

ESTÁNDARES INTERNACIONALES  
DE LA COMISIÓN DE VENECIA:

UN ANÁLISIS COMPARADO CON  
LA JUSTICIA ELECTORAL MEXICANA



INTERNATIONAL STANDARDS  
OF THE VENICE COMMISSION:

A COMPARATIVE ANALYSIS OF THE MEXICAN  
ELECTORAL JUSTICE SYSTEM

THE GENERAL DIRECTORATE OF INTERNATIONAL RELATIONS OF THE  
ELECTORAL TRIBUNAL OF THE FEDERAL JUDICIARY PRESENTS THE  
FOLLOWING EVENT REPORT:

# INTERNATIONAL STANDARDS OF THE VENICE COMMISSION: A COMPARATIVE ANALYSIS OF THE MEXICAN ELECTORAL JUSTICE SYSTEM

Ciudad de México

12 y 13 de mayo de 2022



TRIBUNAL ELECTORAL  
del Poder Judicial de la Federación





## INDEX

I.	INTRODUCTION .....	3
II.	LOCATION AND DATE .....	4
III.	SPEAKERS .....	4
IV.	OBJECTIVE .....	6
V.	PROGRAM.....	7
VI.	IMPLEMENTED ACTIVITIES .....	11
VII.	RESULTS.....	40
VIII.	CONCLUSIONS .....	41



## I. INTRODUCTION

International standards are essential to uphold and guarantee political and electoral rights of citizens in Mexico and Latin America. They constrain the power of States to regulate or restrict rights, since they require compliance with criteria that if not respected, the restriction becomes undue or illegitimate and contradicts them.

Therefore, international standards are general principles included in different international mechanisms (universal or regional), they include political declarations that are useful for clarifications and interpretations developed by human rights bodies and courts, whose principles help specify the scope of application and content. Observations and clarifications provided by human rights monitoring bodies and regional courts (European Union, 2016) are considered. States, by entering treaties or becoming part of international bodies, accept to comply with these principles as a constitutional commitment. In terms of human rights and democracy, as well as fulfilling these pledges, the adherence with international principles enhances the quality of democracy.

During the federal electoral processes of 2018 and 2021, the Electoral Tribunal of the Federal Judiciary of México (TEPJF) invited experts and representatives of different missions to analyze the jurisdictional efforts of the TEPJF. This way, the TEPJF has sought to ensure that the changes introduced by its jurisdictional work are aligned with international standards, always seeking to maximize the *pro persona* principle. For instance, the observation report carried out by the Venice Commission in 2021, concluded that the efforts of the TEPJF is in accordance with the other general conditions set forth by the Venice Commission: a) respect for fundamental rights, specifically freedom of expression; b) protection against electoral manipulation; and c) the necessary procedural guarantees. With a view to addressing the recommendations made, the discussions of the event concluded with the construction of methodologies for jurisdictional monitoring and for the identification of international standards of the Venice Commission applicable to the rulings issued by the Mexican Electoral Tribunal.



## II. LOCATION AND DATE

The event was held in a hybrid format, at the High Chamber of the TEPJF (José Luis de la Peza Auditorium) and through the TEPJF's Zoom and YouTube platform. It lasted two days; Thursday, May 12<sup>th</sup> 2022, from 10:00 am to 2:30 pm and Friday, May 13<sup>th</sup>, from 9:30 am to 12:45 pm. Simultaneous translation was provided from English-Spanish, French-Spanish and Portuguese-Spanish.

## III. SPEAKERS

Foreign Participants		
1	Philip Dimitrov	Judge of the Constitutional Court of Bulgaria and member of the Venice Commission
2	Rafael Rubio	Professor of Constitutional Law at the Complutense University of Madrid, Spain.
3	Jean Pierre Camby	Professor of Public Law at the University of Versailles
4	Stefanie Lindquist	Senior Research Fellow and Professor of Law and Political Science, Arizona State University
5	Irene Spigno	Director General of the Inter-American Academy of Human Rights and Director of the Center for Comparative Constitutional Studies, Autonomous University of Coahuila
6	Warren John Newman	Senior General Counsel of the Constitutional, Administrative and International Law Section, Department of Justice of Canada, and Member of the Venice Commission
7	Andrea Pisaneschi	Professor of Constitutional Law at the Department of Law of the University of Siena



8	Luis López Guerra	Professor of Constitutional Law, emeritus, at the Faculty of Law of the University Carlos III of Madrid.
9	Ilona Tip	Operations Director of the Electoral Institute for Sustainable Democracy in Africa (EISA)
10	Augusto Ferrero Costa	President of the Constitutional Court of Peru and Vice President of the Sub-Commission on Latin America of the Venice Commission
11	Alberto Dalla Vía	Vice President of the National Electoral Chamber of Argentina and Observer of the Venice Commission
12	José Ignacio Vásquez Márquez	Justice of the Constitutional Court of Chile and Substitute Member of the Venice Commission
13	Cármén Lúcia Antunes Rocha	Justice of the Supreme Federal Court of Brazil, and Member of the Venice Commission
14	Giammaria Milani	Senior Researcher in Public Comparative Law, Department of Law of the University of Siena
15	José Thompson	Executive Director and Legal Representative, Electoral Advisory and Advocacy Center of the Inter-American Institute of Human Rights (IIDH-CAPEL)
16	Jeffrey Staton	Judiciary Project Manager at Varieties of Democracy (V-Dem) and Professor of Political Science at Emory University
17	Dong Nguyen Huu	International expert



TEPJF Participants		
1	Reyes Rodríguez Mondragón	Chief Justice of the High Chamber of the Electoral Tribunal of the Federal Judiciary of Mexico
2	Janine Otálora Malassis	Justice of the High Chamber of the Electoral Tribunal of the Federal Judiciary of Mexico and substitute member of the Venice Commission
3	José Luis Vargas Valdez	Justice of the High Chamber of the Electoral Tribunal of the Federal Judiciary of Mexico and member of the Venice Commission
4	Irma Méndez de Hoyos	General Coordinator of Advisors to the Presidency of the Electoral Tribunal of the Federal Judiciary of México

#### IV. OBJECTIVE

Basic documents of the Venice Commission were analyzed and the results of the international jurisdictional missions of accompaniment during the federal electoral processes were evaluated with the aim of building a methodology of support to the electoral jurisdictional efforts, in accordance with applicable international standards and with the purpose of issuing concrete recommendations.



## V. PROGRAM

12 MAY	
10:00 - 11:00	<b>OPENING AND PANEL 1. INTERNATIONAL STANDARDS OF THE VENICE COMMISSION: ANALYSIS OF BASIC DOCUMENTS</b>
<p><b>Objective.</b> Opening remarks and learn how the basic documents adopted by the Venice Commission have contributed to the creation of international standards, and about the importance of the application of these standards in the resolution of electoral disputes. This session will analyze some of the Venice Commission's documents, which have had an impact on the electoral justice of its member states and on the quality of democracy in these countries, in general terms.</p> <p>Format: 10 minutes per speaker and 20 minutes for questions and answers (3 minutes per statement).</p> <ul style="list-style-type: none"> <li>• <b>Janine Otálora Malassis</b>, Justice of the High Chamber of the Electoral Tribunal of the Federal Judiciary of Mexico and substitute member of the Venice Commission</li> <li>• <b>José Luis Vargas Valdez</b>, Justice of the High Chamber of the Electoral Tribunal of the Federal Judiciary of Mexico and member of the Venice Commission</li> <li>• <b>Philip Dimitrov</b>, Judge of the Constitutional Court of Bulgaria and member of the Venice Commission</li> </ul>	
11:00 - 11:15	<b>RECESS</b>
11:15 - 12:45	<b>PANEL 2. REPORTING ON THE PERFORMANCE OF ELECTORAL JUSTICE FROM AN INTERNATIONAL PERSPECTIVE</b>
<p><b>Objective.</b> The purpose of this session is to present some of the findings shared by the electoral support missions to the Electoral Tribunal of Mexico, on the performance of the electoral justice structure from an international perspective.</p> <p>Format: 10 minutes per speaker, 5 minutes for the moderator and 25 minutes for questions and answers (3 minutes per statement).</p> <ul style="list-style-type: none"> <li>• <b>Rafael Rubio</b>, Professor of Constitutional Law at the Complutense University of Madrid, Spain and Substitute Member of the Venice Commission</li> <li>• <b>Jean Pierre Camby</b>, Professor of Public Law at the University of Versailles</li> <li>• <b>Stefanie Lindquist</b>, Senior Research Fellow and Professor of Law and Political Science, Arizona State University</li> </ul>	



- **Irene Spigno**, Director General of the Inter-American Academy of Human Rights and Director of the Center for Comparative Constitutional Studies, Autonomous University of Coahuila

**Moderator: Irma Méndez de Hoyos**, General Coordinator of Advisors of the Presidency of the Electoral Tribunal of the Federal Judiciary of Mexico

12:45 - 13:00

RECESS

13:00 - 14:30

**PANEL 3. JUDICIAL INDEPENDENCE TO CONTRIBUTE TO THE  
QUALITY OF DEMOCRACIES**

**Objective.** This session will analyze the importance of judicial independence in international law and for the protection of human rights. National and international examples will be used to evaluate the contribution of this concept to the body of international principles that favors achieving an electoral justice that contributes to the quality of democracies.

Format: 7 minutes of introductory remarks by the moderator, 10 minutes per speaker and 25 minutes of questions and answers (3 minutes per statement).

- **Warren John Newman**, Senior General Counsel of the Constitutional, Administrative and International Law Section, Department of Justice of Canada and Member of the Venice Commission (virtual)
- **Andrea Pisaneschi**, Professor of Constitutional Law at the Department of Law of the University of Siena
- **Luis López Guerra**, Professor of Constitutional Law, emeritus, at the Faculty of Law of the University Carlos III of Madrid
- **Ilona Tip**, Operations Director of the Electoral Institute for Sustainable Democracy in Africa (EISA) (virtual)

**Moderator: José Luis Vargas Valdez**, Justice of the High Chamber of the Electoral Tribunal of the Federal Judiciary of Mexico and member of the Venice Commission

END OF DAY 1





13 MAY

9:30 - 11:00

**PANEL 4. ACCESS TO JUSTICE AND EFFECTIVE PROTECTION OF RIGHTS: ANALYSIS OF OPINIONS OF THE VENICE COMMISSION**

**Objective.** Access to justice is an international principle that guarantees the effective protection of the political-electoral rights of citizens. This panel will exchange experiences based on the opinions of the Venice Commission for some Latin American countries and will analyze how these opinions, although focused on local issues, their recommendations can be applied throughout the region.

Format: 7 minutes of introductory remarks by the moderator, 10 minutes per speaker and 25 minutes of questions and answers (3 minutes per statement).

- **Augusto Ferrero Costa**, President of the Constitutional Court of Peru and Vice President of the Sub-Commission on Latin America of the Venice Commission (virtual)
- **Alberto Dalla Vía**, Vice President of the National Electoral Chamber of Argentina and Observer of the Venice Commission (virtual)
- **José Ignacio Vásquez Márquez**, Justice of the Constitutional Court of Chile and Substitute Member of the Venice Commission
- **Cármén Lúcia Antunes Rocha**, Justice of the Supreme Federal Court, and Member of the Venice Commission (virtual)

**Moderator: Janine Otálora Malassis**, Justice of the High Chamber of the Electoral Tribunal of the Federal Judiciary of Mexico and substitute member of the Venice Commission

11:00 - 11:15

**RECESS**

11:15 - 12:45

**PANEL 5. METHODOLOGIES FOR ANALYZING ELECTORAL JUSTICE WITH REGARD TO THE QUALITY OF DEMOCRACY**

**Objective.** Learn about the main methodologies and structures for analyzing electoral justice regarding the quality of democracy. During this session, the importance of having electoral observation methodologies specialized in different areas of the electoral process, for example, focused on electoral justice or gender equality, will also be analyzed. There will be a final reflection on some tools to achieve an effective observation.

Format: 7 minutes of introductory remarks by the moderator, 10 minutes per speaker and 25 minutes of questions and answers (3 minutes per statement). The moderator will deliver a final message on the session discussions.

- **Giammaria Milani**, Senior Researcher in Public Comparative Law, Department of Law of the University of Siena

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- **José Thompson**, Executive Director and Legal Representative, Electoral Advisory and Advocacy Center of the Inter-American Institute of Human Rights (IIDH-CAPEL) (virtual)
- **Jeffrey Staton**, Judiciary Project Manager at Varieties of Democracy (V-Dem) and Professor of Political Science at Emory University
- **Dong Nguyen Huu**, International expert

**Moderator: Reyes Rodríguez Mondragón**, Chief Justice of the High Chamber of the Electoral Tribunal of the Federal Judiciary of Mexico

END OF EVENT



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## VI. IMPLEMENTED ACTIVITIES

### Opening and Panel 1. “International Standards of the Venice Commission: Analysis of Basic Documents”

The event "International standards of the Venice Commission: a comparative analysis of the Mexican electoral justice" was inaugurated with a first panel dedicated to the analysis of the basic documents adopted by the Venice Commission, how they have contributed to the creation of international standards and what has been the importance of the application of these standards in electoral dispute resolutions. Justice Janine Otálora Malassis and Justice José Luis Vargas Valdez of the High Chamber of the TEPJF, and Philip Dimitrov, Judge of the Constitutional Court of Bulgaria, all members of the Venice Commission, partook in the panel.



José Luis Vargas Valdez, Justice of the High Chamber of the TEPJF and member of the Venice Commission emphasized that the work of the Electoral Tribunal of Mexico and the Venice Commission which started in 2012, has brought together other realities and allowed the exchange of different schemes of democracy, such as those prevailing in the American continent. In recent years, the Venice Commission has actively participated in reports and observations starting with Mexico, followed by Peru and recently in Chile. These practices of exchanging opinions on good practices have been fruitful for both European and Latin American members. Mexico has been a protagonist in electoral justice issues within the Venice Commission. For example, it proposed the development of the Code of Good



Practices in Electoral Matters, which was adopted by the Commission in 2002. Moreover, a project has been developed to share the administration of the VOTA database, which contains the legislation, opinions and other studies on electoral matters of the Commission's member states.

He emphasized that one of the international efforts of the Electoral Tribunal of Mexico is the Global Network on Electoral Justice (GNEJ), which shares priorities with the Venice Commission, and has generated specialized meetings on electoral justice that allow the expansion of some of the visions and latitudes of the Commission that were not contemplated previously or in its member base. Finally, he pointed out that both the GNEJ and the Venice Commission, as well as the Sub-Commission for Latin America, chaired by Mexico, have created a space to analyze problems of democratic realities from a horizontal perspective, to find solutions to shared challenges.



Janine Otálora Malassis, Justice of the High Chamber of the Electoral Tribunal of the Federal Judiciary of Mexico and member of the Venice Commission focused her speech on judicial independence and the consolidation of the Rule of law as cross-cutting themes of the work and documents of the Venice Commission. She emphasized that independence identified in its broadest sense has allowed the Commission to become a benchmark in the field; this advisory body allows an analysis of various issues and is of great importance beyond specific cases, as it allows the identification of fundamental values of a democratic state. This theoretical and legal construction of the model of the democratic state and of rights, which



places citizens at the center, is based on the needs of the European continent after the fall of the Berlin Wall in 1989.

Within the Venice Commission, in addition to the aforementioned Code of Good Practice, two special documents have been developed for international standards of judicial-electoral independence: the *Rule of law checklist* (2016), which is a tool to measure the Rule of law in any country from a perspective of its constitutional and legal structure; and, the *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy* (2019), a document that analyzes soft law and how to observe it at the national level, so that parliamentary majorities do not become the basis for authoritarianism. In conclusion, the Justice emphasized that the collection of opinions is part of the reference documents for international and national organizations, which are taken up in the decision-making processes.



Finally, Philip Dimitrov, Judge of the Constitutional Court of Bulgaria and member of the Venice Commission emphasized that the Commission is a voluntary entity and that its opinions are not binding on the interested parties. At the core of its efforts is the study of current trends in constitutional law and the identification of certain standards that by their nature are considered universal. It is from this perspective that it discusses draft laws that its members submit for its consideration. Thanks to its experience and practices, the Commission continues to seek new mechanisms to define standards, in addition to documents on voter rights, electoral



registration, election organization, political campaigns, election observation and sanctions.

In this regard, Judge Dimitrov discussed the pillars of the Rule of law, such as: legality, legal certainty, equality before the law and non-discrimination, prevention of abuse of power and access to justice (including the time allowed to dispute a decision, issuing a judgment, transparency in the reasoning of decisions and the right to provide evidence). He considered that these basic principles, founded on equality and democratic practices in accordance with the law, are equally important for electoral justice.



During the segment of questions and answers, the speakers discussed how international standards have been brought closer to the Mexican context. The Electoral Tribunal has proactively adopted international standards and practices that oblige the Mexican state to adhere to human rights principles, which in Mexico are of recent creation. Values such as gender equality, the rights of indigenous peoples and the creation of equal political representation lists have been strengthened through work with the Venice Commission and through guides on how to apply these standards.

In this regard, it was emphasized that the elements of various documents issued by the Venice Commission are considered when analyzing a ruling, which can contribute to the legal argumentation in the sense or intention of the draft decision. Moreover, the Code of Good Practice in Electoral Matters, for example,



has made it possible to build a legal criterion for the justices and work teams. In some cases, an opinion of the Commission can provide a novel element to be introduced in a ruling, such as, for example, the limits or lack thereof on reelection.



## Panel 2. “Reporting on the Performance of Electoral Justice from an International Perspective”

The second panel was moderated by Irma Méndez de Hoyos, Chief of Staff (General Coordinator of Advisors) of the Presidency of the TEPJF, who mentioned that the objective of the session would be to present some of the findings of the electoral support missions at the Electoral Tribunal of Mexico on the performance of electoral justice from an international perspective. She pointed out that election observation in the region began more than five decades ago and throughout this time there have been changes in the modalities, approaches and actors. Electoral observation began as a task to provide greater legitimacy to electoral results.

She emphasized that the focus on comparative methodologies shows how this activity has been professionalized and how the approaches that guide election observation have diversified. The first observation efforts were focused on whether or not they complied with two aspects, to be free and fair, and in a second phase on the quality of the elections. Given the need to elevate the electoral process as a whole, beyond Election Day and based on international principles and standards, efforts were developed from the perspective of electoral integrity, covering the entire electoral cycle. She mentioned that one of these approaches is that of electoral



justice, which is of interest to those present and which undoubtedly supports the consolidation of democracies.



Rafael Rubio, Professor of Constitutional Law at the Complutense University of Madrid, Spain, presented the findings of an observation process that focused on the application of international standards to the Federal Electoral Process (PEF) 2020-2021, focusing especially on those of the Venice Commission. He specified that this is a report commissioned by the Venice Commission and the Council of Europe; he also thanked all the electoral authorities that contributed to the quality of the report for their collaboration.

He clarified that the nature of the report is special, because it focuses on electoral justice during the electoral process considering the standards of the Venice Commission and the Inter-American Commission on Human Rights, both as reference elements rather than mandatory elements. Thus, the examination of the compliance with these standards resulted in a joint and bidirectional reflection, by analyzing the most important decisions issued during the PEF 2020-21 in light of these standards and based on these decisions action guidelines for electoral standards were sought.

He offered some initial points about the electoral process: firstly, it was a process that occurred in pandemic, with the logistical difficulties that this implied and





the conditioning of the role of the Electoral Tribunal; secondly, it represented the largest electoral process in the history of Mexico and probably one of the largest in the world; and finally, the application of 'online trials' to make access to justice more inclusive and homogeneous.

He indicated that the basic conclusions of his report focused on the role that the Electoral Tribunal of Mexico has played in this process, which has highlighted a transformative use in its nature. In addition, he said that defining what the limit of jurisdictional decisions on electoral conflicts is and that it is a fundamental issue for constitutional bodies such as the TEPJF. Finally, he said that the jurisprudential changes experienced during this process were made for the benefit of other international standards and respecting the principles of the Venice Commission, i.e., respect for fundamental rights, especially freedom of expression, protection against electoral manipulation and the necessary procedural guarantees.



Stefanie Lindquist, Senior Researcher and Professor of Law and Political Science at Arizona State University, thanked for this initiative, especially in the context of democratic recession as pointed out by Professor Larry Diamond. In this regard, she mentioned that it is essential to reflect on how to improve democracy in each country, since there is no one-size-fits-all solution. She commented on her report that she drafted upon request by the Electoral Tribunal of Mexico which compared the Mexican system with judicial institutions in the United States, with a special focus on the Supreme Court of Justice of the Nation of Mexico.



She acknowledged that there are some contextual issues that make the work of the Courts difficult: such as, for example, highly politicized decisions and the resolution of thousands of cases in limited periods of time. Specifically, she emphasized that the TEPJF works in a context of *hyper lexis* and *hyper reform*, i.e., the electoral system is continuously being reformed and it is difficult to keep up with these reforms in each six-year term. Secondly, she pointed out that many courts in the region are in a phase of constitutional transition from an inquisitorial system to one characterized by common practices. These issues add to the complexity of the Tribunal's tasks.

She listed the six recommendations of her report: 1. random assignment of the matters to the Tribunal's justices, which is already underway; 2. Eliminate *ex parte* hearings with litigants and develop docket control methods to free justices from creating binding precedents; 3. Adopt ethical guidelines, norms or directives that regulate the activities of the justices on the internet, especially on social media; 4. Depersonalize the role of the justices, elevate the judicial symbols associated with the TEPJF as a reflection of the law and not of who holds the office; 5. Adopt a differentiated standard of review for decisions issued by the INE; and, 6. Extend the term of the justices of the TEPJF and include a pension upon retirement from the Tribunal.





Jean Pierre Camby, Professor of Public Law at the University of Versailles, who participated virtually, commented that his report was an effort to view the TEPJF with an outside perspective. He emphasized that his annotations join those already formulated by the Venice Commission itself and are based on the fact that Mexico finds itself in a particular situation when faced with such a large number of elections and with a high level of political violence. He underlined several specificities of the Mexican context: the existence of an autonomous and independent Electoral Tribunal, the number of political parties and the importance of the weight of litigation and the role given to the National Electoral Institute (INE).

He pointed out that the conclusions contained in his report are grouped in three categories: the need to review the systems of electoral sanctions, especially for those who commit political crimes; the need for a better organization of the competencies both between the administrative and jurisdictional bodies, as well as between the Electoral Tribunal and the state electoral bodies; and the need to ensure the judges' independence. Additionally, he indicated that the report is available on the Tribunal's website and concluded his presentation by highlighting previous remarks: that the constant modification of the electoral laws is not a good thing, and even less so in an election year.





Irene Spigno, General Director of the Inter-American Academy of Human Rights and Director of the Center for Comparative Constitutional Studies of the Autonomous University of Coahuila, congratulated the Electoral Tribunal for its openness to international observation, which has positioned it as a model from an international and comparative perspective. In her speech, she shared her experience of jurisdictional support missions, as a member of the mission coordinated by International IDEA, which provided an impartial analysis of electoral justice in Mexico within the framework of the PEF 2020-2021.

She indicated that the mission analyzed 28 emblematic rulings of the TEPJF based on two perspectives: first, on all the instruments that facilitate or hinder citizens' access or closeness with electoral justice, as well as the responses of the jurisdictional body to the claims of those who demand access to justice. The second perspective was of the relationship between the Tribunal's jurisprudence and international standards, and more specifically, whether the Tribunal's interpretation of the cases is aligned with international standards, both formally and substantively.

She emphasized that the mission report found strengths and areas of improvement. Among the main virtues are: the high degree of protection of those who turn to the Tribunal and a high degree of compliance with the decisions of the TEPJF, as well as the work of the Tribunal to meet principles of completeness, coherence and consistency in its rulings and sensitivity to protect the rights of individuals and groups in vulnerable situations (women, indigenous people, people with disabilities, migrants, the LGBTTTIQ+ community, among others); as well as the frequent reference to international human rights treaties signed and ratified by Mexico, an element that leads to a high conformity of the rulings with international standards.

Among the areas of improvement and recommendations, she mentioned: promoting open justice through various strategies related to the closeness or access to justice; standardizing the structure of the rulings by considering the use of summaries, indexes and glossaries to facilitate the reading and accessibility of the public to the rulings; development of jurisprudential lines to clarify certain legal concepts, such as gender based political violence; and regarding the reference to international treaties, it was recommended to expand the reference to international standards and jurisprudence of the Inter-American Court of Human Rights for a more solid argumentation.



During the questions and answers segment, the participants and audience discussed issues of judicial independence, violence during electoral campaigns, independence and election of judges, challenges and areas of improvement for the Tribunal, the development of a true democracy for all and electoral reform in Mexico.

It was mentioned that institutions must go beyond legitimacy *per se* and how to ensure their effectiveness through communication. Effectiveness must go beyond rulings, society still has a high sense of impunity and the only way to achieve legitimacy is to strengthen the apparatus of sanctions in electoral matters through illegibility rather than annulment, in order to guarantee legal certainty.





### Panel 3. “Judicial Independence to Contribute to the Quality of Democracies”

The third panel was chaired by José Luis Vargas Valdez, Justice of the High Chamber of the TEPJF and member of the Venice Commission. The objective was to analyze the importance of judicial independence in international law and for the protection of human rights. National and international examples were used to evaluate the contribution of this concept to the baggage of international principles that contribute to achieve an electoral justice that contributes to the quality of democracies.



Andrea Pisaneschi, Professor of Constitutional Law at the Department of Law of the University of Siena, Luis López Guerra, Professor of Constitutional Law, emeritus at the Faculty of Law of the Universidad Carlos III de Madrid, Warren John Newman, Senior General Counsel of the Constitutional, Administrative and International Law Section, Department of Justice of Canada and Member of the Venice Commission, and Ilona Tip, Director of Operations of the Electoral Institute for Sustainable Democracy in Africa (EISA), participated as speakers.

At the beginning of his speech, Justice Vargas Valdez pointed out that the panel's reflections will provide relevant elements to feed the specialized debate on judicial independence and democracy. He emphasized that judicial independence is fundamental and a necessary element for the Rule of law and, consequently, for an effective democracy. He pointed out that according to the Report on the Rule of Law issued by the Venice Commission in 2011, although the concept of the Rule of law



is indefinable, an operational approach makes it possible to identify the essential elements that comprise it.

In this regard, he explained that the Commission considered that a consensus can currently be found on the necessary elements of the Rule of law, which it has grouped into: legality; legal certainty; prohibition of arbitrariness or prevention of abuse of power; respect for human rights (as a cross-cutting element); non-discrimination and equality before the law; and access to justice before independent and impartial courts. He emphasized that the Venice Commission itself has pointed out that judicial independence has two components: one subjective and one objective. Regarding the first, he explained that it refers to the right of every person to have his or her rights and freedoms established by an independent judge; the second has to do with an indispensable quality of the judicial system as a whole, that is, its independence from the executive and legislative powers.

Regarding the electoral field, he emphasized that the Venice Commission has pointed out that it is fundamental that the instances that resolve the controversies that arise in this matter must be independent from the executive and legislative branches. Finally, he highlighted what the Commission itself has stated: "*If there are no independent judges, rights and freedoms cannot be applied in a correct and legal manner.*"



Ilona Tip, Director of Operations of the Electoral Institute for Sustainable Democracy in Africa (EISA), who participated virtually, highlighted some of the main points about elections, democracy and judicial independence. She stated that



democracy is based on the people and that there has been a setback in the African region. She noted the recent events that have affected South Africa in regard to electoral processes. She said that transparency and independence make for a clean election, before, during and after the elections.

On the other hand, she emphasized that the Judiciary is important in a democracy, since she considers it fundamental to have a specific body that resolves electoral disputes. She explained that there are important international instruments on political-electoral rights related to electoral justice. In this sense, she pointed out that judicial independence is indispensable to prevent the intervention of other branches of government, and that this is achieved by having clear rules and laws. She recognized that in Mexico there is a robust electoral system, which has a specialized court on the matter.

She mentioned that the mechanisms that are used for electoral disputes must be efficient and that the procedures for filing a complaint must be simple. She concluded by pointing out that the use of technology, social media, and the implications they have on elections, constitute substantial challenges for the bodies that settle electoral disputes.



Andrea Pisaneschi, Professor of Constitutional Law at the Department of Law of the University of Siena pointed out the relationship between due process and the principle of impartiality of judges. He explained that all international standards describe due process as a public hearing, which means a system of procedural rules





that guarantee the rights of the parties, in particular the processes that are based on the hearing are opposed to the clerical processes.

He maintained that the parties are under the control of the judge in public hearings in all procedural acts, in a system guaranteed by law. On the other hand, he explained that the European Court of Human Rights (ECtHR) establishes that judges must be and appear to be impartial. Therefore, he reminded that the independence of judges is something more than being independent and impartial, it means that citizens trust them, because they know that the trial will be impartial. In this regard, he said that during an electoral process the problem is that the terms of resolution are very short.

He concluded by explaining that the independence of the judges has to do with the separation of powers, as this principle is important for the Rule of law. In this regard, he said that a law on judicial independence was passed in the European Union in 2020, which is important with regard to economic issues.



Warren Senior General Counsel of the Constitutional, Administrative and International Law Section, Department of Justice of Canada and member of the Venice Commission participated virtually.

At the beginning of his presentation, he outlined the perspective on judicial independence in Canada. He explained how this independence is guaranteed and what are the principles and role of the Supreme Court. In this regard, he emphasized



that judicial independence in Canada is an important component of the separation of powers and the Rule of law.

Finally, he pointed out that judicial independence has two dimensions: impartiality of the judge and separation of powers. He emphasized that judicial independence is constitutional in all courts in Canada and that it was the Legislature that implemented this measure in the Constitution.



Luis López Guerra, Professor of Constitutional Law, emeritus at the Faculty of Law of Universidad Carlos III de Madrid, explained that when examining international standards on judicial independence, two sources of these standards must be distinguished: *hard law* and *soft law*. In this regard, he pointed out that courts always consult the opinions of the Venice Commission when drafting rulings.

Moreover, he argued that judicial control of electoral processes should be basic, since he considers that, if it is said that there should be an independent court, there should be clear criteria for this. He echoed Andrea Pisaneschi, explaining that the ECtHR establishes that a court must not only be but appear to be independent. He pointed out that another important factor regarding judicial independence is the appointment of judges, for which he recalled that the Venice Commission has issued opinions on the matter and recommends eliminating political parties in the appointment of judges, as well as proposing that a neutral body participate, preferably comprised of the judiciary.



He recognized that, in the Mexican system, it seems reasonable how the judges of the Judiciary are elected, in contrast to what they do in Bolivia, where judges are elected by popular election, which does not guarantee independence. Finally, he pointed out that the Venice Commission and the ECtHR have held that there must be a judicial recourse to decide on the sanction against judges, and that the judicial review must be full and in accordance with the law.



Afterwards, the participants of the event asked the panelists several questions on issues related to judicial independence and how democracy benefits from it, as well as the selection of judges around the world.

To conclude, the Justice of the High Chamber of the TEPJF, José Luis Vargas Valdez, stated that democracy and the rights inherent to this regime are currently under threat throughout the world. He emphasized that, in this context, the Rule of law is fundamental to guarantee that all persons and entities, public and private, are subject to laws compatible with the constitutional and international principles of human rights and democracy.

Therefore, he stated that an independent judiciary is indispensable, because without independent and impartial arbitrators in charge of the interpretation and application of the law, neither democracy nor human rights can be a reality.



#### Panel 4. “Access to Justice and Effective Protection of Rights: Analysis of Opinions of the Venice Commission”

Justice Janine Otálora Malassis, of the High Chamber of the Electoral Tribunal of the Federal Judiciary of Mexico and member of the Venice Commission chaired the roundtable. She shared some welcoming remarks and explained the objective of the session, in which experiences were exchanged based on the opinions of the Venice Commission in some Latin American countries and to showcase the importance of the Venice Commission for the strengthening of democracies.

The panel was comprised of José Ignacio Vásquez Márquez, Justice of the Constitutional Court of Chile and substitute member of the Venice Commission. Augusto Ferrero Costa, President of the Constitutional Court of Peru and Vice-President of the Sub-Commission for Latin America of the Venice Commission; Alberto Dalla Vía, Vice-President of the National Electoral Chamber of Argentina and observer member of the Venice Commission; and Carmen Lúcia Antunes Rocha, justice of the Supreme Federal Court and member of the Venice Commission, who participated virtually.

Justice Otálora Malassis stated that the Venice Commission has contributed to the international dialogue for the promotion of democracy and human rights and reiterated that there is a regional commitment that considers the mechanisms of international legal cooperation. She mentioned that the work carried out in the



Commission has reflected significant advances in the rights of transgender people, in the inclusion of the cosmivision of indigenous peoples and violence against women. She said that the current parallel legal system considers indigenous rights and reserves legislative seats for indigenous people.

She reiterated that it should be harmonized with human rights matters, maintaining coherence with the justice system. Additionally, she pointed out that the system of indigenous design is supported by the Venice Commission and emphasized that indigenous candidacies competing for seats should be within the political party system itself, considering the system of customs and traditions. She concluded by mentioning that international political cooperation, good practices and areas of improvement shared in the Venice Commission contribute to democratic strengthening.



Alberto Dalla Vía, Vice President of the National Electoral Chamber of Argentina, who participated virtually, highlighted the usefulness of the Venice Commission in the efforts of his institution. In this sense, he detailed a series of good practices such as the collaboration of the Venice Commission in 2016 when Argentina proposed a single electronic ballot with technical and legal standards, he mentioned that the reform did not materialize due to a debate on technology, which was categorized as worrying due to issues related to the transparency of the electoral process. He mentioned that a seminar was held in Buenos Aires on this topic, which was attended by members of the Venice Commission.

Subsequently, he mentioned that in 2017, thanks to the international standards of the Commission, Argentina has a gender quota and now has parity and a permanent jurisprudence on the subject. He expressed that, a digital ethical commitment on the use of social media was signed in 2019 in his country, which was



based on the social media report of the Venice Commission and on the model of the Mexican authorities.



Cármén Lúcia Antunes Rocha, Justice of the Federal Supreme Court of Brazil and member of the Venice Commission, who participated virtually, spoke about the Brazilian electoral experience where they have a permanent judiciary and an electoral judiciary. She mentioned that in 2022, Brazil will have an electoral process where the president, governors, deputies and senators will be elected. She pointed out that since 1995, Brazil has had electronic voting and citizens trust the system since it does not require the use of internet and there is no human influence in the voting.

She reiterated that the challenge for the Brazilian judiciary during the upcoming elections will be to generate trust among citizens, since social media and fake news affect the legitimacy of the process. Finally, she pointed out the importance of creating commitments with social media regulators to avoid questions regarding the transparency of the electoral process.



Augusto Ferrero Costa, President of the Constitutional Tribunal of Peru and Vice-President of the Sub-Commission for Latin America of the Venice Commission, highlighted through his virtual participation, the benefits of the contributions and scope of the Venice Commission in Peruvian democracy. He stated that in 2019 the Venice Commission issued opinion 964, referring to the link between constitutional reforms and trust in Peruvian legislation. He pointed out that, the opinion drafted upon the request of the Congress of the Republic of Peru was issued in the context of a political and social crisis produced by the constant disagreements between the executive and legislative branches. The President intended to dissolve the Congress and the Venice Commission recommended that any constitutional reform process should preserve the principle of separation of powers and the requirement of checks and balances between the President and the Congress.

He highlighted that it was established in 2022 that allowing the executive branch to make a question of trust in constitutional reforms an exclusive matter of the Congress implied subjecting it to the constitutional principle of the separation of powers. He reiterated the importance of the Venice Commission in Peruvian democracy and its influence on the separation of powers. Finally, he mentioned that the bodies that administer constitutional justice must be able to control issues that violate constitutional principles within the framework of electoral justice.



José Ignacio Vázquez Márquez, Justice of the Constitutional Court of Chile and substitute member of the Venice Commission, explained that the Chilean Constitutional Court has issued several rulings on the preventive control of legal norms and the preventive control of legal precepts in specific cases. He pointed out that the criteria of the Venice Commission function as an effective mechanism for respecting electoral rules and have contributed to the establishment of electoral justice and access to it, ensuring a transparent and democratic process.

He mentioned that, in terms of the standards of the Venice Commission, several points were established regarding the power and responsibility of various bodies. Regarding the Chilean Constitution, he presented various advances on the guarantee that ancestral groups have been granted access to justice.







In the questions and answers session, the speakers agreed that the contributions of the Venice Commission have achieved great results in Latin American democracies. It was mentioned that having the backing of an international organization strengthens the decisions of the courts and tribunals in the region. It was also mentioned that democracy prevails because of the credibility of electoral processes, and it is the responsibility of judges, justices and courts to ensure that it is a transparent and reliable process.



### Panel 5. “Methodologies for Analyzing Electoral Justice with regard to the Quality of Democracy”

The panel was chaired by Reyes Rodríguez Mondragón, Chief Justice of the high Chamber of the TEPJF, and included Giammaria Milani, Senior Researcher in Comparative Public Law, Department of Law of the University of Siena; Jeffrey Staton, Judiciary Project Manager of Varieties of Democracy (V-Dem), Senior Vice Dean of the Laney Graduate School (LGS) and Professor of Political Science at Emory University; Dong Nguyen Huu, International Expert; and José Thompson, Executive Director and Legal Representative of the Electoral Advisory and Advocacy Center of the Inter-American Institute of Human Rights (IIDH-CAPEL), who participated virtually.



Chief Justice Rodríguez Mondragón highlighted the relevance of the methodologies used to analyze electoral justice, the mechanisms that allow for more effective observation in the field of administration of justice and emphasized that observation contributes to strengthening a model of open justice.

He also mentioned that the TEPJF recognizes that democratic values and principles are universal, so it is considered that international human rights instruments allow increasing the protection of political and electoral rights of all people. As a reference, he shared that in the current composition of the High Chamber, 8.20% of the rulings have taken up the standards of the Inter-American Court of Human Rights and the Venice Commission.



Giammaria Milani, Senior Researcher in Comparative Public Law at the Department of the University of Siena, spoke about the observation methodology that was applied by the University of Siena during the 2017-2018 electoral process in collaboration with the TEPJF, which constituted a specific and modern form of electoral observation for its methodologies and objectives.

He pointed out that, "The project for the monitoring and accompaniment of the 2017-2018 Mexican elections", was carried out in two phases. The first was on the monitoring of the electoral jurisprudence of the TEPJF and, particularly of the High Chamber, in the different stages of the electoral process and, the second focused on the drafting of a white paper on the most relevant aspects of this jurisdictional activity.



He reminded that the purpose of the follow-up was to analyze the decisions issued by the High Chamber of the TEPJF. In total, more than 1,600 files have been published on the project's web page regarding the different decisions and 37 commentaries on rulings. The purpose of the white paper was to present and systematize the material collected and commented on during the follow-up phase, identifying the main problems and strengths of the TEPJF's jurisdictional activity.

He concluded that this scientific, critical analysis and the entire observation methodology used in general, highlights the importance of electoral justice at different levels, that is open and inclusive, but also credible and reliable, so that electoral justice can be strengthened as the legitimization of the electoral process.



José Thompson, Executive Director and Legal Representative of the Electoral Advisory and Advocacy Center of the Inter-American Institute of Human Rights (IIDH-CAPEL), presented the experience of electoral observation in the framework of the Inter-American Union of Electoral Bodies (UNIORE). He emphasized that electoral justice not only resolves controversies after Election Day but has also become an important element throughout the electoral process.

In his presentation, he focused on two missions that have involved the TEPJF: the "UNIORE Jurisdictional Accompaniment Mission during the Mexican electoral process 2017-2018" and "UNIORE Jurisdictional Mission during the Mexican election 2020 - 2021", in which an analysis has been made of rulings issued by different electoral jurisdictional instances in Mexico and as a result, it was found that electoral justice is dealing with untraditional electoral issues in the region. Not only



are the rulings working as a resolution of controversies, but also as an opening of new perspectives on electoral justice and how this is becoming a trend in Latin America.

He also highlighted the degree of legislative development of the countries and electoral systems in question and, the precise approach of the different jurisdictional solutions issued in similar cases, indicating which are the trends that electoral justice is facing in the region, which he defined as a shared electoral justice agenda in Latin American. He said that the development of the second jurisdictional mission, specifically, evidenced the systematic follow-up to the recommendations provided by the first Mission carried out in 2018. He concluded by indicating that we have not only more and more international standards, but also a shared agenda in the region, and this allows us to compare what has been resolved in Mexico with the way in which the same issues have been dealt with by other jurisdictional bodies.



Jeffrey Staton, Judiciary Project Manager for Varieties of Democracy (V-Dem) and Professor of Political Science at Emory University, outlined what he sees as some of the challenges in measuring the electoral justice system and spoke of a system of warnings about the threats to electoral justice, which puts democratic regimes at risk.

Therefore, he indicated that a solid scientific effort is needed to understand the mechanisms that connect the functions and characteristics of this democratic letdown and, several modern techniques are required for said measurement; not only statistics or academic experts are needed, but rather, an alliance with international organizations, civil society organizations, national institutions, the judiciary, judges and justices, among others, is required.



He also mentioned that, if a warning system is required in the measurement of all international standards, it is necessary to prioritize what needs to be measured; electoral priority issues must be selected and based on theory. Thus, he explained how the indicators generate questions, seek answers and explanations, and that they are also connected to theoretical processes of how the system works and how it is supported by empirical evidence. Therefore, they are not random indicators, in a certain way they are connected to the results that are being sought.

He concluded by explaining that in an 'electoral justice alarm system', some concepts that are required to be measured are simpler than others and some are going to be directly observable, for example: how many cases the court was able to resolve directly, the professionalism of the judges and their autonomy.



The last panelist, Dong Nguyen Huu, International Expert, spoke from his experience as an advisor to electoral and governance institutions, stressing that the context must always be analyzed, which is one of the problems of democratic dynamics, which is not a new problem. He gave as an example the Vietnam War, stressing that any undeclared war escapes national legislation and must respect the minimum international conventions to protect the population. Therefore, the violation of the national and international legal system is the clearest example of the crisis of democratic dynamics.

Regarding the question of 'why are electoral processes observed?' he explained that democracy is a law that citizens must respect, where they must also participate in its creation. The people in charge of electoral observation are basically the builders of credibility, they are not critics, they are not vigilantes, they take charge



of the construction of the system's credibility. He emphasized that the TEPJF is a symbolic authority, it has a force of moral authority and the responsibility to maintain a balance within the legislative and executive branches. Therefore, it is necessary to consider the independence and autonomy of the judiciary.

In this sense, he concluded that the TEPJF's efforts with the Venice Commission is proof that there is limited legislation, but there is also an opening to consolidate its moral authority.



To conclude the panel, before giving way to questions from the audience, Irma Méndez de Hoyos, General Coordinator of Advisors of the Presidency made a brief reflection of the panel, recalling how in past decades, all deliberation on international norms was contextual, therefore, it was difficult to think about setting standards.

Thus, she emphasized that, without overriding the importance of said context, today we find an important set of international principles, global norms and codes of good electoral practices issued by the Venice Commission that apply to all countries. Although in some cases they may be in tension with the norms of each country, we find applicable standards and the challenge is to understand how to get closer to those standards.

ESTÁNDARES INTERNACIONALES  
DE LA COMISIÓN DE VENEZIA:

UN ANÁLISIS COMPARADO CON  
LA JUSTICIA ELECTORAL MEXICANA



INTERNATIONAL STANDARDS  
OF THE VENICE COMMISSION:

A COMPARATIVE ANALYSIS OF THE MEXICAN  
ELECTORAL JUSTICE SYSTEM

In the questions and answers segment, the main discussion topics were the impact of the work and recommendations of the Venice Commission on citizen participation and how to develop methodologies for the Mexican case when there are several electoral dispute resolution bodies in the world.



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## VII. RESULTS

The main outcome of the event was to create a fruitful dialogue between authorities, electoral experts from different countries and TEPJF personnel, regarding the international standards of the Venice Commission and the results of the international jurisdictional missions of accompaniment during the federal electoral processes, in order to build a methodology that will assist the electoral jurisdictional efforts in accordance with applicable international standards, taking up concrete recommendations:

- Analysis of the incorporation of international principles and/or standards to upgrade and increase efficiency in the resolution of constitutional and electoral disputes.
- The main results and findings of the international jurisdictional accompaniment missions related to the application of international standards were shared.
- Methodologies were suggested to improve jurisdictional support.
- What specific actions or methodologies should be used so that electoral observation and specifically jurisdictional accompaniment translates into the application of international standards, was analyzed.
- Specific actions or methodologies to analyze access to electoral justice were shared in order to contribute to the consolidation of democracies.
- International good practices and documents related to justice access issued by the Commission that should concern the electoral jurisdictional authorities in Latin America were shared.
- Discussion was held regarding which documents related to the electoral field should be prepared by the Venice Commission, considering the current challenges faced by democracy.
- The speakers shared how the Venice Commission contributes to the consolidation of access to justice in Latin American countries.
- The areas of improvement identified for the TEPJF with a focus on future electoral processes were discussed.





## VIII. CONCLUSIONS

This type of international events organized by the TEPJF contribute to strengthening international collaboration and offers spaces for the exchange of good practices and experiences regarding access to justice at the global level; they have a significant value for the development of up-to-date tools in the field of electoral justice.

On this occasion, several relevant documents of the Venice Commission were reviewed and the results of the international jurisdictional missions of accompaniment during the federal electoral processes were evaluated. This way, it will be possible to develop a methodology to support the electoral jurisdictional efforts, based on applicable international standards taking up concrete recommendations. This is significant since international standards constitute a common consensus of the democratic community of which Mexico is a member, that seeks to protect the political and electoral rights of its citizens and contribute to the improvement of the quality of democracy.

Therefore, the good practices that have been identified in different judicial accompaniment missions, contribute to the reflection on whether the decisions of the TEPJF comply with the international standards that a country must consider in order to provide universal access to justice in electoral matters. Current challenges and goals of due process in the subject contribute to achieving a rich electoral justice that enhances the consolidation of democracies in the Latin American region and specifically in Mexico.