

Distr.: General
24 May 2013
Arabic
Original: English



مجلس حقوق الإنسان

الدورة الثالثة والعشرون

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير المقررة الخاصة المعنية باستقلال القضاة والمحامين، السيدة غابرييلا كناول

إضافة

البعثة إلى السلفادور ** *

موجز

اضطلعت المقررة الخاصة المعنية باستقلال القضاة والمحامين بزيارة رسمية إلى السلفادور بدعوة من الحكومة في الفترة من ١٩ إلى ٢٦ تشرين الثاني/نوفمبر ٢٠١٢. وكان الغرض من هذه البعثة النظر في التقدم الذي أحرزه البلد والتحديات التي واجهها في تعزيز استقلال القضاة، والمدعين العامين والمحامين. وقابلت المقررة الخاصة، أثناء زيارتها لسان سلفادور، وسانتا آنا، مجموعة كبيرة من كبار المسؤولين في الحكومة، المدعي المكلف بالدفاع عن حقوق الإنسان (أمين المظالم)، وقضاة وقضاة صلح من مستويات مختلفة في المحاكم، ومدعين عامين، ومحامين، وأكاديميين، ومنظمات غير حكومية دولية ومحلية ووكالات تابعة للأمم المتحدة.

* يُعمَّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيُعمَّم باللغة التي قُدِّمَ بها فقط.

** تأخر تقديمه.

وترحب المقررة الخاصة بالتقدم الذي أحرزته السلفادور منذ التوقيع في ١٩٩٢ على اتفاقات شابولتيك للسلام في تأمين استقلال السلطة القضائية، الذي يشكل شرطاً مسبقاً أساسياً لسيادة القانون. ويتضمن الدستور أحكاماً تفصيلية تتعلق باستقلال القضاة والمدعين العامين. كذلك يكفل التشريع الداخلي انفصال السلطة القضائية، من الناحية المؤسسية، عن فروع السلطة الأخرى، وهي مستقلة ذاتياً في تسيير عملها وفي تقرير المسائل الداخلية.

وبرغم التقدم المحرز، ما زال هناك عدد من التحديات التي تواجه على صعيد الضمان الكامل لاستقلال ونزاهة القضاة والمدعين العامين في الممارسة الفعلية.

وتبين الأزمة المؤسسية الأخيرة بين الدائرة الدستورية في محكمة العدل العليا والجمعية التشريعية مستوى التسييس الذي بلغته السلطة القضائية، وكيف أثر ذلك على دور الجهات الفاعلة الرئيسية في النظام القضائي في مكافحة الإفلات من العقاب وانتهاكات حقوق الإنسان.

والإجراء المتبع حالياً في تعيين قضاة المحكمة العليا، وغيرهم من القضاة وقضاة الصلح، والجهات الفاعلة الرئيسية في النظام القضائي، لا يوفر ضمانات كافية للقضاء على الضغوطات والتدخلات من جانب الأحزاب السياسية والجماعات الاقتصادية ولضمان اختيارهم بناءً على معايير نزيهة وموضوعية. كما أنه لا يؤمن الاستقلال المؤسسي للسلطة القضائية عن الفروع الأخرى، ولا سيما السلطة التشريعية. وانعدام الشفافية والتدقيق العام في عملية الانتقاء يبقى باستمرار على نظام يقوم على المحسوبية وخدمة المصالح السياسية الخاصة.

ولا يتماشى بشكل كامل النظام الحالي المتعلق بإجراءات التأديب أو الوقف عن العمل أو العزل مع بعض الأصول القانونية وإجراءات المحاكمة العادلة المنصوص عليها في المادة ١٤ من العهد الدولي الخاص بالحقوق المدنية والسياسية والمبادئ الأساسية المتعلقة باستقلال السلطة القضائية التي تنص على أنه لا يمكن عزل أو وقف القاضي عن العمل إلا لأسباب خطيرة تتم عن سوء التصرف أو عدم الكفاءة وبموجب إجراءات عادلة تكفل الموضوعية والحياد.

كذلك، فإن تشكيلة المجلس الوطنية للسلطة القضائية والإجراءات الحالية لانتقاء وتعيين أعضائه لا توفر ضمانات كافية لتمكين هذه المؤسسة من تمثيل مصالح السلطة القضائية تمثيلاً مناسباً أو حماية استقلالها عن الفروع الأخرى للسلطة.

ولا يتوفر للمحامي العام، أو المدعي العام أو أمين المظالم ما يكفي من الموارد البشرية والتقنية والمالية للوفاء بولايتهم الدستورية. والافتقار إلى التنسيق الكافي بين المدعين العامين والشرطة المدنية الوطنية ومحدودية القدرة التقنية للشرطة على التحقيق في

الجرائم وجمع الأدلة يترجم إلى معدلات إدانة منخفضة جداً، ويزيد لدى السكان الإحساس العام بوجود إفلات من العقاب.

ولا تملك المؤسسات التدريبية الحالية موارد بشرية وتقنية ومالية كافية لتوفير فرص ملائمة للتدريب، بما في ذلك التدريب المتواصل والمتخصص وغير ذلك من أشكال بناء القدرات لجميع العناصر الفاعلة في النظام القضائي (قضاة، ومدعون عامون، ومحامون عموميون ومحامون).

وتنهي المقررة الخاصة تقريرها بتوصيات تهدف إلى تعزيز النظام القضائي واستقلال القضاة، وقضاة الصلح، والمدعين العامين والمحامين.

Annex

[English and Spanish only]

Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, on her mission to El Salvador (19 to 26 November 2012)

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–3	5
II. Legal and institutional framework	4–23	5
A. International obligations	4–6	5
B. The justice system	7–17	6
C. National Council of the Judiciary	18–19	7
D. The Public Ministry	20–23	8
III. Challenges to the independence and impartiality of magistrates, judges and prosecutors	24–89	8
A. The institutional crisis between the Supreme Court of Justice and the Legislative Assembly	24–41	8
B. Procedure for the appointment of key actors in the justice system.....	42–60	11
C. Administration of the justice system	61–78	14
D. Prosecutors	79–86	17
E. Access to justice	87–89	18
IV. Lawyers	90–95	19
V. Capacity-building.....	96–99	20
VI. Conclusions.....	100–102	21
VII. Recommendations	103–133	21

I. Introduction

1. The Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, undertook an official visit to El Salvador from 19 to 26 November 2012. She examined the progress made by the country in implementing its obligations under human rights law to ensure the independence and impartiality of judges, magistrates and prosecutors and the free exercise of the legal profession by lawyers, as well as the challenges which prevent actors of the judicial system from discharging their functions efficiently, effectively, adequately and appropriately.

2. The Special Rapporteur visited San Salvador and Santa Ana. She met with a number of senior Government officials, including the Minister of Justice and Public Security; the President and members of the Legislative Assembly; the President and various magistrates of the Supreme Court of Justice, including justices of the Constitutional Chamber (Sala de lo Constitucional); magistrates and judges of different courts and tribunals; the president and counsellors of the National Council of the Judiciary (Consejo Nacional de la Judicatura); prosecutors from the Office of the Attorney General (Fiscalía General de la República); the Office of the Procurator-General (Procuraduría General de la República); the Procurator for the Defence of Human Rights (Procurador para la Defensa de los Derechos Humanos), who serves as the Ombudsman, and his staff; lawyers; representatives of professional associations of judges; bar associations; non-governmental organizations; academics; and United Nations agencies.

3. The Special Rapporteur would like to express her gratitude to the Government of El Salvador for its invitation and for the support provided to her throughout the visit. The standing invitation addressed to special procedures mandate holders in February 2010 and the openness shown by the Government before and during the mission demonstrate its commitment and willingness to cooperate with international human rights mechanisms in the solution of the challenges that the country faces in the field of administration of justice. She also wishes to thank the United Nations Development Programme in El Salvador and the Regional Office of the United Nations High Commissioner for Human Rights for Central America for their valuable cooperation and assistance.

II. Legal and institutional framework

A. International obligations

4. El Salvador is a party to eight core international human rights treaties, including the International Covenant on Civil and Political Rights. Pursuant to these treaties, El Salvador has undertaken to respect and to ensure to all individuals within its territory and subject to its jurisdiction all rights related to the proper administration of justice, including the principles of equality before the law, the right to an effective remedy, the right to liberty and security, the presumption of innocence, the right to a fair and public hearing without undue delay by a competent, independent and impartial tribunal established by law, the fundamental procedural guarantees of persons charged with a criminal offence, and the principle of legality.

5. Pursuant to the human rights treaties to which it is a party, El Salvador is also under an obligation to adopt all appropriate legislative, administrative, judicial and other measures to ensure the establishment of an independent and impartial judiciary and the proper administration of justice. The protection of human rights and fundamental freedoms requires a strong, fair and independent judiciary that is able and willing to uphold human

rights and hold anyone accountable for breaches of law. Without an independent and impartial justice system, the rule of law can be seriously impaired, and there can be no protection or redress for human rights violations, be they of civil, cultural, economic, political or social nature.

6. In accordance with article 144 of the Constitution, international treaties ratified by El Salvador constitute laws of the Republic, and can be directly applied in the domestic legal order. National legislation cannot modify or repeal what was agreed in a ratified international treaty. In case of conflicts, international treaties take precedence over national legislation.

B. The justice system

7. The Chapultepec Peace Accords of 1992 brought peace to El Salvador after more than a decade of civil war. They set the basis for a number of constitutional reforms aimed at achieving peace through the building of a democratic State firmly grounded on the respect of human rights and fundamental freedoms. The reform of the judiciary constituted an important part of the Peace Accords.

8. The political and legal system is based on the 1983 Constitution, amended in 1992 to reflect the agreement reached through the Peace Accords. This set the basis for the separation of powers and for the consolidation of the independence of the judiciary, which constitute essential prerequisites to the rule of law. Title II of the Constitution incorporates the human rights and fundamental freedoms of the person, including the rights relating to the administration of justice that are enshrined in the International Covenant on Civil and Political Rights.

9. The Constitution contains detailed provisions on the independence of the judiciary. It establishes the judicial career to ensure the functional independence of judges and magistrates. In order to enable the judiciary to properly perform its functions, the Constitution also provides that the judiciary shall receive an annual allocation of no less than 6 per cent of the current income of the State budget.

10. The structure and functioning of the judiciary are further delineated in secondary legislation. The Law on the Judiciary¹ regulates the functions and competences of the various courts that integrate the judicial system. The Law on the Judicial Career² contains specific provisions to ensure that judges and magistrates are enabled to decide matters before them impartially and without any restriction, pressure or interference, as well as to guarantee their security, adequate remuneration and conditions of service. It also regulates the promotion, assignment, transfer, suspension and removal of judges and magistrates.

11. The judicial system of El Salvador consists of the Supreme Court of Justice, the courts of appeal, the tribunals and the justices of the peace.

1. The Supreme Court of Justice

12. The Supreme Court of Justice consists of 15 justices distributed among four chambers: Constitutional, Criminal, Civil and Administrative. The Constitutional Chamber is the only one which is explicitly established by the Constitution, and is composed of five magistrates. The President of the Constitutional Chamber is also the President of the Supreme Court and the Judicial Branch (*Órgano Judicial*). The Civil and Criminal

¹ Legislative Decree No. 123 of 6 June 1984.

² Legislative Decree No. 536 of 12 July 1990.

Chambers consists of three magistrates each, while the Administrative Chamber is integrated by four magistrates.

13. According to the Constitution, the Supreme Court has the power to hear *amparo* proceedings; adjudicate on conflicts of jurisdiction among national tribunals and courts; grant permission to carry out decisions issued by foreign courts; ensure the prompt and complete administration of justice; and exercise the other functions entrusted to it by the Constitution or the law.

14. The Constitutional Chamber is competent to control the constitutionality of laws, decrees and regulations; hear individual petitions for the protection of constitutional rights (*amparo* and habeas corpus writs); adjudicate on any disputes between the Legislative and the Executive Branches; and decide cases of suspension or loss of the rights of citizenship, as well as of the corresponding rehabilitation.

2. Courts of appeal

15. Courts of appeal have jurisdiction over appeals from first-instance tribunals. They also adjudicate as first-instance courts on cases against the State, and decide other cases falling within their jurisdiction in accordance with the Constitution and the law. Each court of appeal consists of two magistrates. There are 27 courts of appeal in the country.

3. Tribunals

16. Tribunals (*juzgados*) have general jurisdiction to decide in first instance all disputes that do not fall within the jurisdiction of the justices of the peace, and to adjudicate in second instance upon specific cases provided for by the law. Each tribunal consists of a monocratic judge. There are 218 tribunals.

4. Justices of the peace

17. Justices of the peace (*juzgados de paz*) are monocratic judges who have jurisdiction over minor civil and commercial claims, as well as over minor criminal offences provided for by the law. There are 322 courts of the peace.

C. National Council of the Judiciary

18. According to the Constitution, the National Council of the Judiciary is an independent institution in charge of proposing candidates to serve as justices on the Supreme Court and magistrates and judges for the lower courts. The Council is also responsible for maintaining and updating the registry of lawyers operating in the country; cooperating with the Supreme Court in ensuring the prompt and effective administration of justice; collaborating with and facilitating the coordination of the different actors of the justice system; and organizing and operating the Judicial Training School (*Escuela de Capacitación Judicial*), whose purpose is to provide initial and continuing professional training to judges and other judicial officers.

19. The National Council of the Judiciary is composed of seven counsellors: three lawyers designated by the organization representing lawyers; an academic from the Faculty of Law and Social Sciences of the University of El Salvador; an academic from the law department of a private university; a lawyer designated by the Public Ministry; and a representative elected by magistrates and judges.

D. The Public Ministry

20. The Public Ministry (Ministerio Público) consists of three institutions which are independent from the three branches of government: the Attorney General of the Republic, the Procurator-General of the Republic and the Procurator for the Defence of Human Rights.

1. The Attorney General

21. The Attorney General is responsible for, inter alia, defending the interests of the State and society; initiating criminal proceedings and legal action in defence of the law and public interest; directing criminal investigations in collaboration with the National Civil Police; and promoting the prosecution and punishment of persons accused of crimes against national authorities.³

2. The Procurator-General

22. The Procurator-General is an independent institution charged with defending the family and the interests of children and persons unable to defend their interests autonomously; providing free legal assistance to persons who do not have sufficient means to pay for it in order to defend their fundamental liberties and labour rights; and exercising the other functions established by law.⁴

3. The Procurator for the Defence of Human Rights

23. The Procurator for the Defence of Human Rights (Ombudsman) is an independent national human rights institution established in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Ombudsman is mandated to, inter alia: promote the respect and protection of human rights; investigate complaints of human rights violations and assist victims; promote administrative or judicial remedies for the protection of human rights and measures it deems necessary to prevent human rights violations; and present its views on draft legislation that may affect the exercise of human rights.⁵

III. Challenges to the independence and impartiality of magistrates, judges and prosecutors

A. The institutional crisis between the Supreme Court of Justice and the Legislative Assembly

24. Judicial independence has a crucial role to play in upholding the rule of law, combating impunity and defending human rights and fundamental freedoms at all times. Its implementation requires the creation of an environment conducive to independent, impartial and fair decision-making that enables judges and magistrates to “decide matters

³ Law on the Attorney General of the Republic, Legislative Decree No. 1037 of 27 April 2006.

⁴ Law on the Procurator-General of the Republic, Legislative Decree No. 775 of 3 December 2008.

⁵ Law on the Procurator for the Defence of Human Rights, Legislative Decree No. 183 of 20 February 1992.

before them impartially, on the basis of 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” (principle 2, Basic Principles on the Independence of the Judiciary).

25. The recent institutional crisis between the Constitutional Chamber of the Supreme Court and the Legislative Assembly represents a vivid example of the serious interference to which the judiciary is exposed from other powers of the State.

26. The Special Rapporteur was informed that the crisis originated from a decision of the Constitutional Chamber on the electoral system of El Salvador.⁶ The Chamber declared the unconstitutionality of various provisions of the Electoral Code that did not allow individuals not affiliated to any political party to run for elections. Before the official notification of the decision, the Legislative Assembly modified the Constitution in an emergency session held on the same night the Constitutional Chamber adopted its decision, and established that an individual could run for a political position only if she or he is affiliated to a political party.

27. In June 2011, the Legislative Assembly adopted Legislative Decree No. 743, aimed at obstructing the Constitutional Chamber by requiring that all decisions on constitutionality be taken unanimously. Only after two months of persistent national and international protests was this decree revoked.

28. The tension between the Legislative Assembly and the Constitutional Chamber reached its peak in June 2012, when the Chamber declared that the appointments of Supreme Court magistrates and their alternates made in 2006 and 2012 were unconstitutional on account of the fact that the Assembly could proceed to the election of new Supreme Court magistrates only once for each legislative period (members of the Assembly are elected for a three-year period). The Chamber also declared unconstitutional the transfer of its president to another chamber of the Supreme Court, due to the fact that the president is elected for a period of nine years and has guaranteed tenure until the expiry of his term of office.⁷

29. The Legislative Assembly decided to challenge the legality of these decisions before the Central American Court of Justice (CACJ), established by the States parties to the Organization of Central American States to resolve disputes concerning the interpretation and application of the regional community law.⁸ On 21 June, the CACJ admitted the request of the Legislative Assembly, and issued an interim measure to suspend the effects of the decision of the Constitutional Chamber.

30. Four days later, the Constitutional Chamber declared the decision of the regional court unconstitutional, and ordered the Legislative Assembly to carry out its decision of 5 June 2012. In turn, the Legislative Assembly refused to receive the notification of this decision, claiming that it was for the plenary of the Supreme Court, and not for the Constitutional Chamber, to decide on the constitutionality of the decision of the CACJ. In a public statement, the President of the Republic affirmed that decisions of the Central American Court of Justice had to be complied with.

31. On 28 June, the Legislative Assembly adopted Legislative Decree No. 43 of 29 June 2012. The aim of this decree was to allow the magistrates elected in 2012 to take up their duties despite the decision of the Constitutional Chamber that declared their appointment

⁶ Decision 61-2009 of 29 July 2010.

⁷ Decisions 19-2012 and 23-2012 of 5 June 2012.

⁸ See article 12 of the Tegucigalpa Protocol to the Charter of the Organization of Central American States.

unconstitutional. It made this possible by authorizing any member of the Supreme Court to convoke a session of the plenary of the court without the president having to be present; the magistrates elected in April 2012 thus took up their duties on 1 July 2012. As a result, El Salvador ended up with two Supreme Courts: one composed of the magistrates whose elections had been declared unconstitutional by the Constitutional Chamber, and another consisting of the Constitutional Chamber integrated by alternates.⁹

32. On 15 August, the CACJ pronounced its decision.¹⁰ The Court (a) declared itself a supranational constitutional tribunal with full competence to resolve the conflict between the Legislative Assembly and the Supreme Court of Justice; (b) found admissible the claim lodged by the Legislative Assembly; and (c) declared inapplicable the decisions adopted by the Constitutional Chamber on 5 June 2012. This ruling sparked an outcry among various elements of academia and civil society.¹¹

33. On 24 July, the President of the Republic organized a private meeting at his residence with the leaders of the political parties to find a political solution for the institutional conflict between the Legislative Assembly and the Supreme Court. After a number of meetings behind closed doors, the President announced on 19 August that an agreement had been reached among the six political parties represented in the Legislative Assembly. On 21 August, the Assembly ratified this agreement.

34. The composition of the Constitutional Chamber remained virtually untouched. The justices elected in 2006 and 2012 were invited to take the oath and took up their duties on 22 August. One of the justices elected in 2012 was designated as the new president of the Constitutional Chamber.¹²

35. The Special Rapporteur acknowledges that this agreement played an instrumental role in solving the institutional crisis that paralysed the administration of justice for more than two months. However, she considers that in the absence of clearly defined rules and procedure for the selection and appointment of Supreme Court magistrates, the agreement reached at the presidential residence establishes a dangerous precedent that risks undermining further the independence of the judiciary from the other branches of power. The agreement also shows the high level of politicization in this appointment procedure.

36. The Special Rapporteur notes with concern that the refusal of the Legislative Assembly to comply with the sentence issued by the Constitutional Chamber on 5 June 2012 seriously undermined the independence of the judiciary and the principle of separation of powers.

37. The Special Rapporteur considers that it was not for the Legislative Assembly to assess whether the decisions adopted by the Constitutional Chamber were consistent with the mandate entrusted to it by article 183 of the Constitution. In this regard, the Basic Principles on the Independence of the Judiciary clearly affirm that the judiciary has jurisdiction over all issues of a judicial nature, as well as “exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law” (principle 3).

⁹ See Mirte Postema, “The Supreme Court crisis in El Salvador”, *Quarterly Americas*, 18 July 2012, available from www.americasquarterly.org/the-supreme-court-crisis-in-el-salvador.

¹⁰ Decision 132-09-20-06-2012 of 15 August 2012.

¹¹ See for example Fundación Salvadoreña para el Desarrollo Económico y Social (FUSADES), “La sentencia de la Corte Centroamericana de Justicia: Un fallo sin fundamentos”, *Boletín de Estudios Legales*, No. 141 (September 2012).

¹² AFP, “El Salvador: National Assembly solves constitutional crisis”, 23 August 2012.

38. During her mission, the Special Rapporteur heard testimonies about other serious pressures, threats and interferences with the independence of the judiciary, including: legal proceedings brought against the magistrates of the Constitutional Chamber alleging abuse of power; a threat to remove the magistrates of this Chamber in accordance with article 186, paragraph 2, of the Constitution; refusal of the Legislative Assembly to receive notification of the Court's decisions and to publish its sentences in the official *Gazette*; and the creation of a special commission within the Legislative Assembly to assess the legality of the elections of Supreme Court magistrates of 2009 (when four out of five magistrates of the Constitutional Chamber were elected).

39. One of the most disturbing events that occurred during the institutional crisis was the unprecedented decision of the Legislative Assembly to bring a case against the Constitutional Chamber before the Central American Court of Justice.¹³ The very decision to bring a case before the CACJ showed a profound disrespect for the authority of the Constitutional Chamber, which is the country's highest legal authority for the interpretation of the Constitution.

40. The Special Rapporteur has made efforts to monitor the independence and impartiality of international and regional courts and also has requested that their independence be respected and observed by States.

41. Existing international human rights standards, such as the Basic Principles on the Independence of the Judiciary, state that all governmental and other institutions have to respect and observe the independence of the judiciary, and establish that inappropriate or unwarranted interferences with the judicial process are inadmissible (principles 1, 2 and 4).

B. Procedure for the appointment of key actors in the justice system

42. The Special Rapporteur notes with concern that the current procedures for the selection and appointment of judges and magistrates, members of the National Council of the Judiciary and chiefs of the Public Ministry institutions do not provide sufficient guarantees to ensure their institutional independence, in particular from the legislative power.

43. Candidates for these positions must possess the qualifications listed in the Constitution and secondary legislation. The Special Rapporteur is of the view that most of these requirements are too broad or generic. Furthermore, neither the Constitution nor the law provide any guidance on how to assess some of the requirements, such as "well-known morality and competence", "high level of professional and academic experience" and "integrity" (*honorabilidad*). This means that in practice, candidates for the above-mentioned functions are currently selected solely on the basis of formal and overly general requirements that do not allow a proper assessment of the moral integrity, independence and professional qualifications of the candidate.

44. With the exception of magistrates and judges of lower courts and tribunals, candidates to the top positions of the justice system are elected by the Legislative Assembly with a qualified majority of at least two thirds of its members. The Special Rapporteur is concerned that the lack of appropriate selection criteria and procedures facilitates interference from political parties and economic groups in the selection process.

¹³ This situation caused the resignation of magistrate María Silvia Guillén, elected in 2006 to represent El Salvador in the CACJ.

45. The lack of transparency and public scrutiny in the selection process continues to perpetrate a system based on patronage and political favours. Pressure and interference from political parties and economic groups in the selection of magistrates and other actors of judicial institutions generate corruption and nepotism and hamper the institutional independence of the judiciary and other institutions of the justice system. The Special Rapporteur considers that the current methods for the selection should be reviewed to avoid any risk of appointments for improper motives.

1. Appointment of justices of the Supreme Court of Justice

46. Magistrates of the Supreme Court are elected for a period of nine years and may be re-elected. Their appointment consists of two distinct phases: the “pre-selection” and the selection. The pre-selection aims at preparing the list of candidates that the National Council of the Judiciary is required to present to the Legislative Assembly. Half of the candidates included in this list are designated by an organization representing lawyers (Federation of Lawyers’ Associations of El Salvador – FEDAES), and the other half by the Council. The “selection” is made by the Legislative Assembly, which designates five justices and five alternates every three years.

47. The Special Rapporteur acknowledges that the involvement of different entities in the selection and appointment of Supreme Court magistrates aims at ensuring the institutional independence of the judiciary. However, the current procedure does not offer sufficient guarantees to eliminate interferences from political parties in the election of those magistrates.

48. According to the internal regulation of the Legislative Assembly, the selection of candidates should be transparent and open to public scrutiny. In practice, however, political parties only proceed to an evaluation of the formal requirements of the candidates based on their curricula and, in some cases, short interviews behind closed doors. In many cases, members of the evaluation committee do not have sufficient legal knowledge or expertise to adequately assess the candidates. As a result, candidates proposed to the plenary of the Legislative Assembly are identified mainly on the basis of their actual or perceived political affiliation, rather than on their integrity, ability and appropriate qualifications and professional experience.

49. In previous reports, the Special Rapporteur has noted that there exists a variety of systems for the selection and appointment of judges worldwide (A/HRC/11/41, para. 24). One of these systems consists in the establishment of an independent authority charged with the selection of judges, which can be composed of judges only or be a judicial council with plural representation. Since the involvement of the legislature in judicial appointments inevitably risks politicizing the process, the Special Rapporteur considers that the power to select and appoint Supreme Court magistrates could be entrusted to an independent authority, such as the National Council of the Judiciary. Nevertheless, the current composition of the Council should be changed (see para. 62 below).

2. Appointment of judges and magistrates of courts of appeal, tribunals and justices of peace

50. Similar considerations apply to the selection and appointment of magistrates of courts of appeal, judges of first-instance tribunals and justices of the peace, who are selected by the Supreme Court from a list of candidates prepared by the National Council of the Judiciary. The selection criteria for these posts are defined in the Constitution. Such criteria only allow assessing the academic and professional achievements of the candidate, but not his or her independence and integrity. Furthermore, the lack of guidance in

secondary legislation on how to evaluate these requirements results in the conferring of a wide discretionary power to the Supreme Court.

3. Appointment of counsellors of the National Council of the Judiciary

51. The qualifications required to be elected as a counsellor are the same as those identified in the Constitution to become magistrate of the Supreme Court. In addition, counsellors designated by academic institutions must have taught at the university for at least five years before their election. The Special Rapporteur considers that the current criteria to select the counsellors are not sufficient to ensure that nominees possess the requirements of independence, integrity and competencies required for this position.

52. Counsellors are selected from the lists prepared by the different sectors represented in the Council (academia; judges and lawyers). The Special Rapporteur was informed that some candidates to the Council organize very expensive election campaigns which are allegedly sponsored by political parties or economic groups.

53. The current procedure to select and appoint counsellors presents the same risks as those identified for the appointment of justices of the Supreme Court. For example, the Special Rapporteur was informed that some private universities have been allegedly established for the sole purpose of presenting candidates to the Council (so-called “garage universities”).

54. In previous reports, the Special Rapporteur has noted that if the body is primarily composed of political representatives, there is always a risk that these “independent bodies” might become merely formal or legal rubber-stamping organs behind which the Government exerts its influence indirectly (A/HRC/11/41, para. 28).

55. Members of the Council are elected and dismissed by the Legislative Assembly with a qualified majority of at least two thirds of its members. The Special Rapporteur also considers that the selection of counsellors by the Legislative Assembly, which also retains the power to dismiss them, weakens the independence of the Council. In order to ensure that this body is apt to identify suitable candidates for the Supreme Court and lower courts in an objective, fair and independent manner, she considers that the judiciary and other parties directly linked to the system of administration of justice should also be involved in the selection and appointment of the counsellors.

4. Appointment of chiefs of Public Ministry institutions

56. The Attorney General, the Procurator-General, and the Procurator for the Defence of Human Rights are appointed by the Legislative Assembly for a period of three years, and may be re-elected. Candidates to the first two posts must possess the same requirements as candidates to the Supreme Court. The selection criteria for the post of Procurator for the Defence of Human Rights are set out in secondary legislation.¹⁴

57. With regard to the process of appointment, the Special Rapporteur considers that entrusting the power to appoint the chief of each of these organizations to the Legislative Assembly may hamper the independence of the candidates and, in turn, of the institutions they represent. In relation to the term of office, the Special Rapporteur is of the view that the limited duration of the mandate entrusted to the heads of each of these institutions may prevent them from developing and carrying out a coherent and uniform policy to strengthen their respective organization and support the achievement of its institutional goals.

¹⁴ See footnote 5 above.

5. Appointment of the new Attorney General

58. On 24 April 2012, just before the end of the legislature, the Legislative Assembly elected the new Attorney General for the period 2012-2015. However, as was the case for the election of the Supreme Court magistrates, on 10 July 2012 the Constitutional Chamber declared unconstitutional the election carried out by the Legislative Assembly, on account of the fact that the same legislature could not proceed to the election of a new Attorney General more than once. When the previous Attorney General left office on 17 September 2012, the post remained empty, and its functions were temporarily exercised by the Assistant Attorney General. In November 2012, the latter transferred the management of the Attorney General's Office to the Auditor-General due to health-related issues.

59. At the end of her visit, the Special Rapporteur expressed her concerns about the failure of the Legislative Assembly to find an agreement on the appointment of the new Attorney General, and warned that that situation risked triggering a new institutional crisis. She also stressed that the Attorney General plays a crucial role in guaranteeing legality, combating corruption and impunity and protecting human rights and fundamental freedoms, and called on the Legislative Assembly to proceed without further delay to the appointment of the new Attorney General.¹⁵

60. She is pleased to note that on 4 December 2012, the Legislative Assembly elected the new Attorney General. Such an agreement put an end to months of confrontation and mutual attacks between the major political forces represented in the Legislative Assembly. She is particularly pleased that the Legislative Assembly elected the new incumbent by unanimity.

C. Administration of the justice system

1. Composition of the National Council of the Judiciary

61. As an independent institution in charge of preparing the list of candidates to the Supreme Court and the lower courts, the Special Rapporteur considers that the National Council of the Judiciary has a crucial role to play in ensuring the institutional independence of the judiciary from the other branches of powers.

62. However, the Special Rapporteur notes with concern that the current composition of the Council, which includes only one representative of the judiciary among its seven counsellors, is not adequate to allow this institution to represent and defend adequately the independence of the judicial system. While a genuinely plural composition of this body is recommended, with judges, prosecutors, lawyers and academics represented in a balanced way, she considers that it is important to ensure that magistrates and judges constitute the majority of the body, so as to avoid any political or other external influence.

63. According to article 24 of the Law on the National Council of the Judiciary,¹⁶ the counsellor designated by judges and magistrates cannot be elected as president of the Council. In order to allow the Council to defend adequately the interests of the judiciary, the Special Rapporteur is of the view that the presidency of the Council should be exercised by a magistrate or judge.

¹⁵ OHCHR, "El Salvador: 'Judicial authorities' decisions must be complied with," says UN expert on independence of the judiciary", press statement of 27 November 2012. Available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12840&LangID=E.

¹⁶ Legislative Decree No. 536 of 27 January 1999.

2. Administrative functions of the Supreme Court of Justice

64. Besides its jurisdictional functions, the Supreme Court has a number of administrative functions, such as appointing, suspending and removing judges and magistrates of lower courts and tribunals; authorizing lawyers to exercise their profession; and suspending, removing and rehabilitating lawyers in cases provided for by the law. The Court also carries out administrative attributions in relation to the administration and functioning of the Institute of Legal Medicine and the transfer of detainees (*traslado de reos*).

65. The Special Rapporteur is concerned that the administrative functions currently entrusted to the Supreme Court may be detrimental to the exercise of its jurisdictional competences and the effective and efficient functioning of the entire judicial system. This may adversely affect the duration of court proceedings due to an inappropriate allocation of budgetary resources. In that sense, she learned that many cases are pending in the lower courts and hearings have to be postponed generally because defendants are absent due to the delay of their transfer. In this regard, the Special Rapporteur encourages the Supreme Court to conduct a comprehensive assessment of the functioning of the entire judicial system to identify challenges, gaps and opportunities to improve the administration of justices, and to assess which administrative functions could be transferred to other institutions.

66. In previous reports, the Special Rapporteur advocated that a fixed percentage of the gross domestic product be allocated to the judiciary to ensure its institutional independence from other branches of power (A/HRC/11/41, paras. 37 ff.). She considers that the allocation of 6 per cent of the current income of the State budget to the judiciary (see para. 9 above) represents a good practice in promoting the independent and autonomous functioning of the judiciary. Nevertheless, she is concerned about the management of the budget, which should be better organized and distributed in order to improve the conditions of service in the entire justice system and make it work more expeditiously, efficiently and effectively. Allegedly, according to information received, the financial resources are mostly concentrated in the Supreme Court, which creates a lack of support for the adequate functioning of the courts of appeal, tribunals and justices of the peace.

3. The judicial career

67. The judicial career is established in the Constitution and further regulated in the Law on the Judicial Career, which contains specific provisions on the selection, assignment, transfer, promotion, suspension and removal of judges and magistrates. The aim of the judicial career is to ensure that judges and magistrates are able to exercise their functions independently and impartially and enjoy adequate conditions of service, including long-term security of tenure and adequate remuneration.

68. The Supreme Court of Justice is responsible for the administration of the judicial career. It appoints, promotes, suspends and removes judges and magistrates, coroners, legal officers and employees of lower courts and tribunals. The National Council of the Judiciary manages and oversees the access to the judicial career, which consists of a competitive examination and, in some cases, an initial professional training at the Judicial Training School.

69. The Special Rapporteur was informed that there are four different categories for each instance of jurisdiction, and that the only difference among them is the salary, since the competences and workload are the same. She was also informed that promotions and transfers have been used on some occasions as a means to control judicial decisions and/or exercise reprisals. She observes that this represents a kind of internal interference in the

judicial system by the Supreme Court, which undermines the independence of judges and magistrates of the courts of appeal, tribunals and courts of peace.

70. The technical selection process is aimed only at ascertaining that the candidate meets the minimum requirements set out in the Constitution and secondary legislation for the position for which he or she is applying. The Special Rapporteur considers that the lack of specific selection criteria aimed at assessing the independence and integrity of the candidate and the lack of an appropriate competitive examination conducted at least partly in a written and anonymous manner confer a wide discretionary power on the National Council of the Judiciary, and may lead to the selection of candidates who do not possess the integrity, independence and ability required for the post.

71. The Special Rapporteur is also concerned that the system of promotion of judges and magistrates does not seem to be based on objective factors, such as ability, integrity and experience. She wishes to underscore that while adequate experience is an essential prerequisite for promotion, it should not be the only factor taken into account in such decisions. Promotion, like initial selection and appointment, should be merit-based, having regard to qualification, integrity, ability and efficiency (A/HRC/11/41, para. 72).

72. In order to strengthen the functional independence of judges and magistrates, the final decisions on promotions should preferably be taken by an independent body in charge of the selection of judges, and not by the Supreme Court.

4. Disciplinary proceedings

73. The Special Rapporteur notes with concern that the current regime for disciplinary measures against judges and magistrates is not fully in compliance with the provisions of the Basic Principles on the Independence of the Judiciary, which provide that individual judges can only be dismissed or suspended on serious grounds of misconduct or incompetence and in accordance with fair procedures ensuring objectivity and impartiality (principles 17-20).

74. Magistrates of the Supreme Court can be removed from their office only for specific causes previously established by the law. Decisions concerning their dismissal are adopted by the Legislative Assembly with a qualified majority of at least two thirds of its members. The Special Rapporteur notes with concern that existing legislation does not indicate expressly on which grounds these magistrates can be dismissed,¹⁷ nor does it establish any due process and fair trial guarantees, including an independent review of the decision of the Assembly. This legislative vacuum can lead to improper threats and interferences with the independence of the judiciary, as already pointed out above. In previous reports, the Special Rapporteur has stressed that in case of dismissal by political bodies, it is even more important that their decision be subject to judicial review (A/HRC/11/41, para. 61).

75. The disciplinary, suspension and removal proceedings against judges and magistrates of lower courts are regulated in the Law on the Judiciary. The Department of Judicial Investigation of the Supreme Court is the body responsible for the management and discipline of the judiciary.

76. As noted in previous reports, the Special Rapporteur considers that the law must give detailed guidance on the infractions by judges triggering disciplinary measures, including the gravity of the infraction which determines the kind of disciplinary measure to be applied in the case at hand (A/HRC/11/41, para. 57). She considers that some of the

¹⁷ Fundación para el Debido Proceso Legal, “Independencia y transparencia del poder judicial en El Salvador 2009-2010”, June 2010, p. 35.

infractions set out in the Law on the Judiciary, such as “threat or harm to the correct administration of justice” or “social scandal”, are not sufficiently defined by the law, and therefore risk undermining the independence of the judiciary.

77. It is worrisome that the disciplinary procedure regulated in chapter XI of the Law on the Judicial Career is not fully in compliance with some of the due process and fair trial guarantees set out in article 14 of the International Covenant on Civil and Political Rights, such as (a) the right to be promptly notified of the charges, (b) to have access to documents or other evidence, and (c) to be tried within a reasonable time. She further notes that decisions in disciplinary, suspension and removal proceedings are not subject to independent review, since they are considered and adjudicated by the Supreme Court itself.

78. Finally, the Special Rapporteur is concerned about allegations that in some cases judges and magistrates have been subject to disciplinary proceedings or removed from office because of errors in judicial decisions or because their decisions have been overturned on appeal or review by a higher judicial body. She would like to emphasize that the principle of irremovability should be adopted and respected as a fundamental guarantee of the real independence of the judicial career.

D. Prosecutors

79. The proper functioning of the Attorney General’s office is an important factor in ensuring the proper administration of justice and the fight against impunity. During her meetings with prosecutors, the Special Rapporteur became aware of a number of problems affecting the capacity of prosecutors to initiate legal proceedings in the protection of public interest, including the lack of adequate human, technical and financial resources and the role of public prosecutors in criminal proceedings, particularly in relation to the investigation of crimes and the initiation of criminal proceedings.

80. The Public Ministry receives an annual allocation of 2 per cent of the State’s budget, which has to be divided among the three institutions. The institutions do not own the premises where they are located, and this significantly affects the resources available for their functioning.

81. The lack of adequate human and financial resources for the Attorney General’s Office has an adverse impact on the capacity of prosecutors to initiate criminal proceedings. This results in an extremely low conviction rate, and heightens the general feeling of impunity among the population. For instance, the Special Rapporteur was informed that, despite the Supreme Court decision about the Amnesty Law of 1993, the Attorney General’s Office has not yet initiated any investigation in relation to the crimes against humanity that occurred during the civil war. The Attorney General’s Office receives an annual allocation of 0.1 per cent of the GDP. In 2012, the previous Attorney General requested a budget allocation of US\$ 73 million for 2013, but only received \$35 million. In November 2012, there were 745 prosecutors to deal with over 140,000 criminal cases.

82. Insufficient budgetary allocation also affects the remuneration and the general conditions of service of prosecutors, as well as their initial and continuing legal and professional training. A study carried out by a special commission established by the Attorney General to assess the functioning of the public prosecution services showed that,

in general terms, salaries of prosecutors are 30 per cent inferior to those received by judges and magistrates.¹⁸

83. According to the principle of “functional direction”, prosecutors supervise the National Civil Police in the investigation of crimes and collection of evidence. The Special Rapporteur is concerned that since the police operates under the authority of the Ministry of Justice and Public Security, this principle has at times been undermined when the police does not follow the prosecutors’ orders in a timely manner, thus creating a lack of accountability for criminal investigations.

84. The Special Rapporteur welcomes the creation of specialized investigation units focused on organized crime (homicide, extortion, drug trafficking, money laundering). These units are assigned one or more prosecutors, which facilitates a closer coordination between the prosecutor and the police. However, the lack of adequate coordination between prosecutors and the National Civil Police and the limited technical capacity of the police to investigate crimes and collect evidence continue to contribute to a general feeling of impunity and lack of confidence in the institutions among the population.

85. Regarding this coordination, the Special Rapporteur would like to highlight the Executive Technical Unit of the Justice Sector (Unidad Técnica Ejecutiva del Sector Justicia-UTE), a body created with the aim of improving the coordination of activities among the different justice institutions through the management and provision of technical and administrative support. She is of the view that the work of the Unit, which is an institutional space for improving such coordination, should be better leveraged.¹⁹

86. With regard to the collection of evidence, the Special Rapporteur is concerned that the National Civil Police tend to rely mainly on witnesses to provide evidence of crimes and neglect the collection of scientific evidence, mainly because the vast majority of police officers lack the technical skills to collect such evidence. This tendency also contributes to the extremely low conviction rate existing in the country, since in many cases witnesses decide against providing evidence in courts for fear of retaliation against themselves or their families.

E. Access to justice

87. The Office of the Procurator-General plays a vital role in ensuring access to justice for those who are unable to defend their interests autonomously and in providing free legal assistance for persons who do not have sufficient financial means to defend their fundamental liberties and labour rights in courts. The right of access to legal assistance is a fundamental element of the right to a fair trial recognized, inter alia, in article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights. The Special Rapporteur observes, however, that the annual budget of the Office of the Procurator-General – US\$ 19.4 million in 2012 – is insufficient to enable the Office to carry out its institutional role.

88. Similar considerations apply with regard to the Office of the Procurator for the Defence of Human Rights. The Special Rapporteur notes with satisfaction the efforts made by the Ombudsman to investigate complaints of human rights violations, provide assistance

¹⁸ Comisión Especial para una Evaluación Integral de la Fiscalía General de la República, *Diagnóstico integral y recomendaciones para el fortalecimiento de la Fiscalía General de la República* (San Salvador, 2001).

¹⁹ See the Organic Law on the Coordinating Commission of the Justice Sector and the Executive Technical Unit, Legislative Decree No. 639, 22 February 1996.

for victims and promote administrative or judicial remedies for the protection of human rights. Nevertheless, she considers that the annual budget of this institution, which amounted to US\$ 8.3 million in 2012, is also not adequate to allow the Ombudsman to discharge his or her functions.²⁰

89. The Special Rapporteur welcomes the adoption in November 2010 of the law on violence against women,²¹ which represents another important step to promote, without discrimination, access to justice for women who are victims of violence. In her previous thematic report on gender and the administration of justice, the Special Rapporteur stressed that preventing all forms of sexual and gender-based violence constitutes a prerequisite for overcoming impunity and guaranteeing women's equal access to courts and tribunals (A/HRC/17/30 and Corr.1, para. 34). In this regard, she would like to highlight the law's provisions on criminal proceedings, which are aimed at guaranteeing the fundamental rights of victims of violence during criminal investigation and trial, as well as the measures to promote the participation of women in the administration of justice.

IV. Lawyers

90. Lawyers constitute a fundamental pillar for maintaining the rule of law and ensuring the effective protection of human rights. Lawyers also play an essential role in the right to justice, in access to justice and, especially, in the effective exercise of the right to defence. There are some 24,000 lawyers exercising the legal profession in El Salvador.

91. According to the Constitution, the Supreme Court is the institution empowered to authorize lawyers to exercise the legal profession and suspend them for violation of their professional duties or behaviours that render them unfit to discharge their duties in cases provided for by the law.

92. The Special Rapporteur considers that the overall control exercised by the Supreme Court on lawyers may hinder the free exercise of the legal profession, and in turn, have an adverse effect on the effective access to justice. She is of the view that the legal profession itself is best placed to determine its rules of admission, and should therefore be responsible for administering examinations and granting certificates to legal practitioners, as well as for adopting a code of ethics for the legal profession. In her view, disciplinary proceedings against lawyers should be brought before an impartial disciplinary committee established by the legal profession, and should be subject to an independent judicial review.

93. Since the establishment of the mandate, the importance of an organized legal profession has constantly been emphasized (see for example A/64/181). The Basic Principles on the Role of Lawyers state that lawyers are entitled to form and join self-governing professional associations (principle 24). The aim of these organizations is twofold: safeguarding the professional interests of lawyers and protecting and strengthening the integrity and independence of the legal profession. It is the duty of State authorities to support the establishment and work of professional associations of lawyers without interfering in their activities.

²⁰ In May 2011, the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights granted "A"-status re-accreditation to the Ombudsman's office, but recommended that the institution be given adequate resources to "effectively fulfil its mandate". See the report and recommendations of the SCA, May 2011, pp. 12-13.

²¹ Ley Especial Integral para una Vida Libre de Violencia para las Mujeres, Legislative Decree No. 520 of 25 November 2010.

94. There is no single bar association responsible for the regulation of the legal profession. Lawyers are free to form and join professional associations, and there are many associations created for the defence of their interests. The Federation of Lawyers' Associations of El Salvador comprises eight lawyers' associations in the country. However, since many professional organizations of lawyers are not part of the Federation, the Special Rapporteur is concerned that this institution may not be in a position to promote and protect the professional interests of all lawyers.

95. She is particularly concerned about the role that the Federation plays during the pre-selection of candidates to the Supreme Court. According to information received, the selection of candidates is not always merit-based, having regard to qualification, integrity, ability and efficiency. Furthermore, it appears that candidates who are members of the Federation have an advantage over candidates from other associations.

V. Capacity-building

96. The Special Rapporteur wishes to underline the importance of quality legal education, legal and professional training, including continuing and specialized training, and other kinds of capacity-building for all the actors of the judicial system (judges, prosecutors, public defenders and lawyers). Various stakeholders have expressed concern about the fact that legal education remains poor in the country, especially at the university level, and highlighted the need for reform of the legal education system. They have also informed the Special Rapporteur that existing training institutions do not have sufficient human, technical and financial resources to provide adequate training opportunities for those involved in the administration of justice.

97. The Special Rapporteur notes with appreciation the introduction in 2001 of the Initial Programme for Judges (PFI), which had been established to provide initial professional training for candidates for judicial office. The two-year programme was organized and run by the Judicial Training School. She was informed that, despite its high quality, the programme had ceased to function.

98. Currently, in another training programme, each year 35 lawyers have access to the Judicial Training School through a competitive process. The Special Rapporteur is concerned that the limited financial resources available to the school have restricted training opportunities to a limited number of candidates for judicial office. She is also concerned about the lack of transparency in the selection of candidates. So far, none of the 105 trainees who have graduated from the Judicial Training School has had access to the judicial career upon completion of their training course.

99. Similar considerations apply to the Training School for Prosecutors (Escuela de Capacitación Fiscal), established in 2010 to provide initial training for candidates to the prosecutorial service and continuing and specialized training for prosecutors and administrative officers of the Attorney General's Office. The Special Rapporteur was informed that the School does not have its own budget, and relies almost entirely on technical cooperation from international organizations and institutions to carry out its training activities.

VI. Conclusions

100. **The Special Rapporteur would like to commend El Salvador for its efforts in building a democracy since the Chapultepec Peace Accords of 1992, which set the basis for the separation of powers and the independence of the judiciary, essential prerequisites to the rule of law.**

101. Although relevant reforms have been undertaken in the framework of the Peace Accords, the current reality presents several new challenges as regards strengthening the independence and impartiality of the judicial system in practice. One of these challenges is related to the need to respect and observe the independence of the judiciary. The institutional crisis between the Supreme Court of Justice and the Legislative Assembly is an example of how the judicial system has become politicized. This affects the role of the key actors of the judiciary in combating impunity and human rights violations.

102. Further reforms are necessary to eliminate any improper interference with the judiciary. Such reforms are essential to strengthen the proper functioning of the administration of justice system, the institutional and functional independence and impartiality of judges and prosecutors and the free exercise of the legal profession by lawyers.

VII. Recommendations

103. The Special Rapporteur wishes to make the following recommendations with a view to contributing to the development of an independent, impartial and effective system of administration of justice.

Judicial independence

104. All State institutions should respect and observe the independence of the judiciary. Interference and threats to the institutional independence of the judiciary should be assessed and addressed as a matter of urgency.

105. National authorities should comply with, and implement in good faith, the decisions of the Constitutional Chamber of the Supreme Court of Justice.

Supreme Court of Justice

106. The Supreme Court of Justice should direct its efforts to its judicial functions, thus refraining from taking care of administrative procedures that can be delegated or transferred to other institutions.

107. The Supreme Court should assess how its budget could be better managed to ensure that human and financial resources are duly allocated to the entire judicial system to improve the effectiveness and speedy functioning of its jurisdictional competence.

108. The Constitutional Chamber has the exclusive authority to decide whether an issue submitted for its decision is within its competence. State institutions should refrain from interpreting the decisions of the Constitutional Chamber with a view to ascertaining whether they were consistent with the mandate entrusted to it by the Constitution.

Procedure for the appointment of judges and magistrates

109. The appointment of judges and magistrates should follow objective criteria that are clearly defined in the rules and procedure of appointment. Such criteria should require that persons selected for judicial office be individuals of integrity and ability with appropriate training or qualifications in law.

110. The Legislative Assembly should consider reviewing the procedure for the selection and appointment of magistrates of the Supreme Court, in order to avoid any risk of appointments for improper motives.

111. Transparency and public scrutiny shall guide the selection process of magistrates of the Supreme Court of Justice through public hearings with citizens, non-governmental organizations and other interested parties to scrutinize the independence, competencies and integrity of the candidates.

112. The selection and appointment of judges and magistrates of lower courts should be transferred to an independent authority, such as the National Council of the Judiciary, and should be based on objective criteria in order to avoid improper interference.

National Council of the Judiciary

113. In order to strengthen the independence of the National Council of the Judiciary:

(a) Its composition should be reviewed, so as to ensure that the majority of members are judges and magistrates. The presidency of the Council should be exercised by a magistrate or judge;

(b) The procedure of appointment of counsellors should be reviewed so as to eliminate interferences from political parties and economic groups in the election of the counsellors. The criteria to select the counsellors should also be reviewed to ensure that candidates possess the qualifications, integrity, ability and efficiency required to perform their tasks;

(c) The judiciary and other parties directly linked with the justice system should be given a more prominent role with respect to selecting and appointing the counsellors. Public hearings of candidates should be held to guarantee the fairness, transparency and independence of the procedure.

114. The National Council of the Judiciary could assess the possibility of re-introducing the Initial Programme for Judges (PFI) training.

Judicial career

115. The security of tenure of judges and magistrates should be guaranteed through the adoption of all appropriate measures.

116. The selection of candidates for the positions of judges and magistrates must be based on merit alone and undertaken through competitive examinations conducted at least partly in a written and anonymous manner.

117. Objective criteria for designation, nomination, transfer and promotion of judges and magistrates, such as ability, productivity, integrity and experience, should be developed and implemented. The final decisions on promotions should be taken by an independent body in charge of the selection of judges.

Disciplinary proceedings

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

be established to allow for an independent review of the decisions in disciplinary proceedings.

119. The responsibility for disciplining judges and magistrates should lie with an independent body or mechanisms, such as the National Council of the Judiciary (reviewed in accordance with the recommendations above). The procedure before such a body must be in compliance with the due process and fair trial guarantees.

The Public Ministry

120. Adequate budgetary resources should be allocated to the Attorney General of the Republic, the Procurator-General of the Republic and the Procurator for the Defence of Human Rights (Ombudsman), so as to enable them to carry out their constitutional mandates.

121. The term of office of the chief of each of the three organizations should be extended to allow them to develop and carry out a coherent and uniform policy to strengthen the organization they lead and support the achievement of its institutional goals.

Prosecutors

122. Adequate financial resources should be provided to the Attorney General's Office to improve the conditions of service of prosecutors and their legal and professional training.

123. Appropriate measures should be taken to strengthen the coordination between prosecutors and the National Civil Police, as well as to improve the technical capacity of the police to investigate crimes and collect evidence to be provided in court proceedings.

124. The State should investigate all grave human rights violations that occurred during the civil war.

125. Training opportunities should be organized for both prosecutors and police officers on the collection of scientific evidence.

126. The possibility of creating a judicial investigative police under the direct authority of the Attorney General should be considered.

Women's access to justice

127. The State should redouble its efforts to develop gender-tailored procedures, policies and practices to promote equal access to justice and to fight impunity in cases relating to violence against women.

Lawyers

128. One autonomous professional organization should be established to represent the interests of lawyers, promote their continuing education and training and protect their professional integrity.

129. The administrative functions currently exercised by the Supreme Court with regard to the registration, suspension and rehabilitation of lawyers should be transferred to such independent professional organization.

130. A code of ethics, applicable to all lawyers in the country, should be adopted.

Capacity-building

131. El Salvador should adopt all appropriate measures, including through international assistance and technical cooperation, to provide adequate legal and professional training, including continuing and specialized training, and other kinds of capacity-building for all the actors of the judicial system (judges, prosecutors, public defenders and lawyers).

132. Training opportunities should be available for and accessible to all judges, magistrates, prosecutors and lawyers, regardless of the level at which they operate, and should include specific courses/modules on international human rights law and its application at the domestic level.

133. United Nations specialized agencies and programmes and the donor community should provide financial assistance and technical support to national training institutions in developing quality education curricula and professional training.
