

HONDURAS

Country Profile prepared by the ICJ Centre for the Independence of Judges and Lawyers

Current to 30 October 2014

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Overview

In Honduras, although the Constitution provides for the separation of powers, concerns persist about a lack of respect for the independence of the judiciary. Among other problems, appointments, promotions and removals of judges circumvent or ignore the existing legal framework. Judges do not enjoy security of tenure, especially when they are perceived as challenging power structures. The composition, role and independence of the Council of the Judiciary are problematic. Moreover, concerns have been raised about the physical safety of judges in the country.

Likewise, lawyers have been killed or received death threats, in particular when they work on human rights and corruption cases. Not all lawyers are able to exercise their professional activities freely as required under international standards.

Reportedly, (parts of) the Office of the Public Prosecutor are affected by political interference and a lack of resources. Also prosecutors, in particular those working on cases of impunity for human rights violations or investigating corruption, have been subjected to death threats.

A. Introduction

1. Legal Tradition

Honduras is a civil law country and, according to the Constitution, a constitutional democracy with a presidential system of government. The Constitution in force was adopted in 1982.¹

A former Spanish colony, its independence from Spain was proclaimed in 1821. It briefly was part of Mexico, until joining the United Provinces of Central America (subsequently called the Federal Republic of Central America) in 1823. Honduras declared its independence from the Federal Republic in 1838-1839.

The first general civilian elections in Honduras were held in 1981. They ended a long period of military dominance (1963-1981); however, the military has retained much of its influence.

¹ Political Constitution of the Republic of Honduras (Constitución Política de la República de Honduras, 1982), Decree No. 131, 11 January 1982. The Constitution has since been substantially amended, most recently on 4 May 2005.

In 1993, proposals were made by President Carlos Reina to strengthen the judicial system and ensure accountability for human rights violations. In 2002, a new Code of Criminal Procedure replaced the former system, which had relied heavily on written proceedings and was inquisitorial in character (meaning investigation is led by a specialized judge rather than a prosecutor); the new system relies more on oral proceedings and confers greater responsibility on prosecutors.²

President Manuel Zelaya was detained and sent into exile by the military in June 2009. He had sought to hold a non-binding referendum on launching a process of constitutional reform (which critics claimed was primarily aimed at extending the permitted presidential term, though he denied this). He had indicated an intention to proceed with the referendum despite a Supreme Court decision finding the consultation process to be illegal. His arrest had been authorized by the Supreme Court, to require him to appear before the Court; his expulsion to Costa Rica was effected by the military without Court approval. His removal from the country, and purported removal from office, was promptly and unanimously condemned by the UN General Assembly as a coup d'état, which demanded the immediate and unconditional restoration of his government.³ In July 2009, Honduras was suspended from the Organization of American States (OAS) on grounds of 'the unconstitutional alteration of the democratic order'.⁴

In September 2009, a *de facto* government led by Roberto Micheletti, former president of the National Congress, declared a state of emergency and restricted a number of rights, including the rights to liberty, to freedom of association and freedom of speech.⁵ Thereafter, thousands of individuals were arbitrarily detained, killed, tortured, raped and persecuted.⁶ Several petitions challenging the emergency decree were filed with the Supreme Court, although the decree was ultimately rescinded before any judgment on the merits of the petitions was issued.⁷

Following elections held in 2009, Porfirio Lobo Sosa assumed the presidency of Honduras on 27 January 2010. The National Congress enacted an amnesty law covering events that occurred between 1 January 2008 and 27 January 2010. The list of crimes for which amnesty was given did not explicitly include violations of human rights, but as a matter of practice ambiguous wording contributed to many of the human rights abuses remaining unpunished.⁸

President Zelaya left the country in exile, briefly returning to Honduras for few months, after which he left again for the Dominican Republic. In 2011, Honduras was reinstated in the Organization of the American States as a result of having allowed former President Zelaya to return to the country.⁹

² Organization of the American States, "Legal System of Honduras".

http://www.oas.org/juridico/mla/en/hnd/en_hnd-int-description.pdf (Last accessed 17 August 2014).

³ United Nations General Assembly, Resolution on the situation in Honduras: democracy breakdown, UN Doc A/RES/63/301 (30 June 2009).

⁴ Organization of the American States General Assembly, Resolution on the Suspension of the Right of Honduras to Participate in the OAS, AG/RES. 2 (XXXVII-E/09).

http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-219/09 (Accessed 22 October 2014).

⁵ Executive Decree PCM-M-016-2009, 26 September 2009. Unofficial copy available at http://www.geneva-academy.ch/RULAC/pdf_state/DECRETO-EJECUTIVO-NUMERO-PCM-M-016-2009.pdf (last accessed 22 October 2014). Inter-American Commission on Human Rights, Press Release: 'IACHR Condemns Suspension of Guarantees in Honduras' (29 September 2009). <http://www.cidh.oas.org/Comunicados/English/2009/69-09eng.htm> (last accessed 22 October 2014).

⁶ International Commission of Jurists, *La Independencia del Poder Judicial en Honduras (2004-2013)* (May 2014), p. 29-30.

⁷ International Commission of Jurists, *La Independencia del Poder Judicial en Honduras (2004-2013)* (May 2014), p. 33-34.

⁸ UN Special Rapporteur on the situation of human rights defenders, Report to the Human Rights Council, UN Doc. A/HRC/22/47/Add.1, para. 8.

⁹ Inter-American Commission on Human Rights, 2013 Annual Report, para. 245; and Inter-American Commission on Human Rights, 2012 Annual Report, para. 158.

2. Constitutional structure

The Constitution of Honduras proclaims the separation of powers and independence between the three branches of the government, Legislative, Executive and Judicial.¹⁰ The death penalty is prohibited and every person is entitled to the right to be free from arbitrary arrest and detention, and torture and other cruel, inhuman or degrading treatment or punishment.¹¹

The Constitution may be amended only by a two-thirds vote of the members of the parliament, and no means of amendment is provided for certain articles on, for instance, the form of government, the national territory and the presidential term.

The Constitution also allows the limitation of some enumerated rights in the event of a threat to the territorial integrity of Honduras or a serious disturbance of the peace, an epidemic or other general disaster, or by agreement between the President and the Council of Ministers.¹² The rights that may be limited are the right to liberty; and certain rights following arrest or detention; rights to bail, to freedom of expression, to freedom of association and assembly, freedom of movement, the inviolability of the domicile, and private property.

3. International treaty status

The following table sets out the status of a range of international treaties in Honduras as of 19 August 2014.

	Status (including ratification, accession and succession)
International Covenant on Civil and Political Rights	25 August 1997
ICCPR-OP1	7 June 2005
ICCPR-OP2	1 April 2008
International Covenant on Economic, Social and Cultural Rights	17 February 1981
ICESCR-OP	No signature or ratification
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment	5 December 1996
CAT-OP	23 May 2006
International Convention on the Protection of All Persons from Enforced Disappearance	1 April 2008
International Convention on the Elimination of All Forms of Racial Discrimination	10 October 2002
Convention on the Elimination of All Forms of Discrimination against Women	3 March 1983
CEDAW-OP	No signature or ratification
Convention on the Rights of the Child	10 August 1990
CRC-OP1	14 August 2002
CRC-OP2	8 May 2002
CRC-OP3	No signature or ratification

¹⁰ Constitution of the Republic of Honduras, Article 4.

¹¹ Constitution of the Republic of Honduras, Articles 66 (prohibition of death penalty), 68 (prohibition of torture and other cruel, inhuman or degrading treatment or punishment), and 69 (right to be free from arbitrary arrest and detention).

¹² Constitution of the Republic of Honduras, Article 187.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	9 August 2005
Convention on the Rights of Persons with Disabilities	14 April 2008
CRPD-OP	16 August 2010
	Ratification (including ratification, accession and succession)
Geneva Convention I	31 December 1965
Geneva Convention II	31 December 1965
Geneva Convention III	31 December 1965
Geneva Convention IV	31 December 1965
Additional Protocol I	16 February 1995
Additional Protocol II	16 February 1995
Rome Statute	1 July 2002
Convention against Corruption	23 May 2005
American Convention on Human Rights	5 September 1977

In the 2011 Universal Periodic Review before the Human Rights Council, Honduras agreed to consider the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which establish complaint and inquiry mechanisms for the International Covenant on Economic, Social and Cultural Rights and the [Convention on the Elimination of All Forms of Discrimination Against Women \(CEDAW\)](#), respectively; as of 30 October 2014 the country had not yet acceded to those treaties.¹³

According to the Constitution of Honduras, treaties in force prevail over national law, in case of a conflict in the provisions.¹⁴

4. Court structure

There are three levels of ordinary courts in Honduras:

- the Supreme Court of Justice;
- the Courts of Appeal; and
- the Courts of first instance (Juzgados de Letras).

The Supreme Court is located in the capital Tegucigalpa and has three chambers: civil, criminal, and labour. The Supreme Court is empowered, among other things, to interpret constitutional provisions; to preside over proceedings against state officials and members of the parliament; and to render decisions on extradition cases and other cases to be judged in accordance with international law.¹⁵

¹³ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/16/10 (2011), page 21.

¹⁴ Constitution of the Republic of Honduras, Article 18.

¹⁵ Constitution of the Republic of Honduras, Article 313(2), (4), and (5). See also International Commission of Jurists, *La Independencia del Poder Judicial en Honduras (2004-2013)* (May 2014), p. 7.

In addition to these courts, Justices of the Peace decide on civil and criminal matters within certain statutory limitations,¹⁶ and the military courts are given competence over crimes committed by military personnel.

B. Judges

Individual judges and the judiciary as a whole must be independent and impartial.¹⁷ The requirement that courts and other tribunals be effective, independent and impartial "is an absolute right that is not subject to any exception."¹⁸

Any body (including judicial, administrative and legislative organs) that, through its decisions, determines individual rights, must be independent and impartial and respect fair trial guarantees.¹⁹

The State must guarantee the independence of the judiciary as an overall institution and separate branch of government, as well as the independence and impartiality of each individual judge in relation to each case that comes before him or her.²⁰

International standards set out specific safeguards of judicial independence²¹; these are described in greater detail in the sections that follow.

1. Constitutional and legislative recognition of the principle of judicial independence

The independence of the judiciary must be guaranteed by the State and enshrined in the Constitution or the law.²²

Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.²³

¹⁶ Law on the Organization and Competence of the Courts, Article 26.

¹⁷ The requirement embodies the principle of the rule of law, the right to a fair trial, the right to liberty and security of the person, and the right to effective remedy for violations of human rights. See, among others, Universal Declaration of Human Rights, Article 10; International Covenant on Civil and Political Rights (ICCPR), Article 14(1); American Convention on Human Rights (AmCHR), Article 8(1); Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 (hereinafter: 'UN Basic Principles on the Independence of the Judiciary'), Principle 1 and 2; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 1; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 1 and 2. Generally, see also International Commission of Jurists, International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide, no. 1 (2007).

¹⁸ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

¹⁹ Inter-American Court of Human Rights, *Constitutional Court v. Peru*, judgment (31 January 2001), para. 71; Inter-American Commission of Human Rights, *Guarantees for the Independence of Justice Operators*, OAS Doc. OEA/Ser.L/V/II. (2013), para. 30; Article 8(1) of the American Convention on Human Rights; Article 14(1) of the ICCPR.

²⁰ Inter-American Court of Human Rights, *Apitz Barbera et al. v. Venezuela*, judgment (5 August 2008), para. 55; Inter-American Court of Human Rights, *Reverón Trujillo v. Venezuela*, judgment (30 June 2009), para. 67; Inter-American Court of Human Rights, *Quintana Coello et al. v. Ecuador*, judgment (23 August 2013), para. 154.

²¹ See Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19; UN Basic Principles on the Independence of the Judiciary; Inter-American Court of Human Rights, *Camba Campos et Al. v. Ecuador*, Judgment (28 August 2013), para. 197. See also International Commission of Jurists, International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide, no. 1 (2007), pp. 3-61.

²² UN Basic Principles on the Independence of the Judiciary, Principle 1. See also Inter-American Commission of Human Rights, *Guarantees for the Independence of Justice Operators*, pp. 31 and 33, further noting that the State must be organized in a way that guarantees judicial independence, and that any principle of mutual cooperation between branches of Government, as provided in some constitutions of the region, cannot justify undermining the independence of the judiciary, for example by expecting that its decisions or actions are taken only in accordance with the policy of the government. And see Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 2 ("[t]he other powers of the State ... must respect and make the independence of the judiciary efficient").

The separation of powers is provided for in the Constitution of Honduras²⁴: judges are to be independent and entitled to protection against unlawful dismissals, suspensions, transfers or retirements.²⁵

Pursuant to article 27 of the 2011 law on the Council of the Judiciary and Judicial Career Service, judges are also entitled to form professional associations entrusted of defending their professional interests. There are currently two active judges' associations in Honduras: "Asociación de Jueces y Magistrados de Honduras (ASOJMAH), founded in 2002, and the "Asociación de Jueces por la Democracia" (AJD), founded in 2006.

Notwithstanding these provisions, there is concern about the lack of respect for the separation of powers and in particular the lack of respect for the independence of the judiciary.

For example, a legislative decree enacted in 1999 (No. 161-99) purported to amend article 218 of the Constitution to prohibit the judiciary or president from reviewing Congressional interpretations of the Constitution. A challenge to the legislative decree, brought in 2002 by a member of the National Commission of Human Rights, resulted in a finding by the Supreme Court that the purported amendment violated several provisions of the Constitution, on grounds of, *inter alia*, the separation of powers and the form of government.²⁶ However, the amendment has never been formally repealed by the Congress.

The Inter-American Commission on Human Rights (IACHR) in its 2013 annual report expressed concern with the situation of the judiciary in Honduras, particularly in relation to the body responsible and the procedures for appointment and removal of judges; interference by state and non-state actors with the judiciary; and unlawful dismissals of judges.²⁷

As will be described in greater detail below, the 2011 Law on the Council of the Judiciary and Judicial Career Service, though praised by many as a step forward, fell short in addressing the main issues affecting the independence of the judicial system.²⁸

These, and other issues will be addressed in the following paragraphs.

2. [Appointment and promotion of judges; Security of tenure](#)

*Judges should be appointed through an open process on the basis of prescribed criteria based on merit and integrity, and without discrimination.*²⁹

²³ UN Basic Principles on the Independence of the Judiciary, Principle 9. The Statute of the Iberoamerican Judge explicitly recognizes that "[t]he impartiality is compatible with the recognition of freedom of judges association apart from the exceptions established by the Constitution or legislation of each country" (Article 36).

²⁴ Constitution of the Republic of Honduras, Article 4.

²⁵ Constitution of the Republic of Honduras, Article 303.

²⁶ Constitutional Chamber of the Supreme Court of Justice, judgment of 7 May 2003.

[http://www.loc.gov/law/help/honduras/pdf/\(8\)%20Supreme%20Court%20Decision%20of%202003%20and%20Congressional%20powers/\[Doc.%208.4\].pdf](http://www.loc.gov/law/help/honduras/pdf/(8)%20Supreme%20Court%20Decision%20of%202003%20and%20Congressional%20powers/[Doc.%208.4].pdf) (last accessed 27 October 2014). See also Xth Ibero-American conference on Constitutional Justice, "La normativa de la Constitución: jurisprudencia constitucional", 12-15 March 2014, pages 16 and 17.

<http://www.cijc.org/conferencias/StoDomingo2014/Cuestionarios/Honduras%20%20Sala%20de%20lo%20Constitucional.pdf> (last accessed 27 October 2014).

²⁷ Inter-American Commission on Human Rights, 2013 Annual Report, para. 273; 278-288; 289-298 and 299-304. Constitution of the Republic of Honduras, Article 314. Magistrats Européens pour la Démocratie et les Libertés (MEDEL), 'Deep concern for Honduras' (28 February 2012).

<http://www.medelnet.eu/images/Honduras%20English.pdf> (last accessed 21 July 2014). MEDEL is an association of magistrates promoting the independence and democratization of the judiciary. See also Organization of American States, 'In View of Situation in Honduras, IACHR Stresses Importance of Principle of Independence of the Judiciary' (3 January 2013). http://www.oas.org/en/iachr/media_center/PReleases/2013/003.asp (last accessed 22 July 2014).

²⁸ Inter-American Commission on Human Rights, 2013 Annual Report, para. 279-283.

²⁹ Principle 10 of the UN Basic Principles on the Independence of the Judiciary provides in part: "In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory." See also Human

Only "individuals of integrity and ability with appropriate training or qualifications in law" should be eligible for appointment.³⁰

Steps should be taken to ensure the appointment of qualified women and members of minority communities.³¹

An appropriate clearly-prescribed method of appointment of judges is a prerequisite for the independence of the judiciary,³² and is a means of ensuring equal access to the profession. Whatever method of judicial selection is adopted must "safeguard against judicial appointments for improper motives".³³ In other words, election and appointment should be based on an objective assessment and determination of the applicant's professional knowledge, merits and suitability.³⁴ Appointments and promotions should be decided by bodies that are independent from the executive,³⁵ that are plural and are composed mainly (if not solely) of judges and members of the legal profession,³⁶ and that apply transparent procedures.³⁷

Promotions within the judiciary must also be based on objective factors, particularly ability, integrity and experience.³⁸

To guard against pressure from those who could otherwise influence or make decisions about the renewal of their terms of office, judges' tenure must be guaranteed until a mandatory retirement age or expiry of the term of office.³⁹ Temporary appointments can put independence and impartiality at risk and so are disfavoured.⁴⁰

Judges may be removed from office only in exceptional, strictly limited and well-defined circumstances provided for by law, involving incapacity or behaviour that renders them unfit to carry out the duties of their office, and following a fair procedure.⁴¹

Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

³⁰ UN Basic Principles on the Independence of the Judiciary, Principle 10.

³¹ UN Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, UN Doc. A/66/289 (2011), para. 22-33, 92. Human Rights Committee, Concluding Observations on: the United Kingdom, UN Doc. CCPR/CO/73/UK (2001), para. 15; France, UN Doc. CCPR/C/FRA/CO/4 (2008), para. 26; Sudan, UN Doc. CCPR/C/79/Add.85 (1997), para. 21. Committee on the Elimination of Racial Discrimination: General

Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, UN Doc. A/60/18 (pp. 98-108) (2005), para. 5(d); Concluding Observations on Guatemala, UN Doc. CERD/C/GTM/CO/12-13 (210), para. 8, and on Colombia, UN Doc. CERD/C/304/Add.76 (1999), para. 13.

³² Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

³³ UN Basic Principles on the Independence of the Judiciary, Principle 10.

³⁴ E.g. Statute of the IberoAmerican Judge, Article 15.

³⁵ See e.g. Human Rights Committee, Concluding Observations on: Honduras, CCPR/C/HND/CO/1 (2006), para. 16; the Congo, CCPR/C/79/Add.118, para. 14; Liechtenstein, CCPR/CO/81/LIE, para. 12; Tajikistan, CCPR/CO/84/TJK, para. 17; Azerbaijan, UN Doc. CCPR/C/AZE/CO/3 (2009), para. 12; Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20. Also see Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), cited with approval in UN Commission on Human Rights, resolution 1989/32, Article 11; Universal Charter of the Judge, Article 9.

³⁶ UN Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 28-29; International Commission of Jurists, *International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide, no. 1* (2007), pp. 45-48.

³⁷ UN Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 32. See also Preliminary Report to the Human Rights Commission on a mission to Ecuador, UN Doc.E/CN.4/2005/60/Add.4 (2005), para. 5(d).

³⁸ UN Basic Principles on the Independence of the Judiciary, Principle 13; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 14; Statute of the IberoAmerican Judge, Article 17.

³⁹ UN Basic Principles on the Independence of the Judiciary, Principle 12; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 16(b) and 18(c); Universal Charter of the Judge, Article 8; I/A Court of HR, *Camba Campos et Al. v. Ecuador*, judgment (28 August 2013), para. 197; *Chocrón Chocrón v Venezuela*, judgment (1 July 2011) para. 135; *Camba Campos et Al. v. Ecuador*, judgment (28 August 2013), para. 194.

⁴⁰ Statute of the IberoAmerican Judge, Article 15; Inter-American Commission on Human Rights, *Guarantees for the Independence of Justice Operators*, para. 90.

⁴¹ UN Basic Principles on the Independence of the Judiciary, Principles 17-20; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19-20; see also Statute of the Iberoamerican Judge, Article 16. While as described below in section 4, there must be effective means for holding judges accountable (for crimes, violations of human rights, corruption for instance), all accountability measures must fully respect guarantees of independence and impartiality including as regards grounds and procedures for removal.

Appointments, promotions and removals of judges in Honduras circumvent or ignore the existing legal framework. In discharging their professional duties, judges do not enjoy security of tenure, especially when perceived as challenging the structures in power.

Constitutional provisions specify that to be appointed to the Supreme Court, a person must be Honduran by birth; must be a citizen with full enjoyment of rights (i.e. not legally incompetent); must be registered as a lawyer in the Bar Association; must be more than 35 years of age; and must have either five years of experience as a judge, or 10 years of experience as a lawyer.

Appointments to and promotions within the Supreme Court of Justice are entrusted to the National Congress. The Constitution dictates that the parliament select the candidates on advice of a nomination board made up of members of the judiciary, representatives from the private sector, and civil society.⁴² After appointment, the Supreme Court judges select the President of the Court, subject to approval by the National Congress. Supreme Court Judges hold a seven-year term of office, with possibility of renewal.

For appointments to first instance and appeal courts, under the 2011 Law on the Council of the Judiciary and Judicial Career Service, such appointments are entrusted to a newly-established body, the Council of the Judiciary and Judicial Career Service (assisted by a Selection Tribunal). Members of the new Council are still ultimately selected by the Congress. The Council therefore remains subject to political influence; further, there is no requirement that the majority of members of the Council be judges (or even lawyers), and at the moment the majority are not in fact judges or lawyers.⁴³

Candidates for appointment to these courts must: be Honduran by birth; be citizens with full enjoyment of rights (i.e. not legally incompetent); and be registered lawyers. In addition, first instance judges have to be more than 25 years old and have five years of experience in any legal profession; and Court of Appeal judges have to be more than 35 years old, have at least 5 years of experience specifically in the judicial career, and not be representatives of any religious group.

The process of enacting legislative changes, particularly as regards the holding of consultations with civil society for Supreme Court seats, and the creation of a new body for appointments, promotions and discipline in lower courts, should have been an opportunity to increase independence and transparency of the judiciary in Honduras. However, many provisions in the law eventually adopted in 2011 have either not been applied in practice, or do not fully reflect international law and standards.

In a 2014 report the ICJ outlined challenges pertaining to the composition, role and independence of the Council of the Judiciary. The Council has five permanent members and two alternates. One of the members is the Chief Justice of the Supreme Court, who the law specifies will also chair the Council. Two associations of judges put forward potential names for two positions on the Council (though not necessarily one position for each association); the Honduran Bar Association also puts forward a name or names, as does the National Association of Employees and Staff of the Judicial Branch. The candidates that each of these bodies nominates are referred to the National Congress, which elects the Council's members by a qualified majority.

The ICJ considers that members of this body should preferably be elected by all judges in the country through confidential voting. Moreover, the ICJ suggested that it would be preferable in the Honduran context for the members of the Council of the Judiciary to elect from within their membership a President of the Council, rather than to have the President of the Supreme Court automatically be President of the Council as the law currently provides.⁴⁴

⁴² Constitution of the Republic of Honduras, Article 311. See International Commission of Jurists, *La Independencia del Poder Judicial en Honduras (2004-2013)* (May 2014), p. 24-27.

⁴³ Inter-American Commission on Human Rights, 2013 Annual Report, para. 279-283.

⁴⁴ International Commission of Jurists, *La Independencia del Poder Judicial en Honduras (2004-2013)* (May 2014), p. 43. UN Special Rapporteur on the Independence of Judges and Lawyers, Report on the Regional Consultation on the

The Inter-American Commission on Human Rights has also expressed concerns about the Council's eligibility criteria and nomination procedures, and apparent politicization of the resulting membership.⁴⁵ Currently, there is no requirement in Honduran law that all, or even a majority, of the Council members be judges, or for that matter lawyers; in fact, currently the majority are neither judges nor lawyers. Further, in the most recent appointment process, from the nominees put forward by the two judges' associations, the Congress filled both seats reserved for the judges' associations with nominations from only one of the associations.

Moreover, in 2013, the Association of Judges for Democracy in Honduras raised concerns after the Supreme Court of Justice invited judges to voluntarily undertake the polygraph and toxicological exams as means to evaluate the quality of the judiciary. Further, evaluations of judges are not organized in a regular and consistent manner, and when they do take place, public access to results is restricted or non-existent.⁴⁶

By the end of 2013, the Council had nominated a number of judges for appointment without following any competitive procedure to safeguard the impartiality and quality of appointments, including in relation to two Court of Appeal judges and one judge selected to oversee the action of the military with competence to, for instance, authorize raids.⁴⁷

3. Financial independence of the judiciary

*The State must provide adequate resources to enable the judiciary as an institution to perform its functions properly.*⁴⁸

*The remuneration and pensions of judges must be secured by law at an adequate level that is consistent with their status and is sufficient to safeguard against conflict of interest and corruption.*⁴⁹

*The overall budget for the courts should be prepared "in collaboration with the judiciary having regard to the needs and requirements of judicial administration".⁵⁰ The total budget should be adequate to cover not only remuneration, but other human and technical resources, training, and means for providing for physical security, as well.*⁵¹

The Constitution of Honduras provides that the judiciary is to be financially independent from other branches of government, to be guaranteed by the allocation of 3% of the Gross National Product under the government budget, paid on a quarterly basis, yet this provision has reportedly not been met in practice. In this regard, the Special Rapporteur on the independence of Judges and Lawyers has reported concerns that reductions and delays in budgetary payments to the judiciary are frequent, hindering the proper

Independence of the Judiciary in Central America, UN Doc. A/HRC/23/43/Add.4 (2 April 2013), p. 10. Association of Judges for Democracy (Asociación de Jueces por la Democracia) Report, *La Independencia Judicial en Honduras: Erosionada en el Marco de la Crisis Institucional* (28 October 2013), p. 32-33.

⁴⁵ Inter-American Commission on Human Rights, 2013 Annual Report, para. 282-288.

⁴⁶ Association of Judges for Democracy, Letter to the Council for the Judiciary and Judicial Career Service (23 September 2013), p. 4.

<http://www.poderjudicial.gob.hn/CJ/Documents/Planteamiento%20Consejo%20de%20la%20Judicatura%20Sept2013%20%28421kb%29.pdf> (last accessed 19 August 2014).

⁴⁷ Inter-American Commission on Human Rights, 2013 Annual Report, para. 287 ; El Heraldo, 'Más jueces para la Policía Militar' (17 October 2013).

<http://www.elheraldo.hn/csp/mediapool/sites/ElHeraldo/Pais/story.csp?cid=583656&sid=299&fid=214> (last accessed 16 August 2014).

⁴⁸ UN Basic Principles on the Independence of the Judiciary, Principle 7; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 33.

⁴⁹ UN Basic Principles on the Independence of the Judiciary, Principle 11; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 16(a); Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 13; Statute of the IberoAmerican Judge, Article 33. Inter-American Commission on Human Rights, *Guarantees for the Independence of Justice Operators*, para. 128.

⁵⁰ Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 34.

⁵¹ Inter-American Commission on Human Rights, *Guarantees for the Independence of Justice Operators*, para. 128. Statute of the IberoAmerican Judge, Article 35.

administration of justice.⁵² The lack of financial and administrative capacity is also often referred by judges as the reason for backlogs in hearing and deciding court cases.

All financial resources received by the judiciary are to be administered by the Council of the Judiciary. Salaries are fixed with the agreement of the Supreme Court, but judges have complained that they are not equally distributed, and have not been increased from year to year in accordance with the prescribed rules.⁵³

4. Independence and impartiality of individual judges; Judicial integrity and accountability

Judges must be free to "decide matters before them impartially, on the basis of the facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason".⁵⁴ The prohibition on such acts "from any quarter" underscores its application to both state actors and non-state actors alike. Even within the judicial hierarchy, judges of the same or higher level of court must not interfere with a judge's exercise of judicial functions, other than as provided for by formal procedures such as appeal.⁵⁵

In the exercise of judicial functions, judges must be impartial, and be seen to be impartial.⁵⁶ Judges "must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other."⁵⁷

A judicial code of conduct, drafted primarily by judges and members of the legal profession and consistent with international standards,⁵⁸ can help to safeguard judicial integrity and protect against conflicts of interest.⁵⁹ A judicial code of conduct meeting these criteria and enshrined in the law, should serve as the basis for the determination of cases of alleged judicial misconduct.⁶⁰

Complaints about judicial misconduct must be processed expeditiously and fairly under an appropriate procedure.⁶¹ The judge in question has the right to a fair hearing before an independent and impartial body. The body responsible for discipline of judges should be

⁵² UN Special Rapporteur for the Independence of Judges and Lawyers, Report on the subregional consultation on the independence of the judicial power in Central America, UN Doc. A/HRC/23/43/Add.4, para 58. See also UN Special Rapporteur on the situation of human rights defenders, Report to the Human Rights Council on a mission to Honduras, UN Doc. A/HRC/22/47/Add.1 (13 December 2012), para. 42.

⁵³ Law of the Judicial Career, decree no. 953, 6 December 1972. See also Association of Judges for Democracy, Letter to the Council for the Judiciary and Judicial Career Service (23 September 2013), p. 3-4. <http://www.poderjudicial.gob.hn/CJ/Documents/Planteamiento%20Consejo%20de%20la%20Judicatura%20Sept2013%20%28421kb%29.pdf> (last accessed 19 August 2014).

⁵⁴ UN Basic Principles on the Independence of the Judiciary, Principles 1-7, in particular Principle 2; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Articles 2-8; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 1; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 1-4.

⁵⁵ Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 4.

⁵⁶ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 21; UN Basic Principles on the Independence of the Judiciary, Principle 2; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 25; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Values 2, 3 and 4; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Articles 5-7. Statute of the IberoAmerican Judge, Article 8. The "seen to be impartial" standard means for instance that, even if an individual judge might *in fact* be able to ignore a personal relationship to one of the parties to a case, he or she should step aside from the case to protect against a reasonable *apprehension* of bias.

⁵⁷ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 21.

⁵⁸ See Bangalore Principles of Judicial Conduct; International Bar Association, Minimum Standards of Judicial Independence, para. 35-42.

⁵⁹ See Bangalore Principles of Judicial Conduct, Preamble and 'Implementation'.

⁶⁰ UN Basic Principles on the Independence of the Judiciary, Principle 19.

⁶¹ UN Basic Principles on the Independence of the Judiciary, Principle 17 and 20; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 28.

independent of the executive,⁶² plural and composed mainly (if not solely) of judges and members of the legal profession.⁶³ The judge's rights to a fair proceeding, including to notice of the accusations against him or her, to adequate time and facilities to prepare and present a defence including through counsel, to challenge the evidence against him or her and present witnesses must be respected.

Decisions in disciplinary matters must be based on established standards of judicial conduct, and sanctions must be proportionate. Judges may be suspended or removed only where the incapacity or behaviour of a judge renders the individual unfit to discharge his or her judicial duties.⁶⁴ Disciplinary investigations and sanctions imposed on a judge should never be based solely on disagreement with a legal opinion or judgment he or she wrote in a decision.⁶⁵

Decisions and sanctions in disciplinary proceedings should be subject to independent judicial review.⁶⁶

Judges should also enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.⁶⁷

The Code of Ethical Conduct for the Public Service applies to judges and all other public servants from the executive, legislative and judicial branches of the government.⁶⁸

The Constitution assigns to the National Congress responsibility to ensure compliance by Supreme Court judges with the Code of Ethical Conduct for the Public Service, and in that capacity to conduct disciplinary proceedings against Supreme Court judges.⁶⁹

For first instance and appeal court judges, the 2011 Law on the Council of the Judiciary and Judicial Career Service assigns responsibility for disciplinary and removal proceedings in relation to the Code of Ethical Conduct for the Public Service, to the newly-established Council of the Judiciary and Judicial Career Service. However, Council members are still ultimately selected by the Congress, and therefore the Council remains subject to political influence; further, there is no requirement that the majority of members of the Council be judges (or even lawyers), and at the moment the majority are not in fact judges or lawyers.⁷⁰ At present, the Council invokes ad-hoc regulations and the Law on the Council of the Judiciary and Judicial Career Service contains neither a list of disciplinary infractions

⁶² Human Rights Committee, Concluding Observations on Azerbaijan, UN Doc. CCPR/C/AZE/CO/3 (2009), para. 12; Human Rights Committee, Concluding Observations on Honduras, UN Doc. CCPR/C/HND/CO/1 (2006), para. 16; Human Rights Committee, Concluding Observations on Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20.

⁶³ UN Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), paras. 28-29.

⁶⁴ UN Basic Principles on the Independence of the Judiciary, Principle 18; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 20; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 10.

⁶⁵ Inter-American Commission on Human Rights, *Guarantees for the Independence of Justice Operators*, para. 216 and 249 (recommendation 22). See also Inter-American Court of Human Rights, *Case of Apitz Barbera et al ("First Court of Administrative Disputes") v Venezuela*, Series C no 182 (5 August 2008), para. 86, emphasizing the strict distinction under international law between, on the one hand, procedures (such as appeal) for challenging the correctness of a substantive legal decision taken by a judge acting within the competence given to them by domestic law, and on the other hand, "disciplinary oversight, which is intended to assess the conduct, suitability and performance of the judge as a public official". The Court concluded that it was not enough, then, simply to believe that the judge was wrong about the law, there must be "an autonomous reason warranting a finding that a disciplinary offense has been committed."

⁶⁶ UN Basic Principles on the Independence of the Judiciary, Principle 20; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Articles 26-31; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Articles 8 and 11. The UN Basic Principles suggest that the principle of independent review "may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings."

⁶⁷ UN Basic Principles on the Independence of the Judiciary, Principle 16; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 20; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 10.

⁶⁸ Code of the Ethical Conduct of the Public Servant, Decree No. 36-2007, 31 May 2007.

⁶⁹ Constitution of the Republic of Honduras, Article 205(15) and 234.

⁷⁰ Inter-American Commission on Human Rights, 2013 Annual Report, page 445, para. 279-283.

nor the range of sanctions that may be imposed for breaching those norms (though the Code does affirm the general principle of proportionality of sanctions).⁷¹

In 2010, three constitutional judges and one magistrate, all members of the Association of Judges for Democracy (Asociación Jueces por la Democracia), were arbitrarily dismissed after allegedly taking part in a peaceful demonstration against the 2009 *coup d'état*, while judges and court officials who participated in demonstrations in favour of the Government created after the *coup d'état* were not subject to the same treatment. Two of the sanctions were later confirmed on appeal, one was revoked and one of the judges was entitled to receive benefits.⁷² In late 2012, four constitutional judges were also arbitrarily impeached by the National Congress on proposal of the Supreme Court for "acting contrary to the public interest of the State of Honduras". The sanction was reportedly based on disagreement with a judicial decision taken by the judges on the so-called "Police Purge Law", where they found the exams required under its provisions, including a polygraph test and toxicological exams, in violation of the right of police officers to privacy and not to be self-incriminated.⁷³

Concerns have been raised about the physical safety of judges in Honduras in the context of the number of judges who have been killed and those who have been threatened. According to the National Commission of Human Rights (Conadeh), 84 legal professionals were killed from January 2010 to September 2014.⁷⁴ In some cases, the attacks were unofficially linked to members of organized crime under investigation by judges, but in most cases, investigations by national authorities were neither effective nor were those responsible identified or brought to justice.⁷⁵

A draft law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners proposed by the National Congress, aiming to ensure the safety in work-related activities of, *inter alia*, judges, prosecutors and lawyers, was pending in the National Congress as of 11 December 2014.⁷⁶ This draft law proposes to create, among others, a mechanism to receive and address urgent cases of threats and attacks against lawyers, and it will be competent to determine, *inter alia*, interim and protection measures.⁷⁷

Additionally, the National Congress recently amended the Criminal Code to raise the minimum and maximum penalties for homicide or murder when committed against specified persons including judges, prosecutors, public defenders, or other "Operadores de

⁷¹ Association of Judges for Democracy, *La independencia judicial en Honduras: Erosionada en el marco de la crisis internacional* (28 October 2013), p. 35.

⁷² Inter-American Commission on Human Rights, *Adán Guillermo López Lone et al. v. Honduras*, Case 975-10, Report No. 70/11 (31 March 2011). See also Inter-American Court of Human Rights, Press Release: 'IACHR takes case involving Honduras to the Inter-American Court' (2 April 2014); and Association for German Judges, Press Release: 'Nueva Asociación de jueces alemanes da conferencia a universitarios' (23 February 2012).

⁷³ International Commission of Jurists, *La Independencia del Poder Judicial en Honduras (2004-2013)* (May 2014), p. 30; Inter-American Commission on Human Rights, 2013 Annual Report, page 447, para. 288. See also El Heraldo, 'Garantizan debido proceso en investigación a jueces' (24 October 2013).

<http://www.elheraldo.hn/content/view/full/191268> (last accessed 16 August 2014).

⁷⁴ Center for Justice and International Law, 'CEJIL condena los nuevos asesinatos de fiscales en Honduras' (24 October 2014). <http://cejil.org/comunicados/cejil-condena-los-nuevos-asesinatos-de-fiscales-en-honduras> (last accessed 11 December 2014).

⁷⁵ International Commission of Jurists, *La Independencia del Poder Judicial en Honduras (2004-2013)* (May 2014), p. 78, in particular judges Jesús García and Ernesto Velázquez Martínez, the former allegedly killed by members of organized crime. See also International Commission of Jurists, Press Release: 'La CIJ condena asesinato de la Jueza Mireya Mendoza Peña en Honduras' (27 July 2013). <http://www.icj.org/la-cij-condena-asesinato-de-la-jueza-mireya-mendoza-pena-en-honduras/> (last accessed 27 October 2014).

⁷⁶ Law for the Protection of Human Rights Defenders, Journalists, Media Workers (draft), 27 May 2014.

http://www.observatoriodescentralizacion.org/download/iniciativas_de_ley_en_discusion_/LEY%20DE%20DEFENSORES,%20periodistas%20y%20comunicadores%20sociales.pdf (last accessed 11 December 2014). Inter-American Commission on Human Rights, 2013 Annual Report, para. 309; El Heraldo, 'Aumentan amenazas a muerte contra jueces de lo penal en Honduras' (13 August 2014). <http://www.elheraldo.hn/pais/737909-214/aumentan-amenazas-a-muerte-contra-jueces-de-lo-penal-en-honduras> (last accessed 16 August 2014).

⁷⁷ El Heraldo, 'CN aprueba en primer debate ley de protección a periodistas' (9 June 2014).

<http://www.elheraldo.hn/pais/715960-214/cn-aprueba-en-primer-debate-ley-de-proteccion-a-periodistas> (last accessed 11 December 2014).

Justicia" (which should be interpreted to include lawyers) involved in the "al Combate de la Criminalidad" (the "fight against crime").⁷⁸

C. Lawyers

*Lawyers must be able to carry out their professional functions freely and independently, including when acting on matters that may challenge state interests.*⁷⁹

*Lawyers have the right to form and join self-governing professional associations to represent their interests and protect their professional integrity. Lawyers also have the right to freedom of expression, including to comment publicly on matters of the law, the administration of justice, and human rights.*⁸⁰

*Lawyers have duties, particularly to their clients, for which there must be effective mechanisms of accountability that preserve the independence of the legal profession. Among their duties are: to uphold human rights and fundamental freedoms, to act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession, to maintain the honour and dignity of their profession, and to respect the interests of their clients.*⁸¹

*International standards set out specific safeguards for the role and independence of the legal profession, and are described in greater detail in the sections that follow.*⁸²

1. Legal recognition of the role of lawyers

*The role of lawyers should be recognized in the Constitution and other national laws, including as an essential element of the right to a fair trial.*⁸³

National law should, by express provision or interpretation, specifically recognize the following, at minimum: the general right of everyone to consult with and be represented by a lawyer of choice in relation to any proceedings before any court or tribunal and other matters of a legal character; the right of individuals charged with or questioned in relation to a criminal offence, to have access to and be represented by counsel of their choice in relation to the charges or questioning; the right of all persons deprived of liberty for any reason to prompt access to and representation by a lawyer of their choice (or, in exceptional cases, another independent lawyer). National law should also provide for legal assistance to be appointed in any case where the interests of justice so requires, and free

⁷⁸ Decree No. 100-2014, La Gaceta, 23 October 2014, num. 33,562.

⁷⁹ UN Basic Principles on the Role of Lawyers, particularly para. 16. Human Rights Committee, e.g. Concluding Observations on: Russian Federation, UN Doc. CCPR/C/RUS/CO/6 (24 November 2009), para. 22; Azerbaijan, UN Doc. CCPR/CO/73/AZE 12 November 2001, para. 14; Georgia, Concluding Observations on Georgia, U.N. Doc. CCPR/C/79/Add.74 (1997), para. 32. Human Rights Council, Resolution on the Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, UN Doc. A/HRC/RES/23/6 (2013); Special Rapporteur on the independence of judges and lawyers, Report on independence of lawyers and the legal profession, UN Doc A/64/181 (28 July 2009).

⁸⁰ UN Basic Principles on the Role of Lawyers (welcomed by General Assembly resolution 45/166, 1990), Principles 23 and 24.

⁸¹ UN Basic Principles on the Role of Lawyers, Principles 12, 14 and 15.

⁸² See for example UN Basic Principles on the Role of Lawyers. See also International Commission of Jurists, International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide, no. 1 (2007), pp. 63-69.

⁸³ See for instance: UN Basic Principles on the Role of Lawyers, Preamble ("The Basic Principles on the Role of Lawyers, set forth below... should be respected and taken into account by Governments within the framework of their national legislation and practice"); Human Rights Council, Resolution on the Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, UN Doc. A/HRC/RES/23/6 (2013), para. 1 ("Calls upon all States to guarantee the independence of ... lawyers ..., as well as their ability to perform their functions accordingly, including by taking effective legislative ... measures"); Special Rapporteur on the independence of judges and lawyers, Report on independence of lawyers and the legal profession, UN Doc. A/64/181 (28 July 2009), para. 15-18, and 105 recommending that: "(a) The right to legal counsel of choice be enshrined at constitutional level or be considered as a fundamental principle of law; this fundamental right must be adequately translated into domestic legislation" and "(c) Legislation regulating the role and activities of lawyers and legal profession be developed, adopted and implemented in accordance with international standards; such legislation should enhance the independence, self-regulation and integrity of the legal profession...".

*of charge if the person cannot afford to pay.*⁸⁴

Article 82 of the Constitution of Honduras affirms the general right to a defense, but no part of the Constitution explicitly refers to a general right to a lawyer. Article 83, however, does provide that the State will appoint lawyers to provide legal assistance and representation to the poor, to children and to incompetent persons.⁸⁵

Article 14 of the Code of Criminal Procedure elaborates on the right to defence as prescribed in article 82 of the Constitution. It states that "the right to defence is inviolable. The client and his/her lawyer are entitled to be present in the procedural acts that involve evidence and to make requests and comments they deem appropriate, without prejudice to the exercise of disciplinary power by the competent authority, when the exercise of the referred rights endanger the normal course of the procedural acts (...)."⁸⁶

Articles 15 and 101 of the Code of Criminal Procedure further affirm the right of every person suspected of the commission of a crime to be represented by legal counsel of his/her choice, or for one appointed by the state. The Code provides that violation of this right nullifies any procedures that occurred without the presence of a lawyer.

2. Access to the legal profession

Every person who has the necessary qualifications and integrity should be permitted to qualify for practice as a lawyer.⁸⁷ No discrimination is permitted on grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status with regard to entry into the profession or continued practice.⁸⁸

States should take special measures to provide opportunities and ensure needs-appropriate training for candidates from groups whose needs for legal services are generally not met, particularly when those groups have distinct cultures, traditions or languages or have been the victims of discrimination.⁸⁹

Entry to the profession, like other aspects of the lawyers' career, should be regulated by an independent professional association, and not subject to authorization by executive authorities of the government.⁹⁰

The security of lawyers' ability to practice their profession, as well as the quality and integrity of the profession, should be ensured through the issuance by the independent professional association of a license that establishes the lawyers' credentials and

⁸⁴ ICCPR, Article 14(3)(d). UN Principles and Guidelines on the Access to Legal Aid in Criminal Justice Systems Proceedings, UN Doc. A/RES/67/187 (2013), Principle 3; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 38. This principle also has been interpreted to apply to certain noncriminal proceedings: see e.g. Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 10; Inter-American Commission on Human Rights, Access to Justice as a Guarantee of Economic, Social, and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights, OEA/Ser.L./V/II.129 Doc. 4 (2007), para. 51-65, 90-91; Inter-American Court of Human Rights, *Case of Vélez Loor v Panama*, Series C No. 218 (23 November 2010), para. 132-139, 146-148, and *Rights and guarantees of children in the context of migration and/or in need of international protection*, Advisory Opinion OC-21/14, Series A No 21 (19 August 2014) para. 129-131, and 204-205.

⁸⁵ Constitution of the Republic of Honduras, Article 83. See also Ethical Code for the Legal Professionals, Article 14.

⁸⁶ Code of Criminal Procedure, Decree No. 9-99-E, February 2002.

⁸⁷ Special Rapporteur on the independence of judges and lawyers, Report on independence of lawyers and the legal profession, UN Doc A/64/181 (28 July 2009), para. 36-37, 122(b).

⁸⁸ UN Basic Principles on the Role of Lawyers, Principle 10 (Noting, however, that the prohibition of discrimination does not necessarily preclude a requirement that a lawyer be a national of the country concerned); Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 77 and 80; International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 1.

⁸⁹ UN Basic Principles on the Role of Lawyers, Principle 11.

⁹⁰ Special Rapporteur on the independence of judges and lawyers, report on independence of lawyers and the legal profession, UN Doc A/64/181 (28 July 2009), para. 34 and 105 (d) and (e). See also Human Rights Committee, Concluding Observations on Belarus, UN Doc. CCPR/C/79/Add.86 (1997), para. 14.

authorization to practice law.⁹¹

Lawyers in Honduras cannot practice unless they are registered in the Bar Association.⁹²

While the ICJ has not conducted detailed research on the current situation of individual's access to the legal profession in Honduras, from the information available, lawyers do not seem to be required to meet other conditions in addition to having a law degree. In this context, registration in the Bar Association appears to be a mere formality.⁹³

3. Self-governing professional associations

Lawyers must be able to form and join self-governing professional associations to represent their interests, promote their continuing education and training, and protect their professional integrity. The executive body of the professional associations should be elected by its members and be able to exercise its functions without external interference.⁹⁴ Compulsory affiliation of lawyers to a State-controlled association is unacceptable.⁹⁵

Professional associations of lawyers should cooperate with governments to ensure effective and equal access to legal services, and to ensure that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.⁹⁶

Lawyers and lawyers' associations should be able to engage in activities, and to initiate and participate in public discussion on the substance, interpretation and application of existing and proposed legislation, as well as other matters concerning the law, the administration of justice and the promotion and protection of human rights.⁹⁷

The legal profession should be directly involved, or at minimum meaningfully consulted, at all relevant stages of the process of developing and adopting any legislation regulating the role and activities of lawyers and the legal profession.⁹⁸

Under the law, the Bar Association of Honduras is an independent and self-regulating professional institution, statutorily entrusted to defend the interests of lawyers. Its financial independence is guaranteed by the members' payment of fees.⁹⁹

The Bar Association is composed of, *inter alia*, the National Board, the General Assembly,

⁹¹ Special Rapporteur on the independence of judges and lawyers, report on independence of lawyers and the legal profession, UN Doc A/64/181 (28 July 2009), para. 34, 38-39.

⁹² Organic Law of the Bar Association in Honduras, Article 3(a).

⁹³ Bar Association of Honduras, "Requirements for the Registration" (November 2013).

<http://colegiodeabogadoshn.com/wp-content/uploads/2013/11/requisistos-de-colegiacion-COLEGIO-DE-ABOGADOS-DE-HONDURAS-2013.pdf> (last accessed 18 August 2014).

⁹⁴ UN Basic Principles on the Role of Lawyers, Principle 24; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 97; International Bar Association (IBA), Standards for the Independence of the Legal Profession, Standard 17. See also Special Rapporteur on the independence of judges and lawyers, Report on independence of lawyers and the legal profession, UN Doc A/64/181 (28 July 2009), para. 19-27, 105(b), (c) and (d), UN Special Rapporteur on the Independence of Judges and Lawyers, Report to the Human Rights Council on missions to Mozambique, UN Doc. A/HRC/17/30/Add.2 (2011), para. 79.

⁹⁵ Human Rights Committee, Concluding Observations of the Human Rights Committee on Belarus, UN Doc. CCPR/C/79/Add.86 (1997), para. 14.

⁹⁶ UN Basic Principles on the Role of Lawyers, Principle 25. For a more elaborate list on the functions of lawyers' associations, see International Bar Association (IBA), Standards for the Independence of the Legal Profession, Standard 18; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 99. Also see General Assembly, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UN Doc. A/RES/67/187 (2012), Principles 10 and 11.

⁹⁷ UN Basic Principles on the Role of Lawyers, Principles 12 and 23; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 99(g); International Bar Association (IBA), Standards for the Independence of the Legal Profession, Standard 18.

⁹⁸ Special Rapporteur on the independence of judges and lawyers, Report on independence of lawyers and the legal profession, UN Doc A/64/181 (28 July 2009), para. 15-18.

⁹⁹ Organic Law of the Bar Association of Honduras (Ley Organica del Colegio de Abogados de Honduras), including reform of 16 October 1997, official journal No. 28,438, published on 13 December 1997, Article 7(e).

the Court of Honor, and the Institute for Social Insurance.¹⁰⁰ The members of the National Board, the executive body, and the Court of Honor (the disciplinary body) are selected by the lawyers registered in the bar, who form the General Assembly. This National Board is competent to, among other things, draft the profession rules and the Organic Law of the Bar Association, and to define the members' fees. Its decisions are taken by secret vote and on a majority rule.

The ICJ has not conducted detailed research on the implementation of the law or the effectiveness or independence of the Bar Association.

4. Non-interference with the work of individual lawyers

*Governments must ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.*¹⁰¹

*Lawyers' professional duties include advising clients on their rights and obligations and the working of the legal system; assisting clients in every appropriate way and taking legal action to protect their interests; and assisting clients before courts, tribunals and administrative authorities.*¹⁰²

*Among other things, the authorities must ensure lawyers are granted prompt and regular visits to and communications with individuals who have been deprived of their liberty, regardless of whether they have been charged with a crime, with adequate time and facilities to communicate and consult freely and in full confidentiality.*¹⁰³

*States must respect and protect the confidentiality of lawyer-client communications, within the professional relationship.*¹⁰⁴ *Lawyer-client consultations between a detained person and their lawyer may, at most and then only where security needs require it, "be within sight, but not within the hearing, of law enforcement officials".*¹⁰⁵

*Authorities must ensure that lawyers have access to relevant information, files and documents at the earliest possible time and in any event in sufficient time to enable lawyers to provide effective legal assistance to their clients.*¹⁰⁶

¹⁰⁰ Organic Law of the Bar Association of Honduras (Ley Organica del Colegio de Abogados de Honduras), including reform of 16 October 1997, official journal No. 28,438, published on 13 December 1997, Article 19.

¹⁰¹ UN Basic Principles on the Role of Lawyers, Principle 16(a); Special Rapporteur on the independence of judges and lawyers, report on independence of lawyers and the legal profession, UN Doc A/64/181 (28 July 2009), para. 59-69, and 107-108.

¹⁰² See UN Basic Principles on the Role of Lawyers, Principles 12-15.

¹⁰³ UN Basic Principles on the Role of Lawyers, Principles 7 and 8; General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Doc. A/RES/43/173 (1988), Principles 17 and 18; ICCPR, Article 14(3)(b); Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 34; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 91. Initial lawyer-client meetings should occur from the very outset of detention, and in a matter involving suspected criminal conduct, before and during questioning of a suspect by the competent authorities, such as police, and investigating judges (General Assembly, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UN Doc. A/RES/67/187 (2012), Guideline 3, para. 43(b)). Any delay in access to counsel must be determined and justified on a case-by-case basis. In any case delay should not exceed "forty-eight hours from the time of arrest or detention" (UN Basic Principles on the Role of Lawyers, Principle 7). Depending on the circumstances, delay may be so prejudicial that the subsequent criminal proceedings are rendered irretrievably unfair: see for example, European Court of Human Rights (Grand Chamber), *Salduz v Turkey*, Application No. 36391/02 (27 November 2008), para. 55-63.

¹⁰⁴ UN Basic Principles on the Role of Lawyers, Principle 22. Special Rapporteur on the independence of judges and lawyers, Report on independence of lawyers and the legal profession, UN Doc. A/64/181 (28 July 2009), para. 44-48, and 110.

¹⁰⁵ UN Basic Principles on the Role of Lawyers, Principle 8; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Doc. A/RES/43/173 (1988), Principle 18 (4); Special Rapporteur on the independence of judges and lawyers, Report on independence of lawyers and the legal profession, UN Doc. A/64/181 (28 July 2009), para. 110.

¹⁰⁶ UN Basic Principles on the Role of Lawyers, Principle 21; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 33; Special Rapporteur on the independence of judges and lawyers, Report on independence of lawyers and the legal profession, UN Doc. A/64/181 (28 July 2009), para. 40-43, and 109; International Commission of Jurists, *Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis* (2008), Principle 8.

Lawyers must not face adverse consequences for the fact of representing any client. Lawyers "shall not be identified with their clients or their clients' causes as a result of discharging their functions".¹⁰⁷ Lawyers should "enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority".¹⁰⁸

The authorities must safeguard lawyers' security where this is threatened, including by non-state actors, as a result of discharging their functions.¹⁰⁹

The state must not interfere with lawyers' ability to travel whether within their own country or abroad, whether the purpose of the travel is specifically to consult with or represent clients,¹¹⁰ or is to attend conferences, training sessions or similar events related to human rights and the legal system.¹¹¹

In Honduras, not all lawyers are able to exercise their professional activities freely as required under international standards. Death threats against legal professionals have been reported, and some such threats have been carried out.¹¹² Such threats appear to be particularly strong when lawyers are working with human rights and corruption cases.¹¹³

The draft law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners pending in the legislature as of 11 December 2014, has been advanced by the state as a measure to address attacks against the legal profession.¹¹⁴ This draft law proposes to create a mechanism to receive and address urgent cases of threats and attacks against lawyers, and it will be competent to determine, *inter alia*, interim and protection measures.¹¹⁵ Additionally, the National Congress recently amended the Criminal Code to raise the minimum and maximum penalties for homicide or murder when committed against specified persons including judges, prosecutors, public defenders, or other "Operadores de Justicia" (which should be interpreted to include lawyers) involved in the "al Combate de la Criminalidad" (the "fight against crime").¹¹⁶

5. Lawyers' freedom of expression, association and assembly

Like other citizens, lawyers are entitled to exercise freedom of expression, belief, association and assembly.¹¹⁷

¹⁰⁷ UN Basic Principles on the Role of Lawyers, Principle 18; International Commission of Jurists, *Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis* (2008), Principle 7; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 84; Special Rapporteur on the independence of judges and lawyers, Report on independence of lawyers and the legal profession, UN Doc. A/64/181 (28 July 2009), para. 64-67, and 107.

¹⁰⁸ UN Basic Principles on the Role of Lawyers, Principle 20; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 85.

¹⁰⁹ UN Basic Principles on the Role of Lawyers, Principle 17; Special Rapporteur on the independence of judges and lawyers, Report on independence of lawyers and the legal profession, UN Doc. A/64/181 (28 July 2009), para. 68-69, and 108.

¹¹⁰ UN Basic Principles on the Role of Lawyers, Principle 16(b).

¹¹¹ UN Basic Principles on the Role of Lawyers, Principle 23 (and see freedom of expression and association of lawyers more generally below). Special Rapporteur on the independence of judges and lawyers, Report on independence of lawyers and the legal profession, UN Doc A/64/181 (28 July 2009), para. 59, 60, 63, and 111(c).

¹¹² El Heraldo, 'Abogado del 'Negro' Lobo denuncia amenazas de muerte' (3 April 2014).

<http://www.elheraldo.hn/seccionesssecundarias/entretenimiento/cine/632606-326/abogado-del-negro-lobo-denuncia-amenazas-de-muerte> (last accessed 16 August 2014); Prensa Libre, 'Asesinan en Honduras a un abogado que había denunciado amenazas de muerte' (6 August 2013). http://www.prensalibre.com/internacional/Asesinan-Honduras-abogado-denunciado-amenazas_0_969503303.html (last accessed 16 August 2014).

¹¹³ UN Special Rapporteur on the situation of human rights defenders, Report to the Human Rights Council on a mission to Honduras, UN Doc. A/HRC/22/47/Add.1A (13 December 2012), para. 94 and 95.

¹¹⁴ Inter-American Commission on Human Rights, 2013 Annual Report, para. 309. El Heraldo, 'Aumentan amenazas a muerte contra jueces de lo penal en Honduras' (13 August 2014). <http://www.elheraldo.hn/pais/737909-214/aumentan-amenazas-a-muerte-contra-jueces-de-lo-penal-en-honduras> (last accessed 16 August 2014).

¹¹⁵ El Heraldo, 'CN aprueba en primer debate ley de protección a periodistas' (9 June 2014), <http://www.elheraldo.hn/pais/715960-214/cn-aprueba-en-primer-debate-ley-de-protección-a-periodistas> (last accessed 11 December 2014).

¹¹⁶ Decree No. 100-2014, La Gaceta, 23 October 2014, num. 33,562.

¹¹⁷ UN Basic Principles on the Role of Lawyers, Principle 23.

In addition to the right to form and join self-governing professional associations, as discussed above, lawyers have the right collectively and individually to take part in public discussions of matters concerning the law, the administration of justice, and human rights; to join or form local, national or international organizations; and to attend the meetings of such groups or associations without suffering professional restrictions.

In exercising their rights to freedom of expression and association, lawyers must conduct themselves in line with applicable laws (though such laws must themselves be compatible with international human rights standards) and recognized standards and ethics of the legal profession.¹¹⁸

a) Freedom of association

Lawyers have a single independent and self-regulated body in which registration is mandatory in order to practice.¹¹⁹

Laws do not seem to prohibit the formation of other types of professional organizations, nor is the ICJ aware of reports of restrictions upon freedom of association of lawyers in practice, although the ICJ has not conducted detail research in this regard.

b) Freedom of expression and assembly

The right to freedom of expression is enshrined in the Constitution of Honduras and applies to all citizens without exception. However, the Constitution provides for suspension of freedom of expression when national security and peace is under threat.

As noted above, lawyers in Honduras have been intimidated and attacked in the course and context of the exercise of their profession. It is unclear whether such intimidation and attacks are directed not only at interfering with their professional duties in particular cases but also at limiting the lawyers' freedom of expression in other ways.

The UN Special Rapporteur on human rights defenders reported that, in May 2010, a Public Defender, (along with the four judges mentioned earlier) was arbitrarily removed from post for allegedly taking part in peaceful demonstrations against the coup d'état of 2009. The Special Rapporteur noted by contrast that judges and court officials who had participated in demonstrations in favour of the Government created after the coup d'état, were not subject to the same treatment.¹²⁰ This suggests that the Public Defender was targeted specifically for political reasons related to the content of his exercise of freedom of expression.

6. Integrity and accountability of the legal profession

In carrying out their professional functions, lawyers must seek to uphold human rights and fundamental freedoms, and at all times act freely and diligently in accordance with the law and recognized standards and ethics of the profession. They must always loyally respect the interests of their clients.¹²¹

Lawyers should be governed by codes of professional conduct. Such codes should be

¹¹⁸ UN Basic Principles on the Role of Lawyers, Principle 23; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 92; International Commission of Jurists, *Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis* (2008), Principle 5; International Bar Association (IBA), *Standards for the Independence of the Legal Profession*, Standard 14.

¹¹⁹ Organic Law of the Bar Association in Honduras, Article 1, decree no. 28,438, 8 April 1930.

¹²⁰ UN Special Rapporteur on the situation of human rights defenders, Report to the Human Rights Council on a mission to Honduras, UN Doc. A/HRC/22/47/Add.1 (13 December 2012), para. 93. See also CEJIL, 'CEJIL Condemns Dismissal of Judges Who Opposed Coup D'Etat' (6 May 2010). <http://cejil.org/en/comunicados/cejil-condemns-dismissal-judges-who-opposed-coup-d-etat> (last accessed 11 December 2014).

¹²¹ See UN Basic Principles on the Role of Lawyers, Principles 12-15.

*established by the legal profession itself through independent professional association, but may also be provided for by legislation.*¹²²

*Complaints against lawyers for misconduct in their professional capacity should be "processed expeditiously and fairly under appropriate procedures" and decided "in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession."*¹²³

*The body responsible for investigating and adjudicating on allegations of misconduct by lawyers must be independent and impartial, preferably established by the legal profession itself, and ensure that proceedings are conducted fairly and following proper procedure.*¹²⁴ *A lawyer accused of professional misconduct must have "the right to be assisted by a lawyer of their choice".*¹²⁵ *He or she should be entitled to notice of the complaints against him or her and have adequate time and facilities to prepare and present a defence. Any sanction against a lawyer for misconduct should be proportionate. The lawyer should be entitled to independent judicial review of the disciplinary proceedings.*¹²⁶

The General Assembly of the Bar Association drafted and adopted an Ethical Code for lawyers in 1966. The Ethical Code elaborates on the fundamental principles and values of the profession, the special duties of legal professionals, publications and professional confidentiality, the relation between lawyers and the authorities, fees, and the relation with other colleagues.¹²⁷

Lawyers in Honduras are required to defend justice and ensure the respect of the law in keeping with the ethical values of the profession. Violations of these or other professional duties can result in one of the following sanctions: private admonitions before the National Board, public admonition before the General Assembly, disqualification from holding office in the Bar Association, a fine, or a temporary suspension from practice (between six months to three years).

The Court of Honor has competence to preside over and adjudicate on complaints of misconduct against lawyers. However, complaints of misconduct made against lawyers acting within the legal aid schemes are handled by the Council of the Judiciary.¹²⁸

Currently, the ICJ does not have information on how disciplinary measures are being used against lawyers, and whether guarantees to a hearing and appeal are respected in proceedings related to complaints of alleged misconduct.

¹²² UN Basic Principles on the Role of Lawyers, Principle 26; Special Rapporteur on the independence of judges and lawyers, Report on independence of lawyers and the legal profession, UN Doc. A/64/181 (28 July 2009), para. 53-54, 106; International Bar Association (IBA), Standards for the Independence of the Legal Profession, Standard 22. See Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 102.

¹²³ UN Basic Principles on the Role of Lawyers, Principles 27 and 29.

¹²⁴ UN Basic Principles on the Role of Lawyers, Principles 27 and 28 (referring to "an impartial disciplinary committee established by the legal profession, ... an independent statutory authority, or ... a court"). The Special Rapporteur on the independence of judges and lawyers, in a report on independence of lawyers and the legal profession, UN Doc. A/64/181 (28 July 2009), stated "an impartial disciplining body should be established by the legal profession": para. 106(b), and see para. 55-56 ("Ideally...established by the legal profession itself"). Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 103-106 (referring at Article 104 to "a disciplinary committee established by the Bar Association"); International Bar Association (IBA), Standards for the Independence of the Legal Profession, Standard 22.

¹²⁵ UN Basic Principles on the Role of Lawyers, Principle 27; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 106; International Bar Association (IBA), Standards for the Independence of the Legal Profession, Standard 22.

¹²⁶ UN Basic Principles on the Role of Lawyers, Principle 28; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 106; International Bar Association (IBA), Standards for the Independence of the Legal Profession, Standard 22.

¹²⁷ Ethical Code for the Legal Professionals, drafted in 30 April 1966 by the General Assembly of the Bar Association in Honduras pursuant to article 25 (c) of the Organic Law of the Bar Association in Honduras. Approved by the National Congress through decree n. 18, Official Journal N. 28,438, 13 December 1997.

¹²⁸ Organic Law for the Bar Association of Honduras (Ley Organica del Colegio de Abogados de Honduras), including reform of 16 October 1997, published on 13 December 1997, official journal No. 28,438, Articles 2(c) and 40.

D. Prosecutors

*Prosecutors perform an active role in criminal proceedings, including the institution of prosecution and, in some instances, in the investigation of crime, supervision over the legality of such investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.*¹²⁹

*International standards set out guidelines and safeguards for the impartiality, functional independence, and accountability of prosecutors; they are described in greater detail in the sections that follow.*¹³⁰

1. Functioning of the prosecutorial services

*Prosecutors must carry out their functions fairly and effectively, in an independent, impartial and objective manner, without discrimination of any kind.*¹³¹

*They must maintain the honour and duty of their profession, and must respect and protect human dignity and uphold human rights.*¹³²

*To these ends, prosecutors must among other things: inform, and consider the views of, victims; not initiate or continue an unfounded prosecution; refuse to use evidence obtained in violation of human rights, and take steps to bring those responsible for the violation to justice; give due attention to crimes committed by public officials (including corruption, abuse of power, violations of human rights and crimes under international law).*¹³³

*States must ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.*¹³⁴

*The authorities must physically protect prosecutors and their families when their personal safety is threatened as a result of discharging their prosecutorial functions.*¹³⁵

*The office of prosecutors must be strictly separated from judicial functions.*¹³⁶

Under Honduran law, Public Prosecutors are to represent the State and to ensure the proper, efficient and transparent administration of justice. Prosecutors lead and manage the investigation in criminal cases.

While the ICJ has not conducted detailed research on the extent of the implementation of international standards on Prosecutors in Honduras, it notes with concern a number of issues raised in the report of the UN Special Rapporteur on human rights defenders

¹²⁹ UN Guidelines on the Role of Prosecutors, Guideline 11.

¹³⁰ See for example UN Guidelines on the Role of Prosecutors. See also International Commission of Jurists, *International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide, no. 1* (2007), p. 71-77.

¹³¹ UN Guidelines on the Role of Prosecutors, Guidelines 12 and 13; International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors (1999), Article 1-3 and 4.1; Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/20/19 (7 June 2012), para. 24-28, 98-99, 110, and 119.

¹³² UN Guidelines on the Role of Prosecutors, Guideline 3, 12, and 14-16; International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties of and Rights Prosecutors, Article 1, 3(a) and 4.3 (c), (f)-(g).

¹³³ UN Guidelines on the Role of Prosecutors, Guideline 13(d), 14-16. International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 4.3. See also UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 (29 November 1985).

¹³⁴ UN Guidelines on the Role of Prosecutors, Guideline 4; International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6.

¹³⁵ UN Guidelines on the Role of Prosecutors, Guideline 5; International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(b).

¹³⁶ UN Guidelines on the Role of Prosecutors, Guideline 10.

following her visit to the country in February 2012, in particular:

The ability of the Office of the Public Prosecutor to undertake effective and impartial criminal investigations is seriously undermined by the alleged participation and collusion of police force members in committing crimes, including serious violations of human rights. The Special Rapporteur received information from various sources indicating that police agents, including at the senior levels, had impeded and obstructed investigations. She was also informed that the Human Rights Unit of the Office of the Public Prosecutor was affected by political interference and lack of resources, and that its staff had received death threats. The protection measures available to witnesses and victims are extremely limited.¹³⁷

And that:

... lawyers, prosecutors and judges who act as human rights defenders had been subjected to death threats or even murdered. Those working on cases of impunity for human rights violations or investigating corruption had been particularly targeted.

... prosecutors, particularly those working on human rights and environmental issues, had received death threats and that their situation had become especially precarious. Furthermore, prosecutors and judges working on cases in which the police had been involved in crimes were under political pressure from high-ranking authorities, including from within the office of the General Prosecutor.¹³⁸

The National Congress recently amended the Criminal Code to raise the minimum and maximum penalties for homicide or murder when committed against specified persons including judges, prosecutors, public defenders, or other "Operadores de Justicia" (which should be interpreted to include lawyers) involved in the "al Combate de la Criminalidad" (the "fight against crime").¹³⁹

2. The prosecutor's career

Persons selected as prosecutors must be individuals of integrity and ability, with appropriate training and qualifications.¹⁴⁰ Accordingly, States must ensure that selection criteria embody safeguards against appointments based on partiality or prejudice, and that prosecutors have appropriate education and training.¹⁴¹

Promotion of prosecutors must be based on objective factors and decided upon in accordance with fair and impartial procedures.¹⁴²

Prosecutors must enjoy "[r]easonable conditions of service ... adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations."¹⁴³

Under the Constitution, the Prosecutor General and the Deputy Prosecutor General are to be appointed by the National Congress for a four-year, non renewable, term of office.¹⁴⁴

¹³⁷ Special Rapporteur on the situation of human rights defenders, Report to the Human Rights Council on a mission to Honduras, UN Doc. A/HRC/22/47/Add.1 (13 December 2012), para. 46.

¹³⁸ Special Rapporteur on the situation of human rights defenders, Report to the Human Rights Council on a mission to Honduras, UN Doc. A/HRC/22/47/Add.1 (13 December 2012), para. 92-93. See also para. 100 and 139.

¹³⁹ Decree No. 100-2014, La Gaceta, 23 October 2014, num. 33,562.

¹⁴⁰ UN Guidelines on the Role of Prosecutors, Guideline 1.

¹⁴¹ UN Guidelines on the Role of Prosecutors, Guideline 2.

¹⁴² UN Guidelines on the Role of Prosecutors, Guideline 7; International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(e).

¹⁴³ UN Guidelines on the Role of Prosecutors, Guideline 6; International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(c) and (d).

¹⁴⁴ Constitution of Honduras 1982, Article 229.

The requirements for candidates for the offices of the Prosecutor General and the Deputy Prosecutor General are the same as candidates for appointment as judges of the Supreme Court; candidates must: be nationals of Honduras by birth; hold citizenship with full enjoyment of civil rights (i.e. not legally incompetent); be at least 35 years of age, and have been a judge, lawyer or teacher at the academic level for a period of at least ten years.¹⁴⁵

3. Prosecutors' freedom of expression and association

*Like other citizens, prosecutors are entitled to exercise freedom of expression, belief, association and assembly.*¹⁴⁶

*In addition to the right to form and join professional associations, prosecutors have the right collectively and individually to take part in public discussions of matters concerning the law, the administration of justice, and human rights; to join or form local, national or international organizations; and to attend the meetings of such groups or associations without suffering professional restrictions.*¹⁴⁷

*In exercising their rights to freedom of expression and association, prosecutors must conduct themselves in line with applicable laws (though such laws must themselves be compatible with international human rights standards) and recognized standards and ethics of their profession.*¹⁴⁸

Although the ICJ does not have detailed information on freedom of expression, association and assembly of prosecutors in Honduras, the Asociación de Fiscales de Honduras (Honduras Prosecutors Association) is an independent organization of prosecutors that represents the interests of its members and of the profession.

4. Integrity and accountability of the prosecutorial services

*Prosecutors at all levels, like other public officials, must be accountable when they have been involved in violations of human rights or other breaches of professional standards, including in proceedings based on complaints brought by individuals.*¹⁴⁹

*Disciplinary offences must be defined in law or lawful regulations, and complaints alleging misconduct must be processed expeditiously and fairly in the context of fair procedures before an independent and impartial body. A prosecutor who has allegedly breached established standards of professional conduct must be afforded a fair hearing and the decision must be based on established standards of professional conduct, and subject to independent review.*¹⁵⁰

In accordance with the law of Honduras, all members of the Office of the Prosecutor-General, including the Prosecutor-General, are subject to the professional duties set out in the Code of the Ethical Conduct for Public Servants.¹⁵¹ This Code, while not setting out the range of punishments for specific infractions, prescribes that sanctions are to be determined in accordance to the gravity of the infraction.

¹⁴⁵ Constitution of Honduras 1982, Articles 229 and 307; Law of the Office of Prosecutor-General, Article 19.

¹⁴⁶ UN Guidelines on the Role of Prosecutors, Guideline 8.

¹⁴⁷ UN Guidelines on the Role of Prosecutors, Guideline 8; International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(g).

¹⁴⁸ UN Guidelines on the Role of Prosecutors, Guideline 8.

¹⁴⁹ Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, UN Doc. A/HRC/20/19 (7 June 2012), para. 82-87, and 120-123.

¹⁵⁰ UN Guidelines on the Role of Prosecutors, Guideline 21-22; International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(f) and (g).

¹⁵¹ Code of the Ethical Conduct for the Public Servants, Decree No. 36-2007, 31 May 2007, Article 3.

The Prosecutor-General is responsible for the discipline of prosecutors under his/her authority.¹⁵²

E. Organization of Legal Education

International standards on the judiciary, legal profession, and prosecutors all affirm the need for these professionals to have appropriate training and qualifications.¹⁵³ They clarify that the requirement of requisite qualifications and training extends not only to knowledge of national law, but also training on ethics, and on international human rights protection.¹⁵⁴

Continuing education programmes and other means must be available to ensure that legal professionals are able to ensure their knowledge of national and international human rights law remain up-to-date.¹⁵⁵

Legal education must be open to all persons with requisite qualifications, without any discrimination on grounds of race, colour, sex, religion, political or other opinion, national, linguistic or social origin, property, income, birth or other status.¹⁵⁶ Governments, professional associations and education institutions should take special measures to provide opportunities and ensure needs-appropriate training for law students from groups whose needs for legal services are not consistently met, particularly including those who have distinct cultures, traditions or languages or have been the victims of past discrimination.¹⁵⁷

Legal training requirements for judges, lawyers and prosecutors alike include a programme of study, which is five-and-a-half years in length, and includes theoretical and practical programs. Program graduates obtain a degree in juridical science and the title of lawyer.

While the ICJ has not conducted detailed research into the quality and availability of legal training in Honduras, it has noted a media report in 2013 claimed that the number of students that joined law programs in Honduras had significantly decreased as a result of insecurity faced by legal professionals in their daily activities.¹⁵⁸

The Judicial School, a body of the Council of the Judiciary, is in charge of promoting continuous training and the evaluation of the judiciary and other legal professionals in Honduras.¹⁵⁹ Continuing education, following the award of a law degree, is not however mandatory. The ICJ notes that a judges' association has complained that continuing education/training courses are not organized by the Judicial School on a regular basis, and

¹⁵² Law of the Office of the Prosecutor General, Article 24(18).

¹⁵³ UN Basic Principles on the Independence of the Judiciary, Principle 10; UN Basic Principles on the Role of Lawyers, Principle 9; UN Guidelines on the Role of Prosecutors, Guideline 1.

¹⁵⁴ UN Basic Principles on the Role of Lawyers, Principle 9; UN Guidelines on the Role of Prosecutors, guideline 2(b); Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 40; Bangalore Principles of Judicial Conduct, Value 6: Competence and diligence, 6.4; UN Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/14/26 (9 April 2010), and Advance report on the global thematic study on human rights education and training of legal professionals, UN Doc. A/HRC/20/20 (2012), para. 112; International Bar Association (IBA), Standards for the Independence of the Legal Profession, Standards 2-4; International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 1.

¹⁵⁵ Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 12; Bangalore Principles of Judicial Conduct, Value 6: Competence and diligence, 6.3; Statute of the IberoAmerican Judge, Articles 27 and 28; UN Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/14/26 (9 April 2010), and Advance report on the global thematic study on human rights education and training of legal professionals, UN Doc. A/HRC/20/20 (2012), para. 112.

¹⁵⁶ Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), Article 77.

¹⁵⁷ UN Basic Principles on the Role of Lawyers, Principle 11.

¹⁵⁸ Saúl Vásquez in La Prensa, 'Un 65% ha bajado la matrícula en Derecho' (9 October 2013). <http://www.laprensa.hn/honduras/sanpedrosula/392094-98/un-65-ha-bajado-la-matricula-en-derecho> (last accessed 19 August 2014).

¹⁵⁹ Law of the Judicial Career, decree n. 953, 30 Jun 1980, articles 34-37. See also Judicial Power in Honduras, "The Law of the Council for the Judiciary and Judicial Career Service, Decree No. 219-2011". <http://www.poderjudicial.gob.hn/CJ/Documents/Presentacion%20Consejo%20de%20la%20Judicatura%20%282.9mb%29.pdf> (last accessed 19 August 2014).

that, when courses are available, not all judges and prosecutors appear to have access to them on an equal basis.¹⁶⁰

¹⁶⁰ Association of Judges for Democracy, Letter to the Council for the Judiciary and Judicial Career Service (23 September 2013), p. 4-5.
<http://www.poderjudicial.gob.hn/CJ/Documents/Planteamiento%20Consejo%20de%20la%20Judicatura%20Sept2013%20%28421kb%29.pdf> (last accessed 19 August 2014).