.<sup>97</sup> As a result of the objections, three candidates were excluded from the competition, who filed individual appeals for reconsideration.<sup>98</sup> On October 10, 2024, the CE published the resolutions in which it accepted the appeals, annulled the challenged resolutions and ordered the continuation of the three applicants in the competition.<sup>99</sup>

In addition, according to the regulations and the timetable, the persons who had been struck off had until September 26, 2024 to present their appeals. According to civil society organizations consulted by MIO, as of September 27, the CE had not notified those who filed the objections about the existence of the appeals in the case of the 7 applicants who remained in the process.

On the other hand, this Mission laments the fact that the CE has failed to comply with Article 56 of the Organic Law of the JNJ, which obliges the CE to resolve the challenges prior to the knowledge examination, which took place on August 25, 2024. According to the published resolutions, the challenges were resolved on September 27 and notified on September 30, 2024. In other words, they were resolved after the knowledge test and prior to the personal interview, as stated in the competition rules and in the resolutions. In sum, the CE did not comply with the legal provision regarding the timeline to carry out and resolve the objection phase.

The resolution of the objections after the knowledge test not only contravenes the legal norm, but also allowed questioned candidates to participate in critical stages such as the knowledge evaluation, potentially affecting the quality and legitimacy of the next National Board of Justice.

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<sup>96</sup> Epicenter.TV. Tachas are filed against 9 candidates to the JNJ. Link: <https://epicentro.tv/presentan-tachas-contra-9-candidatos-a-la-jnj/>.

<sup>97</sup> Special Commission for the election of members of the JNJ. [Comunicado 012-2024-EC](#). Resolutions: [018-2024-CE](#), [019-2024-CE](#), [020-2024-CE](#), [021-2024-CE](#), [022-2024-CE](#), [023-2024-CE](#), [024-2024-CE](#), [025-2024-CE](#), [026-2024-CE](#), [027-2024-CE](#). In total there were 9 candidates who received objections, since there are two independent objections filed against the same person.

<sup>98</sup> *Id.*, Resolutions: [020-2024-CE](#), [024-2024-CE](#), [026-2024-CE](#).

<sup>99</sup> *Id.*, Resolutions: [028-2024-CE](#), [029-2024-CE](#), [30-2024-CE](#).



On the other hand, the Mission notes with concern that in seven cases, the CE declared the objections inadmissible, in resolutions that lack sufficient motivation. The resolutions state as the only basis that the objections presented do not fall within the impediments required by Article 10 of the Organic Law of the JNJ, without further information regarding the objection presented and the explanation of the reasoning that led to the conclusions that support such a decision. Out of the seven objections declared inadmissible, five were reinstated as complaints, which is explained in the following section of this report.

The lack of information regarding the objections presented, the appeals of the objected candidates and the motivation of the CE's resolution that leads to rejecting them and/or re-directing them as complaints, prevents the population and the actors interested in the process from assessing whether the candidates in the race in fact did not meet the legal requirements to occupy the position, which include the solvency and moral probity to integrate the JNJ.

## 5.9. Complaints and the interview phase

***MIO-Peru tried to participate on-site in the personal interview activity and, since it was unable to enter the premises, several of its members followed it through the YouTube channel provided for this purpose. The interview stage is crucial, due to the high score given in the competition rules and in the absence of a previous protocol to reduce the discretion of the Special Commission. In this regard, the MIO understands that the execution of the interviews did not guarantee equal treatment to the applicants, it was notorious the length of time given to some and the reluctance to extend the interviews of others for the same term; likewise, there was no predetermined criterion in a technical manner to ask the applicants and in some cases it was aimed to deepen aspects of their curriculum, in others the questions referred to knowledge and in other cases to alleged doubts, complaints or questions about their moral solvency. Nor was it possible to know whether, as best practices recommend, the members of the CE immediately scored each participant and then deliberated so as not to leave room for possible negotiations on an item with so much discretion.***

In summary, the lack of a known protocol and the confusing way in which the interviews were conducted, added to the high relative weight (40 out of 100 total) given to this stage, lead us to conclude that the competition has departed from international standards in these aspects.

On August 15, 2024, it was announced that a form will be available on the web portal [www.comision especial-jnj.gob.pe](http://www.comision especial-jnj.gob.pe) for submitting complaints about the integrity, suitability and moral solvency of the applicants.<sup>100</sup> This period is available until October 28, 2024. However, until the issuance of this report, the CE has not published the complaints filed against the applicants and the only complaints known are the five that were filed as objections, that the CE decided to redirect so that they could be evaluated as complaints.

According to the competition rules, the complaints must be evaluated during the personal interviews. On October 11, 2024, the CE published the schedule for the personal interviews of the 15 applicants, which were held on October 17, 2024.

MIO-Peru, through one of its members, went in person to the building of the Ombudsman's Office, where the interview stage took place. However, both MIO and members of the press, civil society, and a congresswoman were denied entry on the grounds that the interviews would be broadcast on a YouTube channel. The MIO considers that this decision reduced the possibility of having a complete overview of the development of the interviews, the attitude towards the different candidacies, the disposition of time and the performance of the members of the CE.

Although the transmission of the interviews is relevant for greater publicity of this crucial stage, comparative practice indicates that the most relevant publicity of the process occurs when the interview room is opened to the presence of all those interested in observing the development of the interviews.

Regarding the development of the interviews, it was announced at the beginning of the day by the president of the CE (Ombudsman) that they would be 30 minutes each, but then it was altered again and again during its execution. MIO-Peru verified unequal and non-equivalent treatment of the various interviewees. All interviewees were given 30 minutes of interview time. However, the first interviewees were interviewed for 30 to 45 minutes; while, as the day progressed, other interviewees were rushed because time was short and the interviews lasted about 20 minutes.

Some interviewees were asked open-ended questions and were allowed to elaborate. Others were asked follow-up questions or had their answers interrupted or redirected, disrupting their intervention. Finally, several of the interviewees were given the opportunity to make a final statement; others had to ask the CE for a final or closing statement; some ultimately left without such an opportunity.

The Mission recalls that the transparency and reliability of the interview process requires a known and published protocol to guide the development of this phase. It is necessary to plan and design in advance the topics to be investigated during the interviews; to agree on a set of similar questions to be asked to all participants; and to have a method for scoring and evaluating the answers given by the participants.

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<sup>100</sup> *Id.*, [Communiqué 002-2024-CE](#).

Among other cross-cutting questions that should have been asked to all applicants, in order to compare them in an equivalent manner, are, by way of example, questions regarding the diagnosis of the situation of the JNJ and the justice system, objectives and challenges in the coming period, questions about solutions and proposals of the persons questioned, if appointed to the JNJ. Then, it is expected that they will seek to deepen their knowledge and experience relevant to the fulfillment of the role, such as, for example, planning and strategic management of state organizations, personnel management, budget management, work in a collegiate body, management of justice services, etc.).

The interview protocol should have established the ritual of time, equivalent sections and a series of equivalent in-depth questions, a design and scheme that seems not to have been taken into account.

On the other hand, during the personal interviews, it was not observed that the complaints that existed against some applicants were systematically resolved, complaints that were in fact objections that had been referred back to this stage and should have been clearly decided by means of a resolution of the CE in each case. It is inferred that in some cases questions were asked regarding questions or complaints related to the solvency and moral probity of some applicants, but this was not explicit nor did it merit a resolution at the end of the interviews.

Finally, the lack of a protocol for the personal interviews is expressed in the fact that the CE does not provide a table in which the members of the CE, could go about placing scores within a pre-established scale to the answers to cross-cutting questions for each person interviewed, to then deliberate collectively and decide immediately -as soon as the interviewee leaves-, determining the score to be given to each applicant.

This should occur during the session and be public (in the same YouTube transmission), including both the deliberation and the qualification and justification of the decision of each member of the CE. This would achieve transparency and avoid the possibility of arbitrariness or even negotiations or "adjustments" of the ratings, once they are all known.

## **5.10. The table of merits and the oath of office**

***This Mission notes that the Table of Merits was not formed during a public session of the CE, nor was it open to the public. The aforementioned session was not announced as part of the CE session calendar, as all activities and sessions of the Commission should be. Instead of announcing the date and time of the session sufficiently in advance so that all interested persons could attend in person, or follow it through the CE YouTube channel, the merit table was approved in total opacity.***

This mission notes that during October 28, 2024, the date scheduled for the publication of the merit table, there was no information of any kind from the CE until around 11:00 pm, when a statement was published on the CE's website.

The statement mentions that “two thirds of the legal number of members of the Special Commission have been exceeded” (which suggests that the vote could have been divided or in the absence of some of its members) and includes the details of the scores obtained by each applicant in the different stages of the competition. However, there is no information as to whether in the aforementioned session the members of the CE expressed the motivations and grounds that led them to decide on the ranking of the applicants, based on the scores obtained by each one in the various stages of the process. The decision of each member of the CE has not been motivated, public or publicized, as should have occurred with the sessions corresponding to each stage of the process.

The process culminates then, with a closing act characterized by the lack of transparency and publicity necessary to allow its audit by the citizenship, affecting in an unnecessary and lamentable way the legitimacy of its development and consequently, of its results.

## 6. Recommendations in light of applicable international standards

Based on the findings detailed in the previous section, this Mission formulates the following recommendations for future events so that the selection of members of the JNJ is based on merit, moral suitability and the capabilities of the applicants, guaranteeing that the best professionals are chosen to carry out their work independently and not allow undue interference from political and other powers:

### **Strengthen the publicity and integral and transversal transparency of the process:**

- For future selection processes of the JNJ, the Special Commission must observe as a priority its obligations related to active transparency and publicity of all its proceedings and the process in its entirety, thus guaranteeing the right of access to information and citizen oversight.
- The CE should make available to the public in advance the agenda of its meetings and the topics to be discussed at each of them.
- The sessions of the CE should be public, publicly accessible and broadcast live through broadcasting channels that guarantee broad access to its debates and decisions.
- The CE should consult on the preliminary competition bases and ensure a broad debate prior to its approval, in order to gather the best comparative practices and recommendations from experts and various national and international sectors.
- It should also publish and broadcast institutional management instruments, collaboration and third-party contracting agreements, as well as financial details or budget execution reports from the beginning of the operation of the CE until the end of the process.
- The call for the competition should have the widest possible dissemination and active publicity by the CE and its member organizations, taking advantage of state and institutional dissemination channels and the press. The objective is to attract the greatest number and diversity of suitable applicants, guaranteeing the inclusion of gender, territories and ethnic and racial groups.
- Publish in full the portfolios of all applicants, including all background information and supporting documents proving training or years of experience, resumes, all documents supporting requirements, such as thesis, conflict of interest form, criminal record and sponsorship statements, reserving only the personal data of the applicants.

- Publish in full and in a timely manner the complaints and accusations filed against the applicants, the disclaimers presented by the applicants and the reasoned decisions adopted by the CE.
- Allow citizens, interested organizations and the media to attend the interviews of the applicants in person and, at the same time, broadcast them widely and live through the corresponding channels to ensure the widest possible access by the population.
- Announce sufficiently in advance the date and time of the CE session in which the final merit list will be drawn up. This session should be public, with access to the public and broadcast live through broadcasting channels, in order to ensure wide access to the debates, decisions and reasoned vote of each member of the CE.

**Inclusion of gender, minorities and historically discriminated groups:**

- Develop affirmative action mechanisms and measures to guarantee the inclusion of women, minorities and historically discriminated groups in all future election processes for the highest justice authorities in Peru. This should be ensured from the preparatory stage of the election processes and maintained at all stages until the appointment of the persons selected.
- Organized civil society, in particular women's organizations, must oversee the effective implementation of inclusion.

**Improve evaluation procedures and their implementation: choose based on merit and capabilities:**

- The content of the competition bases should be subject to national regulations and international standards.
- The execution of the contest must materialize such norms and standards, implementing the best comparative practices. It is not enough to state that international standards and domestic regulations are met; this must be a verifiable reality.
- Once the bases are approved and the selection process begins, the CE must ensure that the rules designed in advance remain unchanged, in order to guarantee legal certainty and equivalent treatment to all contestants.
- Define clear and objective evaluation criteria to avoid arbitrary decisions and guarantee a technical and meritocratic selection process. In addition, the selection of members should take into special consideration their moral suitability.

- To design a comprehensive evaluation methodology that considers not only quantitative criteria, but also investigates and weighs qualitative aspects of great relevance for the role in the JNJ.
- To entrust specialized, experienced and accredited entities with the elaboration of questions for the knowledge test, in order to guarantee the technical relevance of the test, as well as the security mechanisms in its design, custody, implementation and evaluation.
- Consider performance evaluations in the case of applicants who have previously held public office.
- Develop and disseminate a detailed protocol to regulate the design, application and evaluation of confidence tests that guarantees a methodology, application and reports that are useful and consistent with the technical standards of the area, allowing the use of such reports in an informed, technical and well-founded decision-making process.
- Develop and disseminate a detailed protocol to regulate the design, application and objective evaluation of the personal interview, which must meet international standards of transparency and meritocracy.
- Objectively substantiate the evaluations and decisions on each of the candidacies, specifying the reasons that lead to a decision.
- Develop adequate mechanisms to identify potential candidates related to organized crime and corruption offenses.
- Implement mechanisms that guarantee openness and collaboration with organized civil society, the media and international observation. For example, establishing a registry of national and international observers accredited before the CE.

### **Preserve judicial independence, democratic institutions and the rule of law:**

- The legislative body and the institutions with legislative initiative should refrain from including in the reform proposals provisions that would allow the political power to interfere with the normal development of the process of electing the members of the JNJ or with its functioning as an independent body.
- Before considering regulatory reform initiatives affecting the JNJ, the Congress and the institutions with legislative initiative should carry out technical studies on the functioning of this important judicial and electoral governance body, in order to identify its weaknesses and strengthen its capacities.
- Legislative reform initiatives should consider international principles and standards on judicial independence and refrain from reforms that could have a negative

impact on the independence of the JNJ, or of the institutions that make up the Special Commission in charge of its designation.

- Constitutional or legal reform initiatives that affect the functioning of the JNJ or the mechanisms for appointing its members should be widely debated and approved at times when they do not interfere with ongoing selection processes, as this contributes to a lack of legal certainty.
- Refrain from altering the composition of the JNJ for reasons not previously established by law, and that do not have the gravity required by international standards. This includes avoiding the arbitrary use of political control mechanisms such as constitutional accusations or impeachment by unduly interfering in the appointment process of the members of the JNJ or in their ability to hold office independently of political power.
- Respect the institutionality of the JNJ, and the special protection deserved by the senior officials that make up the institutions of the justice system.
- Reconsider legal initiatives that tend to alter the constitutional regulation to the detriment of the autonomy and independence of the JNJ.
- Establish a clear system of conflict of interest disqualifications for members of the Special Commission.
- To reestablish technical criteria, publicity and meritocracy in the appointment of the Technical Secretariat of the Special Commission, so that it may develop a work that is trusted by all the members of the full CE that comprise it and by society in general.
- Ensure an adequate budget allocation so that the JNJ and the institutions that make up the justice system can operate autonomously, neutrally and without hindrance, complying with transparency and accountability obligations.



## 7. Acronyms

<b>CE</b>	Special Commission
<b>JSCA</b>	Justice Studies Center for the Americas
<b>IACHR</b>	Inter-American Commission on Human Rights
<b>CGR</b>	Office of the Comptroller General
<b>IACHR</b>	Inter-American Court of Human Rights Court
<b>DPLF</b>	Due Process of Law Foundation
<b>IMF</b>	International Monetary Fund
<b>JNJ</b>	National Board of Justice
<b>JUSTLAT</b>	Justice Latin America
<b>MIO-Peru</b>	International Observation Mission on the situation of the National Board of Justice of Peru and the election process of its members.
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>ONPE</b>	National Office of Electoral Processes
<b>RENIEC</b>	National Registry of Identification and Civil Status
<b>TC</b>	Constitutional Court

## 8. References

### 8.1. Regulations national regulations, reform projects, international regulations

*Bases of the public merit-based competition for the election of the members of the National Board of Justice.*

*Schedule of the public merit-based competition for the election of the members of the National Board of Justice.*

*Congress of Peru, Motion No. 13696/2024.*

*Political Constitution of Peru.*

*Convention on the Elimination of All Forms of Discrimination against Women.*

*Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará).*

*Law No. 30916, Organic Law of the National Board of Justice.*

*Law No. 32130 amending the Code of Criminal Procedure.*

*Law No. 32138 amending the Law against Organized Crime (Law 3007).*

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## **8.2. Jurisprudence, studies and reports**

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*I/A Court H.R., Case of Apitz Barbera et al. v. Venezuela. Judgment of August 5, 2008. Series C No. 182.*

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*I/A Court H.R., Case of Reverón Trujillo v. Venezuela. Judgment of June 30, 2009. Series C No. 197.*

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## **8.3. Web Pages and Portals**

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*Epicenter.TV. Tachas are filed against 9 candidates to the JNJ. Link: <https://epicentro.tv/presentan-tachas-contra-9-candidatos-a-la-jnj/>.*

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