

# Judicial Independence and Rule of Law in Central America

November 8, 2012 By [Ernesto Alvarado](#) [1 Comment](#)



Image courtesy of OAS on Flickr

**Petitioners:** Fundación Myrna Mack / Fundación de Estudios Para la Aplicación del Derecho (FESPAD) / Asociación de Organismos No-Gubernamentales (ASONOG) / Centro Nicaragüense de Derechos Humanos (CENIDH) / Comisión Permanente de Derechos Humanos (CPDH) / **Fundación para el Debido Proceso (DPLF)** / Alianza Ciudadana Pro-Justicia de Panama

**States:** Panama, El Salvador, Guatemala and Nicaragua

**Commissioners:** José de Jesús Orozco Henríquez, Dinah Shelton, and Rosa María Ortiz

Latin American nations have often struggled with judicial independence and NGO's from across the region have begun analyzing the situation in these countries to better strengthen the rule of law in Central America. On November 1, 2012, the Inter-American Commission on Human Rights (IACHR) held a hearing discussing the current status of judicial independence in Central America. Some of the recurring themes shared by all states represented were: a lack of transparency in the procedural process of selecting judges; a heavy political influence on appointments; a lack of respect for fundamental human rights; and a need to strengthen legal institutions in each country. In many situations, the representatives of each state mentioned the inability of the political powers to appoint the best-qualified judges, instead merely settling for political favorites. The representatives claimed that the lack of transparency has a negative impact on the confidence of the citizens of each nation represented.

*La Fundación de Estudios Para la Aplicación del Derecho ([FESPAD](#)), an NGO based in El Salvador, indicated that El Salvador has had a difficulty with the appointment of impartial Supreme Court judges because of the immense political pressure that is placed upon them by the party in power. The petitioner noted that Congress rejected the proposed Presidential appointments to the Supreme Court, determining that the selection process lacked transparency, and was therefore unconstitutional. The President then nominated all of the current judges and increased their terms, which, according to the representatives, stretches the constitutional bounds of the President's appointment power. FESPAD mentioned that there is no effective way to select the best Salvadoran*

candidates for judicial positions in the government and Supreme Court because of the immense political pressure felt by these judges to rule according to party lines rather than impartial interpretation of the law.

*El Centro Nicaragüense de Derechos Humanos (CENIDH)*, an NGO from Nicaragua highlighted the lack of professionalism on the country's Supreme Court bench. A result of political bargaining, the judges are elected and often vote along party lines, which effectively determines the candidates for the appointed judicial positions in the country. *CENIDH* indicated that the Sandinista's, the socio-democratic political party currently in power in Nicaragua, method of electing judges together, rather than through separate confirmations, is a Constitutional violation, and that many of the magistrates are currently past their official term limits. This violation has been sanctioned by President Daniel Ortega and is a threat to democratic justice. According to *CENIDH*, these political influences hamper judges' ability to make decisions based on the merits rather than on politics, and human rights violations are a clear result of these practices.

*La Fundación Para El Debido Proceso (DPLF)*, the NGO based in Washington D.C. that reported on the situation in Guatemala, concurred with the problems expressed by the other organizations and added that judges face perverse incentives to pursue higher positions. The disenfranchisement of qualified judges is based on the politicization of appointments and the high level of violence that these judges face once they assume positions of power. A lack of transparency hampers the legal system and under-qualified judges are approved by political entities without a normative benchmark requirement.

The *Alianza Ciudadana Pro-Justicia de Panamá* indicated that the judicial system in Panama faces high levels of corruption and a lack of professionalism that results in the populace losing faith in its authority. Scandals involving high magistrates being bribed in 2002 and 2005 severely damaged the image of the Supreme Court that continues to suffer from biased opinions, corrupt practices, and a lack of qualified judges. As a result, the organization determined that *habeas corpus*, human rights, and the general rule of law in Panama have continued to be violated and the Supreme Court of Panama suffers from inadequacies that no longer protect these rights.

The represented Member States recommended a benchmark for judicial qualifications for all Organization of American States (OAS) Member States, technical assistance from the OAS to determine the legitimacy of the selection process, and emphasis on the importance of professionalism to member states. *CENIDH* requested that the IACHR look into the violations of the Nicaraguan Constitution with respect to the selection of judges.

The Commissioners inquired about more details of specific cases and then thanked the petitioners for their contributions. The petitioners agreed to cooperate in determining the most effective method of proceeding with efforts to improve the judicial selection process in Central America.

Written by: Ernesto Alvarado on November 8, 2012.

Filed Under: [American System](#), [Featured](#), [IACHR-FeaturedLeft](#) Tagged With: [Central America](#), [corruption](#), [courts](#), [El Salvador](#), [Guatemala](#), [human rights violations](#), [Inter-American Commission on Human Rights](#), [judges](#), [Nicaragua](#), [Panama](#), [Supreme Court](#), [transparency](#)

## One comment on “Judicial Independence and Rule of Law in Central America”

1.  Mirte Postema on [November 9, 2012 at 12:36 pm](#) said:

Thanks for this post! (Just one small aclaration: DPLF presented the problem posed by the interference of the Executive and political parties in the selection processes for Supreme Court justices in Central America. We read FESPAD's declaration during the hearing (they couldn't make it to Washington because of hurricane Sandy), but the situation in Guatemala was presented by a colleague from the Myrna Mack Foundation from Guatemala.)

On DPLF's website ([www.dplf.org](http://www.dplf.org)) you can find more information about this hearing, including the document that the organizations presented to the Inter-American Commission.

[Reply ↓](#)

[http://hrbrief.org/2012/11/judicial-independence-and-rule-of-law-in-central-america/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=judicial-independence-and-rule-of-law-in-central-america](http://hrbrief.org/2012/11/judicial-independence-and-rule-of-law-in-central-america/?utm_source=rss&utm_medium=rss&utm_campaign=judicial-independence-and-rule-of-law-in-central-america)