BRIDGE WATCH REPORT

The Rule of Law in Latin America

Jean Monnet Network Policy Debate Bridge Watch Project:
Values and Democracy in the EU and Latin America

2024

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JEAN MONNET POLICY DEBATE

LACES
Latin American Center of European Studies

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Introduction

The BRIDGE Watch Report is one of the leading products of the Jean Monnet Network Policy Debate project – BRIDGE Watch – Values and Democracy in the EU and Latin America (101126807), co- funded by the European Commission's Erasmus+ Program, which has received support from the Latin American Center of European Studies (LACES). This project is a collaboration among a network of 14 universities in Europe and Latin America, including the following institutions: Universidade de Lisboa (Portugal), Universidade Federal de Santa Catarina (Brazil), Universidad del Salvador (Argentina), Universidad Nacional Autónoma de Mexico, Universidad del Rosario (Colombia), Universidad de Sevilla (Spain), Università degli Studi di Milano (Italy), Universidad Mayor de San Andrés (Bolivia), Universidad Central del Ecuador, Universidad Nacional de Trujillo (Peru), Universidad de Chile, Universidad Nacional de Asunción (Paraguay), Universidad de la República (Uruguay) and Universidad Pontificia de Salamanca (Spain).

The BRIDGE Watch project seeks to promote a more nuanced understanding of Latin American countries from a European Union perspective, focusing on values and democracy. This initiative aims to generate critical knowledge and in-depth analysis to help strengthen the EU's global influence. In addition to informing policy systems, the project also aims to bridge the gap between academia and society by encouraging the active participation of a wide range of stakeholders, including civil society representatives, policy makers, educators, and the media.

In line with the project's objectives, the BRIDGE Watch Report provides a comprehensive synthesis of significant progress and challenges related to shared values in selected Latin American countries. In this edition, the focus will be on the Rule of Law.

The rule of law is presented as the predominant organizational pattern in modern constitutional law and international organizations that regulate the exercise of public powers. Its objective is to ensure the compliance of these powers with the law and to guarantee respect for fundamental rights. This topic, along with democracy, constitutes one of the central pillars of the first report of the BRIDGE Watch Project.

This report aims to provide a comparative synthesis of some key elements related to the Rule of Law in ten Latin American countries. In addition, specific recommendations are included based on the analysis of contextual characteristics, both positive and negative, as well as the identification of specific challenges. The countries analyzed are Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, and Uruguay.

The methodology adopted is inspired by the similar Rule of Law mechanism coordinated by the European Commission[1]. The sources of this report include, in particular, written contributions provided by local Latin American beneficiaries present in each of the countries analyzed, prepared with the support of at least one consultant specialized in the subject,

1 European Commission. 2023 European Rule of Law Mechanism: Methodology for the Preparation of the Annual Rule of Law Report. Retrieved from https://commission.europa.eu/system/files/2023-07/63_1_52674_rol_methodology_en.pdf.

who has considered local developments up to July 31, 2024, the date of submission of the questionnaires. The information was collected through responses to a specific questionnaire designed by ad hoc expert consultants and discussed with beneficiaries and local consultants in a double-check system, considering the particularities of Latin American countries. The analysis of the responses was also supported by permanent consultants, who assisted in carrying out the activity.

The questionnaire is presented as a comprehensive tool for evaluating the Rule of Law in the countries analyzed, focusing on four fundamental pillars: the independence of the Judiciary Branch, the anti-corruption framework, freedom of the press, and other vital aspects that impact the countries' institutional quality. Each pillar includes several subtopics for a total of 20 open questions. In particular, the subtopics addressed are the following:

Pillar I: Judicial Independence

1. Independent Self-Governance Bodies
2. Autonomy of Judges and Magistrates
3. Financial Autonomy
4. Accessibility of Judicial Decisions
5. Perception of the Judiciary by Civil Society

Pillar II: Anti-Corruption Framework

6. Regulation and Supervision
7. International Cooperation
8. Accountability Mechanisms
9. Protection of Whistleblowers

Pillar III: Media and Freedom of the Press

10. Public Media Regulation
11. Private Media Information
12. State Interference in Private Media
13. Regulation of Disinformation and Fake News
14. Guarantees for Journalists

Pillar IV: Institutional and Legal Framework

15. Primacy of the Constitution and the Law
16. The Rule of Law: Check and Balances
17. Regulatory Powers of the Executive Branch

18. Legislative Process and Citizen Participation
19. Constitutional State of Emergency
20. Relationship between International Law and Domestic Law

The questionnaire responses were based on official information provided by local authorities, national and international non-governmental organizations, as well as study groups and specialized think tanks. To ensure the quality of the analysis, aspects such as factual accuracy, completeness, quality, reliability, and relevance of the information collected were considered.

The findings of the BRIDGE Watch Report will provide the European Commission with a comprehensive tool to assess the State of the Rule of Law in key Latin American countries, offering valuable analysis to guide trade and diplomatic relations. By identifying fields where shared values are aligned and those that require further development, the report enables the Commission to make informed decisions that balance promoting EU principles with strengthening partnerships in the region.

For the competent national authorities in the countries studied, the report serves as a basis for fostering a broader dialog and exchange of best practices between the EU and Latin America. This collaboration promotes mutual learning, enabling Latin American countries to adopt measures that improve democratic governance, protect human rights, and strengthen legal and institutional frameworks.

By addressing challenges and opportunities in these fields, the BRIDGE Watch Report seeks to build bridges of dialog and cooperation, promoting EU values while supporting Latin America's efforts towards sustainable reforms.

Lisbon, December 15, 2024.

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Pillar I

Judicial Independence

Section 1 – Independent Self-Governance Bodies

Is there an independent Council of the Judiciary recognized by national regulations? If so, does this body operate with complete independence?

Synthesis

Judicial independence in Latin America faces challenges in several countries studied in this Report, especially concerning the existence, structure, and functioning of self-governing bodies within the Judiciary Branch, which may be called the Judicial Council or the Magistrates' Council, among others.

In general, all judicial systems have been profoundly reorganized after the end of dictatorial periods. Several countries have created a formally independent Council of the Judiciary, such as Argentina, Bolivia, Brazil, Colombia, Ecuador, Paraguay, and Peru. On the other hand, some legal systems do not have a formally independent body with such powers, as is the case in Chile and Uruguay. In other cases, this body is subordinate to the Supreme Court of Justice of the Nation, as in Mexico.

Even when formally independent and consolidated bodies exist, recent attempts at intervention and even threats of elimination by other branches of government have been observed, as in the case of the National Board of Justice in Peru. Similarly, significant reform processes are underway that could impact the current status quo, as in the case of Mexico.

Magistrates' Councils face various challenges in fulfilling their role as guarantors of judicial independence in the countries analyzed, challenges that are related to their composition, structure, and powers. The analysis of these three elements reveals the risk of potential external influences, particularly from other state political powers.

Concerning the questionnaires, we find that, in Argentina, the Council of the Judiciary is vulnerable to political pressure due to its composition, including executive and legislative representatives. This situation raises concerns about its impartiality and has prompted calls for reform to safeguard the independence of this branch of government. Although the Magistrates' Council is supposed to be independent in Paraguay, the influence of the executive and legislative branches weakens its autonomy. There are concerns about the politicization of the Judicial Council, which could compromise its independence. Recent reports have pointed to political influences in the appointments, questioning the body's impartiality.

Naturally, in the absence of formally independent bodies, such influence becomes even more pronounced, sparking debates about the autonomy of the entire judicial system, as seen in countries like Chile and Mexico.

In some cases, the jurisdiction of the Councils may lead to public discredit of these bodies, even though the issue lies more in the specific regulations than in the body itself. While several countries have implemented Judicial Councils or independent structures, the presence of political influences in the bodies responsible for tasks such as the selection and oversight of judges remains a common challenge in the region, affecting public perceptions of judicial independence. This situation is exemplified by the process of selecting and appointing judges

in Bolivia, which has recently implemented a controversial judicial ranking review process that various bodies have criticized. It is also common for disciplinary proceedings against judges to be subject to pressure from other branches of the State, compromising their autonomy.

Recommendations

1. Establish judicial self-governing bodies while respecting national diversity: To establish a self-governing body for the Judiciary in each member state, tailored to their constitutions, cultures, and legal histories, with the role of ensuring the independence of judges. This body must be an essential pillar in a Rule of Law that upholds the principle of the separation of powers.

2. Maintain and strengthen the mixed composition of judicial self-governance bodies: Ensure that these bodies include a substantial majority of judges, along with non-judicial members who are not part of the parliament. This balance seeks to curb undue influence from the legislative or executive branches on the judicial system while countering absolute self-referentiality within the Judiciary.

3. Eliminate undue subordination to superior courts: To ensure that judicial self-governance bodies are fully independent and not subject to the authority of other judicial bodies, such as superior courts, thus avoiding hierarchical interference that would compromise their autonomy.

4. Reform the legislative frameworks for the selection and promotion of judges: To grant the self-governing bodies of the Judiciary full authority over the processes of selection, appointment, and promotion of judges, ensuring their complete independence from the legislative and executive branches. These processes must be guided by clear, objective, and transparent criteria, prioritizing professional and ethical merit to foster public confidence in the judicial system.

Section 2 – Autonomy of Judges and Magistrates

Are there effective constitutional and legal safeguards in place to guarantee the independence of judges and magistrates in your country?

Synthesis

The ten Latin American countries analyzed have legal and constitutional frameworks designed to protect judicial independence and provide specific guarantees. These are not personal privileges for judges but are justified by the necessity of enabling them to fulfill their role as guardians of individuals' rights and freedoms.

In particular, these frameworks aim to safeguard judicial independence through measures such as irremovability, life tenure, and irreducible salaries. However, the practical implementation of these guarantees varies significantly, sparking debates about their effective functioning.

It is universally acknowledged that judges must be shielded from undue external influence. In Mexico, the Constitution and the Organic Law of the Judiciary provide guarantees for the judicial system's independence, including provisions for a judicial career path and budgetary autonomy. Despite these provisions, there are still doubts concerning the practical effectiveness of these guarantees, with criticism directed at the administration of judicial organizations. In some instances, they are regarded as only "moderately" effective, as in the case of Peru.

Overall, the effectiveness of certain guarantees is often subject to a probationary period or a temporary lapse, as seen in Brazil and Paraguay. This factor can compromise the independence of the Judicial Branch, as judges may feel pressured to decide cases in a specific manner to secure their tenure. The mere existence of formal guarantees for judges does not always prevent higher judicial bodies from engaging in misconduct or prevarication based on vaguely defined criteria, as seen in Uruguay. Additionally, concrete violations of these guarantees have been documented, such as mandatory transfers without justification or the national government's politicization of the election and selection processes for judicial officials, as observed in Colombia. In other instances, the independence of superior and constitutional court judges is jeopardized by irregular dismissal processes initiated by different branches of government and heavily influenced by political agendas, as in Bolivia or Chile.

Finally, judges must avoid situations that could question their independence or impartiality. This underscores the importance of national regulations on the incompatibility of judicial office with other roles and explains why many states impose restrictions on the political activities of judges. Judges' politicization and excessive activism are significant factors that undermine judicial independence, particularly in states like Brazil.

Recommendations

1. Reconciling probationary periods with judicial independence: Implement a system where candidate judges are evaluated during a probationary period, allowing them to assist in preparing judgments while reserving judicial decisions exclusively for permanent judges. This approach ensures comprehensive training without compromising magistrates' independence.

2. Ensure the internal independence of judges: Ensure that every judge enjoys complete autonomy in their decisions, free from internal or functional subordination. Judges must be protected from undue pressure or hierarchical constraints, making decisions based solely on the law and the facts of each case.

3. Promote maximum transparency in disciplinary processes: Establish disciplinary procedures for judges that adhere to the principles of legality, rationality, proportionality, and the right to defense throughout the process. This approach ensures that sanctions are fair and well-founded, fostering public confidence in the judicial system.

4. Adopt or update a judicial code of conduct: Develop and implement new codes of conduct or revise existing ones to regulate the public behavior of judges, including their activity on social networks, and limit their political activism. Independent judicial bodies should oversee and enforce these codes to ensure adequate adherence to the principles of independence and impartiality.

Section 3 – Financial Autonomy

Is the Judiciary's financial autonomy adequately safeguarded?

Synthesis

To safeguard the judicial system's independence, in both the short and long term, it is essential to provide courts with adequate resources to meet the standards outlined in national constitutions. This ensures that courts and judges can perform their duties with the integrity and efficiency necessary to foster public confidence in justice and the Rule of Law.

A key factor is the importance of an autonomous budget, enabling the Judiciary to function independently of the legislative and executive branches, thereby avoiding external influences that could undermine its impartiality. The allocation and management of an independent budget is recognized as a fundamental mechanism for safeguarding judicial independence and ensuring the efficient administration of justice.

An analysis of the financial autonomy of the Judiciary in ten Latin American and European countries reveals both commonalities and system-specific characteristics.

In countries like Argentina, Brazil, and Paraguay, the Judiciary operates under a system that allows it to prepare its budget, which is then submitted to Congress for approval. In these cases, financial independence is reinforced by laws or constitutional provisions that affirm budgetary autonomy, enabling more self-sufficient management and effective planning of judicial resources.

However, in countries such as Bolivia, Ecuador, Chile, and Colombia, significant limitations in resource allocation hinder the Judiciary's ability to perform its role effectively. For instance, in Bolivia, the Judiciary's budget is relatively small compared to total national spending, raising concerns about the system's capacity to meet the demands of justice. In Ecuador, recent budget cuts have triggered a crisis in judicial administration, impacting critical areas such as infrastructure and staffing.

Similarly, in Mexico, Chile, and Uruguay, while there is a regular process for resource allocation, the Judiciary's budget remains subject to annual political decisions, creating a degree of vulnerability that may compromise judicial independence.

Recommendations

1. Guarantee the independence of the Judiciary's budgetary decisions: Decisions regarding allocating funds to the courts must strictly adhere to the principle of judicial independence. The Judiciary should have institutional mechanisms that allow it to present its views on the proposed budget to parliament, ideally through its self-governing body. This process must be transparent and ensure the meaningful participation of the Judiciary in financial planning.

2. Establish a fixed and sufficient percentage in national budgets: To allocate a stable and adequate portion of the national budget to the judicial system, ensuring sustainable financing

that is free from political influence. This mechanism will guarantee the consistent availability of resources necessary for the operation of the Judicial Branch, thereby reinforcing its autonomy and efficiency.

3. Include resources for modernization and development in the judicial budget: Define a budget that addresses the justice system's daily operational needs and allocates resources for modernization and development. This should include implementing advanced technologies, continuous training for judicial personnel, infrastructure improvements, and initiatives aimed at enhancing the efficiency and accessibility of the judicial system.

4. Promote accountability and transparency in resource utilization: To implement a robust system with oversight and accountability mechanisms to ensure that judiciary funds are utilized efficiently, responsibly, and in service of the justice system. Such measures will foster public trust and strengthen the Judiciary's commitment to good governance.

Section 4 – Accessibility of Judicial Decisions

Are judicial decisions easily accessible across all jurisdictions?

Synthesis

The publication of judicial decisions is a cornerstone of transparency and accountability in the justice system. Making the administration of justice visible contributes to achieving the goal of fair trials, a fundamental principle in any democratic society. However, this publication can sometimes conflict with other human rights, particularly the rights to privacy and personal data protection. The need to address the anonymization of judicial decisions arises in this context.

Additionally, two key related aspects emerge: ensuring access to jurisprudence in all the country's official languages and implementing digitalization systems within the Judiciary alongside accessible Internet platforms.

Among the recurring themes identified in the analysis of responses from the surveyed countries is the widespread effort to ensure public accessibility to judicial decisions, recognized as essential for transparency and accountability within the Judiciary. Countries like Argentina, Chile, Brazil, and Mexico have implemented digital platforms that provide access to judicial decisions, incorporating case law search engines and systems that facilitate the online consultation of rulings. In Brazil, for instance, the "Justice 4.0 Program" enables centralized access to court cases across all jurisdictions, demonstrating a solid commitment to the digitization and accessibility of judicial information. However, this does not always translate into complete and uniform access to the decisions of all judicial bodies within the country. In Uruguay, only the decisions of the Supreme Court and the Courts of Appeals are published, while first-instance rulings from regional courts remain difficult to access. Similarly, in Paraguay and Chile, comprehensive access to all courts and jurisdictional levels is not fully guaranteed.

Regarding specific elements that highlight differences in accessibility levels between countries, notable examples include Bolivia and Peru, where access is particularly limited. In Bolivia, judicial decisions are not consistently published, and users encounter significant challenges in obtaining comprehensive information due to a lack of systematization in the publication of rulings. In Peru, only high-profile decisions are published, while access to other rulings requires a formal request, restricting accessibility and undermining transparency.

In Ecuador, despite the availability of online consultation systems, resource limitations hinder the comprehensive updating of databases, creating an additional barrier to ensuring access to judicial decisions.

Recommendations

1. Create a unified and centralized judicial database: Establish a national database, managed by a single authority in coordination with the judiciary administration, that allows public access to judicial decisions at all levels of jurisdiction through publication. This system will help increase the transparency of judicial systems and promote broader and more equitable access to justice.

2. Ensure that the database is constantly updated: Implement mechanisms to ensure the regular and timely publication of new judicial decisions, with frequent revisions, ideally monthly, to keep the database updated and valuable for users.

3. Ensure database accessibility: Design the platform with tools that promote digital inclusion, such as public access points in major judicial bodies and features optimized for internet access. This will ensure the database is accessible even to individuals with limited technological resources.

4. Promote the comprehensibility of judicial decisions: Adopt measures to enhance the clarity and accessibility of published decisions for the general public, such as providing clear and concise summaries written in accessible language. Furthermore, ensure that decisions are published in all official languages of the country to foster linguistic inclusion.

5. Protect personal and sensitive data in judicial publications: Implement strict anonymization or pseudo-anonymization protocols to safeguard privacy and personal data in published judicial decisions. This ensures a balanced approach between transparency and protecting sensitive information.

6. Promote database interoperability: Design the database to ensure compatibility with other systems and technological platforms, enabling seamless information exchange and access to judicial decisions by various sectors, including academics, legal professionals, and interested citizens.

Section 5 – Perception of the Judiciary by Civil Society

Does civil society perceive the Judiciary as an independent institution?

Synthesis

The general trends in the perception of the Judiciary in Latin America show a prevalent skepticism and a notable distrust of the lack of judicial independence and integrity. In many countries, citizens perceive political and economic factors influencing judicial decisions, eroding public confidence.

A typical pattern is the perception of politicization and corruption within the judicial system. For example, in Argentina, civil society criticizes possible bias due to political ties, aggravated by media coverage highlighting controversial and high-profile cases. In Colombia, respondents believe that economic and political stakeholders exert considerable influence over judicial decisions, undermining the credibility of judicial independence.

In Ecuador, corruption and political interference in trials involving opposition figures have reinforced a negative perception of the Judiciary. In recent years, several high-profile corruption cases have contributed to intensifying the image of a biased justice system. Similar challenges are evident in Paraguay and Mexico.

Judicial inefficiency is another significant factor, leading to frustration and impunity. In Argentina, Bolivia, Brazil, and Peru, the perception of judicial independence is low, driven by slow processes and a lack of transparency in the administration of justice.

This has led many citizens to lose trust in the Judiciary's ability to resolve cases fairly and promptly.

In Brazil, distrust is also fueled by concerns over "judicial activism," particularly in some higher courts, such as the Federal Supreme Court. Criticism regarding its composition and attributions has contributed to undermining trust in the country's entire judicial system.

In contrast, Uruguay stands out for its relatively higher public trust in the Judiciary system, which is perceived as more reliable than other countries in the region. This can be attributed to higher institutional stability and lower perception of corruption, factors that enhance the credibility of its judicial system.

Recommendations

1. Strengthen the autonomy of the Judicial Branch: Implement measures to enhance its independence from other branches of government. This includes establishing self-governing bodies, ensuring economic independence, and adopting transparent, objective, and non-discriminatory processes for selecting and promoting judges while incorporating criteria for ethnic and gender diversity in the composition of the judicial system.

2. Update judicial ethics rules: Align national judicial ethics regulations with essential international standards, such as the revised 2014 Ibero-American Code of Judicial Ethics, and ensure their effective implementation across all levels of the judicial system.

3. Promote transparency in judicial performance: Implement policies to provide broader and clearer public access to information about the functioning of the Judicial Branch, fostering accountability and building citizen trust.

4. Improve efficiency in the administration of justice: Develop and implement measures to reduce procedural times, thus guaranteeing the right to a fair trial and improving the perception of the efficiency of the judicial system.

5. Review the criteria for the appointment of the judges and composition of judicial panels: Ensure that appointment processes uphold the unique diversity of each judicial system by adopting transparent, participatory procedures based on professional and ethical criteria. It is essential to strictly limit the influence of the Executive Branch in these decisions to avoid interference that would compromise judicial independence.

Pillar II

Anti-Corruption Framework

Section 6 – Regulation and Supervision

Does your country have regulations or agencies that criminalize and monitor corruption?

Synthesis

Corruption is criminalized in all the countries observed, either through general criminal legislation – the Penal Code – or specialized laws. New anti-corruption measures have even been introduced at the constitutional level in some nations with recent or recently reformed constitutions, such as Bolivia. Ecuador's Constitution also includes provisions requiring that public administration be conducted transparently and subject to social control and oversight at any time. One of Ecuador's 2008 Constitution's key advancements was establishing the Citizen Participation, Transparency, and Social Control Function, a multi-organic structure aimed at enhancing accountability.

However, the proliferation of specialized anti-corruption laws across these countries, while offering the benefit of greater focus, can also introduce inconsistencies in the legal system. Chile, for instance, has 15 different laws addressing the prosecution of corruption.

In terms of institutions dedicated to overseeing and preventing general corruption, a common trend over the last 15 years has been the proliferation of such bodies in the countries analyzed. Many nations have established autonomous anti-corruption entities or specialized units within existing institutions, such as public prosecutors' offices. For example, Argentina has the Anti-Corruption Office and the Office of the Procurator for Administrative Investigations, which are tasked with investigating and reporting acts of corruption.

Additionally, some countries have created specialized courts to handle corruption cases and enhance judicial efficiency. Peru and Colombia have established specialized prosecutors' offices and national courts with exclusive jurisdiction over corruption offenses and specialized chambers, enabling faster investigations and reducing congestion in the general judicial system.

In general, systems with multiple bodies addressing corruption, particularly in federal states where individual states or provinces have their policies, can inadvertently lead to delays, case dismissals, or annulments due to procedural formalities.

Lastly, challenges remain regarding public perception of the issue. Although control mechanisms are in place, they are not yet widely perceived as effective by the population. A notable example is Mexico, where public perception of corruption remains high despite the existence of the National Anti-Corruption System.

Recommendations

1. Adopt a comprehensive corruption prevention policy: Enhance legislative, investigative, and prosecutorial efforts by establishing specific national prevention strategies. These strategies should be developed in collaboration with civil society to ensure an inclusive and effective approach.

2. Update national anti-corruption regulations: Review and evaluate existing anti-corruption legislation, incorporating updates informed by recent jurisprudence, emerging criminal offenses (such as those related to public goods and service contracts), and improved coordination among existing regulations.

3. Ensure effective implementation of regulatory frameworks: Guarantee the uniform application of anti-corruption laws and regulations across all levels of the State, promoting their consistent and effective enforcement.

4. Analyze the effectiveness of responsible bodies: Assess the strengths and weaknesses of the institutions tasked with combating corruption, evaluating their capacity to carry out their assigned responsibilities and identifying areas that require strengthening.

5. Guarantee the independence of the specialized agencies: Ensure that anti-corruption institutions have operational, financial, and structural independence, enabling them to fulfill their mandates effectively and free from external interference.

6. Promote inter-institutional cooperation: Foster collaboration among specialized agencies, judicial and police authorities, and private sector entities operating in the same field by establishing effective and coordinated cooperation networks.

7. Disseminate a culture of integrity and transparency: Implement programs that promote integrity, sound management of public resources, transparency, and accountability. In addition, civil society should be educated about the functioning of state mechanisms in the fight against corruption, encouraging active participation in these initiatives.

Section 7 – International Cooperation

Do you know of any international cooperation programs against corruption in which your country or organization has participated?

Synthesis

Adherence to international conventions is a widely practiced approach to supporting the fight against corruption. All countries have generally ratified key international instruments, such as the 1996 Inter-American Convention against Corruption and the 2003 United Nations Convention against Corruption (UNCAC), demonstrating a shared commitment to international cooperation in preventing and combating corruption. Many nations have also enacted specific national laws to implement these treaties and established specialized agencies, such as the Anti-Corruption Office in Argentina, the Comptroller General's Office in Chile and Brazil, and the National Anti-Corruption Secretariat in Paraguay.

A notable commonality is the emphasis on international cooperation and the adoption of technical assistance programs. Countries like Brazil, Chile, and Colombia are particularly active in global networks and bilateral or multilateral programs that facilitate the exchange of

information and best practices. For example, Brazil has established international agreements through the Department of Asset Recovery and International Legal Cooperation. At the same time, Chile participates in the UNCAC Alliance and engages in peer reviews coordinated by the OECD.

However, significant differences also exist. Some countries, such as Ecuador and Mexico, face criticism for the ineffective implementation of anti-corruption measures despite their international commitments. In Ecuador, there is a growing perception of corruption within public administration, while Mexico ranks low on the Corruption Perceptions Index, largely due to the lack of effective sanctions.

On the other hand, some countries demonstrate innovative and noteworthy approaches. Chile has conducted comprehensive evaluations under the supervision of international organizations. Paraguay has developed specific programs such as Integrity Paraguay and Rule of Law and Culture of Integrity, with support from USAID.

Recommendations

1. Explore opportunities for international cooperation agreements: Identify and leverage opportunities to participate in bilateral and multilateral agreements to enhance various forms of international cooperation, particularly in priority areas for the country.

2. Establish bilateral agreements with relevant central authorities: Negotiate and formalize bilateral agreements or arrangements with central authorities of countries within the same region or those in other regions or continents where a significant volume of cooperation cases warrants such measures.

3. Follow up and implement international recommendations: To oversee and implement concrete measures and recommendations formulated by the review mechanisms of international conventions to which the State is a party, ensuring their complete execution and enhancing compliance with the international commitments undertaken.

Section 8 – Accountability Mechanisms

Is it possible to directly access accountability reports of public institutions? Are these reports public and accessible?

Synthesis

The Latin American countries analyzed have implemented or strengthened regulatory frameworks and mechanisms to ensure transparency and accountability in public administration and promote public access to information. A commonality among all the countries is recognizing the right to access public information as a vital tool in combating corruption and fostering citizen participation. This right is supported by national laws, such as Law 27,275 in Argentina,

the Law on Transparency and Access to Public Information in Colombia, and Law No. 5282/14 in Paraguay, which regulate the proactive publication of information and the processing of citizen requests.

In terms of similarities, most countries have developed digital transparency portals that provide access to data on budgets, salaries, and audits. For instance, Brazil's Transparency Portal and Mexico's national system facilitate the publication of management reports, enhancing public oversight. Additionally, the laws in these countries include specific provisions to ensure access to information, either through direct requests (passive transparency) or proactive publication (active transparency).

However, significant differences are also evident. Some countries, such as Bolivia, face major challenges due to the absence of specific legislation regulating access to public information, which undermines the effectiveness of accountability mechanisms. Although the Constitution emphasizes transparency in Ecuador, efforts to combat corruption have been insufficient due to the limited implementation of regulatory measures.

On the other hand, countries like Paraguay and Colombia have made progress in standardizing procedures and supervising active transparency, resulting in improved accessibility to public data. In contrast, while Mexico has a robust legal framework, public perception remains critical due to the lack of effective sanctions against corruption.

Recommendations

1. Strengthen public accountability: Maintain and promote accountability practices within the State and public institutions. In countries where such regulations and mechanisms are not yet in place, efforts should focus on their creation and implementation to ensure institutional transparency.

2. Guarantee access to information and proper resource management: Ensure that mechanisms facilitating access to public information, particularly those related to resource management, are accessible, regularly updated, and easily understandable for all citizens, fostering a culture of transparency.

3. Periodically evaluate transparency mechanisms: Perform regular assessments of accountability and transparency measures and structures to ensure they are robust, adaptable to evolving circumstances, and consistently effective.

Section 9 – Protection of Whistleblowers

Are there internal procedures in place to protect whistleblowers from reporting acts of corruption?

Synthesis

A recurring theme across all countries is recognizing the need to protect whistleblowers as a critical tool in the fight against corruption. This goal is pursued through confidential reporting

channels, guaranteed anonymity, and measures to prevent retaliation. In recent years, most countries have introduced legal or administrative mechanisms to protect witnesses and whistleblowers, grounded in national and international frameworks such as the United Nations Convention against Corruption (UNCAC).

Several countries, including Argentina, Brazil, Mexico, and Ecuador, provide digital reporting platforms where confidentiality and, in many cases, anonymity are guaranteed. Also, laws often include provisions for further protections, such as workplace transfers, physical security, or using pseudonyms in legal proceedings.

However, significant differences exist in the implementation and effectiveness of whistleblower protection mechanisms across countries. Argentina, for instance, has a comprehensive protection program for whistleblowers and witnesses. In contrast, Bolivia and Colombia have less developed frameworks, relying on limited regulations or international recommendations. Despite several legislative attempts in Colombia, a specific law guaranteeing comprehensive protection for whistleblowers has yet to be established.

Brazil and Chile stand out for having more advanced regulatory frameworks. In Brazil, Law No. 13.964 provides rewards for whistleblowers and includes measures such as compensation for damages in cases of retaliation. With its recent Law No. 21.592, Chile has strengthened the confidentiality of whistleblowers' identities, though challenges related to potential leaks remain.

On the other hand, countries like Paraguay and Peru have more limited protection mechanisms, relying on general regulations or recommendations from international treaties. Paraguay has no specific law, but the Code of Ethics and related regulations include basic protection measures. In Peru, the implementation of protective measures depends on an evaluation of the seriousness and significance of the allegations.

Recommendations

1. Facilitate reporting by ensuring conditions of safety and anonymity. Establish accessible, confidential, and secure channels to enable whistleblowers to report irregularities without fear of reprisals, ensuring their anonymity when necessary.

2. Expand whistleblowers' protection: Guarantee that individuals who provide relevant information about misconduct or harm to the public interest are adequately protected, regardless of whether the information is complete or constitutes judicial evidence on its own. This approach will encourage citizen collaboration and promote transparency.

3. Implement tailored protection measures for whistleblowers: Develop and apply customized solutions that address the specific circumstances of whistleblowers, taking into account factors such as the nature of the complaint, the level of risk, and potential consequences to ensure their safety and well-being.

4. Strengthen the institutions and resources dedicated to protection: Provide responsible institutions with the necessary technical, human, and financial resources to effectively implement these measures, fostering an environment of trust and support for whistleblowers.

5. Promote a culture of whistleblowing and transparency: Complement regulatory measures with awareness campaigns emphasizing the importance of whistleblowing as a vital tool in combating corruption and safeguarding the public interest. These efforts should foster an environment that values and supports individuals who act with integrity.

Pillar III

Media and Freedom of the Press

Section 10 – Public Media Regulation

Is there any agency or public authority regulating your country's media? How is this regulation carried out?

Synthesis

In all countries, public media are regulated by laws establishing formal principles of access, transparency, and freedom of expression. Yet, while some countries have progressed toward more inclusive and transparent regulatory systems, others continue to face significant challenges related to regulatory updates, institutional independence, and effective enforcement. These disparities reflect national priorities and the inherent tensions between promoting freedom of expression and ensuring ethical and pluralistic oversight of the media in the region. Overall, there is an opportunity to explore further information on how audiovisual services on the Internet are regulated by the countries in question.

In Brazil, for instance, there is no comprehensive regulatory body, and the regulatory framework is still based on the outdated Brazilian Telecommunications Code of 1962, which is insufficient to address modern challenges such as social networks. Similarly, in Paraguay, there is no press law or enforcement authority.

Most countries also explicitly distinguish between public and private media. Laws mandate that public media operate under principles of impartiality, although with varying degrees of success. Additionally, in many cases, legal frameworks guarantee free competition and prohibit monopolies, as seen in Mexico and Peru. However, paradoxically, Mexico remains one of the countries with the highest media concentration globally, highlighting the challenges in practically enforcing these regulations.

The differences between countries lie in the implementation and independence of their regulatory agencies. While in Chile and Uruguay there are independent councils, such as the National Television Council and the Audiovisual Communication Council, in countries like Argentina and Brazil, the autonomy of the entities that play crucial roles in supervising telecommunications and broadcasting services is more limited.

On the other hand, in Ecuador, CORDICOM has broad authority to supervise and regulate media content. Still, this oversight has sparked debates about its potential use as a tool for state control. Although the equitable distribution of the spectrum among State, private, and community media is encouraged in Bolivia, there are no specific regulations to guarantee impartiality in state media.

Additionally, transparency in media ownership varies significantly across countries. For instance, Argentina requires disclosing information about significant shareholders, but not all countries have similar provisions. While progress has been made in technical regulation in Colombia, there is no specific framework to oversee editorial lines or address media concentration.

Recommendations

1. Update existing regulatory frameworks: Expand the regulatory perspective to include all audiovisual communication services, including the so-called "new media," ensuring that these also comply with democratic and ethical principles. It is worth considering adopting national legislation inspired by the European Union's Digital Services Act package, which establishes clear guidelines for digital platforms regarding transparency, accountability, combating disinformation, and protecting users' rights. Such legislation would help promote a fairer and safer digital ecosystem.

2. Guarantee public media independence: If necessary, introduce specific regulations to ensure the autonomy of public media from the government, enabling them to operate impartially and serve the public interest.

3. Promote competition and avoid excessive concentration: Incorporate measures into regulatory frameworks to foster competition, mitigate the negative effects of media concentration, and address the accumulation of power by players with significant market positions.

4. Ensure the autonomy of the regulatory authorities: Establish measures to ensure the independence of entities responsible for media regulation, protecting them from governmental and economic influences and mandating transparency and accountability to the public and democratic institutions.

5. Protect the values of media freedom and pluralism: Introduce regulations to safeguard these principles, particularly concerning appointing members to media councils or regulatory authorities, ensuring fair, transparent, and representative processes.

Section 11 – Private Media Information

Is information about the ownership of private media accessible?

Synthesis

Throughout the region, private media play a key role in society as information providers and economic actors. There are legal frameworks that seek to promote transparency, prevent monopolies, and guarantee media diversity. Countries such as Chile and Uruguay have laws that regulate media concentration, requiring disclosure of ownership to avoid monopolies. In others, such as Colombia and Paraguay, media ownership is registered in public databases accessible to citizens.

Additionally, access to the radio spectrum as a public asset is regulated in all countries, requiring licensing and state supervision. This ensures that the media comply with established technical and ethical standards, even though with varying degrees of adherence.

The most notable differences lie in the effectiveness of these regulations and the accessibility of information on media ownership. In countries like Chile, regulations are robust, requiring

full disclosure of shareholder composition and specific restrictions on foreign participation. However, in Brazil, although there are laws, ownership control is weak, allowing oligopolies that concentrate access to information.

In Ecuador and Mexico, the lack of transparency is evident. In Ecuador, the transparency portal does not include the identity of the owners, which limits citizen oversight and allows for possible monopolies. Mexico does not have a specific regulation for transparency in private media ownership, although technical concessions can be consulted on government portals.

Although there are advanced laws, such as the Audiovisual Communication Services Law in Uruguay, its implementation has been irregular, and media concentration remains high. Additionally, there is insufficient control over the allocation of official advertising, which may generate undue influence.

On the other hand, countries such as Bolivia have regulations that divide the spectrum between state-owned, commercial, and community media. Still, they lack regulations on the impartiality of private media.

Recommendations

1. Establish democratic criteria and transparent procedures for allocating radio and television licenses and frequencies: Design predetermined, public, and open processes to prevent state arbitrariness and ensure equal opportunities for all interested parties, thereby promoting equitable access to media.

2. Guarantee transparency in the ownership and management of private media: Facilitate access to information on the ownership and management of these media, respecting the guarantees inherent to the journalistic exercise, and incorporate mechanisms of accountability and citizen participation to supervise their operation.

4. Specifically regulate the performance of large online platforms, especially concerning their power to suspend or unjustifiably restrict intermediation services.

3. Strengthen independent oversight: Establish autonomous oversight bodies to monitor media concentration, ownership, and funding sources to prevent undue influence from private or political interests on media content.

Section 12 – State Interference in Private Media

Can the State interfere with private media? If so, how is such interference regulated?

Synthesis

In all the countries analyzed, freedom of expression is recognized as a fundamental right protected by both national legislation and international instruments. Most countries have laws regulating the media, seeking to balance safeguarding this right with preventing abuses.

For example, in Chile, Law 19.733 guarantees the freedom to express opinions and protects journalists by allowing them not to reveal their sources. Similarly, the Constitution of Ecuador and the Communication Law promote pluralism and regulate content to ensure ethical standards.

Another common point is regulating the radio spectrum as a public asset. Countries like Uruguay, Colombia, and Paraguay have laws granting concessions to private media to ensure plurality and prevent monopolies. In all cases, the State intervenes to ensure that the media respects fundamental rights, although with different approaches and degrees of effectiveness.

One of the main differences lies in the scope and effectiveness of the regulations. While countries such as Chile and Uruguay have specific laws to promote media diversity and limit the concentration of ownership, the regulations in Brazil and Bolivia are less robust. In Brazil, the lack of effective regulation of media concentration allows the perpetuation of oligopolies despite the efforts of civil society to democratize access to information.

In Mexico, although the Constitution protects freedom of the press, violence against journalists and the lack of effective regulation creates a hostile environment for the practice of journalism. In addition, media concentration continues to be a problem in countries such as Paraguay, where the allocation of frequencies favors a few business groups.

On the other hand, the degree of state intervention in content varies considerably. In Ecuador, the Regulatory Council actively supervises the media, which some see as a form of state control. In contrast, in Argentina and Uruguay, intervention is limited to technical aspects and does not affect editorial independence.

While some countries are moving towards an inclusive and transparent regulatory framework, others face significant challenges in implementing and overseeing their laws. This reflects differences in political contexts and institutional capacity to ensure a pluralistic media environment that respects fundamental rights.

Recommendations

1. Strengthen regulatory frameworks to balance the freedom of the press and the plurality of information: Promote legal reforms that ensure the coexistence of a free and pluralistic press, fostering an environment where all voices can express themselves without undue restrictions.

2. Avoid using public power to influence media outlets and journalists. Explicitly prohibit the use of state tools to punish or reward media outlets and journalists based on their editorial stance or the handling of certain information. This includes avoiding practices such as the arbitrary and discriminatory allocation of official advertising and other indirect measures that restrict the free dissemination of ideas and opinions.

Section 13 – Regulation of Disinformation and Fake News

Is there any regulation to combat disinformation or fake news? How is it applied?

Synthesis

In the region, there is consensus on the seriousness of the problem of disinformation or fake news, driven by the rise of social networks and the rapid dissemination of unverified information. This issue is particularly concerning in electoral contexts.

However, none of the countries have fully implemented specific legislation to address disinformation. All face challenges balancing the fight against fake news with protecting freedom of expression.

Several countries have proposed bills or initiatives to regulate this phenomenon. For instance, in Argentina, legislative proposals aim to penalize the creation and dissemination of false information, although they have not been approved. Similarly, Brazil is debating the "Brazilian Law on Freedom, Responsibility, and Transparency on the Internet," though it faces political challenges to its approval. Many governments like Chile and Colombia have opted for non-legislative approaches, including creating advisory commissions and digital education programs. These initiatives align with the Organization of American States (OAS) recommendations, which warn against ambiguous regulations that could inhibit freedom of expression.

There are significant differences in national approaches. Ecuador has a legal framework that penalizes the dissemination of false information against individuals but lacks regulations addressing collective disinformation or content on digital platforms. Meanwhile, Bolivia faces allegations of government use of fake accounts (digital warriors) to influence public opinion, leading to widespread distrust of any regulatory attempts.

In Mexico and Paraguay, legislation prioritizes freedom of expression and limits the State's ability to intervene in content, making it challenging to control disinformation. In contrast, Uruguay provides legal tools for corrections in traditional media but lacks specific mechanisms to address the spread of false news on social media platforms.

Recommendations

1. Strengthen legal frameworks for access to information and protection of freedom of expression: Develop regulations based on the standards and guidelines of the Inter-American human rights system to guarantee broad access to public information and safeguard freedom of expression.

2. Avoid using criminal law to regulate disinformation: Refrain from creating broad and ambiguous legal figures in the criminal sphere to combat disinformation and instead prioritize judicial mechanisms of a civil nature, which are more appropriate to address this phenomenon.

3. Prevent the imposition of liability on intermediaries for third-party content: Design regulations that do not assign legal responsibility to digital intermediaries for user-generated content, thus avoiding promoting "private censorship" practices that limit freedom of expression.

4. Strengthen legal frameworks regarding electoral processes and publicity: Review and improve regulations related to transparency, regulation, and supervision of electoral advertising, guaranteeing fair and equitable democratic processes.

Section 14 – Guarantees for Journalists

How can journalists protect themselves from government interference that compromises press freedom? What legal remedies are available?

Synthesis

All the countries analyzed recognize press freedom as a fundamental right protected by their constitutions and international treaties, such as the American Convention on Human Rights. Violations of journalists' rights infringe upon the victim's freedom of thought and expression and undermine the collective dimension of this right. Press freedom includes reporting and expressing opinions without prior censorship, though with subsequent accountability. It also guarantees professional confidentiality for journalists, as highlighted in the questionnaire responses from Colombia and Paraguay.

Generally, the states analyzed have legal mechanisms and judicial resources to protect journalists and media professionals from threats, intimidation, and censorship. However, except for Mexico, there is no evidence of specific regulatory frameworks for adequately protecting journalists from governmental interference or threats. Such threats may arise from the State's coercive power to sanction, suppress, or inhibit critical expressions about the actions of state authorities, for instance, through contempt laws. Additionally, none of the responses mentioned any specific protections for women journalists.

There are significant differences in the implementation and scope of legal guarantees. For example, Chile faces criticism from organizations like Reporters Without Borders for impunity in attacks against journalists and the lack of effective measures to protect them.

In Ecuador, the relationship between the State and the press is contentious, with documented cases of reprisals against critical journalists, such as visa revocations or legal actions. This contrasts with countries like Mexico, which provides federal protection mechanisms, including bodyguards and temporary relocation for journalists at risk.

In Brazil, challenges persist, such as judicial harassment of journalists. On the other hand, in Uruguay, regulations include specific measures to prevent media concentration and protect pluralism, which is less evident in other countries.

In Colombia and Mexico, the risks and violence faced by journalists are also linked to the actions of criminal organizations.

Recommendations

1. Implement specialized protection programs for journalists: Establish comprehensive protection systems to address the specific risks faced by journalists, including measures such as safe shelters, personal escorts, digital protection against cyberattacks, and protocols for responding to threats.

2. Strengthen the independence and technical capacity of Judicial bodies: Ensure that cases of violence or intimidation against journalists are handled by independent and technically skilled judicial bodies, free from political or economic pressures. This includes specialized training for judges and prosecutors to address crimes against press freedom.

3. Create specialized research bodies: Establish investigation units dedicated exclusively to crimes against journalists, with adequate human and technological resources to ensure prompt, thorough, and impartial investigations, as well as to ensure the protection of those involved during the proceedings.

4. Learning from international experiences: Analyze successful initiatives from other countries in journalist protection to implement locally tailored policies, including cooperation with global organizations that promote press freedom and a safe environment for journalists.

5. Constant monitoring and evaluation: Establish an independent national observatory to track cases of violence against journalists, ensuring transparency in investigations and corrective measures in cases of inefficiency or negligence by authorities.

6. Promote public awareness and respect for journalistic work: Launch awareness campaigns to emphasize the importance of free and independent journalism as a cornerstone of democracy and the rule of law, aiming to reduce stigmatization and the risk of attacks.

Pillar IV

Institutional and Legal Framework

Section 15 – Primacy of the Constitution and Law

Is there a body that ensures the interpretation and enforcement of the Constitution? If this is the case, specify which one and its competencies.

Synthesis

All countries recognize the Constitution as the supreme legal norm within their respective legal systems. In addition, they have constitutional control mechanisms to ensure that laws and administrative acts comply with constitutional principles. Most of these countries assign the role of interpreting and applying the Constitution to specialized courts, such as constitutional courts, supreme courts of justice, or even specialized chambers.

Regarding the courts, relevant elements include the methods for composing and appointing judges—whether through election, co-optation, or other systems, with or without the involvement of other branches of government—the duration of their terms, which may be lifetime or fixed, the scope of the court's jurisdiction beyond constitutional review, and the specific systems employed to exercise such review.

The data collected reveal challenges in the region concerning the general competence of constitutional bodies. When excessively broad, as in Brazil, Bolivia, and Mexico, this can overburden the system or exacerbate the judicialization of political conflicts.

Regarding constitutional review, it is observed that in addition to the pure models of constitutional control—namely, concentrated control, carried out by a constitutional court or tribunal, and diffuse control, exercised by any judge within the context of a specific case—both of which are present in the countries studied, a third model has emerged, generally referred to as "mixed," combining elements of both systems. For example, in Uruguay, constitutional control is exclusively concentrated and occurs after the promulgation of norms, with effects limited to the specific case (*inter-partes*). In Brazil, the Supreme Federal Court combines diffuse and concentrated systems with the ability to issue binding decisions for particular cases and the entire public administration (*erga omnes*).

In some cases, such as in Chile and Colombia, there are also forms of preventive (*ex-ante*) control of laws or international treaties, as seen in Bolivia and other states.

The differences between countries are also evident in the scope of the effects of constitutional control. For example, Argentina adopts a diffuse control system, where all judges can declare the unconstitutionality of a norm in specific cases, but its effects are limited to the particular case. Conversely, Brazil, Chile, and Colombia combine concentrated and preventive controls, allowing their constitutional courts to issue rulings with broader effects (erga omnes) in some instances.

Recommendations

1. Strengthen the delimitation of constitutional court competencies: Design and adjust regulatory frameworks to prevent overburdening constitutional courts by clearly defining their competencies. This includes establishing specific criteria for access to constitutional jurisdic-

tion to reduce the judicialization of political conflicts and ensure that these bodies can focus on strictly constitutional matters.

2. Promote an adequate balance between the systems of constitutionality control: Encourage the adoption of mixed control models that combine the most compelling aspects of concentrated, diffuse, and preventive control, adapting them to the specific needs of each country. This will ensure a balance between the protection of constitutional principles and the efficiency of the judicial system.

3. Guarantee transparency and clear criteria in the selection and mandate of judges: Establish transparent and participatory procedures for the selection of constitutional court judges, ensuring the representation of several sectors and judicial independence. Additionally, clearly define the duration of their terms and the eligibility requirements, avoiding political interference and promoting a reliable and legitimate justice system.

Section 16 – The Rule of Law: Check and Balances

Is there a clear delimitation of powers between the different authorities?

Synthesis

All countries constitutionally recognize the separation of powers as a fundamental principle to uphold the rule of law and prevent abuses of authority. The three branches of government—Executive, Legislative, and Judicial—are vested with specific powers and equipped with mutual oversight mechanisms, commonly referred to as systems of checks and balances. For instance, parliaments can hold the executive accountable through motions of censure, summoning ministers, or reviewing budgets, while presidents may veto laws passed by the legislature.

However, the effectiveness and application of these mechanisms vary significantly and are shaped by each nation's historical, political, and social contexts. Factors such as multipartisanship, centralism, or other contesting elements also play a role.

Despite a robust system of institutional checks and balances in Brazil, the Judiciary has gained increasing prominence, particularly since the introduction of binding precedents in 2004. This development has faced criticism for its impact on the balance of powers. In Colombia, the practice has revealed distortions in the application of rules, particularly in appointing authorities responsible for overseeing the activities of various branches of government. In Mexico, corruption and political influences have undermined the perception of independence among the branches of government. In Chile, the presidential system grants the Executive significant dominance, especially in fiscal policy and the appointment of magistrates, similar to Brazil in its court with constitutional functions.

Nevertheless, relations between branches of government generally operate within the customary frameworks of a state governed by the rule of law, or at least without overtly disrupting constitutional balances. In contrast, in Peru, conflicts between branches have emerged due to ambiguous constitutional clauses, such as the "moral incapacity" provision for the president, which have led to tensions and political crises.

Ecuador and Uruguay have implemented systems that blend the separation of powers with decentralization mechanisms, fostering the autonomy of local and regional governments. However, in Ecuador, instances of hegemonic control by the Executive have been reported in specific contexts, while in Uruguay, political trials face challenges due to the ambiguity of their legal grounds.

Recommendations

1. Establish precise and robust regulatory mechanisms: Design regulations that ensure the independence and autonomy of each branch of government while promoting transparency and reciprocal supervision to safeguard institutional balance.

2. Analyze and evaluate the system of checks and balances: Review this system from a constitutional perspective and consider the impact of the party and electoral systems to strengthen its functionality and legitimacy within the political and social context.

3. Clarify indeterminate concepts and general clauses: Through authentic or judicial interpretations, precisely define these legal elements to prevent interpretations that could lead to the subordination of one branch of government to another, thereby ensuring respect for the separation of powers.

Section 17 – Regulatory Powers of the Executive Branch

Is the principle of legal reserve applied? Is the technique of decree-law used appropriately?

Synthesis

In all the countries analyzed the principle of legal reserve stipulates that some issues can only be regulated through legislative norms enacted by the legislative branch. This principle aims to uphold the separation of powers and prevent abuses by the Executive branch. However, in exceptional circumstances, most countries permit the Executive to issue decrees with the force of law under specific conditions, such as during emergencies or states of exception.

Oversight of these instruments typically involves approval or review mechanisms by the legislature or Judiciary. For instance, legislative and emergency decrees in Peru and decree-laws in Mexico require subsequent approval or review by Congress. Similarly, in Colombia, decree-laws issued under delegation from Congress are subject to constitutionality review.

The practical application of these principles and regulatory tools varies significantly across countries. In Brazil, provisional measures with the force of law have faced criticism for their excessive use, prompting discussions about limiting their scope. In Chile, decrees with the force of law are tightly regulated, requiring prior authorization from Congress and adherence to clear boundaries.

In Ecuador, the recent overuse of decree-laws, particularly during states of emergency, has sparked controversy over the concentration of power in the Executive and the erosion of legislative debate.

Conversely, in Uruguay, decree-laws, which were a central tool during the dictatorship, are now subject to strict constitutional oversight to prevent similar abuses.

In Mexico, although decree-laws are restricted to exceptional situations, such as health emergencies, the COVID-19 pandemic exposed shortcomings in their application, including regulatory confusion and the centralization of power.

In contrast, Paraguay does not currently resort to decree-laws, as they were abolished by adopting its 1992 Constitution, reflecting a more restrictive stance on the Executive's regulatory authority.

Recommendations

1. Strengthen the principle of legal reserve: Ensure that fundamental matters, especially those related to fundamental rights and constitutional guarantees, are regulated exclusively by formal laws approved by the representative legislative bodies, limiting the use of secondary regulations such as executive decrees.

2. Regulate the use of decrees with the force of law: Establish clear and strict criteria for resorting to legislative decrees or decree-laws, ensuring they are used only in exceptional cases of urgency or necessity and are subject to legislative and judicial oversight to prevent abuse.

3. Promote democratic controls over the Executive branch's powers: Implement legislative and judicial oversight mechanisms to ensure compliance of executive decrees with constitutional and legal frameworks, preventing excesses or deviations of power.

4. Increase transparency in using delegated legislative powers: Publish and monitor the powers delegated to the Executive branch, ensuring that the rules issued under such authority adhere to the parameters outlined in the authorizing law.

5. Promote training in separation of powers: Design training programs for governmental and judicial actors on the importance of the separation of powers and respect for constitutional limits, thereby strengthening the rule of law.

6. Strengthen mechanisms for citizen participation: Include civil society in the monitoring and evaluating regulations issued by the Executive branch, promoting accountability and strengthening public trust in institutions.

Section 18 – Legislative Process and Citizen Participation

Is there public access to legislative bills? Are there mechanisms for citizen participation in legislative discussions?

Synthesis

All countries uphold the principle of transparency and public access to draft legislation. Digital platforms serve as essential tools, enabling citizens to consult legislative initiatives and track

their progress. For example, in Colombia, Congressional Gazettes and other web portals ensure the availability of information on bills under discussion. Similarly, in Ecuador and Paraguay, online systems organize and publish draft legislation alongside supporting documents.

Most countries also promote citizen participation in the legislative process, though the extent and effectiveness of these mechanisms vary significantly. In countries like Mexico, Peru, Paraguay, and Uruguay, the popular legislative initiative allows citizens to submit bills, provided they meet specific requirements, such as gathering a minimum number of signatures.

However, there are notable differences in the scope and impact of participation mechanisms. In Chile, while citizens can share their opinions on bills through platforms like the Virtual Congress, there is no mechanism for popular legislative initiatives. In contrast, in Mexico, citizens can propose legislation if they secure the support of 0.13% of the electoral roll, although this mechanism is not widely utilized in practice.

In some countries, citizen participation is restricted to specific stages of the legislative process. For instance, in Peru, citizens may only participate at the committee level, not in plenary sessions. Civil society can contribute through written submissions or presentations to committees in Uruguay, but such opportunities are often limited when dealing with urgent or complex legislation.

Additionally, the levels of digitization and accessibility of legislative processes differ widely. In Brazil and Ecuador, robust portals provide interactive options for citizen engagement, such as public consultations and forums. However, digital tools in other countries are either more limited or less frequently used.

Recommendations

1. Strengthen transparency in the legislative process: Implement digital public access systems that allow for real-time consultation of legislative bills, their background, and the status of their processing at all stages of the legislative process. These systems must guarantee simple, organized, and updated access, promoting citizen confidence in legislative institutions.

2. Promote citizen participation in legislative drafting: Establish mechanisms that enable citizens to actively participate in the formulation and discussion of legislative bills, which includes popular initiatives, public consultations, open hearings, and digital platforms facilitating the submission of proposals, comments, and observations.

3. Ensure publicity of legislative deliberations: Ensure that committee and plenary sessions are accessible to the public through live broadcasts, online recordings, and the publication of detailed minutes. These measures strengthen accountability and enhance citizen oversight of legislative activities.

4. Establish clear rules for citizen legislative initiatives: Define simplified procedures and affordable requirements for citizens to submit legislative proposals, ensuring that these are thoughtfully considered and debated with the same rigor as regular legislative initiatives.

5. Promote training and awareness on citizen participation: Design and implement educational programs to inform citizens about their rights and mechanisms for participation in the legislative process, encouraging greater involvement in public affairs.

6. Strengthen interoperability and coordination between levels of government: Create an integrated system that connects the legislative portals of the different levels of government (national, regional, and local), facilitating unified access and promoting coherence in legislative policies.

Section 19 – Constitutional State of Emergency

Are constitutional states of emergency provided for in the legal framework?

Synthesis

In all countries, states of emergency are established in their constitutions as mechanisms to address extraordinary situations such as wars, internal unrest, economic crises, or natural disasters. These measures enable governments to temporarily limit certain rights and take exceptional actions to restore order.

A common principle is that states of exception must adhere to the principles of necessity, proportionality, and temporality. Additionally, the measures enacted are typically subject to political and judicial oversight to prevent abuses. For example, in Mexico, suspending individual guarantees requires congressional approval and must be proportional to the crisis. In Ecuador, the government is required to report periodically to the National Assembly and the Constitutional Court on the measures taken.

Most countries also prohibit suspending essential fundamental rights, such as the right to life, personal integrity, and protection against discrimination.

The differences among countries lie in the specific regulation and oversight of states of exception. In Brazil, three types are recognized: the state of defense, the state of siege, and federal intervention, each with distinct requirements and limitations. In contrast, Peru limits states of exception to two types—the State of emergency and the State of siege—but lacks complementary legal regulations detailing their application. This regulatory gap has drawn criticism, particularly during recent crises such as the COVID-19 pandemic.

In Uruguay, the term "state of exception" is not used. Still, emergency powers, such as prompt security measures, exist and have been historically controversial due to their misuse during authoritarian periods. On the other hand, in Chile, states of exception are more clearly defined as a state of catastrophe or a state of emergency, requiring congressional approval for extensions.

In some countries, such as Ecuador and Colombia, these measures have been abused, particularly to suppress social protests or block legislative debate, raising concerns about the balance of powers.

Recommendations

1. Establish clear and proportional limits for states of emergency: Guarantee that the declaration and application of states of emergency are based on constitutional principles of necessity, proportionality, and temporality, avoiding their abusive or unjustified use that could jeopardize fundamental rights and the rule of law.

2. Strengthen political and judicial oversight mechanisms: Ensure that all measures adopted during a state of emergency are subject to rigorous scrutiny by legislative and judicial bodies, with transparent accountability processes to prevent abuse and uphold human rights.

3. Establish clear procedures for the participation of government branches: Precisely regulate the roles and competencies of the Executive and Legislative branches during states of emergency, ensuring a proper balance to prevent excessive concentration of power in any single branch of government.

4. Guarantee the protection of non-derogable fundamental rights: Explicitly prohibit the suspension of essential rights, such as the right to life, the prohibition of torture, and access to habeas corpus, even during states of emergency.

5. Promote transparency and public information: Require that the measures taken during a state of emergency be clearly and timely informed to the public, detailing their justifications, duration, and scope to strengthen public confidence in crisis management.

6. Develop operational guidelines for implementing states of emergency: Provide the authorities with clear and uniform tools for managing these situations, ensuring that the measures adopted align with constitutional norms and international human rights obligations.

Section 20 – Relationship Between International Law and Domestic Law

Is the application of international human rights treaties respected? Are the decisions of specialized international courts complied with?

Synthesis

In all countries, ratified international treaties are integrated into the domestic legal system, and compliance with decisions from global bodies such as the Inter-American Court of Human Rights (IACHR) is recognized as mandatory. Most nations incorporate these treaties into a block of constitutionality, as seen in Ecuador, where they take precedence over national laws, and in Mexico, where human rights treaties are interpreted in line with the pro persona principle to provide the greatest possible protection.

Countries also implement internal mechanisms to monitor compliance with international decisions. For instance, in Colombia, the Constitutional Court regards human rights treaties

as binding and part of the constitutional block, mandating their implementation by state institutions.

Differences arise in the normative hierarchy of treaties and the effective enforcement of international decisions. While human rights treaties have gained recognition in jurisprudence in Uruguay, full integration remains challenging. This is evident in cases like Gelman v. Uruguay (Judgment of February 24, 2011) and Maidanik et al. v. Uruguay (Judgment of November 15, 2021), where obstacles to full compliance with IACHR rulings persist.

In Brazil, human rights treaties ratified by a qualified majority in Congress hold constitutional rank. However, compliance with international decisions, such as IACHR rulings, has been slow and inconsistent, highlighting a lack of political will and institutional capacity. In Chile, international treaties have legal force, but their implementation often hinges on political will. Although the country has partially complied with IACHR judgments, it continues to face difficulties in high-profile cases, such as the incomplete application of the Amnesty Law. In Ecuador, judges are required to apply international treaties, yet their effective implementation has been undermined by abuses during states of emergency, as seen in recent prison crises.

Recommendations

1. Strengthen the Hierarchy of International Treaties in Domestic Legislation: Promote constitutional or legislative reforms to explicitly establish the hierarchy of international treaties, particularly those on human rights, ensuring their direct and immediate application by judicial and administrative authorities.

2. Guarantee effective compliance with international decisions, particularly those involving restitution, satisfaction, or guarantees of non-repetition: Implement specific mechanisms to oversee and ensure the execution of decisions and resolutions issued by international courts, including the designation of accountable entities and the allocation of adequate resources to comply with the ordered reparation measures.

3. Establish national follow-up and monitoring systems: Create or enhance bodies dedicated to coordinating the implementation of recommendations and decisions from international human rights organizations, ensuring effective collaboration with relevant state entities.

4. Promote the training of judges and officials: Develop ongoing training programs for judges, prosecutors, and other judicial actors on the application of international human rights standards, with a focus on the control of conventionality and the *Principle pro persona*.

5. Encourage active civil society participation in monitoring: Facilitate collaboration between the State and civil society organizations to monitor and implement international decisions, promoting transparency and accountability throughout these processes.

6. Strengthen international cooperation: Foster bilateral and multilateral agreements between countries to share best practices in applying international treaties, implementing judicial decisions, and addressing common challenges in domestic and international law interactions.

Conclusion

This report provides an essential overview of the current State of the rule of law in Latin America, accompanied by specific recommendations. The analysis focused on four fundamental pillars of the rule of law: judicial independence, the anti-corruption framework, freedom of the press, and other key aspects of the institutional and legal framework that influence the balance of powers in the region.

As regards the pillar of independence of the Judiciary, as noted by the Court of Justice of the European Union in its judgment of November 19, 2019, the "requirement that the courts be independent … forms part of the essence of the right to an effective remedy and of the fundamental right to a fair trial, which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 of the TEU, in particular the value of the rule of law, will be safeguarded" (AK v. Krajowa Rada Sądownictwa, para. 120). Significant challenges were identified in the countries analyzed. In several of them, self-governing judicial bodies are either absent or subordinated to higher courts, compromising their autonomy. Furthermore, the financial capacity of the Judiciary Branch is threatened by either the lack of adequate funding or the absence of clearly defined resources necessary for its proper functioning. The main issue, however, is the Judiciary's legitimacy in the eyes of society. This legitimacy has been significantly undermined by several factors: criteria for judge selection, external attempts to influence the Judiciary, persecution by other branches of government or organized crime, suspicions of corruption, and the politicization of the Judiciary, particularly in higher courts in some countries.

Corruption remains a significant challenge to the effectiveness of the Rule of Law. The region has made notable efforts to update regulatory frameworks, establish oversight bodies, and create specialized courts to combat the phenomenon of corruption. However, the implementation of these rules and regulations remains incomplete, with persistent challenges related to their effectiveness, the coordination among responsible bodies, their capacity to operate across the entire territory, and public perception of the issue. Regarding international cooperation programs to combat corruption, although countries share a general framework of international commitments, the implementation and effectiveness of these measures vary significantly. These differences are shaped by factors such as political will, institutional capacity, and socio-economic contexts. Discrepancies in the implementation and effectiveness of transparency and accountability mechanisms underscore the urgent need for a more coordinated and effective regional approach. Moreover, strengthening regulatory and operational frameworks is critical to create a robust mechanism for protecting whistleblowers.

Communication services play a vital role in ensuring access to information, the diversity of opinions, and respect for cultural and linguistic diversity. These elements serve as counter-balances to potential authoritarian or totalitarian tendencies that threaten the Rule of Law.

However, the democratic function of the media is at risk due to undue external pressures, partly exacerbated by inadequate regulatory frameworks in several of the countries analyzed. Regarding private media, although most countries recognize the importance of regulating media concentration and promoting transparency, significant disparities persist in implementing and overseeing these regulations. These differences reflect the level of political commitment and the institutional capacity to ensure a pluralistic, accessible, and balanced media ecosystem. Another significant challenge is misinformation and the impact of fake news. While countries share similar concerns about the impact of fake news on democracy, some have made progress with legislative or educational initiatives. In contrast, others face institutional and cultural limitations in addressing the issue without jeopardizing freedom of expression. Strengthening regulatory frameworks and ensuring their effective application is essential to foster more democratic and robust regional communication.

In the end, the balance between the powers of the State and the system of checks and balances are fundamental pillars for protecting the Rule of Law, guaranteeing that no power prevails over another and that democratic principles and justice are respected. However, several challenges emerge from the analysis. Although all countries recognize constitutional supremacy and have mechanisms to control constitutionality, problems persist, such as the overloading of constitutional bodies and the judicialization of political conflicts in some contexts. The principle of legal reserve, crucial to ensure the balance of powers, generates debates due to the differences in its regulation and control among countries and the concrete risk of abuse in situations such as states of exception or emergency. In addition, transparency and popular participation in legislative processes are not uniformly guaranteed in all the cases analyzed. Finally, although countries recognize the primacy of international treaties, especially in the field of human rights, their practical implementation varies considerably. These disparities reflect differences in the normative hierarchy and the capacity of states to fulfill their international obligations, highlighting the need to strengthen internal mechanisms and international cooperation to ensure full respect for human rights.

In addition to the recommendations developed for each point, the analysis identifies areas for cooperation between the European Union and the Latin American countries studied concerning the rule of law:

1. Systematic monitoring of the Rule of Law: Cooperation between Latin America and the EU is deemed suitable for creating a permanent rule of law monitoring mechanism inspired by the model already implemented in Europe. This collaboration is relevant because, while there are differences between European and Latin American legal systems, it enables the exchange of successful practices consolidated within the EU and ensures constant tracking of the rule of law's development in the Latin American region.

2. Development of the Media Sector and Freedom of the Press: The analysis highlights that one of the sectors most needed for development in Latin America is the media and freedom of the press. In this regard, the recent European regulatory experience could be leveraged in topics such as media pluralism, the independent functioning of public service media, transparency in private media ownership, the protection of editorial independence, and the regulation of large online platforms.

This report aims to provide inputs for a concrete analysis of the degree of convergence in shared values between the European Union and Latin America. Although it was not its main purpose, it includes specific recommendations concerning each topic addressed within the pillars analyzed, based primarily on consolidated solutions in the European Union and practices promoted by international organizations of recognized authority. A detailed review of the specific sections of the report is recommended for a deeper understanding.

The issues addressed are constantly evolving in the region and, in some cases, undergoing accelerated change, particularly concerning the independence and legitimacy of the Judiciary. This aspect underscores the need for continuous monitoring and detailed follow-up of the evolution of these issues to provide empirical and analytical inputs to assess the effective exchange and adoption of shared values between Latin America and the European Union.

The analysis presented by the *BRIDGE Watch Report: The Rule of Law in Latin America* contributes to strengthening ties between the two regions and provides a basis for guiding concrete actions aimed at promoting the rule of law, a fundamental pillar for international cooperation.