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## FEATURED Q&A

# Can Bolivian Courts Render Impartial Justice?



Former Bolivian President Jeanine Áñez, pictured in jail, faces charges stemming from her rule. But the likelihood of her getting a fair trial is up for debate. // File Photo: @jeanineanez via Twitter.

**Q Bolivian prosecutors on Aug. 20 charged former interim President Jeanine Áñez with genocide, stemming from the deaths of 22 protesters in 2019 after demonstrations erupted over the country's contested election and Áñez took over.**

**The charges were announced days after an Organization of American States-commissioned report said the Áñez government took power by violating constitutional rules and that security forces committed "summary executions," "massacres" and "systemic torture" during Áñez's rule. Days later, former President Carlos Mesa proposed a reform that he said would guarantee an independent judiciary and promote "reconciliation." Is Bolivia's justice system impartial enough to fairly judge Áñez, or is it influenced by politics? Does the country need a judicial reform such as the one Mesa is proposing, and what would such an overhaul entail? How are Bolivia's polarized politics affecting investment in the country?**

**A Roberto Laserna, director of the Center for the Study of Economic and Social Reality (CERES) in Cochabamba, Bolivia:** "Justice Minister Iván Lima recently said that 'there is not a deadline for the judiciary to be independent.' He knows how badly managed the judiciary is as he was a magistrate himself during Evo Morales' administration. President Áñez's case demonstrates how easy it is for the government to manipulate the system. She was arrested and jailed without the approval of the Legislative Assembly, and the authorities have been throwing one accusation after another at her just to keep her in 'preemptive custody.' In Bolivia, there is no accumulative penal punishment, but those accused may spend an indefinite amount of time

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## TODAY'S NEWS

### POLITICAL

## Salvadoran Lawmakers OK Removal of Judges Older Than 60

El Salvador's ruling-party controlled Legislative Assembly approved a measure that would remove judges older than 60, or ones who have served for longer than 30 years. Critics have called the move a "purge."

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### BUSINESS

## Panama Begins Contract Talks With Mining Firm

In an effort to secure higher royalty payments, Panama's government started contract negotiations with the local operation of Canadian miner First Quantum.

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### POLITICAL

## Moody's Downgrades Peru's Ratings

Moody's Investors Service downgraded its ratings for Peru, citing political risk. The move came just a month after President Pedro Castillo took office.

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Castillo // File Photo: @PedroCastilloTe via Twitter.

## ECONOMIC NEWS

## Moody's Downgrades Ratings for Peru, Cites Political Risk

Ratings agency Moody's on Wednesday downgraded Peru's foreign-currency and local currency long-term issuer rating to Baa1 from A3, with a stable outlook, citing political risk just a month after President Pedro Castillo took office. The downgrade "reflects Moody's view that a continuously polarized and fractured political environment has increased

“These conditions have adversely affected investor confidence and undermined Peru's economic resilience...”

— Moody's Investors Service

political risk and materially weakened policy-making capacity," the ratings agency said in a statement. "These conditions have adversely affected investor confidence and undermined Peru's economic resilience, which has negatively weighed on Peru's medium-term credit prospects," it added. Meanwhile, its decision to change the country's outlook to stable from negative "reflects Moody's opinion that the sovereign will continue to retain a high degree of fiscal strength and economic resilience relative to peers," according to the statement. Moody's also said it had revised its real gross domestic product growth forecast for 2021 to 12 percent, up from a previous forecast of 9 percent, Reuters reported. Castillo was sworn in as president in late July following a lengthy period in which his opponent, Keiko Fujimori, questioned the election results. He won with a margin of just 0.25 percentage points. Despite not having a majority in Congress, Castillo's cabinet received a confirmation vote last Friday. [Editor's note: See related [Q&A](#) in the Aug. 25 issue of the Advisor.]

## POLITICAL NEWS

## Salvadoran Assembly Approves Removal of Judges Older Than 60

El Salvador's ruling party-controlled Legislative Assembly on Tuesday approved a series of reforms to two judicial laws that remove judges older than 60 or who have served for longer than 30 years, in what critics have called a "purge" of the judicial system, *El Diario de Hoy* reported. Although Supreme Court magistrates are exempt from the rule, the new law will remove 156 judges across El Salvador as soon as it takes effect. Among them is Jorge Guzmán, a judge in the municipality of San Francisco Gotera, who is overseeing the case of the "El Mozote" military massacre of 1981, in which at least 1,000 civilians were killed. Last year, the



Bukele // File Photo: Salvadoran Government.

government blocked Guzmán's probes into various military units, which prompted the judge to ask the prosecutor's office to determine whether President Nayib Bukele had committed a crime, including alleged noncompliance of duties and concealment of documents. Ernesto Castro, the president of the Assembly, says the latest reforms aim to rid the judicial system of corruption and "justice tailored to power groups," Market Research Telecast reported. The move follows the government's dismissal of magistrates of the constitutional chamber of the Supreme Court and the attorney general earlier this year, which sparked concerns over weakening checks and balances under Bukele. His administration is also seeking to overhaul the constitution. [Editor's note: See related [Q&A](#) in Wednesday's Advisor.]

## NEWS BRIEFS

## Brazil's Supreme Court Hears Arguments in Indigenous Lands Case

Brazil's Supreme Court on Wednesday heard arguments in a landmark case on land rights for Indigenous groups, Reuters reported. The justices are to decide whether a state government was overly restrictive by only recognizing tribal lands that native communities were occupying when Brazil's constitution was ratified in 1988. The case could affect hundreds of land claims.

## López Obrador Highlights Anti-Graft Efforts in State of the Nation Address

Mexican President Andrés Manuel López Obrador emphasized his administration's anti-corruption efforts and downplayed insecurity and poverty during his third state of the nation address on Wednesday, Reuters reported. López Obrador, who is halfway through his six-year term, remains popular in Mexico despite high violence levels, increasing inflation and a rising poverty rate. The fight against corruption is what has allowed the government to increase social spending by allowing him to "free more budget for the benefit of the people," López Obrador said, Reuters reported.

## BRICS Development Bank Admits Uruguay

The New Development Bank (NDB), established by the so-called BRICS nations of Brazil, Russia, India, China and South Africa, said today that it had admitted Uruguay as a new member, along with the United Arab Emirates and Bangladesh, Reuters reported. The BRICS group of major emerging economies launched the bank in 2015 and began its first formal push to bring in new members last year. "New members will have in NDB a platform to foster their cooperation in infrastructure and sustainable development," NDB President Marcos Troyjo said in a statement, Reuters reported.

## BUSINESS NEWS

## Panama Begins Contract Talks With First Quantum Unit

The government of Panamanian President Laurentino Cortizo on Wednesday started contract negotiations with the local operation of Canadian miner First Quantum in order to get it to pay a higher amount of royalty payments and also improve conditions at its Cobre Panamá open-pit mine, Reuters reported. Before taking office in 2019, Cortizo said the mine should provide more benefit to the public. The mine is believed to hold some 3.1 billion metric tons of proven and provable reserves. Located about 75 miles west of Panama City, the mine has generated approximately \$6.7 billion in private investment, Reuters reported. It includes two open pits, a processing facility, a port and two power plants. It also contributed approximately 3.5 percent of Panama's gross domestic product and can produce in excess of 300,000 metric tons of copper annually at full capacity. The country's industry and trade minister, Ramón Martínez, said Wednesday that the talks between the government and Minera Panamá, the First Quantum unit that runs the mine, would result in a "completely new" contract. He said that if the government is unable to reach a new deal with the company, it would invite a different company to take over the mine. First Quantum has a 90 percent stake in Minera Panamá and started operations at the mine in 2019. Panama's government announced in July that it had appointed a high-level commission to renegotiate its contract with the company. "It is a known fact that the company Minera Panamá SA operates one of the most important mining concessions in the country and that it has pending legal aspects to be resolved," the government said in a statement, according to Market Research Telecast. The negotiations "will ensure that the negotiations are carried out in defense of the best national interests, in accordance with the law and within a framework of transparency," the government's statement added.

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in jail 'awaiting trial.' The justice system is not independent enough to judge her nor any former president. It isn't even independent enough to solve a dispute between two private parties. It functions neither on the basis of merit nor on legal reasoning, but rather according to political and economic influences. Surveys show that 85 percent of Bolivia's electorate distrusts the country's judiciary. A reform can begin by removing the attorney general and appointing by consensus a trusted authority. At the same time, the popular election of magistrates must be removed from the constitution so that experienced, trusted and independent lawyers can be appointed for life, in order to provide them the proper protection. They should also have the power to organize the reform, from professionalization to new procedures and assume control of the budget, which must be increased to provide for the judiciary's great responsibilities. Such a reform is crucial in order for democracy to survive and for development to blossom, as investments are shrinking due to the decline of the rule of law in Bolivia."

**A Kevin Young, associate professor of history at the University of Massachusetts Amherst:**

"Victims have a right to justice. That's the main focus of the Aug. 17 report. The report acknowledges deficiencies in the judicial system and makes some sensible recommendations for reform. But it emphasizes that the problems are 'structural' and not unique to one party. As Bolivian legal ombudsperson Nadia Cruz says, 'Bolivia's population cannot be left without access to justice while these structural issues are resolved.' Honduras likewise has a flawed judiciary, but no one demands that it overhaul the system and replace all officials before prosecutions can proceed, as the Bolivian right is demanding. Honduras has a right-wing, pro-business government, so it's treated differently than the MAS government in Bolivia. Áñez also gets special treatment.

Carlos Mesa, OAS chief Luis Almagro and the State Department were silent when Áñez was killing and torturing opponents. These players enabled the 2019 coup by crying electoral fraud despite a lack of evidence, à la Trump. The abuses of which some MAS-friendly judges are accused, such as

**“ Bolivia has been polarized since before the Spanish conquest.”**

— Kevin Young

overuse of preventative detention, are minor by comparison. The right's current indignation is thus hypocritical and seems aimed at skirting accountability. Bolivia has been polarized since before the Spanish conquest. Polarization doesn't always prevent a society from confronting its problems. Economic growth and poverty reduction were quite impressive under MAS from 2006-2019. This trajectory was disrupted by the coup and Áñez's austerity policies, and later by the pandemic. Democracy, not unity, is a prerequisite for addressing Bolivia's serious economic, health and ecological problems."

**A V. Ximena Velasco Guachalla, lecturer in the Department of Government at the University of Essex:**

"Similar to Mesa's statement, former President Eduardo Rodríguez Veltzé remarked that an impartial and accessible judiciary is 'essential for reconciliation.' However, the country's adherence to the rule of law has further declined in the last few years, going from 0.41 in 2015 to 0.38 in 2020, according to the 2021 WJP Rule of Law Index. The figure ranks the country 121st across 128 countries globally and 29 of 30 in the region. Between 2014 and 2020, the percentage of individuals reporting 'no trust at all' in the judicial system increased from 14 percent to 20 percent, according

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to the 2020 Latin American Public Opinion Project. Citizens' deep-rooted mistrust is not surprising as the system is characterized by a lack of resources, extensive corruption and judicial misconduct. Its persistent disfunction has made the judiciary into a political weapon: administrations across the political spectrum strategically deploy the law against their political opponents. The politicized use of the law has taken place both under the Morales and Áñez administrations, and more recently the Arce administration. While Arce announced reforms to the justice system soon after his inauguration, the process is now stalled. The rule of law should be a focal point in the coming years if Bolivians are to regain trust in a system that has persistently failed to represent the interests of the population as a whole and has instead been used for the benefit of the administration in place. Without a truly independent and respected judicial system, the country will not be able to adjudicate the entrenched views that fuel conflict."

**A** **Kathryn Ledebur, director of the Andean Information Network in Cochabamba:** "The attorney general proposed charges of murder, serious injury followed by death and genocide, defined as anyone 'killing, injuring, or treating inhumanely all, or part of, an Indigenous or other group.' The definition includes 'those directly or indirectly responsible for bloody massacres.' It's far from a kangaroo court; the process has checks and balances. Two-thirds of the Legislative Assembly must ratify the charges for the Supreme Court to hear the case. Strong evidence exists. Áñez and her cabinet signed an illegal order exempting the

security forces from legal consequences for excessive force against protesters. Undoubtedly, the justice system requires profound reform. Ironically, Mesa's allies blocked a 2017 attempt. Two-thirds of the Legislative Assembly passed an in-depth law, drafted



**It's far from a kangaroo court; the process has checks and balances."**

— Kathryn Ledebur

with input from international legal experts, that addressed many longstanding, structural problems. Protests led by CONADE, Áñez's party, and doctors, protesting a malpractice article, forced the law's revocation. It's striking that Mesa didn't express concern about the justice system during Áñez's tenure, during which the same attorney general sanctioned political persecution and failed to credibly investigate massacres and torture. Mesa's politically neutral successor, Eduardo Rodríguez Veltzé, first proposed a renewed reform in 2020. As he affirms, any credible initiative must start with an in-depth diagnosis of existing flaws and contradictions. Revisiting the revoked 2017 Penal System law would be a good place to start. Yet, the hundreds of victims of the 2019 coup have a right to justice, just as Áñez and her allies deserve due process and a speedy trial. Transparent legal proceedings can't wait."

*The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta at [gkuleta@thedialogue.org](mailto:gkuleta@thedialogue.org).*

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