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Low-Key Election of Supreme Court President Overshadowed by Nominations for Open Seat

by Carlos Navarro

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The selection of the new president of Mexico's high court (Suprema Corte de Justicia de la Nación, SCJN) was devoid of drama when the justices elected Luis María Aguilar to one of the most powerful posts in the judicial system on Jan 2, 2015. Aguilar, who will serve a four-year term, was one of six members of the court to seek the post ([SourceMex, Dec. 10, 2014](#)). Aguilar replaces Juan Silva Meza, who completed his four-year term in 2014 and remains on the high court.

In contrast to the relatively low-key election of Aguilar, the announcement of the candidates to replace the deceased Sergio Valls drew lots of fireworks, as one of the three people nominated by President Enrique Peña Nieto was Enrique Medina Mora, a controversial figure who served in high-level law-enforcement roles during the administrations of former Presidents Vicente Fox (2000-2006) and Felipe Calderón (2006-2012) and who currently holds the post of Mexico's ambassador to Washington. Critics view Medina Mora's nomination as misguided because he has no experience on the bench. Conversely, supporters view the selection of the ex-attorney general as an outside-the-box move.

A cautious court?

While there was no controversy regarding the election of Aguilar, his rise to the top post of the SCJN was a lengthy process because of the high number of candidates seeking the post. After several dozen votes, two candidates were left standing: Aguilar Morales and Arturo Zaldívar Lelo de Larrea.

"There is no doubt that Zaldívar has a great record as a jurist and a member of the court," José Luis Vargas Valdez, a legal expert, wrote in the daily newspaper *Excelsior*. "However, it is clear that the track record and the merits of Aguilar Morales won out."

Some critics say the election of Aguilar Morales will result in a very cautious and somewhat conservative court that will seek to maintain the status quo. "A review of the votes of Aguilar Morales in some of main cases resolved by the SCJN in recent years shows no evidence that this justice will place a priority on the protection of human rights or on judicial creativity," Saúl López Noriega, a legal scholar at the Instituto Tecnológico Autónomo de México (ITAM), wrote in the news magazine *Nexos*.

"The election of the SCJN president is a decision with significant relevance not only for our judiciary system but also for the institutional life of the country," added Vargas Valdez, who once served on the agency that prosecutes election fraud (Fiscalía Especializada para la Atención de Delitos Electorales, FEPADE). "The minister who heads the high court is not only given the task of presiding over the country's most important tribunal, but he also oversees the Judicatura Federal. This body is responsible for watching over the correct management of the judiciary and the integrity and behavior of its members, judges, and magistrates, which includes close to 30,000 public servants."

"The challenge in front of Aguilar Morales is huge and consists primarily in making every effort to bring the justice system closer to society," added Vargas Valdez. "In other words, the citizen (of all

layers of society) must truly perceive that he or she can become close to the system of justice. This justice must be swift and expedited and must involve a high-level technical quality that dispels any doubts about its value."

López Noriega pointed out, however, that the chief justice cannot transform the court by himself. "Several of the changes that are needed in this institution require at least a minimum commitment from the president of the high court, but also the rest of the ministers," said the ITAM judicial expert.

López Noriega says the battle to reform the court lies in the quality of the individual members who are appointed. "That is where the future of our country's constitutional justice system will be decided," he said.

Medina Mora lacks judicial experience

Peña Nieto's decision to include Medina Mora's name in the list of three potential candidates to the court created a good deal of controversy. The ex-prosecutor, in fact, overshadowed two other much more highly qualified nominees—Felipe Fuentes Barrera and Horacio Hernández Orozco.

Fuentes Barrera, an academic who obtained a law degree from the Universidad Nacional Autónoma de México (UNAM), has served as a federal district judge and as a magistrate in the Tercer Tribunal Colegiado en Materia Civil del Segundo Circuito.

Hernández Orozco graduated from the prestigious Escuela Libre de Derecho and has taught at several universities. He has also held several judge positions in the Mexican courts and is currently a magistrate in the Quinto Tribunal Colegiado en Materia Penal del Primer Circuito.

In promoting the three candidates, the Peña Nieto administration made a point of emphasizing their long track record in "the judicial profession or in the procuration of justice." By painting the three candidates with a broad stroke, the presidential announcement attempted to minimize Medina Mora's lack of judicial experience. The nominee's career has been entirely in law enforcement and not on the bench, which attracted strong criticisms. Furthermore, there was concern about Medina Mora's controversial tenure as director of the Centro de Investigación de Seguridad Nacional (Cisen) and head of the now defunct Secretaría de Seguridad Pública (SSP) during the Fox administration and as attorney general during the first three years of the Calderón administration. Fox and Calderón were both members of the center-right Partido Acción Nacional (PAN).

"Medina Mora, Mexico's former ambassador to the United Kingdom and current ambassador to the US was a strategic individual for ex-President Carlos Salinas de Gortari (1988-1992) who became an important figure in two PAN administrations," said the weekly news magazine Proceso.

"Medina Mora established strong links with the US Central Intelligence Agency (CIA), putting in place operations along the Mexico-US border following the attacks on the World Trade Center and the plot against the Pentagon in 2001 ([SourceMex, Sept. 26, 2001](#))," added Proceso. "As head of Cisen, he kept permanent contact with US agents on security matters."

Medina Mora was removed as head of the Procuraduría General de la República (PGR) because of differences with Genaro García Luna, his replacement at the SSP, among other reasons. "Medina Mora left the post following the scandal that came to be known as the michoacanazo, columnist Carlos Puig wrote in the daily newspaper Milenio, in reference to the Calderón administration's

move to arrest nearly a dozen mayors, along with dozens of municipal officials and a judge, in Michoacán state for their links to the drug trafficking organizations Caballeros Templarios (Knights Templar) and La Familia ([SourceMex, May 27, 2009](#), and [Aug. 19, 2009](#)).

"The arrests were suspiciously close to an upcoming state election ([SourceMex, July 8, 2009](#))," said Puig, who noted that the operation in the end was a failure. "All of them are out of jail," said the Milenio columnist.

Puig said Medina was the head of the PGR during a scandal that involved the arrest of three indigenous women in Querétaro, who were falsely accused of kidnapping members of the now defunct Agencia Federal de Investigación (AFI) in 2009. The case contributed to a landmark decision by the SCJN allowing citizens to file legal challenges in cases of government impunity ([SourceMex, May 19, 2010](#)).

"Peña Nieto has submitted the name of a candidate who would have to recuse himself in several cases that could come before the court because of actions that he took as head of the PGR," said Puig.

And despite Medina Mora's baggage, Puig believes that the ex-prosecutor has a good chance of gaining enough support if Peña Nieto leans hard enough on members of his party and the PAN in the Senate to confirm the proposed candidate. "Nothing ... could block his election," said the Milenio columnist. "He seems to be a person of luck."

Other critics questioned Medina Mora's performance in diplomatic circles, with one news site calling the nominee an "uninspiring ambassador."

"Who exactly is behind this nomination of this bad prosecutor and bad ambassador?" asked La Otra Opinión, edited by journalist Ricardo Alemán.

In a separate piece, La Otra Opinión cited Mario Álvarez Ledesma, director of judicial and social studies at the Instituto Tecnológico de Monterrey (Mexico City campus), who suggested that Medina Mora would bring down an SCJN that has worked hard to become a solid and constitutionally oriented institution. "Gradually, the SCJN has taken on controversial issues that have been decided by justices with distinguished careers or great knowledge of the law," said La Otra Opinión. "In other words, the tendency of the court to accommodate disgraced or entitled politicians has diminished."

"Medina Mora is an individual who lacks the qualifications and track record to occupy the post," said La Otra Opinión. More importantly, Álvarez Ledesma believes that the move could represent a setback for the country by eliminating the existing balance of powers. "We would again have a vertical system, where an authoritarian president seeks to gain control of all the branches of government," said the news site, quoting Álvarez Ledesma.

Álvarez Ledesma said Medina Mora would join another ally of the Peña Nieto government on the court, Justice Alfredo Gutiérrez Ortiz Mena. "The rise of Medina Mora to the court would represent a political decision that in the eyes of many would only serve to cover the actions of the president and in the long run weaken the separation of powers in Mexico," said La Otra Opinión.

Despite the strong rejection of Medina Mora, there was at least one supporter among the country's prominent columnists. "The court requires members who have broad knowledge of the new tactics

adopted by the violent criminal organizations," Jorge Fernández Menéndez wrote in the daily newspaper *Excélsior*. "In the case of Medina Mora, this advantage is magnified because of his business, political, institutional, and diplomatic experience."

Fernández Menéndez says Medina Mora's broad experience in the business sector includes a role as assessor to Mexico's team of negotiators during discussions on the North American Free Trade Agreement (NAFTA). "There are few people who have more knowledge of the political and judicial systems," said the *Excélsior* columnist. "And few people have this type of experience in fields as diverse and complex."

While the makeup of the 11-member SCJN is under debate, a proposal is circulating in the Chamber of Deputies to greatly expand the size of the court. An initiative in the constitutional affairs committee (Comisión de Puntos Constitucionales) would increase the size of the court to 21 members from the current 11 justices.

According to the proposal presented by PAN Deputy Alfredo Zamora García, a larger court would ensure that the more important issues that affect Mexico would be addressed in a much quicker manner. In addition, the move would ensure a more diverse court, which would create greater opportunities for dialogue, said Zamora García.

However, others disagree that a larger court would guarantee a more efficient judicial system. "[To] increase the number of justices does not solve the serious problem that the judicial system is facing," said attorney Talía Vázquez who once served in the Chamber of Deputies as a member of the Partido de la Revolución Democrática (PRD). "What we need to expedite the justice system is to increase the number of judges in the district courts, in the unitary circuit courts, and the circuit collegiate courts."

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