



FOR IMMEDIATE RELEASE – October 7, 2022

Contact: Eric Friedman
efriedman@nycbar.org

Eli Cohen
ecohen@nycbar.org

**Statement Urging Bolivia to Implement the UN Special Rapporteur's
Recommendations to Strengthen Judicial Independence
in Accordance with International Standards**

[Traducción al español disponible aquí](#)

The New York City Bar Association (“City Bar”) urges Bolivian authorities to implement the United Nations Special Rapporteur recommendations on the independence of judges and lawyers to improve the conditions under which the judiciary operates in the country, based on international standards and principles to protect judicial independence. Securing sufficient financial resources for judges to fulfill their duties and implementing a transparent and merit-based process to decrease the alarming number of judges appointed to temporary positions are fundamental to strengthening judicial independence in the State.

I. Insufficient resources to undertake tasks of judiciary

In January 2021, the salaries of judges and judicial personnel nationwide were reduced because of the passing of Financial Law 1356 on December 28, 2020.¹ By virtue of this law, the entire budget for the judicial branch was cut by approximately Bs.178 million (approximately \$26 million USD). Although this cut was supposed to be temporary – a result of the COVID-19 pandemic and the ensuing economic crisis – it was not increased later in the same way the budget was increased for other branches of government.² In the past three years the budget of the judicial branch, including the Public Prosecutor’s Office, has not exceeded 0.5% of the total

¹ *Jueces y magistrados rechazan recorte de presupuesto y de salarios, alistan medidas de presión*, El Deber (February 3rd, 2021): https://eldeber.com.bo/santa-cruz/jueces-y-magistrados-rechazan-recorte-de-presupuesto-y-de-salarios-alistan-medidas-de-presion_218400 See also: *Órgano Judicial aprueba nueva escala salarial con recortes significativos a administrativos*, El País de Bolivia (January 28th, 2021): https://elpais.bo/nacional/20210128_organ-judicial-aprueba-nueva-escala-salarial-con-recortes-significativos-a-administrativos.html

² *Órgano Judicial aprueba nueva escala salarial con recortes significativos a administrativos*, El País, January 28, 2022: https://elpais.bo/nacional/20210128_organ-judicial-aprueba-nueva-escala-salarial-con-recortes-significativos-a-administrativos.html See also *Presupuesto judicial 2022 no repone recorte salarial*, Correo del Sur, February 7, 2022: https://correodelsur.com/seguridad/20220207_presupuesto-judicial-2022-no-repone-recorte-salarial.html

national budget.³ Further, although judicial salaries were supposed to be reevaluated and updated as promised by authorities when cuts were made in 2020, that has not happened yet; and judges were excluded from the salary increases made in 2022 for other public officers.⁴

This continuing lack of resources hinders the development of strong judicial institutions and impacts the interest of qualified professionals to become, and continue to be a part of, the judiciary. Moreover, budget cuts to resources and salaries for judges and court personnel can lead to corruption in the judicial branch.⁵

According to United Nations Basic Principle 7 on the Independence of the Judiciary, States must provide adequate resources to enable the judiciary to properly perform its functions.⁶ Judiciaries shall not be obliged to rely on other public entities for funding or management of financial resources.⁷ The Inter-American Commission on Human Rights has noted that States in which there are no legal provisions allocating a percentage of the national budget to the judicial branch face serious threats to independence.⁸ The Special Rapporteur on the independence of judges and lawyers has stated that financial resources should be adequate to the judiciary's needs, that the judiciary budget should be revisited regularly with a view to increasing it, and that it should comprise a fixed percentage of the total national budget (between 2% and 6%).⁹ The financial needs of the judiciary must be accorded a high level of priority even in times of economic distress under Principle 42 of the Beijing Principles. The Inter-American Commission on Human Rights has stated that cuts to the budgets of judicial

³ Report of visit by Special Rapporteur on the independence of judges and lawyers, Diego García Sayán to Plurinational State of Bolivia, June 24th, 2022, A/HRC/50/36/Add.1, paragraph 78: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/338/73/PDF/G2233873.pdf?OpenElement>

⁴ *Jueces rechazan ser excluidos del incremento salarial*, Los Tiempos (April 29th, 2022): <https://www.lostiempos.com/actualidad/pais/20220429/jueces-rechazan-ser-excluidos-del-incremento-salarial>

⁵ Report of visit by Special Rapporteur on the independence of judges and lawyers, Diego García Sayán to Plurinational State of Bolivia, June 24th, 2022, A/HRC/50/36/Add.1, paragraph 78: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/338/73/PDF/G2233873.pdf?OpenElement>. See also *Strengthening Judicial Integrity Against Corruption*, Global Program Against Corruption, Vienna, March 2001, UNODC, page 9, https://www.unodc.org/documents/nigeria/publications/Otherpublications/Strengthening_Judicial_Integrity_Against_Corruption_2001.pdf (as the UN has observed, low remuneration of judges and court staff can incentivize corrupt practices, for example, by increasing the willingness of judicial personnel to accept tips or bribes in exchange for procedural benefits).

⁶ Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary> See also The Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region: “[t]he amount allotted should be sufficient to enable each court to function without an excessive workload.” <https://www.icj.org/wp-content/uploads/2014/10/Beijing-Statement.pdf>.

⁷ *Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*, Inter-American Commission on Human Rights, OEA/Ser.L/V/II Doc.44, 5 December 2013, paragraph 49.

⁸ *Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*, Inter-American Commission on Human Rights, OEA/Ser.L/V/II Doc.44, 5 December 2013, paragraph 50.

⁹ United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41, March 24, 2009, para. 37: https://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.41_en.pdf

institutions can affect access to justice, and cause delays in tenured appointments and an increase in temporary staff.¹⁰

The continuing financial restrictions on the Bolivian judiciary not only fall short of international standards but also contravene domestic legal provisions. Pursuant to Article 178 of the Constitution of Bolivia, budgetary autonomy serves as a safeguard to judicial independence.

The Bolivian Judges Association (*AMABOL* for its acronym in Spanish- *Asociación de Magistrados de Bolivia*) and other local bar associations have expressed their concern and discontent with judicial salary reductions but have received no response from authorities.¹¹

The City Bar urges Bolivian authorities to address this pressing issue, including by analyzing the rules and provisions that govern budget allocation for the judiciary, and coordinating with relevant stakeholders to mitigate the problems associated with the persistent lack of judicial resources.

II. Prolonged use of temporary judges; delays in (and/or failure to properly implement) procedures to place judges on the bench with fixed-terms

The judicial career as enshrined in the 2009 Constitution of Bolivia is designed to safeguard judicial independence. It is further governed by Law 025 of 2010, which provides judges with fixed-terms as long as they meet professional and ethical standards in the course of regular evaluations.¹² Transition Law 212 of 2011, which established protocols for transitioning from the former judicial branch to the new judiciary established by the 2009 constitution, converted all judges' permanent seats to temporary positions while the judicial career was designed and properly implemented in a period that was supposed to last no more than 2 years.¹³

The Rules of Judicial Career were published in 2018, and set forth two ways of entry into a career as a judge: a) completion of the formation course provided by the School of State Judges *Escuela de Jueces del Estado* (charged with educating and training judges in Bolivia), or b) by public call.¹⁴ However, the *Consejo de la Magistratura* (entity in charge of oversight of government, management and financial affairs of the judiciary, judicial career and disciplinary

¹⁰ IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc.66, December 31, 2011, para. 381: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>

¹¹ *Jueces anuncian acciones legales contra disminución salarial*, Los Tiempos (January 29th, 2022): <https://lostiempos.com/actualidad/pais/20210129/jueces-anuncian-acciones-legales-contradisminucion-salarial>
See also: *Jueces continuarán ganando menos que administrativos*, Correo del Sur (February 8th, 2021): https://correodelsur.com/seguridad/20210208_jueces-continuaran-ganando-menos-que-administrativos.html

¹² Article 178, Constitution of Bolivia. See also Articles 215 to 218 of Law 025 of 2010: <https://tsj.bo/wp-content/uploads/2019/11/ley-025-ley-del-organo-judicial.pdf>

¹³ *El Consejo pone fin a la transitoriedad de jueces del país*, Correo del Sur, September 2, 2022: https://correodelsur.com/seguridad/20220902_el-consejo-pone-fin-a-la-transitoriedad-de-jueces-del-pais.html

¹⁴ The term used in the rule is “convocatoria pública,” which is a public call or bid for lawyers who already possess the required credentials to apply to become judges.

proceedings against judges)¹⁵ has appointed multiple temporary judges outside the process for appointing fixed-term judges, based on Transition Law 212 of 2011.¹⁶

Many judges in Bolivia have occupied transitory or temporary positions for more than twelve years since the issuance of Law 025 of 2010. Since then, only two rounds of public calls to enter the judicial career have been conducted, resulting in only approximately 300 judges being appointed to fixed-term positions through this method.¹⁷ As UN Special Rapporteur Diego García Sayán has noted, out of 1,134 judges, 47% are operating from transitory positions; and high rates of provisional posts threaten judicial independence.¹⁸

The excessive use of temporary judges in Bolivia breaches UN Basic Principle 12 on the Independence of the Judiciary which provides: “Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.”¹⁹ Many judges in Bolivia have operated from temporary posts for more than ten years, some as long as 15 or 20. Thus, any measures adopted to modify this situation – either to promote temporary judges to fixed-term status or to replace them with fixed-term judges – must consider the rights of these judges. Moreover, such measures must abide by Basic Principle 10, which establishes that “Any method of judicial selection shall safeguard against judicial appointments for improper motives.”²⁰

The Inter-American Commission on Human Rights (the “Commission”) has asserted that temporary appointments undermine judicial independence because there is an incentive to adjudicate in the interests of the authorities that determine fixed-term positions for judges.²¹

¹⁵ Article 195, Constitution of Bolivia. See also Law 025 of 2010: <https://tsj.bo/wp-content/uploads/2019/11/ley-025-ley-del-organo-judicial.pdf>

¹⁶ *Estado de la Justicia en Bolivia*, Fundación Construir, 2019, page 50: <https://www.fundacionconstruir.org/wp-content/uploads/2020/09/Libro-Estado-de-la-Justicia-en-Bolivia-2019.pdf>

¹⁷ *El Órgano Judicial contará con al menos 141 nuevos jueces formados en la EJE*, Correo del Sur (August 27th, 2022): https://correodelsur.com/seguridad/20200827_el-organo-judicial-contara-con-al-menos-141-nuevos-jueces-formados-en-la-eje.html See also: *Jueces transitorios campean en los tribunales y en 12 años solo 120 se han especializado*, El Deber (March 7th, 2022): https://eldeber.com.bo/pais/jueces-transitorios-campean-en-los-tribunales-y-en-12-anos-solo-120-se-han-especializado_269857

¹⁸ Report of visit by Special Rapporteur on the independence of judges and lawyers, Diego García Sayán to Plurinational State of Bolivia, June 24th, 2022, A/HRC/50/36/Add.1, paragraph 21: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/338/73/PDF/G2233873.pdf?OpenElement>

¹⁹ Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

²⁰ Basic Principles on the Independence of the Judiciary, the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary> See also The Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region: “[t]he amount allotted should be sufficient to enable each court to function without an excessive workload.” <https://www.ici.org/wp-content/uploads/2014/10/Beijing-Statement.pdf>

²¹ *Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*, Inter-American Commission on Human Rights, OEA/Ser.L/V/II Doc.44, 5 December 2013, paragraph 89. See also European Commission for Democracy through Law (Venice Commission). Report on European Standards as regards the independence of the judicial system: Part II - The Prosecution Service. Adopted by the Venice Commission at its 85th plenary session (Venice, December 17-18, 2010), Strasbourg, January 3, 2011, para. 50.

Additionally, the possibility of arbitrary removal creates fear of reprisal.²² The Commission had previously expressed concern that positions of judges in Bolivia were temporary until judicial career services was introduced under the Judicial Transition Act.²³ The Inter-American Court of Human Rights has also stated that temporary appointments shall not extend indefinitely and must be used only in exceptional situations.²⁴ Additionally, it has asserted that the permanence of judges means not only guaranteed tenure but also an adequate system of promotions and protection from arbitrary removal.²⁵ Security and stability are essential elements to ensure external and internal independence in the judiciary.

The provisional status of judges not only affects their rights and the conditions under which they perform their duties, but generally affects access to impartial and independent justice for individuals across the country.²⁶

On August 26, 2022, the *Consejo de la Magistratura* announced it was opening a process to invite temporary judges to apply for 489 fixed-term positions.²⁷ The invitation process includes three phases: i) evaluation of merits, ii) an exam on knowledge and abilities, and iii) a final interview.²⁸ Local organizations of independent lawyers have criticized this process as demonstrating undue influence and intervention by the executive power, via the Ministry of Justice, that will result in the “institutionalization” of judges.²⁹

The City Bar recognizes the initiative of the Bolivian authorities, including the *Consejo de la Magistratura*, in attempting to eliminate the provisional status of many judges in the country. However, we urge the *Consejo de la Magistratura* and other authorities involved to follow international standards in appointing judges to fixed-term positions.

²² Inter-American Court of Human Rights, Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 78.

²³ *Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*, Inter-American Commission on Human Rights, OEA/Ser.L/V/II Doc.44, 5 December 2013, paragraph 92.

Inter-American Court of Human Rights, Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 43. *See also*, Case of Chocrón Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, para. 107; Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 118; and IACHR, Second Report on the Situation of Human Rights Defenders. OEA/Ser.L/V/II. Doc.66, December 31, de 2011, para. 364.

²⁵ Inter-American Court of Human Rights. Case of Reverón Trujillo vs. Venezuela, paragraph 79 and 116.

²⁶ Human Rights Committee, General Comment No.32, Article 14. The right to equality before courts and tribunals and to a fair trial, 90th period of sessions, 2007, paragraph 19: <https://digitallibrary.un.org/record/606075?ln=en>

²⁷ *Consejo de la Magistratura evaluará a 489 jueces transitorios para institucionalizar sus cargos*, La Razón (August 29th, 2022): <https://www.la-razon.com/nacional/2022/08/29/consejo-de-la-magistratura-evaluara-a-489-jueces-transitorios-para-institucionalizar-sus-cargos/>

²⁸ *Bolivia ingresará a institucionalización de jueces y pondrá fin a la transitoriedad*, Agencia Boliviana de Información (August 26th, 2022): <https://abi.bo/index.php/noticias/seguridad/26184-bolivia-ingresara-a-institucionalizacion-de-jueces-y-pondra-fin-a-la-transitoriedad>

²⁹ *Del Granado critica intromisión de Lima y tilda de vergonzoso sometimiento de la Magistratura*, Eju (August 27th, 2022): <https://eju.tv/2022/08/del-granado-critica-intromision-de-lima-y-tilda-de-vergonzoso-sometimiento-de-la-magistratura/>

One potential problem with the process set forth by the *Consejo de la Magistratura* is that it allows citizens to submit claims and complaints against judges who are applying for fixed-term positions.³⁰ AMABOL has raised concerns³¹ that such unverified complaints could be used as a way to eliminate judges from the applicant pool based on minor or unfounded accusations and without due process safeguards, including an opportunity to submit evidence, an investigation, and the ability to appeal the decision. The consideration of unverified citizen claims and complaints leaves room for arbitrary, and potentially politicized, decisions.

As the implementing authorities consider how best to transition from over-reliance on temporary judges to filling judicial positions with fixed-term judges, they must take into account that these “temporary” judges have been functioning as such for more than a decade. To the extent that these judges are to be promoted to fixed-term status, the evaluation of merits and the exam on knowledge and activities should follow international standards for the evaluation and promotion of judges. Notably, local judges and the Special Rapporteur have highlighted the lack of adequate mechanisms for the evaluation of fixed-term judges and the absence of a promotion process based on such evaluations and other criteria.³² Such mechanisms are fundamental for judges applying for fixed-term positions as well as those applying for re-appointment.

The Inter-American Commission on Human Rights and the Special Rapporteur have issued recommendations for judicial evaluations and examinations.³³ Pursuant to Principle 13 of the UN Basic Principles “promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.”³⁴ Criteria for judges’ promotions should be objective and specific to avoid vague standards that may give government authorities too much discretion in appointing, or removing, judges.³⁵

³⁰ *Magistratura Procederá Con La Institucionalización De Cargos Para Terminar Con La Transitoriedad En El Órgano Judicial*, Consejo de la Magistratura (August 27th, 2022):

<https://magistratura.organojudicial.gob.bo/index.php/9-noticias/2099-nota> See also: *Magistratura recibirá durante dos semanas denuncias contra jueces transitorios*, urgente.bo (August 29th, 2022):

<https://www.urgente.bo/noticia/magistratura-recibirá-durante-dos-semanas-denuncias-contrajueces-transitorios>

³¹ *La Amabol rechaza convocatoria para jueces transitorios*, Correo del Sur, September 6 2022: https://correodelsur.com/seguridad/20220906_la-amabol-rechaza-convocatoria-para-jueces-transitorios.html

³² Report of visit by Special Rapporteur on the independence of judges and lawyers, Diego García Sayán to Plurinational State of Bolivia, June 24th, 2022, A/HRC/50/36/Add.1, paragraph 70: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/338/73/PDF/G2233873.pdf?OpenElement>

³³ United Nations. Economic and Social Council. Commission on Human Rights. Report presented by Leandro Despouy, Special Rapporteur on the Independence of Judges and Lawyers. Addendum. Mission to Brazil. E/CN.4/2005/60/Add.3, February 22, 2005, para. 58. See also: *Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*, Inter-American Commission on Human Rights, OEA/Ser.L/V/II Doc.44, 5 December 2013, paragraph 76.

³⁴ Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>

³⁵ United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41, March 24, 2009, para. 72. See also: Council of Europe, Committee of Ministers, Recommendation Rec (2000) 19 of the Committee of Ministers to the Members States on the Role of Public Prosecution in the Criminal Justice System, adopted by the Committee of Ministers on October 6, 2000 at the 724th Meeting of the Ministers’ Deputies), para. 5.a.

III. The New York City Bar Association calls on Bolivian authorities to guarantee adequate functioning of the judiciary by incorporating international standards in their actions and initiatives

The New York City Bar Association urges Bolivian authorities to curb the problems outlined above by addressing the recommendations issued by the United Nations Special Rapporteur on the independence of judges and lawyers after his visit in February 2022. The City Bar calls on Bolivian authorities to undertake all necessary measures to:

- a. Ensure adequate financial resources for the proper operation of the judiciary with the goal of promoting judicial independence by improving the working conditions of justice operators, including a review and update of salaries to mitigate the effects of the salary reductions and other budget cuts that took place in January 2021; and
- b. Abide by international rules and standards on judicial independence in the transition of judges from provisional positions to fixed-term positions in a manner that promotes the stability of the judicial system. This includes a transparent system of adequate evaluation and promotion.

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.