

STATEMENT CONDEMNING THE MEXICAN PRESIDENT'S REMARKS ANNOUNCING THE INVESTIGATION OF JUDGES FOR THEIR DECISIONS

The New York City Bar Association expresses serious concerns about remarks made by Mexican President Andrés Manuel López Obrador during his daily press conferences, most recently on Tuesday, July 19, 2022 in which he announced the investigation of a federal judge for issuing a temporary injunction in a case involving the government.¹ The New York City Bar Association opposes any action or statements by President López Obrador or his supporters that improperly interfere with the independence of the judiciary in Mexico.²

I. INVESTIGATING JUDGES FOR THEIR DECISIONS

The President's July 19 remarks were delivered in the context of a question about judicial reform and judicial immunity. The reporter asking the question mentioned a few cases and the name of a federal judge, to which the President responded: "*We are investigating this judge for the Iberdrola case, we are reviewing how he granted an amparo so that the company does not pay a fine of (almost) 10 billion pesos.*"³ (The judge referred to in the reporter's question was not the

¹ *Ya se investiga a juez Lozano Bernal por caso Iberdrola: AMLO*, La Jornada (July 19, 2022) <https://www.jornada.com.mx/notas/2022/07/19/politica/ya-se-investiga-a-juez-gomez-fierro-por-caso-iberdrola-amlo/> (last visited July 26); *El gobierno de AMLO investiga al juez Gómez Fierro por falsificación de documentos en caso Iberdrola*, Proceso (July 19, 2022) <https://www.proceso.com.mx/nacional/2022/7/19/el-gobierno-de-amlo-investiga-al-juez-gomez-fierro-por-falsificacion-de-documentos-en-caso-iberdrola-289844.html>

² On March 11, 2021, the City Bar called upon President López Obrador and his administration to honor their international commitments to the rule of law and to respect the work of lawyers, after he accused Mexican lawyers of "treason against the country" for representing foreign companies that are expected to take legal positions against his proposed energy reform. *Statement of the New York City Bar Association on the Mexican President's Accusations of Treason Toward Attorneys* (March 11, 2021) https://s3.amazonaws.com/documents.nycbar.org/files/TFILJ_Obrador_Statement_210311.pdf

³ *Juez Gómez Fierro está siendo investigado por "salvar" de multa a Iberdrola: AMLO*, El Financiero (July 19, 2022) (<https://www.elfinanciero.com.mx/nacional/2022/07/19/juez-gomez-fierro-esta-siendo-investigado-por-salvar-de-multa-a-iberdrola-amlo/>) (last visited July 26).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

judge in the Iberdrola case,⁴ who had granted an injunction in an amparo proceeding, a type of case involving constitutional claims.⁵)

In March 2021, the President, during a morning press conference, also asked the Chief Justice to investigate a federal judge for a decision suspending the validity of a legal reform to the energy law, one of President Lopez Obrador's priorities.⁶ In April 2021, the President publicly criticized the same federal judge for another decision, suggesting corruption.⁷ On this occasion, the Undersecretary for Public Security referred to the judge as "used by groups of interest," referring to the political opposition.⁸

After President Lopez Obrador requested that this federal judge be investigated, although ostensibly independent of the executive branch, the Federal Judicial Council⁹ opened an investigation. On May 1, the Chief Justice announced that the investigation had found nothing irregular.¹⁰ Nonetheless, the same day, a Mexican journalist published an article about an investigation that the Mexican financial intelligence unit, which is an agency under the control of the Executive branch, was carrying out in relation to the judge and the judge's family members.¹¹

II. PRESIDENT'S ACTS BREACH INTERNATIONAL LAW

⁴ The Mexican Energy Regulator opened an investigation against Iberdrola for alleged irregular sale of electricity. See more here: *México investiga a Iberdrola por venta irregular de energía*, Público (February, 4, 2022) <https://www.publico.es/internacional/iberdrola-mexico-mexico-investiga-iberdrola-venta-irregular-energia.html>;

⁵ Judge Ramón Lozano Bernal issued the injunction, but the reporter had inquired about Judge Juan Pablo Gómez Fierro.

⁶ López Obrador desafía al Poder Judicial y pide investigar al juez que frenó la reforma eléctrica, El País (March 15, 2021) <https://elpais.com/mexico/2021-03-15/lopez-obrador-desafia-al-poder-judicial-y-pide-investigar-al-juez-que-freno-la-reforma-electrica.html> (last visited July 26).

⁷ AMLO critica a juez por revés a padrón telefónico; "dio amparo a empresas eléctricas", Milenio (April 4, 2021) <https://www.milenio.com/politica/amlo-critica-juez-reves-padrón-telefonía-movil> (last visited July 26); AMLO critica a juez que otorgó amparo contra datos biométricos en padrón de celulares, Crónica (April 4, 2021) <https://www.cronica.com.mx/notas-amlo-critica-a-juez-que-otorgo-amparo-contra-datos-biometricos-en-padrón-de-celulares-1184267-2021.html> (last visited July 26)

⁸ Juez Gómez Fierro es "de contentillo", usado por grupos de interés: Ricardo Mejía Berdeja, EL Universal (April 21, 2021) <https://www.eluniversal.com.mx/nacion/ricardo-mejia-berdeja-juez-gomez-fierro-es-de-contentillo-usado-por-grupos-de-interes> (last visited July 26)

⁹ Institution in Mexico charged with the administration, control and discipline of the federal judicial branch (with the exception of the Supreme Court). Article 94 of the Mexican Constitution, available online at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf> (last visited July 26)

¹⁰ "Nada irregular" con juez Gómez Fierro; le garantizamos plena autonomía: Zaldívar, Aristegui Noticias (May 1, 2022) <https://aristeguinoticias.com/0105/mexico/ministro-arturp-zaldivar-garantiza-autonomia-del-juez-gomez-fierro/> (last visited July 26); Zaldívar afirma que no se ha encontrado "nada irregular" en la actuación del juez Gómez Fierro (May 1, 2021) <https://elpais.com/mexico/2021-05-01/zaldivar-afirma-que-no-se-ha-encontrado-nada-irregular-en-la-actuacion-del-juez-gomez-fierro.html> (last visited July 26)

¹¹ Ramirez, Peniley; El juez incómodo y la UIF (May 1, 2021) <https://www.reforma.com/el-juez-incomodo-y-la-uif-2021-05-01/op203922> (last visited July 26); UIF investiga finanzas de juez Gómez Fierro, de su madre y su hermana: periodista, Noroeste (May 1, 2021) <https://www.noroeste.com.mx/nacional/uif-investiga-finanzas-de-juez-gomez-fierro-de-su-madre-y-su-hermana-periodista-LN906904> (last visited July 26)

These acts contravene several fundamental principles and standards of international law.¹²

The United Nations Basic Principles on the independence of the Judiciary¹³ state that “it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary” to ensure that courts can decide “matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.” Moreover, the American Convention on Human Rights, specifically Articles 8 and 25, encompasses the right to a fair trial and judicial protection; and the Inter-American System has established the independence of the judiciary as fundamental.¹⁴ The Inter-American Court of Human Rights has developed jurisprudence emphasizing the importance of an independent judiciary to guarantee the right to a fair trial.¹⁵

Publicly announcing investigations of judges who have ruled against the government violates these international standards because such conduct directly undermines the respect and independence of the judiciary and intimidates the judges involved and deters them from independently carrying out their judicial duties. Regardless of the legality of a judge’s decision or alleged misconduct,¹⁶ if any party in a proceeding before a judge, including the government, disagrees with a ruling, legal processes are in place to reverse or modify the decision. Furthermore, in the event of credible allegations of judicial corruption or misconduct, appropriate and non-political channels should be pursued, while avoiding public and overt threats from other branches of government.

III. BAR ASSOCIATIONS REACT IN CRITICISM

Mexican bar associations reacted to the President’s accusations. The National Association of Corporate Counsels, The Mexican Bar Association Foundation¹⁷ and the General Council of

¹² Judicial Independence has been recognized both as a general principle of law and as customary international law, United Nations General Assembly/Human Rights Council. Report, Promotion and Protection of All Human Rights – Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/11/41, March 24, 2009, paragraph 14.

¹³ Basic Principles on the Independence of the Judiciary (1985), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

¹⁴ Comisión Interamericana de Derechos Humanos, GARANTÍAS PARA LA INDEPENDENCIA DE LAS Y LOS OPERADORES DE JUSTICIA. (2013) <https://www.oas.org/es/cidh/defensores/docs/pdf/Operadores-de-Justicia-2013.pdf> (last visited July 26)

¹⁵ Corte Interamericana de Derechos Humanos, *Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 12: Debido Proceso*, available at <https://www.corteidh.or.cr/sitios/libros/todos/docs/cuadernillo12.pdf>

¹⁶ The New York City Bar Association takes no position on the underlying merits for any accusation before the competent authorities.

¹⁷ The New York City Bar Association’s Cyrus R. Vance Center for International Justice and the Mexican Bar Association Foundation recently announced the creation of a Joint Committee to Protect the Rule of Law, including judicial independence. The press release is available here: <https://www.nycbar.org/media-listing/media/detail/vance-center-and-fundacion-barra-mexicana-announce-joint-committee-to-protect-the-rule-of-law> (last visited July 26)

Mexican Lawyers issued statements¹⁸ calling for the executive branch to respect judicial independence.

IV. NEW YORK CITY BAR ASSOCIATION CALLS ON MEXICAN AUTHORITIES TO RESPECT JUDICIAL INDEPENDENCE

The New York City Bar Association calls on all parties to recognize the importance of the independence of the judiciary for the rule of law. The New York City Bar Association urges the Mexican government and its elected officials to respect judicial independence in a manner consistent with international law and Mexico's international commitments.

¹⁸ Asociación Nacional de Abogados de Empresa ANADE, PRONUNCIAMIENTO SOBRE LA IMPORTANCIA DE QUE TODAS LAS AUTORIDADES DEL PAÍS RESPETEN LAS DECISIONES JUDICIALES, Y QUE SU EVENTUAL Y CONFORMIDAD SE EXPRESE A TRAVÉS DE LOS CAUCES JURÍDICOS PREVISTOS PARA ELLO (July 19, 2022) <https://twitter.com/ANADEcolegio/status/1549511065624612870?s=20&t=5oG8pSNJF5XZ8AA0eSsQng> (last visited July 26); Fundación Barra Mexicana de Abogados, PRONUNCIAMIENTO DE LA FUNDACIÓN BARRA MEXICANA A.C (July 20, 2022) <https://twitter.com/FundacionBarra/status/1549913309066960896?s=20&t=-0tsAVIhx2PcjrFWcrYqQ> (last visited July 26); Consejo General de la Abogacía Mexicana, Pronunciamiento del Consejo General de la Abogacía Mexicana sobre resoluciones dictadas por jueces federales en los juicios de amparo (July 20, 2022) <https://twitter.com/ConsAbogaciaMEX/status/1550159476472389636?s=20&t=-0tsAVIhx2PcjrFWcrYqQ> (last visited July 26)