

# *Entre la alarma y la expectativa: el reto de fortalecer la independencia judicial en Panamá*

*(Between Alarm and Expectations: the challenge of strengthening judicial independence in Panama)*

## **EXECUTIVE SUMMARY**

### **Motive for study**

This study on judicial independence in Panama was undertaken following a previous DPLF study on judicial corruption.<sup>1</sup> The chapter on Panama noted that in order to achieve a more independent judiciary, a well-regulated process for the selection of judges was needed. The comparative regional report in that study further indicated that the system of nomination of Supreme Court judges by the President (followed by their confirmation by Congress) allowed for the appointment of judges primarily based on political affiliations rather than merit or professional ability. The independence of the judiciary thus remains a concern. The present study, therefore, analyzes this issue and investigates three important elements of judicial independence: the selection of judges, economic independence of the judiciary and the remuneration of judges, and provides for recommendations.

### **International standards**

International standards and domestic Panamanian law provide that essential elements of judicial independence include the existence of a transparent system of judicial nomination, economic independence for the judiciary, and adequate judicial compensation.

Furthermore, international human rights treaties stipulate that all people have the right to be judged by competent, independent and impartial tribunals. The United Nations' Basic Principles on the Independence of the Judiciary (UN Basic Principles) provides in its first principle that "[t]he independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country." The European Court of Human Rights determined in *Campbell and Fell v. United Kingdom*<sup>2</sup> that in order to assess whether the judiciary is independent, one must look at the method of nomination of its officials, in addition to the length of judicial terms, the existence of protections against external pressure and the appearance of independence to the public. The Inter-American Court of Human Rights (IACHR), to a great extent, uses the same criteria, citing the European Court's cases as precedent.

---

<sup>1</sup> DPLF, *Controles y descontroles de la corrupción judicial. Evaluación de la corrupción judicial y de los mecanismos para combatirla en Centroamérica y Panamá (Evaluation of Judicial Corruption in Central America and Panama and the Mechanisms to Combat it)*, Washington, DC, 2007.

<sup>2</sup> European Court of Human Rights, *Fell and Campbell v. United Kingdom*, sentence of 28 June 1984, [1985] 7 EHRR 165, Series A No. 48.

## Selection of judges

Panamanian law specifies different systems for selecting Supreme Court justices and judges of lower courts. The study therefore explores the issue of judicial nomination in the two court systems separately.

Regarding Supreme Court justices, the Panamanian Constitution mandates in Article 203(1) that the Executive nominates and Congress subsequently approves nominees to the Supreme Court. The Constitution further requires that substitute judges be pre-selected from the pool of career judges,<sup>3</sup> and prohibits vacancies on the Supreme Court from being filled by those who have held parliamentary or executive roles during the same constitutional period.<sup>4</sup> It thus seems that the Constitution intends to put technical criteria before political, thus limiting the otherwise broad discretionary power of the government and the legislature regarding the confirmation of Supreme Court justices. History, however, has shown these measures to be insufficient to guarantee a Supreme Court free from political interference. Nominations have more often than not fallen to people with ties to the President and party in power.

With respect to lower courts, the Panamanian constitution establishes a system of co-optation, conferring the responsibility of selecting judges to fill vacancies upon the judges of higher courts. There are constitutional requirements that the judges need to have certain qualifications,<sup>5</sup> but these requirements have proven to be insufficient. It is thus necessary to make corrections and adjustments to the normative framework that regulates entrance to the judicial career, and to reduce the excessive amount of discretion granted to the nominator. Additionally, there is a notable absence of an organization with real power to administrate the aforementioned judicial career with an eye toward establishing judicial independence.

In practice, the Panamanian system for judicial selection is seriously flawed, which has led to popular discontent with the judicial system in recent years. It is widely accepted that the judiciary is inefficient, corrupt and controlled by special interests and other government branches. Since the two tiers of the judiciary (the Supreme Court and lower courts) have different appointment processes, different types of change will be needed for each tier.

The first type of change needed regards the integration of the Supreme Court. There is an urgent need to increase public and civil society participation in the nomination and confirmation process.

The second premise for reform is the need to guarantee internal independence by means of a professionalization of the judicial career (*carrera judicial*). A judicial training program could provide tools necessary to avoid the inequities (*distorsiones*) that occur in the internal judicial system. Additionally, the administration of the judicial training program should be delegated to the Judicial Council (*Consejo de la Judicatura*). These

---

<sup>3</sup> Art. 203(3) Constitution.

<sup>4</sup> Art. 203(4) Constitution.

<sup>5</sup> Arts. 270 and 271 Constitution.

measures would help to solidify a judicial recruitment program based on merit that adequately guarantees internal independence of judges.

### **Economic independence**

Under international law, economic independence is said to be another essential component of judicial independence. International human rights treaties, however, do not directly address this issue, but this notion is taken to fall under the requirement of a "competent, independent and impartial judge or tribunal"<sup>6</sup> that can be found in the UN Basic Principles. Article 7 of this document further requires that "[E]ach member state shall apportion adequate resources for the judiciary to carry out its function." The UN Special Rapporteur on the Independence of Judges and Lawyers moreover stated that economic autonomy is key to ending corruption and favoritism in the judiciary.<sup>7</sup>

In Panama, the Supreme Court and the Attorney General (*Procurador General de la Nación*) create budgets for their respective branches of government and submit them to the executive branch for inclusion in the general budget. The Constitution stipulates that the budgets of the judicial branch and of the office of the public prosecutor (*Ministerio Público*) must equal at least two percent of the total government income. The executive branch is assigned the discretion to distribute surplus funds if the requested budget is less than the required two percent. In the event of a shortage of funds, the Constitution directs that the judiciary shall determine where to apply any necessary budgetary cuts, so as to promote judicial financial independence.

A look at the budgetary reality of the Panamanian justice system, particularly with regard to the judicial branch, reveals that the resources assigned are insufficient. The two percent guaranteed to the judicial branch and the public prosecutor falls considerably short of the budgetary needs of these institutions. With over \$122 million USD requested in 2008, two percent of the budget resulted in only about \$67 million being allocated to that cause. In a study of judicial spending in Central America in 2006, it was found that Panama spent the least money on its judiciary.<sup>8</sup> All recommended constitutional reforms, such as those determined in the State Pact for Justice (*Pacto de Estado por la Justicia*), are still awaiting implementation.

### **Remuneration of judges**

Internationally, it is recognized that sufficient compensation for judges is also essential for an independent judiciary. Judges must be paid enough to ensure a dignified life. Like judicial branch budgets, the issue of judicial pay is not addressed directly by human rights treaties. However, the UN Basic Principles names adequate judicial compensation as a basic principle.<sup>9</sup>

---

<sup>6</sup> See, for example, Article 8.1 Inter-American Convention on Human Rights and Article 14.1 International Covenant on Civil and Political Rights.

<sup>7</sup> See Special Rapporteur on the Independence of Judges and Lawyers, *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Leandro Despouy*, UN document E/CN.4/2004/60, 31 December 2003, par. 32.

<sup>8</sup> See Programa Estado de la Nación, *Informe estado de la región en desarrollo humano sostenible 2008*, San José de Costa Rica, PEN, 2008, p. 208.

<sup>9</sup> Principle 11.

At the regional level, the IACHR addressed the question of what constitutes adequate pay in its report on Haiti. The IACHR deplored the very low salaries of Haitian judges, and officials conceded that these salary levels create a system prone to corruption. The recommended structural reforms in Haiti included increases in the salaries of judges.<sup>10</sup>

Panama's constitution doesn't regulate judicial pay expressly, as some other countries' constitutions do. The Constitution does, however, include a regulation equalizing judicial salaries with those of the ministers of the State, which could serve as a guideline for the establishment of a compensation scale for all members of the judiciary, in accordance with the international standard of adequate compensation for judges. It also provides for a general provision that consecrates the principle of suitable compensation, while another provision states that judicial employees' salaries may not be reduced, but can be increased at any time. Finally, at the infra-legal level, the Regulations on the Legal Career (*Reglamento de la Carrera Judicial*) contains a series of norms developing a system of compensation, entrusting the creation of a salary scale to the Department of Human Resources (*Departamento de Personal*), to be consulted with the Judicial Council (*Consejo Judicial*).

An observation of the reality of judicial compensation in Panama demonstrates that there are two main problems that need to be addressed: first, the diverging salaries between the different jurisdictional areas within the organization; and second, the need to reinforce normative guarantees of adequate judicial compensation. There is a large salary gap between different jurisdictional levels; a 2008 study showed that while Supreme Court Justices earned \$10,000 USD, municipal judges earned only \$1630 USD.<sup>11</sup> Several of the people interviewed for this study said that the structure needs urgent improvement through a specification of technical and objective criteria for salary grades. They noted in particular the need to increase salaries at the first jurisdictional level, and occasionally at the second level as well. It is further important to note the transcendence that a constitutional amendment consecrating the principle of the inviolability of compensation (*intangibilidad remunerativa*) benefitting the judges could have as a mechanism for strengthening their independence.

---

<sup>10</sup> See Inter-American Commission on Human Rights, *Haití, ¿justicia frustrada o Estado de derecho? Desafíos para Haití y la comunidad internacional*, Washington, DC, General Secretariat of the Organization of American States, 2006 (OEA/Ser/L/V/II.131/Doc. 6 rev. 1, 26 de octubre de 2005), par. 147 and 230.2.

<sup>11</sup> See *Planilla de Empleados del Órgano Judicial*, [www.organojudicial.gob.pa](http://www.organojudicial.gob.pa).