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Senate Elects Two New Justices to Supreme Court

by Carlos Navarro

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The election of Norma Lucía Piña Hernández as one of two new justices in Mexico's highest court (Suprema Corte de Justicia de la Nación, [SCJN]) will keep the current gender ratio in the court, but some observers point out that the Senate is missing an opportunity to boost the number of women on the panel. On Dec. 10, the Senate voted to appoint Piña Hernández and Javier Laynez Potisek as the two newest justices on the SCJN. They will take over the seats held by Olga Sánchez Cordero and Juan Silva Meza, who completed their 20-year terms. Piña Hernández, a judge in the federal district court (Vigésimo Tribunal Colegiado en Materia Administrativa del Primer Circuito) effectively replaces Sánchez Cordero, meaning that the 11-member court will continue to have only two women. The other female justice is Margarita Luna Ramos.

Critics question transparency of process

Piña Hernández and Laynez Potisek, head of the office in charge of enforcing tax laws (Procuraduría Fiscal de la Federación), were both elected by an overwhelming margin in the Senate from two lists submitted by President Enrique Peña Nieto. They both obtained strong support from the governing Partido Revolucionario Institucional (PRI) and the conservative Partido Acción Nacional (PAN). They both will serve for 15-year terms, which is the current tenure for all SCJN justices.

The center-left Partido de la Revolución Democrática (PRD) offered mixed support, with some members dissenting from the decision of the party leadership to support the two new justices. Sen. Miguel Barbosa, PRD floor leader in the upper house, said the center-left party mostly agreed to support the two candidates, even though there were questions about the process, including allegations that there might have been a behind-the-scenes agreement between the PAN and the PRI on the election of the two new justices.

"The process needs to be regulated, one that is open for everyone to see," said Barbosa, who urged that a longer list of qualified professionals be compiled. "The Senate needs to ensure that we have a more exhaustive selection process."

There were also criticisms from outside about the lack of transparency in the selection of the new justices. "Norma Lucía Piña Hernández and Javier Laynez Potisek were selected in a process that was not transparent," said the news site Cimacnoticias.

Others suggested the selection process should be revamped to include a higher quality of candidates. "What we need are structures that view the law with a critical eye and make interpretations that are more progressive and egalitarian in the face of the realities that Mexicans are facing," said Miguel Moguel Valdés, a researcher at Fundar Centro de Análisis e Investigación.

Moguel Valdés called the election earlier this year of Eduardo Medina-Mora Icaza, a prosecutor with very little judicial experience ([SourceMex, March 18, 2015](#)), a step in the wrong direction.

"The winners were the ones who benefitted from the agreement between the PRI-Peña Nieto administration and the PAN: magistrate Norma Lucía Piña Hernández and tax prosecutor Javier Laynez Potisek," columnist Francisco Garfias wrote in the daily newspaper *Excélsior*.

According to Garfias, Finance Secretary Luis Videgaray also was a big winner, since he was the one who proposed Laynez Potisek. In contrast, presidential counsel Humberto Castillejos lost out because he supported Raúl Cervantes Andrade, who was not even included in the final three names for consideration in that particular slate. Laynez Potisek was selected over Mexico state prosecutor Alejandro Jaime Gómez Sánchez and Álvaro Castro Estrada, a former magistrate in the federal conciliation and arbitration court (Tribunal Federal de Conciliación y Arbitraje).

Before landing at the tax prosecutors' office, Laynez Potisek also served as legal counsel during the administrations of former Presidents Ernesto Zedillo, Vicente Fox, and Felipe Calderón, and as a deputy secretary in the la Procuraduría General de la República (PGR). His long career as a member of the establishment under both PRI and PAN administrations led to some criticisms from center-left parties during the Senate hearings before the vote.

Sen. Manuel Bartlett Díaz of the Partido del Trabajo (PT) and Sen. Dolores Padierna of the PRD suggested that the role of Laynez on the high court would be to halt appeals of campesinos and indigenous communities on land disputes and to block all legal recourses against the structural reforms implemented during the Peña Nieto government.

"We are about to experience a farce," Bartlett Díaz said during the debate. "Peña Nieto is going to impose his employee, Laynez, and we are not even giving the Senate the decision-making power that is guaranteed by the Constitution."

There was also some controversy surrounding Piña Hernández. Cimacnoticias and others criticized Piña Hernández's vague replies during her testimony before the Senate, including answers on several issues that have come recently before the court, such as the legalization of marijuana, euthanasia, and human rights.

"Many senators were bothered by what they considered obvious replies, imprecise answers and evasion to the questions that they presented to Norma Piña," said the daily business newspaper *El Economista*. "This appeared to be an obvious effort on the part of the federal government to simply fill the slot left vacant by Olga Sánchez Cordero."

Debate over gender equity

Despite the criticism, Piña Hernández's election to the court fulfilled the request by members of civil society that at least one woman be elected to the high court. Some women's rights organizations believe the Senate should have appointed two women, which would have brought the ratio to 8-to-3. In October, retiring Justices Sánchez Cordero and Luna Ramos made statements advocating for the Senate to consider naming two women to the court. At that point, there was uncertainty as to how many women President Enrique Peña Nieto would propose for the SCJN. "We need a new woman justice who has a sensitivity to the problems faced by vulnerable groups," Sánchez Cordero said at that time. "It would be ideal for two women to be appointed, but my seat should at least be occupied by a woman."

"It is urgent that women remain a part of the process of imparting justice," Claudia Corichi García, a member of the Chamber of Deputies for the PRD, wrote in a guest piece for the daily newspaper *El Sol de México* in October, before the list of candidates for the two posts had been completed. "This is a challenge for the president and for the Senate, who have the power to determine whether women will be picked for the posts. All of us, men and women, have to demand" that women be given a priority.

A petition with 45,000 signatures was presented to Peña Nieto, urging him to name at least one woman to the SCJN, a move that Sánchez Cordero endorsed. "I am pleased that civil society is aware of the nominations of members of the high court," said the retiring justice.

The petition prompted Peña Nieto and the Senate to draw up a separate list of three qualified women jurists to ensure that at least one woman was selected. All three served on a lower court. In addition to Piña Hernández, the list included Sara Patricia Orea Ochoa and Verónica Judith Sánchez Valle.

Some critics said the slate of candidates was uninspiring. "After evaluating the three women candidates that were submitted by President Peña Nieto, I had more questions than answers. Where is their capacity for innovation to construct a court for the 21st century? Where is their capacity to develop arguments and defend their points of view with critical thought? Why were other more qualified women candidates missing from the list," PRD Sen. Armando Ríos Piter wrote in a guest column published in the daily newspaper *Excélsior* just days before the Senate was to vote on the SCJN candidates.

"After reviewing the three candidates, I determined that none meets the requirements mandated in the Constitution in terms of efficiency, capacity, and integrity, and that is why I believe that this slate should be rejected," Ríos Piter added.

On paper, the qualifications of the three women suggested potentially strong candidates. However, critics said all three showed very little capacity during their Senate testimony. "With their records, one would think that you would have professionals with a high legal capacity and with skills to meet the challenge of public testimony," Jorge Javier Romero Vadillo wrote in *SinEmbargo.com*. "Nevertheless, none of the candidates demonstrated broad knowledge or a capacity to present a reasoned argument, qualities that are expected from a judge making decisions related to the Constitution."

Ríos Piter reiterated his criticisms during the Senate debate, but was rebuked by women senators from the three largest parties, including Ivonne Álvarez and Diva Gastélum from the PRI, Adriana Díaz Lizama from the PAN, and Angélica de la Peña of the PRD. The senators demanded that Piter show more respect for the women candidates, particularly Piña Hernández, who appeared to have stronger support than Orea Ochoa and Sánchez Valle.

"We women know very well that when the time comes to evaluate our capacities, we have to demonstrate our abilities twice as much [as men]," Díaz Lizama said. "And even so, the recognition is only half" of what men receive.

Ríos Piter responded that this was not a case of gender discrimination but a question of merit and capacity. He noted that Piña Hernández deserved his respect as a woman, but that she would not receive his vote. "She ranked in last place among all the circuit judges in an evaluation made by the judicial branch," he said.

Some observers, including Humberto Guerrero, coordinator of human rights at Fundar Centro de Análisis e Investigación, suggested that Peña Nieto and the Senate put too much emphasis on a gender quota and not enough on the quality of the candidates. In answering to the demand by civil society for a stronger female presence in the court, the powers-that-be put together a slate in which none of the candidates had a strong record of protecting women's reproductive rights, they said.

“What occurred is very regrettable, because we have jurists in this country with greater capacities and knowledge,” Guerrero told Cimacnoticias.

Beyond the issue of gender quotas, there was some concern that the two new justices were less sympathetic to women’s issues, including gender equity, abortion, domestic violence, and femicides. “Some non-governmental organizations suggest the two justices could result in a court that is less open on issues of sexual and reproductive health,” said Cimacnoticias.

One statement from Piña Hernández that raised a flag, said Cimacnoticias, was her assertion that Mexico lacks legislation in “relation to the rights of the embryo.”

There were similar concerns about testimony from Laynez Potisek, who spoke about the move by Mexico City to eliminate any restrictions on abortion during a woman's first three months of pregnancy. In 2008, the SCJN voted to support the Mexico City law. The court did not rule on the legality of abortion but rather focused on the constitutional right of a legislative body – in this case the Mexico City legislature (Asamblea Legislativa del Distrito Federal [ALDF]) – to pass legislation ([SourceMex, Oct. 15, 2008](#)).

“I believe that this is an issue that can be reopened,” said Laynez Potisek, who suggested that the court could review the matter if new cases were brought forth.

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