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**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

Посещение Гондураса

Доклад Специального докладчика по вопросу о независимости судей и адвокатов* **

Резюме

Специальный докладчик по вопросу о независимости судей и адвокатов посетил Гондурас с официальным визитом 16–22 августа 2019 года. Цель миссии заключалась в изучении прогресса, достигнутого страной в выполнении предусмотренных прав человека обязательств по обеспечению независимости и беспристрастности судей и прокуроров и свободы адвокатской практики.

Специальный докладчик приветствует усилия, предпринятые Гондурасом в последние годы для решения структурных проблем, с которыми продолжает сталкиваться страна. Крайняя нищета, дискриминация и неравенство, насилие и отсутствие безопасности, широко распространенная коррупция и высокий уровень безнаказанности по-прежнему являются серьезными проблемами для Гондураса, однако определенный прогресс был достигнут, в частности в области сокращения количества убийств. Вместе с тем неспособность государственных органов надлежащим образом решать эти проблемы порождает глубокое недовольство и недоверие к политическому классу и государственным институтам, что также сказывается на судебной системе и, в меньшей степени, органах прокуратуры.

Усилия, предпринятые в целях укрепления независимости и повышения эффективности судебной системы, пока еще не принесли значительных результатов в плане расширения доступа к правосудию и борьбы с безнаказанностью. Недостаточное финансирование, плохая подготовка персонала и низкий уровень эффективности приводят к длительным судебным разбирательствам и увеличению объема нерассмотренных дел. Политические и другие формы вмешательства и давление со стороны негосударственных субъектов наряду с низкими зарплатами

* Резюме доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен, и на испанском языке.

** Настоящий доклад был представлен после установленного срока, с тем чтобы отразить в нем самые последние изменения.



лежат в основе высокого уровня коррупции в судебных органах, причем с помощью взяток и подкупа зачастую можно добиться вынесения благосклонного судебного решения. Насилие и безнаказанность по-прежнему широко распространены, при этом более 90% преступлений остаются безнаказанными, несмотря на меры, принятые в целях увеличения людских, финансовых и технических ресурсов органов прокуратуры.

В заключение своего доклада Специальный докладчик предлагает ряд рекомендаций, направленных на дальнейшее укрепление независимости судей и прокуроров и обеспечение свободы адвокатской практики.

Annex

Report of the Special Rapporteur on the independence of judges and lawyers on his visit to Honduras

I. Introduction

1. At the invitation of the Government, the Special Rapporteur on the independence of judges and lawyers carried out an official visit to Honduras from 16 to 22 August 2019. The aim of the mission was to examine the progress made by the country in implementing its obligations under human rights law to ensure the independence and impartiality of judges and prosecutors and the free exercise of the legal profession by lawyers, as well as the challenges which prevent actors of the judicial system from discharging their functions efficiently, effectively, adequately and appropriately.

2. The Special Rapporteur met with senior government officials from various ministries, members of the National Congress, the Commissioner for Human Rights, the President of the Supreme Court of Justice, judges and magistrates of various courts and tribunals and members of the Office of the Prosecutor-General, including the Prosecutor-General and prosecutors from specialized prosecution services, such as the Special Prosecution Unit to Fight Corruption-related Impunity. The Special Rapporteur wishes to reiterate his gratitude to the authorities of Honduras, in particular the Ministry for External Relations and International Cooperation and the Ministry of Human Rights, for the invitation and their support in the preparation of the visit.

3. With the support of the Office of the United Nations High Commissioner for Human Rights country office in Honduras and the office of the resident coordinator, the Special Rapporteur also met with a wide range of civil society representatives, including from non-governmental organizations and associations of judges, prosecutors and lawyers, academics and members of the donor community, as well as representatives of international and regional organizations. He would like to express his gratitude to all the judges, prosecutors, lawyers, academics and representatives of organizations who shared their experiences and opinions with him.

II. Legal and institutional framework

A. International obligations

4. An independent and impartial judicial system is essential for upholding the rule of law and ensuring the protection of human rights and fundamental freedoms. The judiciary is also an essential component of the checks and balances with and between the other branches of government, ensuring that laws adopted by the legislature and acts of the executive branch are in conformity with international human rights standards and the rule of law.

5. The independence of the judiciary is enshrined in a number of international human rights treaties to which Honduras is a party, including the International Covenant on Civil and Political Rights and the American Convention on Human Rights. Both instruments provide that everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law. Given the country's adherence to those treaties, it must, *inter alia*, adopt all appropriate measures to guarantee the independence of the judiciary and protect judges from any form of political influence in their decision-making.

6. Together with the principle of the separation of powers, according to which the executive, the legislature and the judiciary constitute three separate and independent branches of the State, the independence of the judiciary forms part of the essential components of the rule of law. The constitution, laws and policies of a country must ensure that the justice system is truly independent from the other branches of government so that the people can be

confident that the judiciary acts and adjudicates exclusively on the basis of the constitution and the law.

7. In the Basic Principles on the Independence of the Judiciary, it is indicated that the measures that States must adopt to secure and promote the independence of judges and magistrates. According to principle 1 of the Basic Principles, the independence of the judiciary shall be enshrined in the constitution or the law of the country and it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. Under principle 2, the judiciary shall decide matters before them impartially, without any restrictions, improper influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason. The Basic Principles also provide guidance on other requirements, including regarding the qualifications of and selection process for judges (principle 10), conditions of service (principle 11), security of tenure (principle 12) and disciplinary, suspension or removal proceedings (principles 17–20).

8. The Constitution of Honduras provides that the State endorses the generally accepted norms, standards and practices of international law that are conducive to human solidarity, respect for the self-determination of peoples, non-intervention and the strengthening of universal peace and democracy (art. 15). Following their ratification, international agreements become part of the domestic legal order (art. 16) and take precedence over national legislation in case of conflicts with the provisions contained in ordinary law (art. 18).

B. Justice system

9. The judicial system of Honduras consists of the Supreme Court of Justice, courts of appeal, courts of first instance and justices of the peace.

10. At the time of the Special Rapporteur's visit, there were 5,739 judges in the country, 52 per cent of whom were women.

1. Supreme Court of Justice

11. The Supreme Court of Justice is the supreme judicial authority in the country. It consists of 15 justices distributed among four chambers: Constitutional Chamber, Criminal Chamber, Civil Chamber and Labour Chamber. The Constitutional Chamber is the only one which is explicitly established in the Constitution (art. 316) and is composed of five magistrates. The other Chambers comprise three magistrates each. The President of the Supreme Court represents the judicial branch.

12. According to the Constitution, the Supreme Court has general competences in relation to the organization and supervision of the judiciary and exercises far-reaching jurisdictional functions, including hearing cases involving senior State officials, extradition cases and cases adjudicated by lower courts. The Constitutional Chamber is competent to determine the constitutionality of laws, decrees and regulations, hear individual petitions for the protection of constitutional rights (writs of *amparo* and habeas corpus) and adjudicate any disputes between the powers of the State, including the National Electoral Council (art. 316).

2. Courts of appeal

13. Courts of appeal have jurisdiction over appeals arising from cases before tribunals of first instance. They are three-judge panels that hear all appeals from the lower courts, including civil and commercial, criminal, labour, administrative, constitutional and habeas corpus cases. There are 27 courts of appeal in the country, located in the main provinces. The judges of the appellate courts are appointed by the Supreme Court.

3. Courts of first instance

14. Courts of first instance cover civil, commercial, criminal, labour, family, administrative, domestic violence and juvenile cases. In the main provinces, in addition to their territorial competence, the courts have a judicial competence in labour, civil,

administrative, tenancy and criminal law cases. There are 67 courts of first instance in Honduras.

4. Justices of the peace

15. The lowest level of the court system consists of justices of the peace, distributed throughout the country. Each department capital and municipalities with populations of more than 4,000 people should have two justices, and municipalities with populations of fewer than 4,000 people should have one justice of the peace. Justices of the peace handling criminal cases act as investigating magistrates and are involved in only minor cases. More serious criminal cases are handled by the courts of first instance. The judges are appointed by the courts of first instance.¹

5. Council of the Judiciary

16. The Constitution provided for the creation of a Council of the Judiciary and the enactment of a law to regulate its organization, scope and faculties (art. 317). The Council of the Judiciary and the Judicial Career was established in 2011, but ceased to exist in March 2016, following a decision of the Constitutional Chamber of the Supreme Court (see paras. 31–34 below).

III. Structural problems and their impact on public trust

17. The effective realization of the independence and autonomy of the justice system does not depend solely on the implementation of national legislation and policies related to the administration of justice and the free exercise of the legal profession. The persistence of structural problems, such as widespread corruption, extreme poverty, discrimination and inequality, violence and insecurity and a high level of impunity, remain major challenges for Honduras and continue to have long-lasting adverse effects on the independence and autonomy of the judiciary with regard to other State powers and non-State actors, such as organized crime networks.

18. Corruption remains a major threat to the stability and appropriate functioning of institutions, which are obstacles to maintaining the competitiveness of the country and affect investment. Networks of patronage and clientelism and organized crime dominate society and various sectors of the economy. Corruption has had a particularly negative impact, which is compounded by the impunity that has followed the unveiling of the most notorious cases involving high-ranking politicians and authorities. In 2019, Honduras was ranked 146 of a total of 180 countries considered by Transparency International,² 14 positions lower than its ranking in 2018, and continues to be one of the most corrupt countries in the world. The Government has put into place an anti-corruption framework, but sustained efforts and enforcement is lacking.

19. Despite a certain degree of stability in the national economy in recent years, the country continues to face high levels of poverty, with a poverty rate of 52.6 per cent. The extreme poverty rate in 2017 was 17.2 per cent, the second highest rate in Latin America and the Caribbean, after Haiti. The inequality rate (Gini coefficient of 50.5 in 2017) is also among the highest in the region – and the world. High levels of poverty and inequality have contributed to the emergence of a cycle of high crime and low growth. Although the homicide rate in the country has decreased, Honduras continues to have one of the highest homicide rates in the world. The reduction in the homicide rate has not translated into a reduction in the level of violence, which remains very high and continues to be a constant threat to the population.

20. Impunity continues to be widespread, especially in cases involving high-ranking politicians and State authorities. According to recent data, the rate of impunity in Honduras continues to exceed 90 per cent, and more than 97 per cent of crimes against human rights

¹ See www.nyulawglobal.org/globalex/Honduras.html#_3.3_Judicial_Branch.

² Transparency International, Corruption Perceptions Index 2019. Available at www.transparency.org/cpi2019?news/feature/cpi-2019.

defenders go unpunished. Similarly, crimes allegedly committed by State agents also have a high level of impunity.

21. Those dynamics continue to affect the economy's growth potential and the economic opportunities available for Hondurans and trigger the migration of many people out of Honduras, in search of better economic opportunities and an escape from crime and violence. The inability of State authorities to adequately address those challenges is the root of the extremely low trust that Honduran society has in the political class and State institutions.

22. In that context, it comes as no surprise that the whole justice sector, which comprises the judiciary, the prosecution service and the police, has been strongly questioned by citizens, the private sector, unions, civil society organizations and humanitarian groups, among others. Only one quarter of the population trusts the judicial authorities, whereas other State institutions, such as the armed forces and the police, obtain slightly better results (35 per cent and 33 per cent, respectively). In 2017, a survey on the level of trust in the public prosecution service showed that only 30 per cent of the people who responded to the questionnaire had some trust in the prosecution service, whereas the remaining 70 per cent had little trust (34.8 per cent) or no trust at all (35 per cent).³

23. In its most recent report on the situation of human rights in Honduras,⁴ the Inter-American Commission on Human Rights referred to the Honduran justice system as a "selective justice" system, or a system in which courts and tribunals act late and do not offer an effective response to human rights violations, but which, in contrast, proves to be very effective when acting in defence of the interests of powerful actors, such as politicians or business enterprises closely linked to those with political power.

24. The Special Rapporteur underscores that addressing the structural problems that currently affect the independence and impartiality of national courts and tribunals not only requires additional financial resources, but also – first and foremost – the firm political will to strengthen the independence of the judiciary, improve the conditions of service of justice operators and enhance the level of protection of judges at risk. That action should be accompanied by additional efforts to tackle the high levels of poverty and inequality, which at present create an enabling environment for the high levels of violence, corruption and impunity that affect the country.

IV. Challenges to an independent and impartial justice system

A. Weak legal and institutional framework

25. The principle of judicial independence refers to both the individual and institutional independence required for decision-making. The Inter-American Court of Human Rights has pointed out on several occasions that the State must guarantee the autonomous exercise of the judicial function with regard to both its institutional aspect, in relation to the judiciary as a system, and its individual aspect, in relation to the person of the specific judge.

26. In its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee observed that the requirement of independence and impartiality of a tribunal referred, in particular, to the procedure for the appointment of judges, the guarantees relating to their security of tenure, the conditions governing promotion, transfer, suspension and cessation of their functions and the actual independence of the judiciary from political interference by the executive branch and legislature.

27. Principle 11 of the Basic Principles on the Independence of the Judiciary provides that the status of judges, including their term of office, their independence, security, adequate remuneration, conditions of service, pensions and age of retirement must be regulated by law.

³ Honduran Council of Private Enterprise, "The election of high-ranking officials in Honduras: lessons learned and impact on the democracy and its institutions", 2019.

⁴ Inter-American Commission on Human Rights, "Situation of human rights in Honduras", 2019.

28. Both the principle of the separation and balance of powers (art. 4) and the independence of the judiciary (art. 303) are enshrined in the Constitution of Honduras. In the exercise of their functions, judges are independent and only subject to the Constitution and the laws (art. 303). Other constitutional provisions set out additional safeguards, including the exclusive authority of the judiciary over all issues of a judicial nature (art. 304), the general prohibition to establish special courts (art. 304) and the financial and administrative autonomy of the judiciary (art. 318).

29. The Constitution provides that the organization and functioning of the judiciary will be regulated by law (art. 307) and that judges and magistrates may be suspended, transferred or removed only in the cases provided for by the law and with the guarantees provided therein (art. 317 (2)). Similarly, the Constitution provides that the law will regulate the organization and functioning of the Council of the Judiciary (art. 317 (1)).

1. Law on the Council of the Judiciary and the Judicial Career

30. By Decree No. 282-2010 of 19 January 2011, a number of amendments to articles 313 and 317 of the Constitution were introduced, with a view to providing a constitutional basis for the eventual enactment of a law on the Council of the Judiciary and the Judicial Career. Those amendments were aimed at shifting some powers related to the administration of the justice system from the Supreme Court to the soon-to-be-established Council of the Judiciary. Article 3 of the decree also contained a transitional provision, according to which, prior to the creation of the Council, the President of the Supreme Court would retain the power to select, appoint and dismiss judges, magistrates and administrative personnel, as well as the power to direct and supervise the administration of the judicial branch.

31. On 17 November 2011, the National Congress enacted Decree No. 219-2011, which gave effect to the new Law on the Council of the Judiciary and the Judicial Career. Article 2 of the Law established the Council as the constitutional governing body of the judicial branch, with autonomy and functional and administrative independence, subject only to the Constitution and the law. In March 2016, however, Decree No. 219-2011 was declared unconstitutional by the Constitutional Chamber of the Supreme Court, according to which the law undermined the exclusive attribution of the Supreme Court to organize and direct the judicial branch and thereby violated the principles of judicial independence and the separation of powers.

32. As a result of the decision of the Constitutional Chamber, the organization and functioning of the Honduran justice system are at present regulated by the Law on the Judicial Career of 1980 and its regulations of 1987, the Law on the Organization and Faculties of the Courts (1906, as amended through 1988), the rules of procedure of the Judicial Service Council (1988) and the rules of procedure of the General Inspectorate of Courts (1995).

33. The most worrying aspect of the declaration of unconstitutionality is that, in addition to creating a serious legal vacuum, it also “revived” the transitional provision in Decree No. 282-2010 concerning the powers of the President of the Supreme Court to select, appoint and dismiss judges, magistrates and administrative personnel and to direct and supervise the judiciary as a whole. As a result, the highest judicial authority in Honduras has added to its judicial functions the administrative functions that had been transferred to the Council of the Judiciary pursuant to the Law on the Council of the Judiciary and Judicial Career.

34. The concentration of administrative functions in the hands of the Supreme Court is problematic. Not only does it add to the already large workload of the Supreme Court, with the risk of undermining its jurisdictional functions, it also exposes the judiciary to the risk of interference from other State institutions, in particular the National Congress, which elects the Supreme Court judges. In cases in which administrative functions are the responsibility of the highest judicial body, the Special Rapporteur has advocated the separation of administrative and jurisdictional functions, so as to enable the judiciary to concentrate fully on the latter (A/HRC/23/43/Add.1, para. 106).

35. The Special Rapporteur considers that such a legal and institutional framework for the judiciary presents serious gaps and is not sufficient, as it stands, to protect and promote the independence of the judiciary from other branches of Government (i.e., institutional independence) and the independence of individual judges to adjudicate the cases before them

impartially and autonomously (i.e., personal independence). Other human rights mechanisms have expressed similar concerns.

36. According to the information received during the visit, the Supreme Court established a commission to draft a new law to set up the Council of the Judiciary and regulate its administrative and financial competences. The Transparency Unit for the Judicial Branch informed the Special Rapporteur that, as at the end of January 2020, the draft law had been finalized but not yet approved by the plenary of the Court.

2. Selection and appointment of candidates to judicial office

37. As a result of the declaration of unconstitutionality, the procedure for the selection and appointment of magistrates of courts of appeal, judges of courts of first instance and justices of the peace is regulated in articles 26 to 33 of the Law on the Judicial Career (1980).

38. The procedure consists of two phases. In the first phase, the Directorate of Personnel Management selects eligible candidates, through the Personnel Selection Committee. The procedure envisaged in the Law on the Judicial Career (1980) includes the publication of vacancy announcements, the invitation of short-listed candidates to a competitive examination and the preparation of a list of preselected candidates. Only candidates who have obtained a score of at least 70 per cent on the examination are deemed to be successful. In the second phase, when a judicial vacancy occurs, the Director of Personnel Management sends a list of three candidates to the President of the Supreme Court, who chooses from among those candidates but is not bound by the ranking order indicated in the list submitted.

39. The Special Rapporteur is of the view that the current selection procedure does not provide sufficient guarantees to minimize the risk of appointments for improper motives. The Directorate of Personnel Management cannot be regarded as being independent and autonomous from the Supreme Court, given that its Director is appointed by the Supreme Court, under article 10 of Law on the Judicial Career (1980). Most of the criteria set out in article 23 of the Law are too broad or generic, and the Law does not provide sufficient guidance on how to organize and conduct the competitive examination process or on how to prepare the list of successful candidates on the basis of their ranking. The evaluation or screening tests and toxicological and polygraph tests that are currently conducted by the National Directorate of Investigation and Intelligence, a police body belonging to the executive branch, violate the privacy of the candidates, and the results are not subject to any form of control or appeal.

40. With regard to actual appointments to judicial office, the Special Rapporteur considers that the discretionary powers conferred by Decree No. 282-2010 on the President of the Supreme Court are too wide and pose serious risks in relation to the independence of the selected candidate with regard to the head of the judicial branch. The concentration of those powers in the hands of the President of the Supreme Court may be regarded as a perpetuation of a system based on patronage and political favours.

41. The Special Rapporteur stresses that the procedure followed for the selection and appointment of candidates to the national anti-corruption jurisdiction in 2016 represents a good practice that could be used in the future for the selection and appointment of all judges. The selection process was carried out in accordance with a selection protocol adopted by the judicial branch, which indicated the requirements that candidates had to meet and the modalities for setting up the commission for the selection of candidates. The participation of the Organization of American States (OAS) Support Mission against Corruption and Impunity in Honduras and civil society in the selection process was regarded by many interlocutors as a guarantee of the transparency and objectivity of the selection process.

3. Disciplinary proceedings against judges and magistrates

42. The procedure applicable to disciplinary proceedings against judges and magistrates is scattered among a number of legislative and regulatory sources, including the Law on the Judicial Career and the Law on the Organization and Faculties of the Courts.

43. According to article 78 (10) of the latter, the Supreme Court has the authority to suspend and dismiss any member of the judiciary on the basis of misconduct or serious offense in the exercise of official duties. Following the amendment of article 313 of the Constitution, the disciplinary competence of the Supreme Court is now limited to the hearing of first-instance disciplinary proceedings against magistrates of courts of appeal. Disciplinary proceedings against all other judges and magistrates are regulated by the Law on the Judicial Career, which identifies various kinds of disciplinary offences and the corresponding sanctions. The law does not contain any information as to the procedure for handling disciplinary cases or imposing disciplinary sanctions on judges. The grounds for disciplinary liability set out in the Law are too vague and ambiguous and do not comply with the principle of strict liability. Furthermore, there seems to be no clarity as to the body or authority responsible for imposing such sanctions or as to the roles and responsibilities of the Judicial Career Council and the Directorate of Personnel Management, which in both cases are subject to the power of the President of the Supreme Court.

44. In *López Lone et al v. Honduras*,⁵ the Inter-American Court of Human Rights found that there was “a total lack of clarity” as regards the applicable procedure and the authorities that should hear and adjudicate disciplinary proceedings against the petitioners. The Court also found that, as an auxiliary body of the Supreme Court, the Judicial Career Council lacked due independence to review the dismissal decisions issued by the Court. The conclusions reached by the Inter-American Court of Human Rights with regard to the disciplinary regime applicable to ordinary judges could apply, *mutatis mutandis*, to the disciplinary procedures against Supreme Court magistrates. The Constitution contains no provisions as to the body in charge or the procedure for handling disciplinary cases against Supreme Court judges.

45. The Law on the Judicial Career provides that its provisions do not apply to Supreme Court magistrates (art. 5). On the basis of the Law on the Organization and Faculties of the Courts, it could be concluded that it is for the Supreme Court to handle disciplinary cases against its magistrates, but the procedure to be followed does not appear to be regulated by law.

46. The Special Rapporteur has serious concerns about the loopholes existing in the current disciplinary regime. The lack of clarity ascertained by the Inter-American Court of Human Rights as to the competent bodies to conduct disciplinary proceedings and the procedure to be followed persists and has indeed been exacerbated by the declaration of the unconstitutionality of Decree No. 219-2011, which brought an end to the disciplinary regime established by the Law of the Judiciary Council and the Judicial Career. As a result, Honduran judges continue to be exposed to the risk of disciplinary sanctions for behaviours that do not constitute a breach of any disciplinary rule.

B. Threats to judicial independence

47. As a consequence of the weak legislative and institutional framework, the judiciary of Honduras continues to be exposed to various forms of interference or pressure from other sources, including not only other State institutions but also the judicial hierarchy. The most serious form of interference with judicial independence is the dismissal of judges outside of the cases, namely, incapacity or behaviour that renders them unfit to discharge their duties, and/or without the procedures provided for by law.

1. Dismissal of judges

48. In 2009, three judges and one magistrate were subject to disciplinary proceedings and later dismissed by the Supreme Court, as a result of their actions in favour of the re-establishment of democracy in Honduras following a coup d'état. In October 2015, the Inter-American Court of Human Rights ruled that, as a result of its action in support of the coup d'état, the Supreme Court could not be regarded as possessing the objective requirement of impartiality to conduct the disciplinary proceedings against the four judges. It also concluded

⁵ Inter-American Court of Human Rights, *López Lone et al v. Honduras*, judgment of 5 October 2015 (preliminary objection, merits, reparations and costs).

that the Judicial Career Council, the entity that reviewed the dismissal decisions issued by the Supreme Court pursuant to the Law on the Judicial Career, was not an autonomous and independent body by virtue of its nature as an auxiliary body dependent on the Supreme Court.

49. The most emblematic case of dismissal occurred on 12 December 2012, when four of the five judges of the Constitutional Chamber of the Supreme Court were dismissed by the National Congress. The reasoning behind their dismissal was the vote in favour of the application for *amparo* on the grounds of the unconstitutionality of Decree No. 89-2012, which created the Law to purge the police force of corruption. Allegedly, the dismissal was motivated by the fact that the conduct of the magistrates was contrary to the interests of the State and had the effect of endangering the security of citizens. Following the decision to dismiss the four judges, on the same day, the National Congress elected four new justices chosen from the list of candidates for Supreme Court magistrates compiled in 2009.

50. The Special Rapporteur reiterates that judges can only be dismissed for serious misconduct of a disciplinary or criminal nature that renders them unfit to discharge their duties, and solely in accordance with an objective and transparent procedure previously established under the Constitution or in legislation. The dismissal of judges and magistrates by other branches of government constitutes an egregious violation of the principles of judicial independence and the separation of powers and must be condemned without exception.

2. Selection and appointment of key actors in the justice system

51. A distinct threat to judicial independence and the separation of powers arises from the current procedures for the selection and appointment of magistrates of the Supreme Court, the Prosecutor-General and the Deputy Prosecutor-General, which do not provide sufficient guarantees to ensure their institutional independence, in particular from the legislative power.

52. Candidates for those positions must possess the qualifications listed in the Constitution. The Special Rapporteur is of the view that most of those requirements are too broad or generic, therefore in practice, candidates for the above-mentioned functions are currently selected solely on the basis of formal and overly general requirements that do not allow for a proper assessment of the moral integrity, independence and professional qualifications of the candidate.

53. The procedure for the selection and appointment of magistrates of the Supreme Court is set out in articles 309 to 315 of the Constitution and in the Organic Law on the Joint Nominating Committee for the Election of Candidates, and the selection and appointment of the Prosecutor-General and the Deputy Prosecutor-General is based on the Constitution and the Law on the Public Ministry. The procedures are similar; the appointment board prepares a list of candidates and transmits it to the National Congress, which appoints the candidates with the favourable vote of two thirds of its members. The composition of the appointment boards in charge of preparing the list of candidates is also similar and is designed to include various constituencies, such as judges, law practitioners, the National Commissioner for Human Rights, representatives of national universities and members of civil society, in the selection of candidates.

54. The Special Rapporteur is of the view that the current procedures do not offer sufficient guarantees to eliminate interference from political parties in the election of Supreme Court magistrates, the Prosecutor-General and the Deputy Prosecutor-General. Given the absence of clear and appropriate selection criteria and procedures for the assessment of candidates, coupled with the lack of transparency and public scrutiny, acts of patronage and political favours continue to be perpetrated in such a system, as shown by the most recent selection processes for the elections of magistrates of the Supreme Court, in 2016, and the Prosecutor-General and Deputy Prosecutor-General, in 2018.

55. In that regard, the Special Rapporteur wishes to stress that the involvement of the National Congress has had, in practice, the effect of politicizing judicial appointments, with political considerations prevailing over the objective criteria set out in international and regional standards. Such politicization generates corruption and nepotism and hampers the institutional independence of the judiciary and the separation of powers.

56. The recent elections of the Prosecutor-General and the Deputy Prosecutor-General offer some elements that should be taken into account for future selection processes of high-ranking officials of the justice system.

57. In April 2018, the nominating committee established by the President of the Supreme Court elaborated its code of ethics and rules of procedure to ensure that candidates are assessed and selected on the basis of clear and objective rules and through a public and transparent process.

58. The Special Rapporteur welcomes the elaboration of more detailed rules to integrate the selection procedure set out in the Constitution and in legislation. According to some interlocutors, the elaboration of those rules represents a good practice that could be followed for future selection processes. Nevertheless, he notes with concern that that selection process fell short of international standards in several aspects.

59. According to international standards, selection processes must follow strict, clear and objective criteria previously established by law to evaluate the integrity, suitability and competencies of candidates. The rules of procedure and the code of ethics elaborated by the nominating committee cannot be regarded as legally binding provisions that future selection boards will be bound to observe.

60. The inclusion of general principles concerning transparency and public participation is laudable, but in practice, civil society participation was limited to the last stages of the process. As a result, civil society organizations did not participate in the elaboration of the general norms and standards that guided the selection of candidates. Furthermore, it appears that the curricula vitae of the candidates were not posted on the websites of the institutions that contributed members to the board.

61. The criteria for the evaluation of candidates were not sufficiently clear and precise as to ensure the selection of candidates based solely on their personal and professional qualities. It left a wide margin of discretion to the selection board in choosing the candidates to include in the list presented to the National Congress. At the end of the debate, the National Congress decided to reappoint the outgoing Prosecutor-General, despite the fact that his name was not included in the list of candidates transmitted to it.

3. National Security and Defence Council

62. Another form of interference brought to the Special Rapporteur's attention relates to the National Security and Defence Council, established by Decree No. 239-2011 pursuant to article 287 of the Constitution.

63. The National Security and Defence Council is the highest permanent body in charge of guiding, designing and supervising the general policies of the State in matters of security, national defence and intelligence. It is responsible for designing strategies to prevent, combat, investigate and punish relevant crimes and coordinating the action of the various State bodies with competences in those areas. The National Directorate of Investigation and Intelligence is responsible for carrying out, through specialized units of investigation, the public policies established by the Council in the area of defence and security.

64. The National Security and Defence Council brings together the President of the Republic, who presides over it, the President of the National Congress, the President of the Supreme Court, the Prosecutor-General, the Secretary of Security and the Secretary of National Defence. It meets on a monthly basis or whenever the Council President deems necessary.

65. The Special Rapporteur is aware that several State authorities have competence in matters of national defence and security and considers that, in principle, the establishment of a body in which different State authorities and bodies handle issues of national interest is not in question. Nevertheless, concentrating decision-making in a body presided over by the executive may raise serious concerns with regard to the separation of powers and the independence and autonomy of the judicial branch, given that it is under the purview of the prosecution service and the judiciary to investigate and sanction crimes perpetrated in violation of the national policies on matters of national security and defence designed by the National Security and Defence Council.

C. Protection of justice operators

66. Under principles 2, 7 and 11 of the Basic Principles on the Independence of the Judiciary, States are required to adopt all appropriate measures to enable judges to perform their functions freely and independently, without any threat, pressure or interference, direct or indirect, from any quarter and for any reason. The Guidelines on the Role of Prosecutors (para. 4) and the Basic Principles on the Role of Lawyers (principles 16 (a) and 17) contain similar provisions. In the light of the high levels of violence and crime in Honduras, such measures should include the design and implementation of appropriate protections for judges and members of their families against the threats posed by the organized crime.

67. In the report on his visit to Honduras, the Special Rapporteur on the situation of human rights defenders noted with concern that, between 2010 and 2016, 117 law professionals – judges, prosecutors, lawyers and court staff – died violent deaths. Those working on cases of corruption, organized crime, drug trafficking and violence against women were at particular risk (A/HRC/40/60/Add.2, para. 55). In the report on its country visit in 2018, the Inter-American Commission on Human Rights noted that many of the problems of violence and threats to the independence and personal integrity of justice workers in Honduras persisted and that judges and magistrates continued to face death threats, harassment, intimidation and interference and risk of assassination and attacks that made it difficult for them to carry out their duties with independence and impartiality.

68. The Special Rapporteur welcomes the efforts of national authorities to enable judges and magistrates to carry out their professional activities without being subjected to any kind of undue pressure. In that regard, the adoption of the Law for the Protection of Human Rights Defenders, Journalists, Media Professionals and Justice Operators represents a significant advance in the protection of human rights defenders, including law professionals, who are in a situation of risk.

69. Several judges and public prosecutors mentioned to the Special Rapporteur however that the scarce financial resources of the judicial branch were in many cases insufficient for adopting comprehensive protection measures for themselves and their families. The modalities of protection did not always correspond to the needs or the particular risks that they faced. In the light of the limited character of the protection afforded by State authorities, some judges chose to renounce them. According to information received, only judges of the jurisdiction with territorial competence at the national level have been provided with police escorts, whereas other judges and magistrates have continued to carry out their professional activities with limited or no protection.

70. One of the transitory provisions of the Law for the Protection of Human Rights Defenders, Journalists, Media Professionals and Justice Operators provides that the institutions of the justice sector must modify their annual budget in order to allocate dedicated resources for the creation of protection mechanisms for their personnel (art. 64). In accordance with that provision, a special unit for the protection of judges at risk would have to be established within the judicial branch, with a mandate to take all measures necessary for the immediate protection of judges under threat. However, at the time of the Special Rapporteur's visit, the protection and risk assessment units were not yet operational.

71. The Special Rapporteur is seriously concerned about the delays within the judicial branch in creating its own protection mechanism. Without a comprehensive mechanism to protect judges and magistrates from all kinds of external pressures – including threats or attacks against members of their families – the capacity of the judiciary to uphold the rule of law and to protect human rights is irremediably compromised.

72. Similar considerations apply in relation to the measures adopted to protect prosecutors and lawyers. To date, the Office of the Prosecutor-General has not yet established any protection mechanism to enable its staff to perform their professional functions without intimidation, hindrance, harassment or improper interference, and only 17 prosecutors appear to have been granted protection measures, despite the threats that all prosecutors face and the situation of insecurity in which many of them find themselves. With regard to lawyers, both State authorities and the Bar Association of Honduras stated that they did not have sufficient resources to provide adequate protection to lawyers at risk.

D. Corruption and organized crime

73. Corruption and organized crime are closely interconnected problems affecting the whole of Honduran society. They pose serious threats to the independence of the judiciary and the prosecution service, the institutions that are entrusted by the Constitution to investigate those crimes and to judge and sanction the perpetrators.

74. Honduras adopted a number of measures to respond to the threats posed by corruption and organized crime, including the establishment of the OAS Support Mission and the creation of new State institutions to investigate and punish corruption-related crimes. The Support Mission was established in January 2016 through an agreement between OAS and the Government of Honduras as an international cooperation entity to support the country in its efforts to combat corruption and impunity. Its initial mandate was for a period of four years. In collaboration with national authorities, it facilitated the prosecution of 14 cases and the indictment of 113 people.

75. The OAS Support Mission also provided valuable support to State authorities in setting up new institutions to investigate and punish corruption-related crimes. They included the courts and tribunals with national territorial competence in criminal matters, commonly referred to as “anti-corruption courts”, as well as the creation of the Special Prosecution Unit to Fight Corruption-related Impunity in the Office of the Prosecutor-General, which contributed to strengthening the investigative capacity of the Office of the Prosecutor-General in the area of combating corruption and increased the number of corruption cases brought before the judiciary.

76. Nevertheless, given that most of the investigations carried out by the Special Prosecution Unit to Fight Corruption-related Impunity involved senior State officials, the cases were not brought before the competent anti-corruption court or tribunal, but before the Supreme Court, pursuant to article 415 of the Code of Criminal Procedure. That provision, in the Special Rapporteur’s view, is the basis for the modest accomplishments of Honduras in the field of combating corruption and organized crime.

77. The Special Rapporteur considers that the OAS Support Mission has played a positive role in strengthening the capacity of national institutions to investigate and punish corruption-related crimes. For that reason, he deplores the decision of the Government to end the mandate of the Support Mission, which expired on 19 January 2020. Such a decision, along with the decision to discontinue the operation of the Special Prosecution Unit to Fight Corruption-related Impunity, which was created with the backing of the Support Mission, may have a long-term adverse impact on the fight against corruption and organized crime.

78. The Special Rapporteur regrets that, to date, none of the cases of corruption brought before the Supreme Court has resulted in the imposition of criminal sanctions on the perpetrators of the crime, due to the delays of the Supreme Court and the interference of the National Congress, and has translated into de facto impunity for the crimes committed. The following three emblematic examples clearly illustrate that point.

79. The so-called “Parliamentarians’ Network” case involved more than 60 parliamentarians accused of the embezzlement of public funds, allegedly transferred from the executive branch to civil society organizations and then into the bank accounts of the parliamentarians. In January 2017, the National Congress approved a number of amendments to the Organic Law on the Budget, requiring the Superior Audit Court to carry out preliminary audits and special investigations of all embezzlement cases involving members of the National Congress. Following those legal amendments, the Supreme Court decided to suspend the consideration of the case and to transfer it to the Superior Audit Court, which was granted a delay of three years to conclude its examination. The Supreme Court decision to suspend consideration of the case has been appealed before the Supreme Court itself and remains pending, since February 2018; no progress has been made to date.

80. The so-called “Impunity Pact” case is closely linked to the “Parliamentarians’ Network” case. It involves two parliamentarians accused of falsifying documents, abuse of authority and crimes against the form of government for the modifications they allegedly introduced into the text of the Organic Law on the Budget following its approval by the

National Congress on 18 January 2018. Those modifications included provisions different from those approved by the plenary session and made it impossible to initiate investigations against officials who had handled public funds before the conclusion of administrative proceedings before the Superior Audit Court. Following several public denunciations, the National Congress issued an errata explaining that the modifications were the product of a good-faith error and not a premeditated act. Following those modifications, however, the Supreme Court ordered the administrative closure of the case. The “Impunity Pact” case is currently stalled in the Supreme Court.

81. The so-called “Pandora’s box” case concerns an alleged misappropriation of public funds and other offences. It involves a former Minister of Agriculture and Livestock and 37 other officials and individuals accused of designing a scheme to embezzle and divert funds of the Ministry of Agriculture and Livestock and the Ministry of Finance intended for social programmes and use them to finance their political campaigns in 2013 and for other personal expenses. Of the 38 accused, 3 are still in prison, 3 have been definitively acquitted, 3 are fugitives and 29 have been convicted and sentenced under measures alternative to imprisonment. Appeals filed by the defence and the Office of the Prosecutor-General have been pending since July 2018, and the process in the Supreme Court appears to be paralyzed.

82. The limited progress made in those cases demonstrates the urgent need to design and put into place independent and efficient institutional mechanisms for the investigation and prosecution of high-ranking State authorities that, in the present context, enjoy de facto impunity for the crimes they have allegedly committed.

V. Conclusions

83. **The Special Rapporteur welcomes the efforts made by Honduras in recent years to address the structural problems that continue to affect the country. Extreme poverty, discrimination and inequality, violence and insecurity, widespread corruption and a high level of impunity remain major challenges for Honduras, but some progress has been made, in particular with regard to the reduction in the homicide rate, which decreased in the period from 2014 to 2018, according to government sources. In general terms however, the inability of State authorities to adequately address those challenges has generated deep discontent and lack of trust in the political class and State institutions, which also affects the judiciary and, to a lesser extent, the public prosecution service.**

84. **The efforts made to strengthen the independence and effectiveness of the justice system have not yet had a significant result in strengthening access to justice and fighting impunity. Underfunding, poorly trained staff and ineffectiveness result in lengthy judicial proceedings and a backlog of cases, while political influence and other forms of interference and pressure from non-State actors, along with low salaries, are at the root of the high level of judicial corruption, with bribes and irregular payments often being exchanged for favourable court decisions. Violence and impunity continue to be widespread, with more than 90 per cent of crimes remaining unpunished, despite the measures adopted to increase the human, financial and technical resources of the public prosecution service.**

85. **The legal and institutional framework on the judiciary presents serious gaps and is not sufficient, as it stands, to protect and promote the independence of the judiciary from other branches of Government and the independence of individual judges to adjudicate the cases before them impartially and autonomously. The dissolution of the Council of the Judiciary following a decision of the Supreme Court has deprived the judiciary of an institution which should have been essential to safeguarding judicial independence and has resulted in the transfer of the administrative functions previously exercised by the Council to the Supreme Court.**

86. **Honduran judges continue to be exposed to various forms of interference or pressure from other sources, including not only other State institutions, such as the legislative and executive branches of power, but also the judicial hierarchy. Such**

interference has manifested in the most dramatic form in the arbitrary dismissals of judges that took place in 2009 and 2012.

87. The establishment of the National Security and Defence Council, a body in which different State authorities handle issues of national interest under the overall control of the head of the executive branch, also raise serious concerns with regard to the separation of powers and the independence and autonomy of the judicial branch and the prosecution service.

88. The current procedures for the selection and appointment of key actors in the justice system, such as magistrates of the Supreme Court, the Prosecutor-General and the Deputy Prosecutor-General, do not provide sufficient guarantees to avoid politically motivated appointments, whereas the widespread discretionary powers conferred on the President of the Supreme Court undermine the independence of the candidates to judicial offices chosen by the head of the judicial branch.

89. Corruption and organized crime are closely interconnected problems affecting the whole of Honduran society. They pose serious threats to the independence of the judiciary and the prosecution service, the institutions that are entrusted under the Constitution with investigating those crimes and judging and sanctioning the perpetrators thereof.

90. The high level of violence and the insecurity existing in the country have a widespread adverse impact on the capacity of judges and prosecutors to perform their professional activities freely and independently. The adoption of a law to protect legal professionals who are in a situation of risk is a positive step in the right direction, but appropriate protection mechanisms to defend judges, prosecutors and members of their families must still be developed and implemented.

91. The OAS Support Mission against Corruption and Impunity in Honduras did an outstanding job in strengthening the capacity of national institutions to investigate and punish corruption-related crimes, despite the relatively modest number of accomplishments, which is mainly owing to the obstacles imposed by the country's political and economic powers. The decision of the Government to end the mandate of the Support Mission, as of 19 January 2020, and the decision to discontinue the operation of the Special Prosecution Unit to Fight Corruption-related Impunity may have a long-term adverse impact on the fight against corruption and organized crime.

VI. Recommendations

A. Strengthening judicial independence

92. All State institutions should respect and observe the independence of the judiciary.

93. Honduras should take concrete measures to guarantee the independence of the judiciary and protect judges from any unwarranted interference, influence, pressure or threat. Such measures include, but are not limited to, the adoption of legislation to regulate all aspects of the judicial career. Any interference with, or threats to, the independence of the judiciary should be assessed and addressed as a matter of urgency.

94. In order to ensure the institutional independence of the judiciary and the prosecution service, the composition and functions of the National Security and Defence Council should be reviewed so as to ensure that the independence of the justice system and the principle of the separation of powers are not affected.

B. Legal and institutional framework

95. Honduras should adopt, as a matter of priority, a new law on the Council of the Judiciary and the Judicial Career. Such a law should be aimed at strengthening the independence and impartiality of the judiciary and should be developed in accordance

with existing norms and standards relating to the independence of the judiciary, the separation of powers and the rule of law, taking into account the recommendations of relevant international and regional bodies, including the Human Rights Committee and the institutions of the inter-American system for the protection of human rights.

96. The law should be the result of an open, fair and transparent process, involving not only the Supreme Court, but the whole of the judiciary, the Commissioner for Human Rights and civil society actors, and should regulate all aspects of the judicial career, including decisions pertaining to the selection and appointment of candidates to judicial offices, security of tenure, remuneration and benefits received by judges and court personnel, the conditions of service, transfer, promotion, pensions, the age of retirement and disciplinary proceedings against judges.

1. Council of the Judiciary

97. In order to guarantee its independence from the executive and legislative branches and ensure effective self-governance for the judiciary, the law on the Council of the Judiciary and the Judicial Career should include detailed provisions regarding the setting-up of the Council of the Judiciary and its composition and functions and guarantee the autonomy of the Council with regard to the executive and legislative branches of power.

98. The administrative functions currently attributed to the Supreme Court should be transferred to the new Council of the Judiciary, which should be endowed with the widest powers in the areas of the selection, promotion, training and professional evaluation of, and disciplinary proceedings against, judges. The Council should also be granted general responsibilities with regard to the administration of the court system and the allocation of budgetary resources to the various courts.

99. To avoid the risk of corporatism and self-interest, the Council of the Judiciary should include not only judges, but also lawyers, law professors, jurists, members of the Bar and lay members, such as citizens of acknowledged reputation and experience. The judges who are members of the Council should be elected by their peers following methods that guarantee the widest representation of the judiciary at all levels, and the election of lay members of the Council should be entrusted to non-political authorities. While actively serving in their positions, politicians and members of the legislative or executive branches of power should not simultaneously serve on the Council.

100. The selection and appointment of members of the Council of the Judiciary should take place in an open and transparent way so as to eliminate interference from political parties and economic groups in the election of the counsellors. The selection of candidates should be undertaken on the basis of clear and objective criteria previously established by law and decisions based solely on merit, taking into account their qualifications, skills and abilities, as well as their integrity, independence and impartiality.

101. The Chair of the Council should be elected by the Council and the position held by an impartial person with no political affiliation.

2. Selection and appointment of judges

102. The procedure for the selection of candidates to judicial offices should be transparent and based on objective criteria established in the new law on the Council of the Judiciary and the Judicial Career. The vacancy notice and the terms of reference should be publicly announced and widely disseminated. The selection process should include competitive examinations conducted, at least in part, in a written and anonymous manner and an interview, at a minimum with the candidates who have reached the final round.

103. Background checks should be handled with the utmost care and conducted strictly on the basis of the rule of law. The selecting authority can request a standard check for a criminal record and any other disqualifying grounds from the police. The results of the background check should be made available to the applicant, who should

be entitled to appeal them in court. No other background checks should be performed. The decision to refuse a candidate on the basis of a background check must be a reasoned one.

104. Decisions on the selection of candidates should be based solely on merit, having regard to their qualifications, skills and capacities, as well as to their integrity, independence, impartiality and human rights values. The selection process should be entrusted to an independent authority, such as the Council of the Judiciary. Should the President of the Supreme Court retain the authority to formally appoint judges, such discretionary power should be limited to the candidates included in the list prepared by the Council and in the ranking order indicated by the selection body.

3. Disciplinary proceedings

105. The current regime for disciplinary measures against judges and magistrates should be reviewed, so as to ensure that judges are suspended or dismissed solely on grounds of serious misconduct or incompetence and in accordance with fair procedures ensuring objectivity and impartiality. Appropriate procedures should also be established to allow for an independent review of the decisions in disciplinary proceedings.

106. The responsibility for disciplinary proceedings against judges should be vested in an independent authority composed primarily of judges, such as the Council of the Judiciary or a court. In order to avoid excessive concentration of power in one body, the competence to receive complaints and conduct investigations and the competence to adjudicate disciplinary cases should be vested in separate branches of the Council of the Judiciary or in different authorities entirely.

107. In the context of disciplinary proceedings, accused judges should be provided with all the procedural guarantees set out in article 14 of the International Covenant on Civil and Political Rights, including the right to defend themselves in person or with the assistance of a legal counsel of their choosing.

C. Selection and appointment of key actors in the justice system

108. The procedure for the selection and appointment of magistrates of the Supreme Court, the Prosecutor-General and the Deputy Prosecutor-General should be reviewed, in order to avoid any interference from political parties and economic groups in the selection of high-ranking officials of the justice system.

109. The composition and functioning of the selection boards in charge of preparing a list of candidates to those positions should be regulated by law.

110. The law should also set out clear and objective criteria for the assessment of candidates. In that regard, the Special Rapporteur recommends that additional criteria should be developed that allow for the assessment of the moral integrity, independence and professional qualifications of the candidates.

111. The procedure for the assessment of candidates should include provisions to ensure transparency and allow for public scrutiny. In particular, the curricula vitae of the candidates should be made publicly available, and civil society should be allowed to participate in public hearings with the candidates so as to enable the general public to assess their personal and professional background, as well as their integrity and independence.

112. In order to avoid that candidates are selected in the National Congress on the basis of their actual or perceived political affiliation, the Special Rapporteur considers that the power to select and appoint high-ranking officials of the justice system should be entrusted to an independent authority, such as the Council of the Judiciary or a similar independent institution, such as a prosecutorial council. Should the National Congress retain the power to formally appoint judges, the appointment should be made

on the basis of a transparent process and chosen from candidates on a list presented by the appointment board.

D. Protection of justice operators

113. The Special Rapporteur urges national authorities to establish without further delay the protection units envisaged for judges and prosecutors at risk and to allocate appropriate human, financial and technical resources to protect judges, prosecutors and lawyers who face threats, harassment, intimidation and interference as a result of their professional activities. The modalities of protection should correspond to the nature and seriousness of the risk faced by the beneficiaries of the protection measures and should also extend to members of their families.

E. Corruption and organized crime

114. The Special Rapporteur recommends that Honduras consider repealing the provisions of article 415 of the Code of Criminal Procedure, which has been used to shield politicians and senior State officials accused of corruption. Should those provisions be retained, the Special Rapporteur recommends that their scope be limited to crimes perpetrated in the exercise of their official functions, and not extend to any crime allegedly committed by those individuals.

115. Although there are provisions in the Code of Criminal Procedure and the Criminal Code aimed at encouraging the collaboration of persons accused of complex or organized crime so that they can provide relevant information in exchange for advantages in terms of the sanctions and treatment that they face, they are not an integral component of the national strategy and procedures aimed at combating corruption. It is of the utmost urgency that the National Congress consider discussing and passing a law to introduce plea bargaining and guarantee effective collaboration with the prosecution service, particularly in criminal investigations on corruption and organized crime. Honduras should also consider establishing more efficient and systematic cooperation with other countries on the basis of the relevant provisions of the United Nations Convention against Corruption.

116. The Special Rapporteur deeply regrets the decision of State authorities to end the mandate of the OAS Support Mission and to discontinue the operation of the Special Prosecution Unit to Fight Corruption-related Impunity. He recommends that State authorities allocate appropriate human, financial and technical resources to the fight against corruption and organized crime.
