

Human Rights Violations in Honduras

ALTERNATIVE REPORT SUBMITTED
TO THE UNITED NATIONS
HUMAN RIGHTS COMMITTEE

INCLUDING THE COMMITTEE'S CONCLUDING OBSERVATIONS

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Human Rights Violations in Honduras

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The World Organisation Against Torture (OMCT) coordinates the activities of the SOS-Torture Network, which is the world's largest coalition of non-governmental organisations fighting against torture and ill-treatment, arbitrary detention, extrajudicial executions, forced disappearances, and other serious human rights violations. OMCT's growing global network currently includes 282 local, national, and regional organisations in 92 countries spanning all regions of the world. An important aspect of OMCT's mandate is to respond to the advocacy and capacity-building needs of its network members, including the need to strengthen the participation of the non-governmental organisations in the work of the United Nations Treaty Bodies and to advocate for full implementation of human rights treaties. OMCT also ensures that children's and women's rights are fully integrated in the work of these bodies.

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Foreword

Writing alternative reports for the United Nations treaty bodies, in particular the Human Rights Committee (HRC) and the Committee Against Torture (CAT) is one of the main activities of the World Organisation Against Torture (OMCT) and is complementary to giving direct assistance to victims of torture and other cruel, inhuman or degrading treatment or punishment.

These alternative reports are a valuable source of information for the independent experts who monitor the implementation of the United Nations human rights instruments. With these reports, it is possible to see the situation as objectively as possible and to take a critical look at government action to eradicate torture and other cruel, inhuman or degrading treatment or punishment.

Under the aegis of the European Union and the Swiss Confederation, OMCT's "United Nations Treaty Bodies" programme, together with the "Rights of the Child" and "Violence against Women" programmes, coordinated the research and writing of this report on human rights violations, in particular the practice of torture and ill-treatment in Honduras, to be presented during the 88th session of the Human Rights Committee held from 16 October – 3 November 2006. During this session, the official report by the State of Honduras on the implementation of the rights inscribed in the International Covenant on Civil and Political Rights was reviewed by the Committee, with a particular emphasis on detention, children's rights and violence against women.

This report was jointly prepared by three Honduran non-governmental organisations (NGOs), active in the defence of human rights.¹ Representatives from these NGOs attended the HRC session, briefed the members of the Committee on the human rights situation in Honduras and presented the alternative report.

The present publication constitutes a primary tool to lobby on the national and international levels. The List of issues and the Concluding Observations and Recommendations of the Committee have been added to the end of this document.

1 CEM-H, COIPRODEN and CPTRT.

A follow-up mission in Honduras is planned to take place in the next semester in order to monitor the State's implementation of the Committee's Concluding Observations and to give training to facilitate this process.

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Presentation of the organisations and persons who elaborated the report

CPTRT

The Centre for the Prevention, Treatment and Rehabilitation of victims of Torture, CPTRT, was founded in 1995 through the sponsorship of RCT and DANIDA. The CPTRT's mission is to prevent torture, organised violence and cruel, inhuman and degrading treatment towards groups at risk: persons deprived of their liberty and their relatives, detainees, indigenous groups, persons in remote rural regions, and slum-dwellers.

COIPRODEN

The network of institutions for children's rights (*Red de Instituciones por los Derechos de la Niñez*), COIPRODEN, is a coalition of more than 29 civil society organisation. All of them work to protect and promote the rights of children in four departments in Honduras: Francisco Morazán, Comayagua, Tela, and Santa Bárbara. They came together in order to monitor the international commitments which the State of Honduras has undertaken regarding children's rights.

CEM-H

The Study Centre of Women (Centro de Estudios de la Mujer) - Honduras, CEM-H, is a civil, feminist and non-lucrative organisation that obtained its legal status in 1987. It was created to promote social, economic, cultural and political changes to eliminate all forms of discrimination and violence against women, to promote human rights and the equality of women in relation to citizenship and social and economic justice.

OMCT

The World Organisation Against Torture (OMCT), based in Geneva, coordinates the SOS-Torture network, the largest coalition of NGOs fight-

ting against torture, ill-treatment, arbitrary detention, extrajudicial executions and forced disappearance. Among other activities, OMCT facilitates the access of national network NGOs to the United Nations mechanisms for the protection of human rights.

Introduction to the Alternative Report

The State of Honduras ratified the International Covenant on Civil and Political Rights (henceforth “the Covenant”) in 1997. In accordance with Art. 40 of the Covenant, Honduras committed itself to submit periodic reports to the United Nations Human Rights Committee, the supervising organ for the implementation of the obligations undertaken by the States.

The State of Honduras presented its initial report to the Committee in 2005. The document was registered with the official signature of the United Nations, CCPR/C/HND/2005/1. The report was prepared by the State from November 2003 to the end of 2004. The Chancellor’s Office was in charge of elaborating this report although its preparation included the participation of other State institutions such as the Special Prosecutor for Human Rights and the National Commissioner for Human Rights (*Comisionado Nacional de Derechos Humanos*). There had been various calls by the State to encourage civil society participation, however the latter was scarce and made minimal impact on the final document of the report.

The presentation of the initial report constitutes a significant step forward in the fulfilment of the obligations undertaken by the State of Honduras before the international mechanisms for the protection of human rights. Despite this advance, the examination of the report has revealed important gaps.

From the perspective of these organisations, the fact that little attention has been paid to the living conditions and the enjoyment of rights provided by the Covenant is particularly alarming in relation to persons who are deprived of their liberty and are under State guardianship.

Thus, the present report will examine the situation of persons deprived of their liberty on account of having committed criminal offences and also minors at risk who are placed under State guardianship. Violations of the rights of women and children, in particular the right to life, will be analysed as well.

The present document intends to be a thematic study concerning Honduras’ observation of certain rights provided by the Covenant, in particular those relevant to persons deprived of their liberty. The purpose of the report is to give the Committee an illustration of the real situation inside prisons, where a tendency towards the deterioration of living conditions has

been observed, in violation of the rights of individuals living there. Further, the rights of vulnerable categories of individuals have been examined, including women, children and teenagers in the contexts of the family, the community and detention centres. The aim of the document is to contribute to the knowledge of this situation, to expose the State's initiatives in relation to the penitentiary system and to propose recommendations that improve respect for human rights of persons deprived of their liberty or who are under State guardianship.

In conformity with international human rights instruments and national legislation, making hygienic and safe spaces available for persons deprived of their liberty in order to effect their social rehabilitation, constitutes the basis for the creation of prisons. From our perspective, the realisation of this objective implies the guarantee of some basic rights such as life, personal integrity and the right against arbitrary deprivation of liberty.

The examination of the rights of individuals in detention, especially those guaranteed by articles 6, 7, 9, 10 and 14 of the Covenant, will be an important component of the analysis. Likewise, the respect of rights by the State of Honduras guaranteed under articles 3, 8, 23, 24 and 27 (specifically the right of women and children to non-discrimination and non-exploitation) will be analysed.

The present document results from four categories of sources:

- Bibliographic sources such as recent investigations about the penitentiary system;
- Primary sources directly provided by the General Office of Special Preventive Services of the Security Secretary (*Dirección General de Servicios Especiales Preventivos de la Secretaría de Seguridad*), DGSEP, the Prosecutor for Human Rights (*Fiscalía de Derechos Humanos*) and the National Office of the Coordination of Execution Judges (*Oficina Nacional de Coordinación de Jueces de Ejecución*), the Honduran Institute of Childhood and Family (*Instituto Hondureño de la Niñez y la Familia*) and journalistic sources;
- Interviews with key informants; and from
- Direct observations of the human rights bodies engaged in the development of the present report.

The organisations which have cooperated to elaborate and present this report wish to recognise the support and the information delivered by other organisations working in the human rights field and in relation to prisons, such as the Penitentiary Pastoral (*Pastoral Penitenciaria*), the Committee of Relatives of Disappeared Individuals of Honduras (*Comité de Familiares de desaparecidos de Honduras*) and the Reflection, Research and Communication Team of Jesus Company in Honduras (*Equipo de Reflexión, Investigación y Comunicación de la Compañía de Jesús en Honduras*).

1. General Context

1.1 Introduction of the Rule of Law in Honduras

The current Constitution of the Republic was promulgated in 1982. Since then, it has been through various reforms. The significance of this is diverse; the reforms considered as being most important are those relative to the role of the army² and the reform of the judiciary.³ The reforms were carried out through the adoption of reform decrees (which are established procedures) as well as through interpretative reform.⁴

The Constitution establishes that the Honduran government is “republican, democratic and representative”. It is a presidential government. Separation of powers is guaranteed as each one is carried out independently.⁵

- Legislative power is exercised by a unique chamber of representatives elected through direct suffrage (Art. 189, Constitution of Honduras (CH)).
- Executive power is exercised by the president and the vice-president who are elected (Art. 236 CH).
- Judicial power is exercised by the Supreme Court of Justice, Court of Appeal, and the Tribunals (Art. 303 CH).

The Constitution contains a large catalogue of Fundamental Rights and Public freedoms. All of them are based upon the fundamental tenet that the human being is the supreme unit of society and the State (Art. 59 CH). This specific catalogue is completed by:

- The so-called “open clause” that refers to any other right or guarantee proper to the “democratic form of governance” and “human dignity” (Art. 63 CH).

2 Decree 10/84, gazette 24.262, 9/3/1984, mainly, and Decree 189/86, October, gazette 25.087.

3 Modified by Decree 262/2000 and ratified by Decree 38/2001, published in gazette 29.489.

4 The National Congress has conferred upon itself the role of interpreting the Constitution under its authentic form in a contested reading of article 205 of the Constitution, referring to the interpretation of the law.

5 Art. 4 of the Constitution of the Republic of Honduras, hereafter, CH.

- Incorporation of basic international commitments into the legal system of Honduras – see below.

The Constitution of Honduras enshrines the principle of legality in procedures of public administration (Arts. 322 and 323 CH). This principle is strengthened by the obligation to attribute competence to public services in an explicit and restrictive manner (Art.321 CH). Any intervention that may go beyond these margins is void and involves the authors' responsibility (Art.321 CH).

CHILDREN'S RIGHTS

The general situation of children's rights in Honduras is conditioned by socio-economic factors that affect the fulfilment of civil and political rights. In general, we can observe progress towards the consolidation of democracy and relative economic stability, which allow for improvements in relation to education and health. Despite the realisation of formal democracy – promotion of elections, new institutions, constitutional reforms, etc. – the general living standards in Honduras are still precarious. As a result, civil and political rights are affected, as well as economic, social and cultural rights, particularly those belonging to women and children.

1.2 The Judiciary

General Aspects

The judiciary is exclusively in charge of “judging and executing the object of judgement” (Art. 303 CH). In order to correctly exercise its functions, the judiciary has administrative independence and is provided with sufficient resources (Art. 307 CH).

Basic legislative development of State power is conferred by the two following laws:

- Judicial Career's Law⁶ (*Ley de la Carrera Judicial*), according to principles of equality of opportunity and merit, this law establishes the conditions of access, continuation, promotion, disciplinary regime and sanctions in a career of judicial function.

- The Courts' Organisation and Function (*The Ley de Organización y atribución de los Tribunales* (LOAT))⁷: determines the criteria of complementarity between the different orders and courts.

Judicial power

The Supreme Court is the State's highest jurisdictional authority.⁸ It is conferred with activities characteristic of a Supreme Court and a Constitutional Court which is mandated to adjudicate cases interpreting the constitutionality of acts and laws. It is also the organ that manages the judiciary.

Its main jurisdictional functions include:

- Examining cases on appeal from the first instance in the Court of Appeal (Art. 313 CH)
- Hearing cases initiated against senior civil servants when the National Congress has declared that proceedings should be undertaken against them (Art. 312.2 CH)
- Adjudicating appeal cases on issues of legal protection, reform and constitutionality of laws in compliance with the law (Arts. 313.5 & 316 CH).
- Settling conflicts regarding State powers in its Constitutional Court (Art. 316 CH).

Its main non-judicial functions are to :

- Nominate and dismiss judges and magistrates (Arts. 313.1 & 313.8 CH).
- Develop the country's judicial scheme (Arts 313.11 & 313.12 CH).
- Establish the annual judiciary budget (Art. 313.10 CH).

6 Judicial Career Law (*Ley de la Carrera Judicial*), Decree 953-1980, hereafter, LCJ.

7 Courts' Organisation and Functions Law (*Ley de organización y atribuciones de los tribunales*), Decree 76/1906, LOAT hereafter.

8 Art. 308.

Judicial Independence

Judges and magistrates are independent to State powers and are also independent to one another within the judiciary. This follows a horizontal structure; there is no hierarchical mandate between judges and magistrates but only differences in fields and ranks. The impartiality of judges and magistrates is guaranteed by a series of measures:

- Division of the courts' competences, provided by the law. It is established by the LOAT.
- Legal reserve for the establishment of causes of dismissal, transfer, demotion and retirement (Art. 317 CH).
- Measures designed to ensure that a distance is kept between the judicial organ and the object and parties of cases (Art. 303 CH, under the heading XII of the LOAT). Article 2 of the Code of Ethics for Court Officers (*Código de ética para funcionarios judiciales*) sets out a guideline of correct behaviour for judges.⁹
- Professional obligations particular to judicial functions of judges and magistrates (Art. 319 CH & Art. 108 LOAT).
- The clause which prohibits judges from sitting on the same case in different instances (Art. 303 CH & Art. 7 LOAT).

Judges and magistrates are legally bound to exercise their functions independently. In the case where this principle is not be adhered to, there are criminal sanctions. Interference with the independence of a judge is defined as the “exercise of influences towards a certain end in the cases heard or to be heard” (Art.54 h LCJ). It is a series of behaviour that tend to externally interfere with judicial activity and with the judges' and magistrates' own behaviour, contrary to the principles specified in chapters 9 and 10 of Book II of the Criminal Code.¹⁰ Judges and magistrates are obliged to inform the Supreme Court of any pressures exerted on them¹¹.

9 Code of Ethics for court officers, Agreement 558 of the Supreme Court of Justice. Hereafter, CEFJ.

10 Honduran Criminal Code, Decree 144/83. Hereafter, CP.

11 Procedural Criminal Code, Decree 9-99- 3. Hereafter, CPP, Art. 7.

1.3 CONADEH or Ombudsman

The National Commissioner of Human Rights (*Comisionado Nacional de los Derechos Humanos*) was created in 1995.¹² It was established as a result of constitutional reform¹³ which gave rise to the concept of “guaranteeing the rights and freedoms recognised by the Constitution” (Art. 59 CH).

The structure of the institution was established by the Organic Law on the National Commissioner of Human Rights (*Ley Orgánica del Comisionado de Derechos Humanos*)¹⁴ and development regulations.¹⁵

The Commissioner is an independent institution with a “functional, administrative, technical and conditional” autonomy (Art. 8 LCONADEH and Art. 3 RCONADEH).

The Commissioner is assigned the following functions under Article 9 of its Constitutive Law:

- To monitor the observance of human rights in public administration procedures.
- To watch over public sector intervention so as to guarantee the principle of legality, paying special attention to arbitrary, defective, negligent and abusive acts of regulations.
- To generally carry out human rights education and promotion.
- To participate in the coordination of human rights policies with public administration, the international actors and civil society.

12 An antecedent of an executive nature has operated since 1992, the Executive Office of the Human Rights National Commissioner (Comisionado Nacional de Derechos Humanos). Human Rights National Commissioner (Comisionado Nacional de Derechos Humanos), Annual Report 2002, p.1. Accessed 17/05/06 at <http://www.conadeh.hn/cd%20Informe%20Anual%202002/presentacion.htm>

13 Decree of ratification 2-95, 07/02/95.

14 Law of the National Commissioner on Human Rights (Ley del comisionado Nacional de Derechos Humanos), Decree 153 – 95. hereafter, LCONADEH.

15 Executive agreement 142-96. hereafter, RCONADEH.

The Commissioner has national jurisdiction. In principle, any procedure of the public sector is subject to its supervision. This includes:

- Public administration procedures: any activity of State organs, at any territorial level, including independent institutions (Art. 2 RCONADEH).
- Acts of private individuals exploiting concessions, public services or practice of a public function (Art.16 LCONDEH and Art. 3 RCONADEH)

In the practice of its functions, the Commissioner and his/her assistants will have the competence to:

- Address any authority or official member so as to request information (Art. 6 LCONADEH), including access to confidential documents (Art. 35 LCONADEH). This faculty is strengthened by the obligation of officials to collaborate in its investigations. Obstruction is considered an offence of non-compliance (Art. Art. 39 LCONADEH) classified in the criminal code (Art. 346. CP) with has a penalty of three months to one year imprisonment.
- Gain access to all civil and military facilities, including detention and imprisonment centres (Art. 7 LCONADEH).

The Commissioner is mandated to carry out ex officio investigations into human rights violations initiated upon its own will or upon the request of one of the parties (Art. 16 LCONADEH). Requests may come from individuals as well as from corporations (Art. 23 LCONADEH), or from their legal representatives.

The Commissioner's power is not of an executive nature and it cannot modify the competence of the public sector or judicial resolutions (Art. 42 LCONDEH). However, the Commissioner is able to make recommendations for the adoption of new measures which aim to revise administrative practices.

The Commissioner cannot initiate criminal prosecution, as it is obliged to communicate any illicit conduct to the public prosecutor (ministerio fiscal). It would not be able to examine the corresponding complaints and emit a judgment (Art. 26 LCONADEH). In these cases, the Commissioner will submit a report to the accused and to the complainant (Art. Policy CONADEH). The Commissioner does not provide systematic statistics in

the use of this tool whose practical reach is limited.

The investigations of the Commissioner do not block nor suspend the exercise of administrative or judicial functions (Art. 18 CONADEH).

In order to become Commissioner, the head of the institution must hold certain professional qualifications (Art.5 LCONADEH) and be elected through simple majority. The mandate of the Commissioner is a six-year term which is renewable (Art. 4 LCONADEH).

The Commissioner benefits from immunity in the practice of his duties, which also covers his/her assistants (Art. 10 LCONADEH).

Termination of the mandate of the Commissioner is legally pre-established: expiry of the mandate, resignation, death, permanent incapacity, or “gross negligence in the fulfilment of his/her duties” (Art. 11 LCONADEH). The procedures that determine “gross negligence” or incapacity have not yet been defined. Though this clause has not yet been invoked, this ambiguous formula represents a threat to the institution as it can be used to bring about arbitrary dismissal.

The Commissioner has taken important steps towards institutional strengthening through the enlargement of its territorial base and the improvement of its internal resources. As a result, there are 15 departmental offices of the CONADEH and personnel of the Commissioner regularly benefit from internal training. According to the annual reports, the latest priorities have been to examine legislation on children and adolescents, freedom of information, transparency and electoral legislation¹⁶.

16 Report CONADEH 2005, institutional administration, p. 83.

1.4 Sectorial Institutions

SECTORIAL INSTITUTIONS RELATING TO CHILDREN

Following the ratification in 1990 of the Convention on the Rights of the Child, new national legislation concerning children's rights was adopted, the Code of Childhood and Adolescence (*Código de la Niñez y la Adolescencia*)¹⁷, and institutional restructuring was carried out in relation to the public bodies in charge of watching over children's rights. This allowed for the transformation of the National Board of Social Welfare (*Junta Nacional de Bienestar Social*) (JNBS) into what is today the Honduran Institute of Childhood and Family (*Instituto Hondureño de la Niñez y la Familia* – IHNFA).

The IHNFA¹⁸ is a self-governing body of social development whose primary goal is the integral protection of childhood and family. It assumes the responsibility of coordinating the public and private sectors for the promotion, execution and inspection of the main policies relevant to childhood protection and conservation. In compliance with this role, the IHNFA is the competent instance for the tutelage of offenders or socially unstable minors, which is conducted by children's judges. The institution holds two programmes aimed at this specific population:

1. The “Family Welfare Programme” (*Programa De Bienestar Familiar*), which along with other services, takes care of children under 6 years old in daily care centres.
2. The “Re-education and Social Rehabilitation Programme” (*Programa De Reeducción y Reinserción Social*) whose objective is the re-education and rehabilitation of teenagers in conflict with the penal law through two sub-programmes:
 - Alternative measures to the deprivation of liberty.
 - The Programme of measures for the deprivation of liberty (Programa de medidas de privación de la libertad), which has at

17 Decree No. 73-96 5th September 1996.

18 Created by means of Decree No. 199-97 National Congress.

its disposal four internment centres, three of those for boys and one for girls, which have a maximum capacity of 435 inmates altogether. Amongst these centres only one can be defined as an open centre (Jalteva).

SECTORIAL INSTITUTION FOR WOMEN

The National Women Institute (Instituto Nacional de la Mujer – INAM –) was born in 1998 by Decree no. 232-98. It aims to ensure the rights of women and girls, to promote the economic independence of women in order to eradicate poverty, and to promote equal opportunities for women and girls in every domain of civic life.

For more details about programmes on women's rights, see Section II (Articles 3, 23, 25 and 26 of the ICCPR).

1.5 Integration of international human rights law into national law

The Honduran Constitution has adopted a monistic system of integration of international human rights instruments: that is, those instruments that are validly signed and ratified are integrated into national legislation as soon as ratification comes into effect (Art. 16 CH). The validity of ratification is subject to constitutionally prescribed processes.

International law which is validly incorporated into national law occupies a supra-legal position, as stipulated by article 7 of the General Law of Public Administrations (*Ley General de las Administraciones Públicas*). Accordingly, international law can be directly invoked and applied by domestic courts. Two recent examples of this have occurred in relation to prison issues. Thus, the Supreme Court of Justice granted collective rights, inserted by the Public Ministry (*Ministerio Público*), to the inmates of the Marco Aurelio Soto National Penitentiary and the San Pedro Sula Criminal Centre, on the basis of certain articles of the ICCPR, the Inter-American Convention on Human Rights and other basic standards in penitentiary material, such as

the Standard Minimum Rules of the United Nations for the treatment of detainees.¹⁹

Following complaints by inmates, judges who adjudicate prison matters have made reference in their decisions to international human rights law and basic international standards on the subject, as sources of law.

LEGISLATION RELATIVE TO CHILDREN'S RIGHTS

As mentioned in its “Third periodic report to the Committee on the Rights of the Child”²⁰, the Honduran State has strived to harmonise national legislation with the Convention’s provisions. Nevertheless, it is necessary to recognize that the national normative framework in regards to childhood is contradictory and many laws issued in recent years demonstrate the existence of problems in the exercise of these conflicting laws. This is particularly evident when examining the laws issued between 1998 and 2004. Although they generally show that progresses have been made in regards to the protection of childhood, these laws also contradict the rights recognized in the Convention. Indeed, though the Convention on the Rights of the Child, the Constitution and other laws in force are the legal pillars and axes on which children’s rights are based, and in spite of these texts which clearly spell out the law, it has proven difficult for the different public bodies to carry out their duties in respect of children.

LEGISLATION RELATIVE TO WOMEN’S RIGHTS

See section II (Articles 3, 23, 25 & 26 of the ICCPR)

- 19 Collective Habeas Corpus in favour of inmates of the Penitenciaría Nacional submitted by the Public Ministry (Ministerio público) and its resolution in the constitutional tribunal of the Supreme Court of Justice, Resolution sixth of January 2006; Collective Habeas Corpus in favour of inmates of the Centro Penal de San Pedro Sula submitted by the Public Ministry (Ministerio público), Resolution fourteenth of February 2006.
- 20 The report was socialized with the Civil Society in November 2005, although it has not yet been presented to the Committee in Geneva it is part of the public sphere.

2. Articles 3, 23, 25 & 26 ICCPR: Gender equality – Protection of women’s rights

2.1 Status of women in Honduras

The nineties marked a significant advance towards the recognition and integration of gender issue on the international plane. During this period, the World Conference on Human Rights (Vienna 1993), the International Conference on Population and Development (Cairo 1994), the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Pará 1994), the World Summit for Social Development (Copenhagen 1995), and the Fourth World Conference on Women (Beijing 1995) all took place and became milestones for the advancement of women’s rights.

The international movement for the advancement of women’s rights in the nineties also had its impact in Honduras, resulting in reforms to its national legal framework. Such reforms include the 1997 *Law Against Domestic Violence (Ley Contra la Violencia Doméstica)* and its reforms of 2004, the *Law on the Equality of Opportunity for Women (Ley de Igualdad de Oportunidades para la Mujeres)* of 28 of April 2000, the *National Policy on Women (Política Nacional de la Mujer)* of 2002, the adoption of the *Law of Regional Councils for Families (Ley de Consejerías de Familia)* (1993); the *Sexual and Reproductive Health Policy (la Política de Salud Sexual y Reproductiva)* (1997), the *Special Prosecutor for Women (Fiscalía Especial de la Mujer)* (1997), the creation of the *National Women’s Institute (Instituto Nacional de la Mujer-INAM)* in 2000, and the reforms of the Electoral Law in 2004 that established a minimum quota of 30% for women’s political participation and the obligation for political parties to apply the policy of equality of opportunity within their parties.

Another striking phenomenon is that having fought for the creation of these institutions for the defence of women’s rights, it is not recognised that women’s or feminists’ movement triggered their creation. The feminists’ claims have been thus expropriated and their contents emptied out and the State is reluctant to give resources to these organisations who survive thanks to international cooperation funds. The competition for resources weakens women’s organisations, and, as a result, the

claims for which they have fought for so long and that were expected to protect women and strengthen their movement have instead weakened and divided them.

Despite progress made in public policies, there is still little connection to the **improvement of the quality of life**, measured in economic factors. Thus, women are still discriminated against and public policies related to sexual and reproductive rights are loaded religious fundamentalism.

Along with the economic, political and social transformations brought with the neo-liberal globalisation of Central America, some changes have occurred that have changed gender relationships, and one can notice how the country's mass of skilled workers has been feminised. The establishment of assembly companies in Honduras and of international agribusiness has led to the increase of the number of economically active women, representing more than half of the labour force in new economic sectors.

Today, State powers and especially the legislative branch have agreed that certain funds coming from the relief of external debt should be used to confront poverty, and should be managed by Municipal Corporations (*Corporaciones Municipales*). This decision leads to the fortification of the procedures of social citizenship auditing, in order for women to maintain control and demand transparency of disposable resources to face poverty.

On the other hand, it is essential that women's collective spaces be strengthened, as well as agreement and alliance actions that allow the implementation of political and technical strategies and mechanisms to stimulate permanent procedures of social auditing with the civic participation of social actors involved at both municipal and national levels.

However, in relation to **political participation**, despite the Law of Equality of Opportunity for Women (*Ley de Igualdad de Oportunidades para la Mujer*) that establishes a 30% quota of women in the different functions of popular elections, women represent only 16% of Municipal Corporations. Considering that the exclusion of women in high-level functions is a persisting historical phenomenon, the possibilities of implementing public policies aiming to improve women's standards of living and to reduce gender inequalities are limited.

2.2 Women with AIDS

In Honduras, amongst the 63,000 people living with HIV, by the end of 2003, 48,000 were adults and 33,000 women aged between 15 and 49. Since 1985, the year in which the first cases of AIDS appeared, until 2005, the country records a total of 17,223 cases of AIDS, and 4,143 asymptomatic carriers giving a total of 22,366 people who are HIV positive. Within this total, 10,027 are men, representing 58.2%, and 7,196 are women, which is equivalent to 41.8%. These figures show that men and women are gradually coming to the same level of infection.²¹ The increase in HIV/AIDS victims amongst women has produced interest and recognition from the international community of the high social and human cost which vulnerability caused by inequalities implies.

Persons most largely affected are aged between 20 and 49, representing 81.6% of total cases of women carrying AIDS. Despite a lack of figures specific to age and sex criteria, the rise of the number of HIV/AIDS cases of women and the concentration of cases in this age group, demonstrates that HIV/AIDS affect women in their reproductive age, and as a result many children end up in orphanages and are denied the right to enjoy a better quality of life.

The transmission of the virus is largely effected through heterosexual relations, it corresponds to 84.8% of cases. In this type of sexual practice, women of all ages and social classes are disadvantaged, owing to the domination of men over women in regards to one's body and sexuality. The expressions of human sexuality are multiple and complex, and the approach to gender and body is social, cultural and political. Sexual practice is also strategic as men use it to exercise their power on reproductive life and upon sexuality, from which women's oppression largely derives.

With respect to the increase of the disease on the national territory, during the 21 years since it first appeared in the country, it has rapidly spread at national level, becoming an epidemic that has gained a significant presence in urban centres where population is concentrated and

21 Public Health Ministry (*Ministerio de Salud Pública*). Clinical situation of HIV/AIDS infection, period 1985, November 2005.

makes up a large labour force. This is the case as urban centres represent geographic spaces where important economic, geopolitical, hospitality and educational activities take place. Amongst the cities with the most cases are: San Pedro Sula (4,925 cases, equivalent to 28.6%) and Tegucigalpa (3,406 cases, or 19.8%); in these two cities, 48% of total cases are concentrated.

These cities are characterised by industrial and commercial activities. In some of them assembly and agribusiness companies are located which necessitate a strong labour force, which is the reason why they form urban centres of concentrated population, with a feminine majority. Population is concentrated here without the State and municipal authorities taking action to develop necessary social infrastructure to respond to heightened population growth. The lack of response to the population's needs has generated and intensified various social and economic problems, amongst which are poverty, overcrowding, denial of individual and collective needs, civic insecurity and delinquency.

The mortality rate of women in their reproductive age increased by 1.50/1000 in 1997, in comparison to 1.43 in 1990, mainly due to the impact of HIV/AIDS and the rise of violence.²²

22 Mirta Kennedy and Eva Cristina Urbina. *Derechos Sexuales y Reproductivos en Honduras*, April 2004, OWA Project.

3. Article 6 ICCPR: Right to life

In a binding case against the State of Honduras, the Inter-American Court of Human Rights affirmed that as a consequence of the limitation of faculties derived from the deprivation of liberty, the State assumes a position of guarantor with respect to persons deprived of liberty.²³ The main consequences that follow are:

- the shifting of the burden of proof;²⁴ and
- the State has the obligation to plan adequate measures for emergency situations²⁵.

The Death Penalty

The Honduran system does not implement the death penalty. Under the terms of the ICHR, ratified by Honduras, it would be contrary to the right to life (Art. 4.2 CIDH).

The State has made a satisfactory description of the legal framework of the protection of the right to life before the Committee. Nonetheless, it ignores the growing crisis of the penitentiary system, which is illustrated by increasing violence inside detention centres

3.1 Intra-penitentiary violence

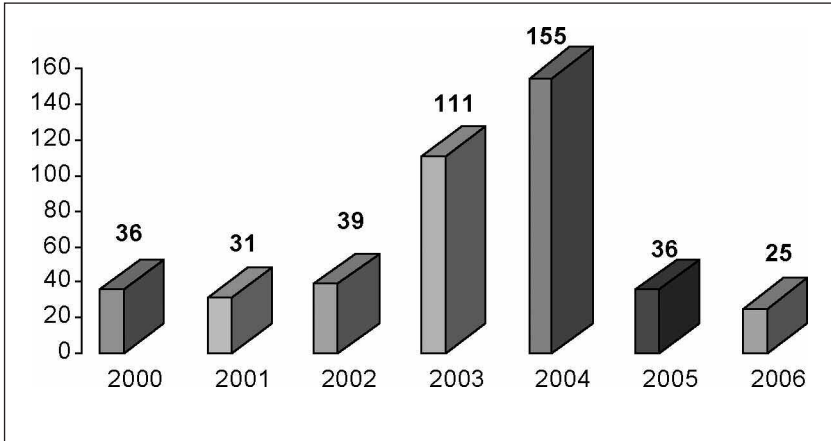
According to data provided by the DGSEP, during the period from 2000 to 2006, 425 cases of deaths in custody have been recorded.

23 Inter-American Court of Human Rights, Hilaire, Constantine and Benjamín and others v. Trinidad and Tobago. par. 165. Similarly, see Cantoral Benavides, 18 August 2000, par. 87.

24 Inter-American Court of Human Rights, provisional measures, Urso Blanco, 18 June 2002, clause 8.

25 Inter-American Court of Human Rights, Instituto de reeducación del menor v. Paraguay, clause 178.

Death of individuals deprived of liberty. Period 2000 - 2006



Source: DGSEP Record / CPTRT Monitoring

This data refers to all causes of death. For a more precise examination, we have taken into account two major violent events: death resulting from serious altercations and daily incidents.

3.2 Collective incidents of violence

One characteristic of intra-penitentiary violence in Honduras is the multiple occurrences of violent riots since the end of the nineties. A list of them has been recovered in a recent study.

Rating in relation to the gravity of the events that have taken place, the massacres of the Granja Penal de “El Porvenir” of Ceiba and of the detention centre of San Pedro Sula stand out as they constitute the most violent incidents of the contemporary penitentiary history of the country.

Both massacres have some elements in common:

- Victims of the massacres were young people linked to gangs. In general, these young people remain segregated in detention centres and suffer

Serious riot incidents in Honduran prisons

DETENTION CENTRE	DATE	NUMBER OF VICTIMS	EXPLANATION
Penitenciaría Nacional	01/07/03	1 dead and 11 injured	Police operation
San Pedro Sula	12/11/99 31 injured	11 dead and Sharp instruments	Quarrel between Maras.
Tela	05/03/03	2 dead and 9 injured	Quarrel between Maras. Firearms
San Pedro Sula	21/03/03	7 dead	Asphyxiated in their own cells
Granja Penal del Porvenir, Ceiba	5/04/2003	69 dead and 39 injured	Quarrel between security guards and Maras. Police Intervention.
San Pedro Sula	Mayo 2004	107 dead	Fire
Centro Penal de Choluteca	03/05/02	At last 9 dead	Police

Source: Joaquín Mejía, Lucas Valderas, Amado Mancía and Héctor Flores, "Brief diagnosis of the penitentiary system of Honduras in the light of human rights", Tegucigalpa: Guaymurás, ERIC, 2005, pp 50-51.

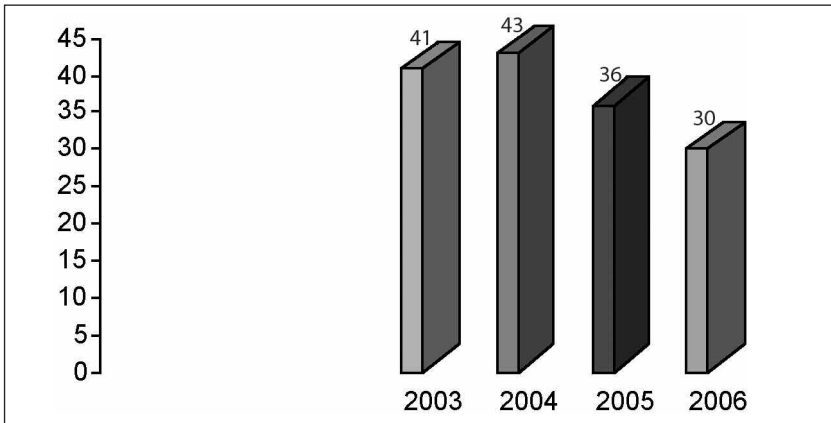
from a situation of intense exclusion and discrimination as it has been stated repeatedly.

- The aggravation of the consequences of the events due to the authorities' incapacity to adequately face emergency situations, such as the violent explosion of confrontations between rival groups, Granja Penal de el El Porvenir, or the outbreak of an immense fire, Centro Penal de San Pedro Sula.
- The slowness of opening investigations for the resolution of these cases. This report offers more details in the section related to impunity.

3.3 Daily Violence

Parallel to reported incidents, detention centres suffer from permanent tension and violence which is illustrated by the heightened number of unnatural deaths.

Violent deaths not linked to riots incidents, 2003-2006



Source: DGSEP Record / CPTRT Monitoring

Deaths that were not related to the two massacres most likely came about as a result of detainees' access to arms.

Violent deaths classified by cause (excluding massacres)

Cause of death	2003	2004	2005	2006	Total	%
Death by violence of an undetermined kind	19	10	15	1	45	30
Injury by firearms	2	10	3	15	30	20
Injury by sharp instruments	9	9	12	4	34	22.6
Asphyxiation	11	9	3	8	31	20.6
Fight – beating	0	1	2	0	3	2
Disappearance	0	4	1	2	7	4.6
Total	41	43	36	30	150	

Compiled by CPTRT from official and journalistic sources

In 2006, the Marco Aurelio Soto National Prison was named the most violent prison in the country with 25 deaths of inmates. The lack of control inside the centre is such that even in the maximum security area where prisoners are confined to individual cells and are permanently supervised by armed agents, several deaths have nonetheless occurred. This reality persists despite the collective *habeas corpus* provisions granted by the Supreme Court, which had ordered prison authorities to ensure the right to life to all inmates.

Some aspects of the intra-penitentiary violence are particularly striking:

- Access to arms by detainees

Though in some cases sharp instruments appear to be made by prisoners themselves, prisoners also have access to lethal arms. Access is thought to be underestimated as firearms have also been found in incidents that did not cause any mortal victims which are not counted in statistics.²⁶ This situation

26 *Dos baleados en riña entre mareros en el penal donde se encontraba Maduro.* Newspaper el Heraldo, 11/02/2005. On-line version.

is highly reflective of the incapacity of the State to maintain control within its prisons.

- Disappearances of prisoners

The number prisoners who have disappeared in the past years reflects the instability of the penitentiary system. The CPTRT has recorded the following cases:

Sady Otoniel Gómez Gonzáles, inmate in the Penitenciaría Nacional. Belonging to the Salvatrucha gang. His disappearance was reported by the media on 17 of February 2006.²⁷

Penitenciaría Nacional. Member of the Mara 18, imprisoned the 23 June 2003, accused of murder. He was seen for the last time on 25 July 2005. The media reported his disappearance on 27 July 2005²⁹.

Oscar Danilo Vásquez Corea, inmate in the Penitenciaría Nacional, accused of unlawful assembly. His disappearance was reported by the media in the month of February of 2006.²⁸ Although there was no evidence, the penitentiary administration publicly declared that he had escaped.

Jose Arnaldo Mata Aguilar, Orlín Geovany Funez, Glen Rockford, inmates in the Centro Penal of San Pedro Sula, enclosed in the same wing as the rest of the members of the MS gang. Their disappearances occurred in between 2003 and early 2004. Their mortal remains were found underneath the ground of the jail #19, two years afterwards.

José Rafael Reyes Galvez, alias the “Crazy”, inmate in the

27 Newspaper la Prensa, 17 February 2006, http://www.laprensahn.com/sucesos_nota.php?id04962=3643&t=1140156000

28 *Idem*.

29 Newspaper la Tribuna, 28 July, p. 73.

3.4 Violence perpetrated by State agents within prisons

Prisons remain under the supervision of agents from the general office of special preventive services (*dirección general de servicios especiales preventivos*). The preventive police is a force qualified to use firearms in detention centres (Art. 64 LRD). Many of the agents have received training of a military nature.³⁰

The use of force in the penitentiary environment is limited to situations where it is absolutely necessary to maintaining order in detention centres (Art. 63 LRD). With respect to the use of firearms, it is stipulated that:

*“The use of these will be exclusively limited to extraordinary cases and in absolutely indispensable circumstances for self-defence.”*³¹

In the report presented by the State to the Committee, there are contradictory statements regarding knowledge of the relevant provisions and international standards on the subject. The State affirmed that official agents receive training on prison issues and the prevention of torture. Nonetheless, in another passage of the report, the State admits that such training of prison issues does not exist for official agents.

In practice, the exercise of discretion regarding the use of firearms by State agents has generated serious incidents.

The use of force by official agents was a determining element in the massacre of the Granja Penal “El Porvenir”. In this incident, the intervention of police agents and members of the army resulted in the deaths of 64 persons and 39 others were injured. The intervention of State agents was aimed to control a confrontation between rival groups in the prison. The agents were supported in the intervention by other groups of detainees. Of the ones who were killed, 38 died as a direct result of injuries by firearms combined with

30 Report of the State of Honduras to the Committee, CCPR/C/HND/2005/, clause 94.

31 Art. 64 LRD.

32 Report from the State of Honduras to the Committee, CCPR/C/HND/2005/, clause 69.

33 Report from the State of Honduras to the Committee, CCPR/C/HND/2005/, clause 94.

injuries caused by other prisoners acting with the consent of the State agents³⁴. The other 26 individuals died as a result of the fire provoked in a room by several detainees in the presence of the official agents.³⁵

The indiscriminate use of firearms for the purpose of suppressing non-violent escape attempts has generated several serious incidents in the last years:

1. In the detention centre of Nacaome, German Maldonado died of injuries caused by firearms shot by the police while he was trying to escape on the 28 of September 2005. In the same attempt, Lenín Ávila was injured.
2. José Herman Morales, 40 years of age, died from severe injuries inflicted by prison police when he tried to escape while being transferred to the court.
3. On Saturday 13 of May 2006, Evelin Julissa Sierra died in the Penitenciaría Nacional Marco Aurelio Soto, when she came to visit a detained relative. She was carrying a child in her arms who was seriously injured. Official agents had open fire when an inmate attempted to escape.

Finally, the presence of firearms in the detention centres, generate risks due to accidental detonation³⁶.

The State acknowledges these danger; as an emergency measure, the Inter-institutional Commission of Penitentiary Reforms (*Comisión Interinstitucional de Reforma Penitenciaria*) recommended

“To provide detention centre guards with non-lethal arms and electronic equipment to maintain internal security and surveillance”³⁷.

These suggestions have not been put into practice at the time of writing.

34 Request from the Public Minister (Ministerio Público) in the penal action against the perpetrators of the Massacre of the Granja Penal of El Porvenir.

35 *Idem*.

36 Darwin Mauricio Ortíz Leiva, 22 year old detainee at the Penitenciarío Nacional, was injured when a police officer accidentally shot at him, 17 February 2004.

37 Comisión interinstitucional de reforma penitenciaria, 2003, Op.Cit. Recommendations, Urgent measure 1.4.18.

3.5 Impunity of violence in prisons

A criminal justice response to such incidents requires the establishment of facts of the alleged incidents, which can lead to the identification and punishment of perpetrators in accordance with the law, and satisfactory reparation to the victims. This obligation was undertaken by Honduras under several international instruments.³⁸

The national prison system cannot escape the scope of these obligations. As reiterated by the supervisory organs of the Inter-American system, whenever individuals are deprived of liberty and in State custody, the latter acquires the special status of guarantor of their rights.³⁹

The Inter-American Commission on Human Rights recently advised that:

*“In particular, the State has to ensure the control of the force and discipline in detention centres, as well as the entry and the carrying of weapons. In this way, it has to avoid such incidents of violence and loss of human lives to be repeated in the future, by means of corresponding administrative and judicial investigations”*⁴⁰

Despite this comment, in Honduras, high rates of impunity persist in relation to the most serious offences. This situation reaches dramatic extremes inside the penitentiary sphere where the vast majority of violent incidents that occur remain unpunished.

Concrete examples of this are the deaths resulting from both of the massacres. In both cases, the massacres of Granja Penal de El Porvenir and Centro

38 Inter-American Convention on Human Rights (Art.2), International Covenant on Civil and Political Rights (Art. 2 & 3), UN Convention Against Torture (Art. 2).

39 Before this specific relationship is instituted between the detainee and the State, the latter must assume a series of particular responsibilities and take special initiatives in order to ensure to prisoners decent living conditions and the effective enjoyment of such rights which should not be restricted in any circumstances, or whose restriction must not necessarily derive from the deprivation of liberty which is therefore not permissible. If this were the case, then it would be implied that the deprivation of liberty denies a person their entitlement to every human right, which is unacceptable. Inter-American Court of Human Rights, “Instituto de Reeducación del Menor”. Judgment of 2 September 2004. Series C, No. 112, Par. 153.

40 “La Comisión Interamericana de Derechos Humanos expresa preocupación por los hechos violentos registrados en la Penitenciaría de Honduras”, press release No. 2/06, Washington D.C., 6 January 2006.

Penal de San Pedro Sula, the deceased individuals were young people affiliated with gangs and criminal action has been directed against State agents.

- In the case of the massacre of Granja Penal del “El Porvenir”, in March 2004, the Public Ministry (*Ministerio Público*) introduced an injunction against police agents, army members and certain prisoners, for the death of 62 gang members and three relatives visiting the prison. Some of them have given notice of appeal and habeas corpus against the adoption of preventive measures in their regard, to the Supreme Court of Justice through their legal representatives. The appeal was accepted on 7 of March 2005. In flagrant violation of the dispositions of the *Ley de Amparo* of 1936, applicable to the procedures of lodging an appeal, the Supreme Court obtained all the documents of the case, paralysing the investigation of the main case, in order to resolve the *habeas corpus* appeal from the preventive measures order. Although the Supreme Court resolved the *habeas corpus* appeal in mid-2006, at the moment of writing this present report, the main legal case has not progressed. As a result, the investigation remains at a standstill three years later, not even reaching the stage of the public oral hearing in first instance. To date, no remedy, civil or administrative, has been ordered in favour of the victims’ relatives, nor such a case even been heard. Though, preventive measures were ordered against the accused as part of the criminal process, none of them has been implemented at the moment of the preparation of this report.
- Following the deaths of 107 gang members in Centro Penal de San Pedro Sula, the Public Ministry (*Ministerio Público*) introduced a request that criminal proceedings be opened against the Centre’s director. Once the preliminary investigations had been completed, the Criminal Court of San Pedro Sula ordered a definitive stay of proceedings, before any oral or public hearings had taken place, as any evidence of responsibility had not been assessed.⁴¹ The Public Ministry (*Ministerio Público*) introduced an appeal against the definitive stay of proceedings and once when this was rejected⁴², a habeas corpus appeal was made before the Supreme Court. Upon rejection of this appeal, the actions before the national

41 Court order of the Criminal court after the initial visit held on the first of September 2004 .

42 Court of Appeal of San Pedro Sula, resolution 22 November 2004.

criminal jurisdiction were exhausted.⁴³ In the administrative procedure, no reparation was attributed to the relatives of those who had been killed nor to those who had survived the incident with serious injuries. In this connection, the State of Honduras was recently denounced before the Inter-American Commission on Human Rights.⁴⁴ A report recently published by the National Commissioner on Human Rights points to the persons in charge of the penitentiary system, together with the Centre's director, as those responsible for having violated the prisoners' right to life and security⁴⁵.

In the same vein, the majority of deaths resulting from daily episodes of violence perpetrated by other prisoners remains unpunished. The following data serve as indicators of the gravity of the situation:

- According to the Special Prosecutor of Human Rights (Fiscalía especial de Derechos Humanos), the vast majority of the deaths which occurred in the last years in the Penitenciaría Nacional Marco Aurelio Soto remain unresolved.
- At the national level, the figures are also worrying. Despite the high numbers of deaths in 2004 and 2005, only 10 judicial proceedings for offences committed while in prison have been brought during the same period.

The lack of initiation of judicial proceedings, largely due to restrictions on budget and personnel, has an enormous consequence on this situation. Nevertheless, there are additional difficulties for obtaining justice. For

43 Resolution Constitutional Chamber Supreme Court Of Justice, habeas corpus appeal 3321-04 /187-221-05, twenty-seven of September 2005.

44 Obispado de San Pedro Sula, Public Communication, "Porque amamos y sufrimos: esperamos justicia". San Pedro Sula, 14 July 2005.

45 CONADEH. Special report with recommendations on the arson that took place in the detention centre of San Pedro Sula on 17th May 2004 (Informe especial con recomendaciones sobre el incendio ocurrido en el centro penal de San Pedro Sula el 17 de Mayo de 2004). Accessible on 18/09/06 on http://www.conadeh.hn/pdf/informes/especiales/Informe_Centro_Penal_SPS.pdf

46 Declarations from Mrs Sandra Ponce, Prosecutor on Human Rights (Fiscalía de Derechos Humanos). Newspaper El Heraldo, 31/01/06.

47 Public Ministry (Ministerio Público), Human Rights Prosecutor (Fiscalía de Derechos Humanos), Note 182-2006, 3 March 2006.

example, in the case of the Granja Penal de El Porvenir massacre, a serious interference, aimed at obstructing the collection of evidence at the scene of the crimes, was documented.

Similarly, in relation to the last serious incident which occurred at the Penitenciaría Nacional Marco Aurelio Soto in January 2006, resulting in the death of 13 persons, State agents admitted that the crime scene had been tampered with⁴⁸

“We arrived in an entirely modified crime scene with respect to all aspects: the position of the dead bodies, their blood washed away with water and let me tell you that the security personnel of the PN took their time to intervene at the scene of the crime. That is to say, shots were heard, someone informed them that there were dead persons and with much caution, security personnel made sure they knew what kind of conditions they would be facing upon entry to the scene, including conditional factors, and when they left the area, the scene was already modified”⁴⁹

CHILDREN’S RIGHTS

The right to life is enshrined in the Code of Childhood and Adolescence (*Código de la Niñez y Adolescencia*) and the State of Honduras has the obligation to protect this right by the means of implementing appropriate measures.⁵⁰

48 Newspaper el Heraldo, 7th January 2006, p. 2.

49 Arturo Álvarez, assistant director of Medicina forense, statement to the newspaper la Prensa. Newspaper la Prensa, 7th January, 2006, accessible on <http://www.laprensahn.com/apertura.php?t=1136613600>

50 Article 11 and chapter II, section I, concern the right to life. In Article 12, it is mentioned that “every human being has the right to life from the moment of his conception” (“todo ser humano tiene derecho a la vida desde el momento de su concepción”) and that “the State will protect this right by adoption of necessary measures for the gestation, the birth and the subsequent development of the individual, to be carried out with respect for human dignity” (“el Estado protegerá este derecho mediante la adopción de las medidas que sean necesarias para que la gestación, el nacimiento y el desarrollo ulterior de la persona se realicen en condiciones compatibles con la dignidad humana”).

The death penalty does not exist in Honduras, and neither boys, girls nor teenagers can receive a sentence of life imprisonment. In Honduras, the death penalty has not been applied but the subject of its restoration was dangerously broached in the last electoral campaign of November 2005, by the presidential candidate of the National Party (Partido Nacional). His campaign was based on the promise to build up urban security by strengthening repressive laws and actions against youth gangs. This was envisaged by foreseeing the instauration of the death penalty which would publicly challenge the Honduras' ratification of several international treaties. This presidential candidate did not manage to win the elections and the subject has not reappeared since the beginning of the new Liberal Government of elected president, Manuel Zelaya Rosales.⁵¹

With regard to extrajudicial and summary executions of children and young people, the organisation working to defend the rights of children and adolescents, Casa Alianza⁵², observed that during the period in between January 2002 and January 2006, 1,976 children and adolescents under 23 years of age lost their lives as a result of violence and/or arbitrary execution. Children and adolescents continue to be the main victims of violence in Honduras. The years in which the major number of crimes occurred were 2002 and 2003 with 549 and 557 deaths each year, respectively. During 2004, there was a reduction of 29,1%, or 395 deaths. Nonetheless, in 2005 there was a new rise reaching 431 deaths provoked by violence and/or executions.⁵³ Furthermore, figures from other sources reveal that the high rate of violent deaths of children and adolescents in Honduras is alarming.

The major number of victims (83%) are male, and 17% female. Despite such figures, female adolescents and young women continue to face violence which remains latent, whose only signs are those on their body, of sexual abuse, torture or ill-treatment.

The analysis of characteristics of violent deaths and/or executions of children and young people in the past four years, demonstrated that

51 Note from the consultant – Ellen Verryt.

52 Casa Alianza is a member organisation of Coiprodén, the Network of Institutions for Children's Rights (la Red de Instituciones por los Derechos de la Niñez).

53 Casa Alianza – Database.

about 74% of the 1,976 registered deaths, occurred in Tegucigalpa and San Pedro Sula. However, the problem is expanding across the whole national territory, as cases are also localised in cities of less density such as Comayagua, Yoro and Cortes. These deaths continue presenting the same characteristics and *modus operandi* of arbitrary executions that were observed in the last years: the children, adolescent and young persons' bodies are found in open fields, rivers or other remote areas, with signs of torture on their bodies, their hands and feet tied, and shots in their head. New tendencies of execution were observed during 2005; children, adolescents and young people were executed in groups of two or more, their bodies thrown out of moving cars and they are then shot from motorbikes or other vehicles.⁵⁴

In September 2004, a series of collective assassinations took place. They had characteristics of executions, including torture, decapitation and premeditation, which made the investigators think that the authors may be deaths squads engaged to perpetrate these crimes. The investigations have not yet identified the person or group that organised these assassinations.⁵⁵ Although the press frequently reports these events, the killing of children and young people has not provoked the generalised public indignation that it warrants. Many think that death is the inevitable result of their way of life; the perception is that the majority of children, adolescents and young persons killed are members of gangs. Nevertheless, a study realised by the National Commissioner on Human Rights (*Comisionado Nacional de los Derechos Humanos*) about the violent death of young persons between 1998 and December 2001, concluded that a mere 34% of the victims had been members of gangs.⁵⁶ Furthermore, many of the dead children and young persons who had a link with gangs had taken the decision to leave them and had undertaken rehabilitation or participated in one of them.

The United Nations Special Rapporteur, Asma Jahangir, says in her report that "some assassinations were attributed to campaigns of 'social

54 Casa Alianza, 2005.

55 "Escuadrones de exterminio estarían ejecutando jóvenes", *El Herald* 21st September 2004.

56 *Comisionado Nacional de los Derechos Humanos de Honduras, Muertes violentas de jóvenes en Honduras: una realidad que exige respuestas*, Tegucigalpa, December 2001, p. 49.

cleansing’ carried out by paramilitary groups or civic patrols, death squads or any other particular group that cooperates with the government or is tolerated by it, or motivated to confront violence and other criminal activities of children and young persons efficiently.”⁵⁷

As a response to the recommendations of the United Nations Special Rapporteur on Extrajudiciary, Arbitrary and Summary Executions (*Relatora Especial de las Naciones Unidas sobre Ejecuciones Extrajudiciales, Arbitrarias y Sumarias*), and to the several denunciations by national and international bodies on extrajudicial executions of children, the State reacted and established in May 2002, the Permanent Commission for the Protection of the Physical and Moral Integrity of Childhood (“*la Comisión Permanente para la Protección de la Integridad Física y Moral de la Niñez*”).⁵⁸ Coiprodén is an official member on the part of the Civil Society in the Commission and is represented by Casa Alianza as a member of the network. The CPTRT works since 2005 as a guardian to oversee the fulfilment of the Commission’s mandate.⁵⁹ The report of the Commission confirmed that 574 minors under 18 years old had been assassinated in the past five years. After the presentation of these figures, in September 2002, the Commission created the Special Unit of Investigation on Deaths of Minors (*Unidad Especial de Investigación de Muertes de Menores*) to investigate the violent deaths of children that took place since 1998.⁶⁰ This Unit forms part of the Ministry of Security (*Ministerio de Seguridad*) and was previously under police control. However, it was restructured in June 2003 to obtain more neutrality and transparency, and started to collaborate with NGOs, in particular with Casa Alianza Honduras, who supplied a list of unsolved cases of recorded assassinations.⁶¹ The mission of the Unit is to investigate the deaths of persons under the age of 21 in former and new cases

57 Los Derechos Civiles Políticos, en particulares las Cuestiones Relacionadas con las Desapariciones y las Ejecuciones Sumarias: Extrajudiciales, Arbitrarias y Sumarias. Report of the United Nations Special Rapporteur, Sra. Asma Jahangir, presented in the fulfilment of resolution 2002/36 of the Commission on Human Rights (E/CN.4/2003/3/Add.2, 14th June 2002).

58 Executive Decree PCM – 006 – 2002.

59 Extension by the consultant.

60 Rachel Harvey, “Del Papel a la práctica – un análisis del Sistema de Justicia Juvenil”, Children’s Legal centre, editor: Save The Children, United Kingdom, October 2005, pp. 121-122.

61 Extension by the consultant.

that fall under its mandate.⁶² It also investigates collective assassinations whenever one of the victims is under 21 years old. When concluding the investigation, it submits the report to the General Prosecutor (*Fiscalía General*), which decides whether there is sufficient evidence to initiate judicial proceedings.⁶³

In a great majority of extrajudicial execution cases, the participation of State agents was denounced, however no adequate action was taken by the government against them, making the State directly responsible for the impunity of the agents. Regarding the offences for which the authors have not been identified or those that do not involve a specific person, the Honduran State holds indirect responsibility.⁶⁴

Concerning problems of impunity, it must be acknowledged that the Special Investigation Unit for Deaths of Minors (*Unidad Especial de Investigación de Muertes de Menores*) does not fight impunity effectively, which is due in part to the lack of financial and human resources. Of the 384 cases treated between July 2003 and May 2004, the Unit only submitted to the prosecutor (*Fiscalía*) 75 cases concerning 116 victims. Fourteen of the cases (19%) involve State Agents, nevertheless, 58% of the judicial proceedings involve gang members as the accused, even though it is considered they are not responsible for the majority of the cases. Until June 2004, of the total number of persons implicated in the 75 cases, only 41 were detained, two were sentenced and one person had precautionary measures applied to him preceding the trial. The small number of cases criticised by NGOs, is due to the inherent difficulties of the investigation of crimes that occurred many years ago and to the fear they may include numerous witnesses, who hinder their cooperation. A victim protection programme is being elaborated, but it has not been yet implemented. Moreover, children who could act as witnesses were under the influence of drugs, and therefore their evidence is

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- 62 Cases must include one or more of the following characteristics: homicides have some trace of execution, the body bears wounds from a bullet in the head, the bodies are found in remote locations, the bodies bears signs of mutilation, or the bodies have not been identified.
- 63 Rachel Harvey, “Del Papel a la práctica – un análisis del Sistema de Justicia Juvenil”, Children’s Legal centre, editor: Save The Children, United Kingdom, October 2005, pp. 121-122.
- 64 Amnesty International, “Cero tolerancia ...a la impunidad – Ejecuciones Extrajudiciales de niños y jóvenes desde 1998”, February 2003.

deemed unreliable. Therefore, the National Commissioner on Human Rights (*Comisario Nacional de Derechos Humanos*) also criticises the slowness of their work and lack of independence. Unfortunately, the existence of the Unit did not have a dissuasive effect, and the number of children and young person victims has not reduced. Between February 2003 and September 2004, approximately 700 other children and young people were assassinated which brought Amnesty International to launch a new campaign asking for the government of President Maduro to take immediate measures to fight against extrajudicial executions of children in Honduras.

In spite of its deficiencies, the Unit contributes in a certain measure to the prevailing fight against impunity. The absence of a body which is dedicated to the investigation of extrajudicial execution of children and young people would be a serious gap in the judicial system and would demonstrate the indifference of the government towards the fate of marginalised youth.⁶⁵ One must recall that in March 2006, on account of the change of government, there have been rumours of intentions to dismantle the Unit and remove the budget. Thanks to the action and pressure of human rights NGOs and to various emergency high-level meetings, the Unit was incorporated into the Public Ministry (*Ministerio Público*). Nevertheless, this Unit does not directly depend on the mentioned minister, which prevents interference from the General Office of Criminal Investigation (*Dirección General de Investigación Criminal*).⁶⁶

The Unit of Internal Affairs (*Unidad de Asuntos Internos*) – another investigatory entity– forms part of the Ministry of Security (*Ministerio de Seguridad*) and is responsible for investigating offences, misconduct and acts of negligence committed by members of the police. In June 2002, this Unit had to deal with investigations of assassinations which occurred in San Pedro Sula, where most extra-judicial deaths took place.

65 Rachel Harvey, “Del Papel a la práctica – un análisis del Sistema de Justicia Juvenil” Children’s Legal centre, editor: Save The Children, United Kingdom, October 2005, pp. 122 - 125.

66 Note of the consultant– Ellen Verryt. Present in the first meeting of the presentation of the new administration of the Unit under the coordination of the Officer Varela within the Ministry of Government and Justice (*Ministerio de Gobernación y Justicia*), 8 March 2006.

The report implicated various members of the police. Nevertheless, the only measure adopted following this investigation was the replacement of the person in charge of the Unit. Consequently, the NGOs considered the Unit to be ineffective; that its status within the Ministry of Security (*Ministerio de Seguridad*) does not allow it to fulfil its investigatory function properly and independently, thereby favouring impunity.⁶⁷

GENDER-BASED VIOLENCE

Gender-based violence is the second cause of death of women at the reproductive age. Furthermore, it represents a global, multi-dimensional and structural phenomenon that affects the life and security of the women of all ages.

The unequal power relationships between genders, the exclusion of women as a gender collective of equal citizenship with men in conformity with the modern State, have had as their consequence the institutionalisation of masculine violence as a mechanism of domination towards women.

Public policies recognise domestic and intra-familial violence as an important social issue, but other forms of aggression towards women remain invisible, such as sexual violence, sexual exploitation, trafficking, and crimes of hatred that cost the lives of girls and women from lower socio-economic classes.

FEMINICIDE

Femicide covers all forms of murder of women and girls for gender-based reasons. Also characteristic of femicide is the impunity with which these acts are committed, the impunity that protects the offenders, the lack of measures adopted by the State for the protection

67 Rachel Harvey, “Del Papel a la práctica – un análisis del Sistema de Justicia Juvenil” Children’s Legal centre, editor: Save The Children, United Kingdom, October 2005.

of women, the slowness to implement and improve security mechanisms to protect women from sexist violence and the lack of sanctions to be applied to the perpetrators of these acts.

Homicides against women which have increased in the past three years, possess the following characteristics:

- Cruelty: mutilation, dismemberment, multiple attempts to cause death, repetition of acts causing death, marks on the body.
- Evidence of sexual violence (nudity of the victim, position in which the body is placed).
- Political significance of the assassinations (messages left on the body).
- Blurred identity (flattened face, burns, or other forms).
- Massacres: assassination of the woman and her children, generally in the house of the victim.
- Ritualism of the crime scene, layout of the bodies, manipulation of the dead bodies.

According to information from the DGIC, the following statistics were reported: 111 dead women in 2003, 138 in 2004 and 171 in 2005. This comes to a total of 420 cases of femicide. Thus far in 2006, already 96 women have been victims of violent deaths.

Each day, violence against women increases: during the first semester of 2006, the number of cases of femicide rose 43,5% in comparison to the first semester of the previous year.⁶⁸

Of women victims of femicide in 2004, 24% of the cases took place in Tegucigalpa, 31% in San Pedro Sula, and 45% in the rest of the country.

Forty percent of women were assassinated in their homes and 60% in public areas or other places. In 2004, 82% of the crimes were committed with a firearm, 12% with a sharp instrument, and 6% with other types of devices such as ropes, stones, and petrol.

Women victims of femicide in Honduras are young women between 15 and 29 years old coming from the poorest stratum of the country.

68 CODEH, *Situación de la violencia y derechos humanos en Honduras*, January - June 2006.

a) Socio-economic factors

The opening of borders has increased the prevalence of drug trafficking in the region and its culture of violence. Trafficking in persons is being transformed into a major business which benefits from public policies which promote the exportation of persons as merchandise. The major part of the working-age population is composed of the poorest and less educated young males, excluded from the regular labour market and who are converted into « mareros » or hired assassins. Another growing business is the sexual and commercial exploitation of girls and women which attract the poorest classes of girls, adolescents and women.

Crimes against women are perpetrated in highly populated areas where the free-trade economy has been most successful. It is in these areas that transnational capital has been most invested, such as in assembly plants. It is there where the number of femicides is concentrated:

In 2003, the departments of Cortes, with 41,44%, and Francisco Morazán, with 29,73%, were the places where the highest number of crimes against women took place. These departments are highly populated because it is in these departments that assembly and industrial centres have established themselves. These are the regions which have a highest levels of delinquency. In 2004 and 2005, the number of victims of femicide in these departments decreased by 21.44 points in Cortes and of 1.73 points in Francisco Morazán, but then increased again by 30% in 2005. Indeed, it is in the cities of these departments where the most cases of femicide occur, in the biggest cities of Honduras; San Pedro Sula, Tegucigalpa and Comayagua.

b) Socio-cultural factors

Adult and young women and girls are murdered in circumstances of extreme cruelty, many times in their own homes. Their bodies are used by criminal gangs or groups, for which they are a mean of expressing conflicts between gangs, sending messages to the government and society, or representing other symbols of power.

The perpetrators adopt the methods of terror and extermination applied by criminal networks to: assassinate woman and children, send messages of terror and intimidation to families and government employees, set

the crime scene, carefully conceal their involvement, including emotionally distancing themselves from the victims.

The murder of women is set in a culture of impunity supported by gender stereotypes that blame and stigmatise victims them as jealous, mad or libertine. These arguments are the ones used by the perpetrators of these acts who get off scot-free due to lack of evidence, and this even in cases where there are antecedents of domestic violence and sufficient circumstantial evidence.

c) Legal framework

Honduras is a signatory to the American Convention on Human Rights (Pact of San Jose) whose Art. 4 provides for the right to life: *‘Every person has the right to have his life respected’*. Honduras has also ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para) in 1995. It states in Chapter 1, Art.1, that *‘For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere’*; and in Art.4 it establishes the right for women’s life to be respected, as well as their physical, mental and moral integrity.

With regard to its national legislation, the **Constitution of the Republic** (*Constitución de la República*), under heading III, « From the Declarations, Rights and Guarantees » (*“De las Declaraciones, Derechos y Garantías”*), establishes in Art. 61 that *« The right to inviolability of life, individual security, of liberty, equality before the law, and property is guaranteed to Honduran people and foreigners residing in the country », and in Art. 65, it provides that « the right to life is inviolable ».*

In 1997, the **Law Against Domestic Violence** (*Ley Contra la Violencia Doméstica*) was adopted. It stipulates in Art. 1 that *« The provisions of this law are of public order, of imperative observance and have the purpose of protecting the physical, patrimonial and sexual integrity of women against any form of violence coming from her husband, ex-husband, partner, ex-partner or any relationship related to a couple.»* Furthermore, Art. 6 provides that *« In order to effectively bestow rights to women suffering from domestic violence, mechanisms of protection,*

consisting of security, preventive and provisional measures, will be established ». The content of this article also includes security measures such as: removing the accused from the household, prohibiting the accused access to the house, detention of a term not exceeding twenty-four hours, retention of arms or suspension of any licence that allows the possession of arms, surrendering the residence to the woman, and measures to keep the accused at a distance from the house.

Although there are laws against domestic violence and measures to protect and promote the security of women victims of domestic and intra-familial violence, for which the **Criminal Code (Código Penal) in Chapter V (Arts No. 179-A and 179-B regulating intra-familial violence)**, women remain at risk. A large part of femicides take place in the family environment and when complaints of violence have been filed, security measures prescribed by the law were not applied. Thus, perpetrators of violence against women benefit from complete impunity.

In addition to this international and national regulation, in 2002, the National Policy on Women (*Política Nacional de la Mujer*) was adopted. It contains the First National Plan on the Equality of Opportunities 2002-2007 (*Primer Plan Nacional de Igualdad de Oportunidades 2002-2007*) that includes a Chapter concerning the prevention of violence against women.

The Honduran Criminal Code (Código Penal Hondureño) sanctions assassinations and homicides, in its chapter on offences against life and physical integrity from article 116 to article 120:

Article 116

Whoever brings death to another person, excluding the circumstances mentioned in the following Articles, commits the offence of simple homicide and will incur a sentence from six to fifteen years of imprisonment.

Article 117

Is accused of assassination whoever brings death to another person in the following circumstances:

- 1) *Treachery*
- 2) *Malice aforethought*
- 3) *By means of flood, arson, poison, explosion, derailment, breakdown of*

ship or any other artifice that may wreak havoc, whenever there is mens rea and criminal intent; and,

4) With cruelty, deliberately or inhumanely increasing the pain of the offended.

The sentence for assassination will be twenty to thirty years of imprisonment, and whenever it is to be committed by means of payment, reward or promise of remuneration, or as a result of robbery, the sentence will be of thirty years of life imprisonment.

Article 118

Is accused of parricide whoever brings death to one of his ancestors or descendants, to his partner or the person with whom he lives a marital life, and will undergo a sentence from fifteen to twenty years of imprisonment.

Article 120

Whosoever, with the purpose of causing harm on the body or on the health of the person, may cause his / her death, whenever the means used was not supposed to reasonably provoke it, will be punished with the sentence applicable for homicide reduced from a third to half of it.

d) Actions undertaken by the State due to pressure coming from women's organisations within the country and their limits

An Inter-institutional Commission on following up femicides (*Comisión interinstitucional de seguimiento a los femicidios*) was approved in 2006 and integrated into the Commissioner on Human Rights (*Comisionado de los Derechos Humanos*), the National Institute of Women (*Instituto Nacional de la Mujer*), the Special Prosecutor's Office of Women (*Fiscalía Especial de la Mujer*), the Supreme Court of Justice (*Corte Suprema de Justicia*) as State institutions. Civil society groups are represented by the Study Centre on Women (*Centro de Estudios de la Mujer*), the Women's Association Against Violence (*Colectivo de Mujeres Contra la Violencia*), and the Centre on Women's Rights (*Centro de Derechos de Mujeres*). Despite the coming together of these organisations, the Commission does not have the necessary resources to fulfil its tasks.

Deputy Doris Gutiérrez from the Democratic Unification Party (*Partido Unificación Democrática –UD*), supported by the women lawmakers, submitted a motion to the National Congress and on the request of the Women’s Association Against Violence (*Colectivo de Mujeres Contra la Violencia*). Its purpose is to build up a high-level Commission on the investigation on femicides in Honduras, in order for the Public Ministry (*Ministerio Público*) to create a special unit on femicide in this branch of the State organs. She also urged the Ministry of Education (*Ministerio de Educación*) to create a scholarship fund for children of women victims of femicide. In spite of the submission of the motion, Congress did not allocate a budget for the Ministry nor for the creation of the special unit. Neither was budget allocated for the scholarship fund, and the arduous task of investigating crimes against women was assigned to the Commission of Women of the Congress (*Comisión de la Mujer del Congreso*). It is well known that although it is quite clear that the deputy members of the Commission are interested by the investigation into cases of femicide, they do not have the necessary resources to conduct in depth investigations.

The Public Ministry (*Ministerio Público*) increased its restrictions for the creation of the special unit on femicides and the only action it took in this regard was the nomination of two prosecutors to take on this difficult task. The prosecutors do not benefit from any resources to study the investigations in depth, and one of the main hurdles is the lack of a unit specialised in femicide within the Office of Criminal Investigation (*Dirección de Investigación Criminal*).

4. Article 7 ICCPR: Prohibition of torture and cruel, inhuman or degrading treatment or punishment

As stated in the State report, Honduran legislation defines the crime of torture as follows:

“torture is committed by an employee or civil servant, including those from penitentiary institutions or from juvenile correction centres, who abuse their position in order to obtain a confession or information from an individual or to punish him for an action by submitting him to conditions or procedures that by their nature, duration, or other circumstances, inflict physical or mental suffering, the suppression or diminishment of his conscious faculties, wisdom or decision making capacity, or that by any other means attack his moral integrity.”⁶⁹

In the case where this kind of conduct is inflicted by a private actor, the sentence will be reduced (Art. 209 A in fine CP).

The reading of this article should be completed with others that point out:

- the invalidity of following orders from superiors as a justification for the perpetration of acts contrary to an individual’s rights as guaranteed under Art. 24 CP.
- the nullity of procedural practices which utilise physical violence or violence and other similar practices (Art. 88 CH & CPP, Arts. 166.4 & 169).

With respect to the practical aspects of compliance with this law, in its report, the State does not recognise the numerous public denunciations concerning the persistence of practices of ill-treatment.

Historical review of practices of torture in the Honduran penitentiary system:

Between 1998 and 2002, the most frequent cases of ill-treatment involved:

- Physical punishment of persons deprived of their liberty, as well as of

⁶⁹ Art. 209 A CP Honduras, mentioned in the State Report, Par. 65.

their relatives, meted out by members of prison security, using weapons as well as other instruments.⁷⁰

- Use of shackles, even on prisoners who are terminally ill.
- Imposing prisoners to wear stigmatising uniforms during exits from the centre, for transfers to medical centres and courts.
- Mistreatment of prisoners' relatives, including vaginal searches to which prisoners' relatives (mothers, sisters, partners, daughters, etc) have been submitted.

Abuse of prisoners by the authorities has generated action that have put inmates' life and physical integrity at risk. In particular, vulnerable inmates such as those who are ill or who have no resources have suffered ill-treatment at the hands of prison authorities; for example being subjected to "Calentadas" or beatings, being shot at or attacked by sharp instruments, being hanged, sexually abused, and killed.

At the end of this period, some of these systematic practices were abolished thanks to the initiation of joint inspections by non-governmental and governmental security organisations. The efforts of non-governmental organisations to train technical and prison staff contributed greatly to this development.

From 2002 to 2005, persistent acts that are referred to as cruel, inhuman and degrading treatment were illustrated by the following:

- The existence of power relationships that generate ill-treatment, discrimination and sexual abuse committed against an individual's dignity, such as beating by batons by prison staff to discipline prisoners.
- Acts of abuse by the authorities or ignorance of minimum treatment of detainees illustrated by: handcuffing inmates to the bed when they are in hospital care for treatment of an illness, beating up inmates or exhibiting prisoners in public places inside detention centres.

70 The main instruments used have been batons and electric sticks. In one case, a prison guard spilt hot soup on a prisoner causing second degree burns on his neck. The CPTRT received the complaint and provided care for the prisoner.

- Lack of respect to prisoners' relatives such as subjecting them to inappropriate inspection such as in the Granja Penal de Comayagua case (verbal abuse, privileges for some visits, disrespect towards women).
- Persons living with HIV/AIDS have been transferred to hospitals for their medical appointments to hospitals with their hands and feet chained

CPTRT Investigation: ill-treatment today

The CPTRT has carried out a study on ill-treatment practices of prisoners. The study was undertaken between November 2003 and November 2005. During that period, 208 prisoners detained in the country's central zone were interviewed. Amongst all the interviewed prisoners who took part in the study, 155 had been subjected to some form of ill-treatment.

Ill-treatment affects one's physical integrity - kicks, blows, burns – or mental integrity – intimidation or verbal abuse. On some occasions, prisoners recounted ill-treatment with the use of instruments such as hoods, cigarettes or clubs.

Parallel to the field investigation, in 2005, the CPTRT monitored the episodes of public denunciation in three of the country's newspapers (Newspapers *el Heraldo*, *La Tribuna* and *El Tiempo*) in relation to complaints made against members of the police force who were allegedly responsible for criminal acts, torture and abuse of authority. Between January and November 2005, 79 cases were registered in which police officers were blamed for acts of torture and abuse of authority.

Although the State acknowledges in its report the formal existence of different security measures provided to protect individuals subjected to ill-treatment or torture, in reality, these are inoperative. Statistics provided by the Human Rights Prosecutor (Fiscalía de Derechos Humanos) indicate that no official agents have been summoned for their participation in crimes against the right to life and physical and mental integrity in prisons in the period between 2004-2005, in stark contrast to the reality of the situation in prisons in Honduras.⁷¹

71 Public Ministry (Ministerio Público), Human Rights Prosecutor (Fiscalía de Derechos Humanos), note 182-2006, 3 March 2006.

Visit of the United Nations Working Group on Arbitrary Detention:

A recent visit by the United Nations Working Group on Arbitrary Detention affirmed the persistence of violations of individual freedoms and due process, pointing out amongst these⁷²:

- The persistence of practices of ill-treatment by official agents.
- The lack of response from judicial and investigatory State authorities in the face of persistent practices of ill-treatment.
- Frequent cases in which the legal time limits of detention were not respected.

Solitary confinement in prisons

The State has emphatically affirmed that no isolation or measures of extended solitary confinement exist in Honduran legislation.⁷³ Such a statement would be in conformity with the Delinquent Rehabilitation Law (*Ley de Rehabilitación del delincuente*) which does not permit solitary confinement as part of possible disciplinary measures.

In spite of this, during 2005, the Scorpion Project (*Proyecto Escorpión*) was put into effect, which consisted in the creation of new solitary confinement cells in the principal detention centres of the country.⁷⁴ Each cell is composed of two sections: the first one with a 5 metre square metallic barrier

72 United Nations, Working Group on Arbitrary Detentions, Press release of its visit to Honduras. Tegucigalpa, 1 June 2006. Accessible at <http://www.unhchr.ch/hurricane/nsf/424e6fc8b8e55fa6802566b0004083d9/29a9912bab5282c6c125718100311227?OpenDocument> 16 June 2006.

73 Report of the State of Honduras to the Committee, CCPR/C/HND/2005/, clause 61.

74 The creation of the project was announced in early 2005- newspaper la prensa, Monday 24/01, p. 66; Armando caledonio, security undersecretary, newspaper la tribuna, 26/01, p. 64. Though it was not put into effect before early 2006 – newspaper La Prensa, 29/01/06, digital version, http://www.laprensahn.com/sucesos_nota.php?id04962=2132&t=1138514400; President Maduro's declarations, Ricardo Maduro, President of the Republic- at the moment of the declarations. Newspaper la tribuna, 25/0105, p. 10.

ceiling, and a 7 metre square living space with bed and toilet. These cells were planned to be for individual use.

The activation of the Scorpion Project (*Proyecto Escorpión*) is subject to regulations of the “Penitentiary Solitary Cellular Regime” (*Régimen Celular Unipersonal Penitenciario*).⁷⁵ Despite its regulation, serious risks persist in the application of disciplinary measures imposing solitary confinement, such as:

- Lack of strict compliance to the principle of legality and to measures of treatment and sanctions provided by the Delinquent Rehabilitation Law (*Ley de Rehabilitación del delincuente*).
- Wide discretion exercised by directors of detention centres in the interpretation of prisoner conduct liable to be sanctioned and the duration of such punishments.
- Absence of specific mechanisms to supervise the legal and medical situation of confined individuals.
- Necessity to establish specific conditions of care for prisoners subjected to such a regime to ensure their right to integrity and to health in these conditions.

As the Committee previously signalled, being subjected to extended solitary confinement may be considered as an inhuman treatment.⁷⁶ Likewise, the United Nations Special Rapporteur on Torture (Relator de Naciones Unidas para la Tortura) pointed out that solitary confinement is a determining factor of practices of ill-treatment.⁷⁷

Therefore, we consider that the State has failed to give information on the existence of the disciplinary measures in relation to solitary confinement and to provide figures on the number of persons who were submitted to it. This amounts to a serious omission that renders difficult the assessment of respect of the right to personal integrity.

75 Agreement Security Secretariat (Acuerdo Secretaria Seguridad), 1367, 2005. 14/10/2005.

76 Human Rights Committee, General Comment 20.

77 United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, A 54/426, Par. 46.

TORTURE OF CHILDREN AND ADOLESCENTS

See section on torture and other ill-treatment in detention (Article 10, ICCPR)

DOMESTIC VIOLENCE

In almost every country in the world, including Honduras, the most insecure place for a woman is her own home; the most frequent aggressors of violence against women are men who are emotionally and sentimentally tied to the women, such as husbands, boyfriends, and partners in life, without mentioning close friends and acquaintances, superiors, stepfathers or brothers.

a) Legal framework

Concerning national legislation, in 1997, Honduras adopted the **Law Against Domestic Violence** (*Ley Contra la Violencia Doméstica*), amended in 2005, that stipulates in its Art. 6: “In order to effectively bestow rights to women suffering from domestic violence, mechanisms of protection, consisting of security, preventive and provisional measures, will be established. Amongst these measures, security measures are the ones implemented following the deposition of a complaint and has the aim of stop acts of violence or to prevent further acts of violence.”

The content of this article also includes security measures such as: removing the accused from the household, prohibiting the accused access to the house, working place or places usually frequented by the accuser, prohibiting the accused to intimidate or harass the accuser, and withholding the accused’s weapons.

In 2004, emergency phone line 114 was also created. It is dependent on the national police and was made especially so that victims of domestic violence can denounce the authors of violence. Likewise, the National Women’s Institute (*Instituto Nacional de la Mujer*), in 2003 and 2004, conducted training aimed at national police agents.

b) Judicial and administrative impunity

Despite all the above advances, concerning legislation, there has not been much impact on securing women's lives who have survived domestic violence. This is mainly due to the fact that there have been no requisite changes made to the judicial administrative system. Most cases are not solved rapidly and are not seen as violations of women's human rights which hinders the prevention of violence and the protection of women's lives and integrity.

More than 80% of murders committed against women, remain unpunished due to the judicial system's flaws. The crime scene is often contaminated which makes it difficult to find the guilty parties. And even in cases where a murderer is caught, he is easily set free for lack of evidence.

Such was the recent case of Percy Escobar, who killed his partner, Karla Patricia Galindo, 31 years of age, and his sons and daughters Helen Nicola, 10 years, Andrea Paola, 8 years, and Christian Eduardo Escobar, 5 years, who were strangled and later tied to their mother with a rope in their home in the colony Centroamérica oeste, on 3 October 2005.

5. Article 8 ICCPR: Prohibition of slavery and forced labour

5.1 Child labour

On 9 June 1980, the Honduran State ratified ILO Convention n° 138 on the minimum working age, as well as Convention n° 182 on the worst forms of child labour, by means of Decree No. 62 – 2001, on 25 October 2001. Along with the introduction of the agreement on the abolition of child labour, the National Commission for the Eradication of Child Labour (“*Comisión Nacional para la Erradicación del Trabajo Infantil*”) was created through Decree No. 17 – 98 on September 7 1998. The Commission carried out inquiries all over the country during three years, in order to adopt and put into effect a “National Action Plan for the Gradual and Progressive Eradication of Child Labour” (“*Plan de Acción Nacional para la Erradicación gradual y progresiva del trabajo infantil*”).

The Labour Code (*Código de Trabajo*) and the Code of Childhood and Adolescence (*Código de la Niñez y Adolescencia*) set the minimum authorised working age to 16 years old, stating that young persons have to reach that age in order to formalise an individual employment contract. Persons under 16 years old require an authorisation, but in no case can a child under 14 years be permitted to work.⁷⁸ The minimum age fixed by the Honduran State is in accordance with ILO Convention n° 138 invoking the derogation of the article 2.4 of the mentioned agreement. In addition, a regulation relative to child labour that defines prohibited jobs, the working day for adolescence over 14 years of age working with a legal authorisation, and measures on occupational health with respect to children, was agreed upon as well as the creation of the inspection of child labour.⁷⁹

According to the results found in the ILO/PEC survey on child labour in 2002, there were 356,241 children and adolescents aged between 5

78 Art. 31, 32, 33 of the Labour Code (*Código de Trabajo*), and art. 119 – 128 of the Code of Childhood and Adolescence (*Código de la Niñez y Adolescencia*).

79 Executive Agreement on the Regulation on Child Labour in Honduras (Reglamento sobre Trabajo Infantil en Honduras Acuerdo Ejecutivo) No. STSS-211-01 of 10 October 2001, *Gaceta* 29,654 of 11 December 2001, art. 1 and 50.

and 17 years practicing an economic activity, thereby representing 15.4% of the total population. The prevalence of labour is larger amongst boys (122.3%) than amongst girls (8.2%), as well as more common in the rural areas (18.5%) than in the urban ones (11.1%). Furthermore, an estimated 123,195 workers are under 14 years of age, which is below the authorised working age. Agriculture is a dominant branch in rural areas; in urban areas youth mainly work in trade or manufacture. It is considered that 87% of children faced forced labour, and amongst these 60.5% did not attend school. The main reason for having an economic activity is to contribute to family resources.⁸⁰

5.2 Commercial sexual exploitation of children and adolescents

Casa Alianza conducted a study in 2000 which revealed that 1,019 children were victims of commercial sexual exploitation in the Honduran capital, amongst which 91.1% were females. Sexual trade and exploitation occurs dominantly in the street, and in bars and night clubs. In order to combat this issue, the police created the “Unit on Sexual Offences” (*Unidad de Delitos Sexuales*) in 2004 whose purpose is to investigate commercial exploitation and child sexual abuse.⁸¹

Commercial sexual exploitation of children and adolescents constitutes a systematic violation of their human rights, and is one of the most dominant forms of violence and physical and emotional abuse, mainly committed by male adults. It is a complex and multi-dimensional issue, that maintains the patriarchal culture of exploiting minors and oppressing women, where sexual violence and exploitation become “natural” especially due to the social exclusion and marginalisation of large population sectors, in the national context of widespread poverty.

This situation is covered up by secrecy which fuels the social context of impunity, permissiveness, indifference and complicity, to which joins

80 ILO/IPEC/SIMPOC, Synthesis of results from the survey on child labour in Honduras, May 2004.

81 COIPRODEN, Informe de la situación actual de la Niñez hondureña en el marco del Seguimiento a las Recomendaciones del Comité de las Naciones Unidas por los Derechos del Niño, Tegucigalpa, Honduras, February 2005.

the governments' lack of political willpower to face the problem and the legal system's weakness to eradicate it. Such practices take many forms such as prostitution and pornography, from commercial sexual exploitation of children and adolescents in the street, to more the increasing use of technological means of exploitation such as through sale of pornography on the internet and sexual tourism based on the promotion of commercial sex with minors. Such practices contribute to the increase of demand and to the establishment of international and national networks. In this global sex market, the bodies and lives of children and adolescents are exploited and transformed into marketable commodities in magazines, photos, videos, on the internet, etc., in view of a profit."

6. Article 9 ICCPR: Personal security and protection against arbitrary detention

6.1 Legal framework for the deprivation of liberty in the Republic of Honduras

According to national law, one's liberty may only be deprived by a competent authority sentencing an individual for perpetration of an offence or crime, in accordance with the procedures established by law.⁸² The legal system ensures respect for the principle of legality.

Legal measures

- Procedural guarantee: Art. 84 National Constitution of Honduras (NCH) and Art. 1 Criminal Code (CC);
- Substantive guarantee: Arts. 95 and 98 NCH and Art. 2 CC;
- Jurisdictional guarantee: Art. 94 and 84 NCH;
- Enforcement guarantee: general principle of legality Arts. 321 and 323 NCH and through the creation of a coordinating body of enforcement judges, Code of Criminal Procedure (CCP), Art. 381 and ss.⁸⁴

Procedural aspects

According to the Inter-American Court of Human Rights, the guarantee of legality expressed in Article 29 of the ACHR requires that all limitations of rights must result from a formal act by a legal authority.⁸⁵ This ruling must be issued with express authorisation from the competent authority.⁸⁶ The

82 Arts. 69, 84 and 95 NCH; Art. 9.1 International Convention on Civil and Political Rights, hereinafter ICCPR; Art. 7.2 American Convention on Human Rights, hereinafter ACHR.

83 The Criminal Code of Honduras, Decree 143-83. In text, CC.

84 Code of Criminal Procedure. Decree 9-99- 3. In text, CCP.

85 Inter-American Court of Human Rights, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (articles 13 and 29, American Convention on Human Rights), Advisory Opinion OC-5/85.

86 *Idem*.

Court's interpretation is binding for the State of Honduras and affects all interpretations of domestic law.

The deprivation of liberty can result from a conviction or can be applied as a precautionary measure. In any case, it can only be carried out in places defined by the Law (Art. 85 NCH), where persons awaiting sentencing should be separated from those who have already been convicted (Art. 86 NCH and Art 191 CCP).

The deprivation of liberty constitutes a measure of exceptional character. It may only be adopted after a court verifies the criminal act, or in order to prevent persons suspected of being associated with the criminal act from escaping or obstructing justice (Art. 94 NCH and Art. 172 CCP).

The law contemplates the following forms of preventative deprivation of liberty: apprehension, provisional detention, and pre-trial detention (Art. 173 CCP).

Apprehension

The police can apprehend someone without a written mandate in cases where there is reason to suspect participation in a crime and an attempt to evade justice (Art. 175 CCP). The District Attorney and the competent authority must be informed of detentions for this purpose within six hours.

Provisional Detention

- Permissible criteria: Risk of evading justice, the need to secure the crime scene, and refusal to comply with a summons to give evidence (Art. 176 CCP).
- Procedure: The order or ruling must be issued in writing and authorised by a competent authority, a District Attorney or a judge (Art. 84 NCH and Arts. 173 and 176 CCP).
- Time limit: Provisional detention can last no longer than 24 hours without obtaining a legal ruling. Legal detention can last no longer than 6 days (Art. 71 NCH).

6.2 Pre-trial Detention

Due to its importance within this case, we will now consider pre-trial detention, which is “*depriving an individual of his or her liberty while he or she is waiting to be formally sentenced.*” (Art. 176 CCP). This measure can be taken in the following cases (Art. 179 CCP):

- Risk of evading justice,
- Risk of interfering with justice,
- Substantiated risk that measures will be taken in retaliation against the accused or accuser.

Pre-trial detention is also permissible when there is no way to guarantee the objectives of justice through any other precautionary measure that does not entail depriving individuals of their liberty (Art. 184 CCP).

The Supreme Court of Honduras has affirmed the exceptional character of precautionary measures that deny individuals’ liberty.⁸⁷

The increased occurrence of liberty deprivation through pre-trial detention is a problem rooted in Honduras’ prison system. According to data provided by the Directorate for Special Protective Services (DSPS), up to 63% of persons deprived of their liberty is awaiting sentencing.⁸⁸ The National Coordinating Body of Enforcement Judges corroborates these findings, albeit at a slightly lower rate of 60%.⁸⁹

Data indicate an improvement over time. In the early 1990s, the population of persons in detention awaiting sentencing was approximately 90%. These rates remained constant throughout the 1990s, but began to decline slightly after 2000. Only in 2002 did the decline become substantial.

The available data for 2005 indicate that this decline is slowing, coinciding with the introduction and enforcement of a new Code of Criminal Procedure.

A few specific groups suffer disproportionately from the arbitrary application of pre-trial detention.

87 Supreme Court of Honduras, Sentence AP 784-02, date 02/04/03.

88 DSPS. 2004 Annual Report.

89 Report issued by National Coordinating Body of Enforcement Judges. Prison population, December 2005.

The new criteria for setting individuals' bail in pre-trial detention (Art. 179.2 CCP) require an assessment of the detainees' socio-economic conditions. This practice is inherently discriminatory in a country where the large majority of individuals live in poverty and a significant portion of economic activity is undeclared.

The security policies applied in the last few years have played an important role in this phenomenon. The strict enforcement of amended Art. 332 of the Criminal Code, known as the "Anti-maras (anti-gang) Law," warrant particular attention.

After Art. 332 reformation, and with the advent of heightened social unrest due to increased violence, the State now applies pre-trial detention to accused individuals on a more regular basis than ever before. There has been significant protest against the widespread pre-trial detention of youth who are linked to gangs.⁹¹

*"Once the police capture the "mareros" (gang members), the government authorities present the requirements for detention without even questioning police conduct. Due to strong social pressure, the judge feels obliged to send the accused to jail."*⁹²

As a result of its strict enforcement, two thousand youths were detained within the first 16 months after reformed Article 332 became effective.⁹³ This overwhelmed the legal system and put hundreds of youths under precautionary pre-trial detention.⁹⁴

A new legislative reform was passed shortly thereafter which undermined the exceptional nature of pre-trial detention as a precautionary measure.⁹⁵ The new legislation specifically extinguished the Court's ability to adopt

90 Amendment of the Criminal Code allows more extreme punishment for crimes of illegal association, and expands the range of permissible police behaviour in their efforts against organised gangs.

91 *Supra* note 25.

92 Orellana Mercado, Edmundo. Report on the State of Judicial Power. Honduras 2003. Tegucigalpa: FOPRIDEH, IFES, 2004.

93 Rivera, Reina. Effects of the application of Article 332 on the Honduran prison system. Tegucigalpa: CIPRODEH, 2006.

94 *Id.*

95 Decree 223-05, Publisher in La Gaceta on 12/03/05.

precautionary measures other than imprisonment in cases of illegal association and membership in organised crime.

“In no cases will pre-trial detention be substituted with any other precautionary measure for crimes committed by members of organised crime or illegal associations.”

These legal reforms are based on discriminatory criteria for the systematic, rather than exceptional application of pre-trial detention as a precautionary measure. The San Pedro Sula massacre illustrates the effects of the widespread application of the “*Anti-maras Law*” on youth.

- In the San Pedro Sula Criminal Centre fire, almost 50% of the 189 persons found in the affected area had been detained for crimes related to gang activity – illegal association alone or in combination with other crimes – and 49 of the dead were awaiting a formal hearing.
- Partial data on the application of Article 332 CC indicate an essentially indiscriminate use of pre-trial detention, and significantly higher application to gang-related crimes than for any other.

Despite numerous recommendations received by the State, no significant measures have been adopted to reduce the number of people being held in pre-trial detention. Although the State claimed that the new Code of Criminal Procedure would reduce the number of individuals being deprived of liberty through pre-trial detention, official data does not reflect this.

Population denied liberty in pre-trial detention Historical Comparison

	Old Code of Criminal Procedure	New Code of Criminal Procedure	Total
May 2004	2897	3726	6623
December 2005	2284	4833	7117

Source: National Coordinating Body of Enforcement Judges. Prison Population Listings. May 2004 and December 2005

CHILDREN'S RIGHTS

Children are not subject to the same criminal system as adults. The Code on Children and Adolescents establishes a juvenile criminal system in Title III. Article 180 states that twelve (12) years old is the minimum age at which one can be judged.⁹⁶ Articles 208 - 218 of the Code on Children and Adolescents establish the procedures for arresting minors.⁹⁷ Arrests of minors should also be made in accordance with the principles, rights, and procedures included in Honduras' National Constitution and other relevant laws. The police may arrest a minor for whom a judge has issued an arrest warrant, which should be presented to the subject child or adolescent. The police may also arrest a child or adolescent without a warrant at the moment a crime is being committed (*in fraganti*). The majority of arrests occur *in fraganti*. For example, in 2003, 582 children were arrested, presumably in the process of committing the crime, while only 42 arrests were made with a legal warrant.⁹⁸ Moreover, the police may only apprehend children under the age of 12 with the sole objective of returning them to their parents or legal custodians.

The law recognizes that detention is an exceptional measure that deprives the child of his or her liberty. Reasons for legal detention are: serious threats, violence, or damage to a person's life; committing repeat or habitual offences; unjustifiable refusal to comply with other measures or sanctions ordered by the competent authority; and, risk of escape or obstruction of justice.⁹⁹ Child inmates retain a series of rights, and withholding liberty must not last longer than eight (8) years. Children must be detained in special facilities separate and apart from the adult prison system. The deprivation of liberty must be reviewed every six (6) months. These rights are articulated in articles 198 and 199 of the Code on Children and Adolescents.

96 Code on Children and Adolescents, Art. 180: "Children under twelve (12) years old do not commit crimes."

97 Article 175 of the Code of Criminal Procedure, decree N0 9-99 E, establishes the general process for an arrest.

98 Rachel Harvey, "From Paper to Practice – An Analysis of the Juvenile Justice System" ("Del Papel a la Práctica – Un Análisis del Sistema de Justicia Juvenil") Children's Legal Centre, editor: Save The Children, United Kingdom, October 2005, p. 24.

99 Code on Children and Adolescents, Art. 198.

The Code on Children and Adolescents authorises the judge to adopt precautionary measures that guarantee the child's presence throughout his or her trial.¹⁰⁰ Included among these guarantees is the right of every child to have his or her own counsel.¹⁰¹ Article 182 also protects this right by demanding respect for all procedural guarantees recognised under Honduran law.¹⁰²

In relation to the protection of children's liberty, it is disconcerting that internment measures authorised by Juvenile Court judges are not subject to periodic evaluation, nor are they examined on a case-by-case basis.¹⁰³ This precludes the possibility of substituting or shortening the periods minors are deprived of their liberty.

In its "Third Periodic Report on the Compliance of the Convention on the Rights of the Child", the State of Honduras recognises that "the detention of minors by police is one of the most discretionary and illegal expressions of judicial ambivalence, which is evident in Honduras in many fields related to the rights of children. Upon observing such incidences over the last few years, it is clear how ubiquitous this phenomenon is. In 2002, there was a clear break from the trend towards greater respect for human rights, which had begun to improve in the early 1990s. Detentions¹⁰⁴ have been increasing as a result of citizen safety policies which have made children and adolescents the primary targets."

100 Socio-familial orientation and support; imposition of the rules of conduct as determined in Art. 192; obligatory residence; assisted freedom; semi-freedom, and internment. Code on Children and Adolescents, Art. 206.

101 Code on Children and Adolescents, Art. 229.

102 Particular reference is made to the presumption of innocence; the right to a speedy and public trial; the right to be present at trial; the right to be freed immediately if the competent authority deems that there is no reasonable indication of having committed or participated in the infraction; the right to immediate and professional legal counsel; the right to not testify against oneself; the right to freedom from torture and the exclusion of illegally obtained evidence; the right not to be subjected to unlawful punishments; that procedural terms, timeframes and documentation are satisfied as established by Law; that the judgment be based on evidence presented during the trial; the right to equality before the Law and courts; and the right to appeal a sentence.

103 Code on Children and Adolescents, Art. 198.

104 In December 2004, the Constitution was reformed, increasing the detention period for inquiry from 24 to 72 hours.

It is suspected that police charged with maintaining internal order and safety have played a central role in the persecution and detention of minors who are in the most dire situations, completely deprived of basic rights (living in the streets, abandoned, etc.). In no way does this reflect a focus on protecting children's rights, nor does it demonstrate a sense of social co-responsibility. The social policies affecting this sector of the population should be of central concern.

The State of Honduras recognises that the reforms of Article 332 of the Criminal Code, known as the *Anti-maras* Law, which criminalise membership in a "mara" or "gang,"¹⁰⁵ have promoted the indiscriminate detention of adolescents. Between August 14, 2003¹⁰⁶ and December 2004, there were 787 adolescents detained. Of these, 597 (75.8%) were sent by the District Attorney to the Juvenile Court.

The increased force exercised by police against children has been matched by recent criminal sentences, which have included more severe detention measures. Of the 597 adolescents sent to Juvenile Court, 462 (77%) were deprived of their liberty. Only 93 were sentenced to other precautionary measures. Thus, an alarming portion were held under pre-trial detention in both adult prisons and juvenile internment facilities. This indicates that pre-trial detention is the general rule, rather than the exception, a situation that stands in stark contrast to the intentions of existing laws.¹⁰⁷ Moreover, in the official follow-up report recently issued to the Committee on the Rights of the Child, the State explicitly acknowledged that 77% of the 787 children affected between the implementation of the reforms of Article 332 and December of that same year (a period of less than five months) were subjected to pre-trial detention.¹⁰⁸

105 La Asociación Cristiana de Jóvenes de Honduras (ACJ) and Save the Children UK, estimate that adolescents, 12-17 years old, account for 64% of all youth gang members.

106 The date the reform of the Criminal Code Art. 332 was put into effect.

107 Art. 184 of the Code of Criminal Procedure and Art. 198 of the Code on Children and Adolescents.

108 Third Periodic Report on Compliance of the Convention on the Rights of the Child, developed by the Consultant María del Carmen Ayer Cerna, for IHNFA. Tegucigalpa, November 2005.

The government's "Zero Tolerance" policy was put into place during the Maduro administration. General police repression against juvenile delinquency and gang activity still continues as the number of round-ups and large scale arrests increase. This appears to have directly contributed to the mistreatment of children and adolescents. Gang members are especially hurt and attacked during the arrests.¹⁰⁹

109 Anecdotal reports about the mistreatment of minors during the arrest were provided by Casa Alianza. Lawyer Gustavo Zelaya, meeting held on June 22, 2004; Hugo Mejía Tabora, Director of El Carmen, visit on July 12, 2004; Ricardo Torres, advisor and coordinator of the Programa Paz y Justicia de Iglesia Menonita, meeting held on July 13, 2004 to develop the book entitled, *Del Papel a la Práctica – Un Análisis del Sistema de Justicia Juvenil en Honduras*.

7. Article 10 ICCPR: Prison conditions

7.1 Legal framework of the prison system

According to the National Constitution of Honduras, the principal aims of the prison system are to ensure public safety and to provide rehabilitation for prisoners (Art. 87 NCH).

The basic regulation of the prison system is the Criminal Rehabilitation Law (CRL).¹¹⁰ Among other things, this Law establishes the structure of the prison system, sets up a program of progressive treatment, sets out the rights of prisoners, and outlines the disciplinary regime. Although the CRL identifies the need for implementing regulations (Art. 95 CRL), no such statutes have yet been established.

The Security Secretariat is responsible for overseeing the prison system. This oversight is carried out by the Police Directorate of Special Protective Services which is in charge of maintaining and administering all adult prisons, as well as taking care of Social Reintegration Centres for juvenile criminals.¹¹¹ Every detention facility has a director who is responsible for ensuring compliance with the CRL, guaranteeing “*the safety, order, discipline, hygiene and health of the prisoners.*” (Art. 18 CRL).

Various institutions have the authority to supervise prisons and guarantee the rights of individuals deprived of liberty.

Enforcement judges represent the primary authority for protecting the rights of prisoners. Their main functions are (CCP Arts. 381 and ss):

- To ensure that prison administration respects the principle of legality and human rights while a sentence is being served.
- To define specific details of the sentence, including its duration and conditions for parole.

¹¹⁰ Criminal Rehabilitation Law, Decree 173-84, 15/10/1984. In text, CRL.

¹¹¹ Article 29 of the General Public Administration Law. The Security Secretariat’s responsibility was established by Decree 155-98, issued on 28 May 1998, published in the Official Newspaper, La Gaceta, N° 28,629, August 1, 1998. Article 52 of the National Police Law.

Other institutions with authority to oversee compliance and protection of prisoners' rights are the Public Ministry and the National Commission on Human Rights (NCHR) or its Ombudsman.

The NCHR is an authority external to and independent from the national prison system which operates through official proceedings and in response to formal complaints. This institution issues general and specific reports and recommendations on specific human rights violations (NCHR Law, Art. 9).

The Public Ministry holds the sole authority over criminal acts, addressing suspected human rights violations suffered by individuals deprived of their liberty. Through the District Attorney for Human Rights, the Public Ministry is responsible for addressing suspected human rights violations which may have been perpetrated in part by State actors.

Alongside these institutions, and in the face of the prison system's deteriorating conditions, the last Congress established a number of special commissions to address the prison system's problems.¹¹² These commissions issued various evaluations and recommendations, which have received very little attention since their dissemination.

The last Congress also pushed for new prison legislation that would replace the existing Criminal Rehabilitation Law. The main objective of this new legislation was to create a civil institution to oversee the prison system. The new legislation was not passed before Congress went on recess at the end of 2005.

7.2 Prison infrastructure

According to the Criminal Rehabilitation Law, Honduras has 24 criminal facilities classified into three categories:

1. **National Prisons:** *For prisoners serving sentences of 3 or more years.*
2. **Departmental or Regional Jails:** *For prisoners serving sentences of less than 3 years.*

112 There were six commissions established in four years. Joaquín Mejía, Lucas Valderas, Amado Mancia and Hector Flores. Brief Evaluation of the Honduras Prison System from a Human Rights.

3. *Local Jails: For individuals serving a prison sentence*¹¹³

Safety measures are to be taken in psychiatric establishments, prison camps, and rehabilitation or special treatment centres.¹¹⁴

Until 2005, the only National Prison was the Marco Aurelio Soto Criminal Centre. In 2006, however, a number of regional jails were elevated to the status of National Prison.¹¹⁵

7.3 Living conditions of individuals deprived of liberty

Overcrowding

The State recognizes that overcrowding is one of the worst problems facing the Honduran prison system.¹¹⁶

The actual capacity of the prisons is a controversial topic. The Directorate of Special Protective Services (DSPS) has set the maximum capacity at 8,280 prisoners.¹¹⁷ Nevertheless, other prison authorities have questioned this number, placing the maximum capacity at no more than 7,000 individuals.¹¹⁸

113 A prison sentence subjects the criminal to the deprivation of his/her liberty in local jails, with the subsequent obligation to work on site while serving the sentence (Criminal Code, Art. 47).

114 *Safety measures that may be applied are: 1) Internment in a psychiatric establishment; 2) Internment in a labour institution or prison camp; 3) Internment in a rehabilitation or special treatment centre; 4) Freedom under surveillance; 5) Prohibition from residing at a specific location; 6) Prohibition from visiting specific locations; 7) Set bail based on good behaviour; 8) Deportation of foreigners* (Criminal Code, Art. 83).

115 The following facilities were converted to National Prisons: Comayagua, Danlí, El Porvenir, Santa Rosa de Copan, San Pedro Sula, Choluteca, Lempira, La Paz and CEFAS. Executive Decree 004-2005, June 2005.

116 Honduras' Report to the Committee, CCPR/C/HND/2005, section 90.

117 DSPS, 2004 Annual Report,

118 "The population is growing, they are 11'000, on Friday. We can attend to 7,000." Marco Tulio Bulnes, Interim Director of the Directorate of Special Protective Services, being interrogated by enforcement judge, Sandra Palacios, about the capacity of the prison system. Grievance hearing, 11/10/04, Exp. 144-04.

Prison Overcrowding

Criminal Facility	Stated Capacity	Current Population
P. N. EL PORVENIR	240	533
R.D. LA CEIBA ATLANTIDA	100	313
R. L. TELA, ATLANTIDA	160	266
R. D. TRUJILLO, COLON	120	361
P.N. COMAYAGUA, COMAYAGUA	800	659
P.N. SANTA ROSA DE COPAN	240	502
P. N. SAN PEDRO SULA, CORTES	800	1907
R. L. PUERTO CORTES, CORTES	50	107
P. N. CHOLUTECA, CHOLUTECA	800	376
G. P. DANLI, EL PARAISO	400	440
P.N.MARCO AURELIO SOTO	2500	3157
P. N. PUERTO LEMPIRA	20	24
R. D. LA ESPERANZA, INTIBUCA	100	127
G.P. LA PAZ, LA PAZ	120	209
P.N. MARCALA, LA PAZ	120	126
G.P. GRACIAS, LEMPIRA	600	329
G.P. OCOTEPEQUE	150	116
R.D. JUTICALPA, OLANCHO	130	398
P. N. SANTA BARBARA	180	387
G.P. NACAOME, VALLE	120	170
G.P. YORO, YORO	150	231
R.D. EL PROGRESO, YORO	120	398
R.D. OLANCHITO, YORO	60	205
P.N. CEFAS	200	204
Total	8280	11545

CPTRT. Source: DSPS. 2004 Annual Report; Data reported for individuals deprived of liberty. 30 December 2005

According to data provided by the DSPS, 11,545 people were deprived of liberty in Honduras at the end of 2005.¹¹⁹ The Coordinating Body of Enforcement Judges indicated that, for the same time period, the total prison population was 12,020.

There are few reliable records kept within prisons which make precise descriptions and analyses difficult. This is reflected in aspects of this document.

According to the 2001 National Census, Honduras had a total population of 6.5 million people.¹²⁰ The same data indicate that more than 170 out of every 100,000 individuals are prisoners. Although these data should be adjusted to account for population increases, they nevertheless reflect one of the highest populations of prisoners in the region.¹²¹

From a historical perspective, the population of prisoners has increased disproportionately to overall population growth. For example, in the early 1990s, 5,717 people were deprived of their liberty.¹²² Throughout the 1990s, the total prison population continued to increase, reaching 12,500 in 2001.

The increase in overall population alone cannot explain this phenomenon. A number of studies have shown that the increase in the total prison population is significantly greater than the growth of the general population.¹²³

119 Directorate of Special Protective Services, Report on population deprived of liberty, 31 December 2005.

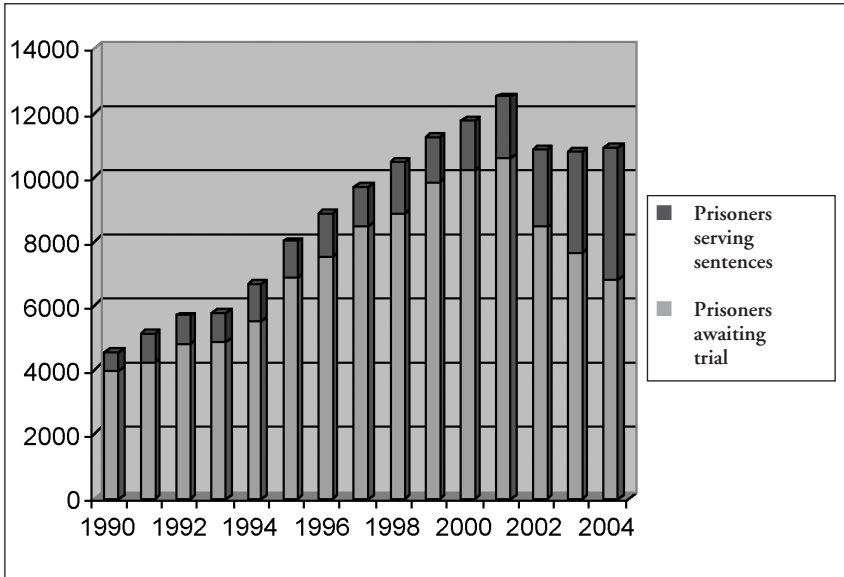
120 According to the 2001 Honduras National Census, the total population is 6,535,344. Data available at: <http://www.ine-hn.org/>

121 See Noel Rodríguez, M. Outlook on Prison Systems in Latin America and the Caribbean from a Human Rights perspective, Project “Women deprived of liberty in Central America” (Panorama de los sistemas penitenciarios en América Latina y el Caribe desde una perspectiva de los Derechos Humanos, Proyecto “Mujeres privadas de libertad en América Central”). ILANUD. 2002. Document available at <http://www.iidh.ed.cr/comunidades/seguridad/doctrina.htm>

122 Elias Carranza (Coordinator), “Criminal Justice and Prison Overcrowding. Possible Responses” (“Justicia penal y sobrepoblación penitenciaria. Respuestas posibles”). ILANUD: Costa Rica: Siglo XXI editors, 1999. Cited in Mejía, J. et al., 2005.

123 Noel Rodríguez, 2002. Op. Cit.

Population deprived of liberty: Historical data



Source: *DSPS, 2004 Annual Report*

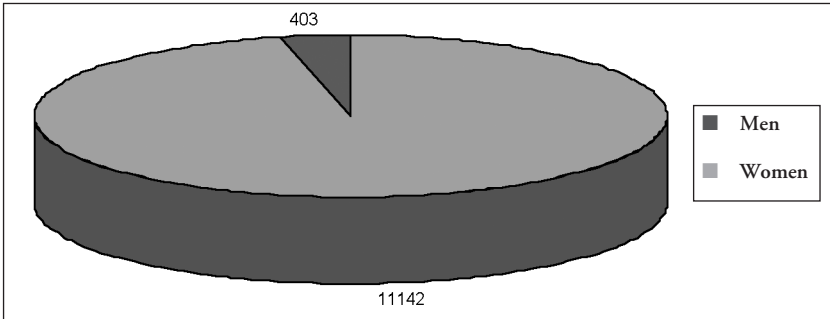
These data cannot be fully appreciated without comprehensive studies that compare them to data on delinquency and the application of criminal policies. Nevertheless, evidence suggests a strong correlation between the application of stricter criminal policies and the growth in prison population. Other recent studies focused on the repression of gang activity in Honduras, indicate a significant hardening of the State's security policies, as well as the State's systematic use of imprisonment to combat criminal activity.¹²⁴

124 Vid. Tomas Andino, "Does the Anti-Gang Law (Criminal Code Art. 332) Make Sense in Honduras?" ("Tiene Sentido La "Ley Anti Maras" (Art. 332 Del Código Penal) En Honduras?"); Reina Auxiliadora Rivera Joya Expert Opinion Developed for the Inter-American Court of Human Rights, Case 12.331, "Four Cardinal Points": Victims' family members in the case of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Diomedes Obed García and Orlando Álvarez Ríos, versus the State of Honduras. December 15, 2005.

7.4 Demographic groups

According to available data, the majority of individuals deprived of their liberty in Honduras are male.

Population deprived of liberty, Distribution by sex



Source: DSPS, December 2005

Among men, the majority have been detained for crimes resulting in death, violent crimes against property, crimes related to the possession and sale of illegal substances, and sexual assault.¹²⁵ Among women, the majority are in prison for their involvement in crimes related to the possession and sale of illegal substances.¹²⁶

Similar to the general population, the Honduran prison population is relatively young. The most recently available data indicate the majority of those deprived of liberty are younger than 35, with a particularly high concentration between 24 and 35 years of age.¹²⁷

Youth detained for gang-related activity constitute a significant proportion of the total prison population. As this report illustrates, the living conditions of this group warrant special attention.

125 DSPS, 2004 Annual Report.

126 DSPS, 2004, Op.Cit.

127 Pérez de Mungía, Andrés. Social characteristics of the prison population and their effect on work and education opportunities within the criminal and social rehabilitation centres in Honduras. Exploratory Study. (Características sociales de la población penitenciaria y su relación con las posibilidades de trabajo y educación en los centros penales y de reeducación social de Honduras. Estudio exploratorio.) Tegucigalpa: PNUD, 2005. Project on small firearms, security, and justice, p. 28.

Prison population linked to gangs

CRIMINAL FACILITY	GANG NAMES										
	18		MS/13		DE LA 61		VL		WANDERS		TOTAL
	H	M	H	M	H	M	H	M	H	M	
P. N. EL PORVENIR	2	0	1	0	0	0	0	0	0	0	3
R.D. LA CEIBA	0	1	3	0	0	0	0	0	3	0	7
R. L. TELA,	0	0	7	0	0	0	0	0	0	0	7
R. D. TRUJILLO,	2	0	9	0	2	0	1	0	0	0	14
P.N. COMAYAGUA,	1	0	1	0	0	0	0	0	0	0	2
P.N. SANTA ROSA	1		1	0	0	0	0	0	0	0	2
P. N. SAN PEDRO SULA,	65	0	18	0	0	0	0	0	0	0	83
R. L. PUERTO CORTES,	1	0	43	0	0	0	0	0	0	0	44
P. N. CHOLUTECA,	16	0	13	0	0	0	0	0	0	0	29
G. P. DANLI,	1	1	0	0	0	0	0	0	0	0	2
P.N.MARCO AURELIO SOTO	168	0	262	0	0	0	0	0	0	0	430
P. N. PUERTO LEMPIRA	10	0	0	0	0	0	0	0	0	0	10
R. D. LA ESPERANZA,	1	0	0	0	0	0	0	0	0	0	1
G.P. LA PAZ,	3	0	8	0	0	0	0	0	0	0	11
P.N. MARCALA,	0	9	0	7	0	0	0	0	0	0	16
G.P. GRACIAS,	0	1	0	0	0	0	0	0	0	0	1
G.P. OCOTEPEQUE	3	0	0	0	0	0	0	0	0	0	3
R.D. JUTICALPA,	10	0	10	0	0	0	0	0	0	0	20
P. N. SANTA BARBARA	6	0	48	2	0	0	4	0	0	0	60
TOTAL	290	12	424	9	2	0	5	0	3	0	745

Source: DSPS, February 2006 Report

The visit of the Special Rapporteur of the Inter-American Commission on Human Rights, Florentín Menéndez, confirmed the 2004 prison crisis. As a result, the State proposed a plan to alleviate the system's congestion using three important initiatives:¹²⁸

- Issue a selective pardon that would benefit 950 individuals.¹²⁹ The pardon would be granted to: persons imprisoned for minor offences, persons who had completed their sentence but who had not yet been released because they still had to pay an associated fine, prisoners older than 60 who had completed at least half of their sentence, the mentally ill, and those who suffered from HIV/AIDS.¹³⁰
- Issue a Presidential Decree in June 2005 that would allow prisoners to commute their sentences to community service.¹³¹
- Designate various jails as National Prisons, to avoid having to move all persons with sentences longer than 3 years to a National Prison (Decree of June 2005).¹³²

At the time this report was compiled, the granting of pardons – the program's critical piece – had been stopped. The Supreme Court acknowledged that only 34 of the 950 potential beneficiaries of the pardon had actually been processed and released.¹³³ Data relating to the other initiatives are not available, although significant doubts exist pertaining to their implementation and efficiency.¹³⁴

In the last few months, the Honduran government has suggested the possibility of building new prisons as a concessionary response to overcrowding.

128 The visit took place in December 2004. See <http://www.cidh.org/PRIVADAS/visitas.htm>

129 Data provided by the National Coordinating Body of Enforcement Judges.

130 Statements by Luis Alonso Pineda Batres, Secretary General of the Security Secretariat, made to the Judge ruling on the collective writ of Habeas Corpus in favour of the National Prison inmates, 10 May 2005.

131 Executive Decree, No. 110-2005, by which Articles 53 and 61 of the CC were reformed.

132 Executive Decree No. 004-2005.

133 La Tribuna Newspaper, 27 January 2006. Available at <http://www.latribuna.hn/92457.0.html>

134 El Heraldo Newspaper, 17 January 2006. Available at <http://www.elheraldo.hn/nota.php?nid=44452&sec=7&fecha=2006-01-17>

Although no steps have been taken on this proposal yet, it is important to remember that these new prisons are not contemplated within existing prison legislation. As result, they would fall into a legal void.

7.5 Health conditions

Providing a healthy living environment to those deprived of liberty is a basic obligation of the State. This responsibility has been stipulated in various international standards.¹³⁵

As Honduras itself recognizes, the prison establishments in Honduras are precarious and do not offer the physical or logistical conditions needed to adequately attend to its prison population.¹³⁶ As a result, many criminal facilities have been deemed “contaminated and unhealthy.”¹³⁷

Access to drinkable water is also severely limited in numerous facilities. A number of inmates at the Marco Aurelio Soto Criminal Facility were seen drinking unhealthy water.¹³⁸ This facility is not the only one with such unhealthy conditions: “(across the country) almost all criminal facilities lack drinkable water and electricity.”¹³⁹

The lack of water in bathrooms combined with plumbing problems has created significant troubles for sewage maintenance at the Juvenile Rehabilitation Centre “Menores Renaciendo” and the “El Progreso” Criminal Facility. The lack of resources precludes significant and necessary reforms or repairs. As a result, at the time of the present report’s release, the Ocotopeque prison had still not repaired a water tank that had ruptured four months earlier. Currently, this prison only receives water with limited pressure for one hour a day, which makes basic plumbing impossible throughout the site.

135 Standard Minimum Rules for the Treatment of Prisoners; Standards of the European Committee for the Prevention of Torture, CPT/Inf/E (2002) 1, Rev. 2004, Chapter. III.

136 Honduras’ Report to the Committee, CCPR/C/HND/2005/, Sect. 98.

137 Inter-Institutional Commission on Prison Reform, 2003, Op. Cit. p. 19.

138 Visit from Lawyer Paulina Perez de Licona, as the executor of the Collective Habeas Corpus, 10/05/05.

139 President Maduro announces drastic changes in the national prison system. Tuesday, 13 May 2003. Available at http://www.casapresidencial.hn/2003/05/13_1.php

In many facilities, prisoners are surrounded by garbage (e.g. Marcala, and the Ocotopeque Prison Camp) or have garbage pits next to their cells (Marco Aurelio Soto National Prison). As a result, constant noxious smells, as well as pest and rodent infestations, significantly threaten prisoners' health.

In some centres, the quality of the prisoners' water supply is seriously compromised.¹⁴⁰

Individuals deprived of liberty often complain about the limited quantity of food they are given in the larger State prisons.¹⁴¹ The prison directors are given 9 Lempira per day for inmates' physical care.¹⁴²

A brief description of the daily living conditions experienced by much of the Honduran prison population illustrates the deplorable situation in which most facilities are currently found:

"...upon moving to the area known as "diagnostic," we were told that the maximum capacity was one hundred and eighty inmates, even though there were two hundred and twenty five at the time. Overcrowding was evident; the majority of prisoners were sleeping on the ground. There are no beds, only a few have sleeping mats in satisfactory condition, there aren't enough cells, the corridors are filled with inmates, making passage nearly impossible. They haven't had access to drinking water for a month, and the little water that is available must be carried from far away. As a result, horrible smells come from the sanitary installations, which are in poor condition and next to which inmates sleep. The living spaces are completely confined, there is no natural ventilation, and there is basically no electricity".¹⁴³

Police holding cells are equally unhealthy. Detainees must withstand unacceptable conditions as they await release or transport to a formal prison. In fact, a Public Ministry evaluation of police holding cell conditions in the

140 Collective *Habeas Corpus* in favour of the National Prison inmates; Collective *Habeas Corpus* in favour of inmates from the San Pedro Sula Criminal Centre.

141 *Idem*.

142 Collective *Habeas Corpus* announced in favour of the inmates at the San Pedro Sula Criminal Centre, 4 August 2005, p. 2.

143 Paulina Pérez de Licona, the Judge carrying out the Collective *Habeas Corpus* in favour of the National Prison inmates. Record of Visit, 10/05/2005.

Francisco Morazán Department confirmed that many detention centres place inmates in unhealthy cells, with limited access to drinking water, light, and ventilation.¹⁴⁴

Under these circumstances, adequate personal medical attention and supplies are fundamental to protecting inmates' right to life. However, the lack of resources has led to inadequate health services to meet the needs of this population. The State is fully aware of these conditions: "almost all prisons lack the necessary medical, dentist, and nursing staff, as well as the medicines required for attending to inmates."¹⁴⁵

144 Inspections of police holding cells carried out by both the CPTRT and the Public Ministry in 2004 and 2005.

145 Inter-Institutional Commission on Prison Reform, *Op. Cit.* p. 24.

Medical personnel attending prisons

Criminal Facility	Doctors	Dentists	Psychologists	Nurses
P. N. EL PORVENIR	nd	nd	nd	Nd
R.D. LA CEIBA	1	0	1	0
R. L. TELA,	0	0	0	1
R. D. TRUJILLO,	0	0	0	0
P.N. COMAYAGUA,	1	1	0	0
P.N. SANTA ROSA DE COPAN	0	1	0	1
P. N. SAN PEDRO SULA,	1	1	0	0
R. L. PUERTO CORTES,	0	0	0	1
P. N. CHOLUTECA,	0	1	0	1
G. P. DANLI,	1	0	0	1
P.N.MARCO AURELIO SOTO	3	1	3	8
P. N. PUERTO LEMPIRA	0	0	0	0
R. D. LA ESPERANZA,	0	0	0	0
G.P. LA PAZ,	0	0	0	2
P.N. MARCALA,	0	0	0	1
G.P. GRACIAS,	0	1	0	0
G.P. OCOTEPEQUE	0	0	0	0
R.D. JUTICALPA, OLANCHO	0	0	1	0
P. N. SANTA BARBARA	0	0	0	1
G.P. NACAOME, VALLE	0	0	0	0
G.P. YORO, YORO	0	0	0	0
R.D. EL PROGRESO, YORO	0	0	0	0
R.D. OLANCHITO, YORO	0	0	0	0
P.N. CEFAS	1	2	1	2
Total	8	8	6	19

Source: DSPS, February 2006

7.6 Rehabilitation Policies

Basic international human rights instruments dictate that the ultimate objective of applying a sentence should be the personal reformation and social rehabilitation of the individual.¹⁴⁶ National legislation should be interpreted similarly.¹⁴⁷

Existing doctrines on international protection mechanisms highlight various elements that are critical to achieving rehabilitation.

- Individualize treatment, attend to the medical, psychological, psychiatric and learning needs of those deprived of liberty.
- Provide access to education and work for those deprived of liberty.
- Create and maintain a safe and healthy environment within prison communities.

As the State points out, the CRL is intended to create a system which offers individualized, progressive treatment of those deprived of their liberty¹⁴⁸. However, this system has not proven to be effective. Some of the main obstacles are:

- The inability to separate the different categories of prisoners.
- The lack of an agency or office responsible for ensuring implementation. The Technical Boards which were envisaged in the text of the CRL have not been incorporated into the system, despite the State's claim to the contrary.¹⁴⁹ This shortcoming is echoed in the evaluation carried out by the Inter-Institutional Commission on Prison Reform:

*“The interdisciplinary Technical Boards, contemplated in the Criminal Rehabilitation Law for each criminal facility, have not been established due to a lack of necessary personnel, because adequate funding has not yet been allocated to this initiative and the positions have not been created.”*¹⁵⁰

146 Art. 5.6 IACHR, Art. 10.3 ICCPR.

147 Art. 85 NCH, Art. 1 CRL.

148 The State of Honduras' Report to the Committee, CCPR/C/HND/2005/, Sect. 75.

149 The State of Honduras' Report to the Committee, CCPR/C/HND/2005/, Sect. 70.

150 Inter-Institutional Commission on Prison Reform, Op. Cit. Pg. 23.

- Lack of real opportunities for those deprived of liberty to access education and professional activities. This shortcoming was so extreme that it, too, was mentioned by the Inter-institutional Commission on Prison Reform:

*“The majority of centres do not offer educational programs or have the facilities necessary to provide them. Inmates also do not have opportunities to be trained in specific or technical trades, which can contribute to their rehabilitation.”*¹⁵¹

Current data indicate that inmates receive very limited professional guidance and training,¹⁵² despite alarming levels of illiteracy among those deprived of liberty in Honduras.

This situation continues to worsen as there is not enough staff to effectively re-socialize the inmates

*“With regard to the application of the Standard Minimum Rules for the Treatment of Prisoners, we can say that these Standards are not observed in practice by the prison authorities because they are not aware of these Standards, they have not been trained on the topic, and their personnel have a strong military background”*¹⁵³

Currently, only 5 social workers are employed by the national prison system¹⁵⁴.

151 Inter-Institutional Commission on Prison Reform, Op.Cit. Pg. 25.

152 “[A]mong adult men, the most shocking result was that 89.9% of the population (practically, 9 out of every 10) has not received any occupational training from the criminal facility Pérez de Murguía, Op.cit. p. 29.

153 Honduras’ Report to the Committee, CCPR/C/HND/2005/, Comment on Article 10.

154 DSPS Report, February 2006.

CHILDREN'S RIGHTS

Article 199 of the Code on Children and Adolescents grants child inmates, among others, the right to adequate treatment by the competent authorities charged with their care, prohibiting the use of force, weapons, or violence, as well as collective punishments. The same Article gives child inmates a series of rights, which include the right to: education, recreation, access to authorized jobs, medical attention, receive visitors, and gradual and progressive social reintegration. The same Code also dictates that inmates under the age of 18 have the right to remain separate from adults when deprived of their liberty, and children can be separated from each other based on their age, sex, and internment status.¹⁵⁵ These rights are also recognized in Article 10.2 of the ICCPR.

Nevertheless, there are no separate institutions for minors who have been sentenced and for those who have not. Given that deprivation of liberty is used excessively as a precautionary measure, most child inmates are imprisoned while the investigation takes place or while awaiting a formal sentence.¹⁵⁶ Moreover, there are often conflicts between children and adolescents who have no gang affiliation and youth gang members, provoking intense aggression between these groups. Only the Women's Social Adaptation Centre (WSAC) permits children under the age of 3 to stay with their mothers, prioritizing the child's psycho-emotional health. Here, they have set up day care facilities and nurseries, and they train the mothers and staff to attend to the children's needs, in order to ensure the protection of the children's rights.

The Code on Children and Adolescents mentions that the detention centre must provide healthy living conditions, clothing, and access to personalized medical treatment.

155 Art. 199: (g) To remain separated from other children that could negatively influence the child's behaviour and from individuals older than eighteen who are still serving a sentence; Art. 262: in the same facilities, children will be separated according to age, sex, and internment status.

156 Rachel Harvey, "From Paper to Practice – An Analysis of the Juvenile Justice System." ("Del Papel a la práctica – un análisis del Sistema de Justicia Juvenil"), Children's Legal Centre, editor: Save The Children, British Kingdom, October 2005, p. 67.

Children and adolescents considered to be minor offenders (12-18 years) are sent by Juvenile Court Judges to the IHNFA's "Re-education and Re-integration Program." The Program has four centres that attend to minor offenders, with a maximum capacity of 435 inmates. This maximum capacity has been surpassed by more than 200% since the enforcement of revised Article 332 of the Criminal Code and the stricter treatment of suspected minor offenders.¹⁵⁷ Overcrowding is associated with other significant challenges facing the prison system's treatment of children. For example, prison system operators are not prepared to work with children, the infrastructure is inadequate, and there are constant sanitary and nutritional risks.¹⁵⁸

Both 2004 and 2005 were marked by public outcry against the living conditions of inmates at the IHNFA facilities and, in particular, the "Renaciendo" Educational Complex in Francisco Morazán. Given the deplorable situation in which the children and adolescent detention centres are currently found, and based on findings from a recent visit by the Special Rapporteur for Children, Commissioner Paulo Sergio Pinheiro of the IACHR, ordered the following precautionary measures to better protect the right to personal integrity of children detained at that facility on 13 December 2004.

Firstly, all necessary measures must be adopted immediately to effectively protect the personal integrity of all children imprisoned at the "Renaciendo" Juvenile Detention Centre. The Commission highlighted, specifically, the immediate closure of punishment cells, immediate abolition of physical punishment, immediate consideration of staff removal or transfer, and the immediate adoption of measures to guarantee adequate sanitary conditions for all inmates. Secondly, there should be

157 "Third Periodic Report on Compliance with the Convention on the Rights of the Child," State of Honduras - IHNFA. ("Tercer informe periódico sobre la situación en el cumplimiento de la Convención de los Derechos del Niño" Estado de Honduras - IHNFA), p. 65.

158 With help from UNICEF in 2002, the Re-education and Re-insertion Program was evaluated. They looked at the conditions to which children were subjected in Internment 114. One of the main findings was that 61% of the boys and girls did not have access to any form of integrated process to prepare them to become a part of society once their sentence was satisfied. Only 19% of the planning was ever completed, and there was a shortage of staff. Only 61% of the centres have a calendar established for family visits.

24-hour-a-day internal supervision of the facility, as well as permanent oversight by an independent entity, such as the National Commission on Human Rights. There should also be direct intervention by IHNFA, under whose responsibility the “Renaciendo” Centre falls. Thirdly, it is critical to thoroughly investigate the underlying problems which create the need for such precautionary measures. The responsible authorities should be identified and held accountable through corresponding criminal and administrative sanctions.

The situation of youth gang members has improved slightly. Youth members of the MS gang can now go outside on a daily basis whereas before they could only go out on Tuesdays. They also are receiving English lessons provided by a group of Evangelical missionaries, even though the youth cannot have visitors. Despite these improvements, the youth continue to face serious problems. For example, the MS gang does not have access to sanitary installations, forcing them to take care of their bodily functions using plastic bags. The water is not drinkable and has a dark yellow colour. Youth members of the 18 gang are all in the same cell. They can leave the cell 3 hours a day to play sports or work on computers, as long as the activity is aimed towards occupational ends. Educational conditions have also not improved. Youth are still detained without being able to attend classes, thereby denying them their right to education.

During CPTRT’s last visit, in June 2006,¹⁵⁹ it was clear that conditions had improved for about 50 children and adolescents because their cells had been remodelled giving them access to water. However, the sanitary installations had not been completed, and youth inmates were still expected to use contaminated water for personal hygiene and drinking.

TORTURE AND OTHER ILL-TREATMENT OF CHILDREN DEPRIVED OF LIBERTY

During the CPTRT visit, a number of youth were seen with bruises and marks from having been brutally beaten by police at the moment of their arrest and transfer to the “Renaciendo” Centre. Children also

159 Visit by representatives from Human Rights Watch, from New York and Geneva, and Ellen Verryt, 1 June 2006.

mentioned inhuman treatment by some of the Centre staff upon entering the facility. Marks on the walls from mock executions can still be seen. Other youth testify that the Prison Police from the adult jail often visit the Juvenile Centre in order to terrorize and humiliate the youth in the middle of the night.¹⁶⁰ They also explained that these Police applied a torture technique, called “capuchón” to some of the children.¹⁶¹

Another worrying example of torture practiced on inmates is mentioned in official letter No. 3769-05 FEDH, which the CPTRT received on 22 November 2005. The letter outlined the District Attorney’s injunction against four prison police positioned at the “Renaciendo” Centre for torturing various children. The writ of Habeas Corpus filed on behalf of the child inmates which demanded that the unhealthy living conditions be corrected remains unresolved.¹⁶²

Prison staff still force solitary confinement for up to 7 days on children they consider to be flight risks. The children are isolated without access to water or sanitary installations and are forced to take care of their bodily functions in a plastic bag. The psychologist, hired in mid-May 2006 by the new administration, assured the CPTRT delegation that the punishment cell, known as “La Leonera,” (“The Lion Cage”) had been destroyed, though this could not be confirmed.

WOMEN DEPRIVED OF LIBERTY

According to data provided by the Directorate of Special Protective Services (DSPS), the population deprived of liberty in Honduras at the end of 2005 included 11,574 men (96.79%) and 372 women, or just 3.21%. 208 of these women reside at the National Women’s Prison for Social Adaptation (NWPSA), which was constructed to cater to the needs of men, and most definitely not to those of women.

160 Testimonies given during the visit of 1 June 2006.

161 A piece of rubber from a tire is filled with lime and put on top of the individual’s head. Lime is a mineral that irritates the skin and eyes, and can lead to asphyxiation.

162 The official letter is signed by Aida Romero, who currently is the District Attorney for Human Rights.

The situation of female inmates is different from that of men. In general, women arrive at criminal facilities having already suffered extensive physical, psychological and sexual abuse, and without having received proper treatment for related health problems. As a result, imprisonment affects women very differently than it does men¹⁶³ (*Also see the CPTRT Report*).¹⁶⁴

The National Women's Prison for Social Adaptation (NWPSA) represents 2% of the total prison population in Honduras. The average age of women at NWPSA is 35 years. The majority of these women are in jail for their involvement in crimes related to the possession and sale of illegal substances, according to the study conducted by CEM-H in 2005 (and the CPTRT Report). This situation reflects the way in which women are being taken advantage of – they feel obligated, whether by their partner or by poverty, to take part in these crimes. 25% of Honduran homes are headed by women. There are no laws that guarantee paternal responsibility. These women are obligated to raise and sustain their families without contributions from the father of their children.

Comments¹⁶⁵

Of all the women deprived of liberty in the female prison, more than half have been sentenced (135 women or 65%). At the same time, 35% of this prison population (73 women), is awaiting a hearing.

It is worth noting that these figures do not reflect how many women have been convicted in comparison to those who have merely been indicted since they entered the prison. This data would give a sense of how long it takes the court to make a ruling once the case is initiated,

163 Lawyer Romelia de Artica, Coordinator of Enforcement Judges in Francisco Morazán. Address on the Discriminatory Prison System for Female Inmates at the National Women's Prison for Social Adaptation (NWPSA) 2nd Annual Conference on Women Deprived of Liberty, 23 May 2006.

164 The Status of Detention in Honduras (La Situación de las Comunidades Cerradas en el Estado de Honduras), CPTRT.

165 Evaluation of the Status of Women Deprived of Liberty at the National Women's Prison for Social Adaptation (NWPSA) (Diagnostico Situacional de las Mujeres Privadas de Libertad de la Penitenciaría Nacional Femenina de Adaptación Social (PENFAS)), CEMH 2006 ; Lawyer. Saúl Bueso. Statistical Analysis of Legal Status of Female Inmates at NWPSA (Análisis Estadístico Condición Legal de las Mujeres internas de PENFAS).

**Statistical analysis
of the 208 female inmates at the National Women's Prison for Social
Adaptation (NWPSA):**

LEGAL STATUS OF FEMALE INMATES AT NWPSA

No.	Legal Status	Number of Women	Percentage %
	TOTAL NUMBER OF WOMEN	208	100%
	Formal Sentences	135	65%
	Arraigned	73	35%
		208	100%
	<i>FEMALE INMATES SENTENCED</i>		
1	Formal Sentences	135	100%
2	Sentenced to 1 weekend each month	3	2%
3	Sentenced to every weekend	2	1%
4	Sentenced to every other weekend	7	5%
5	Sentenced to full-time, with weekends free	4	3%
6	Sentence on appeal	2	1%
7	Sentenced/Reversed	1	1%
8	Sentences under review	1	1%
9	Women arraigned/sentenced without notification	1	1%
10	Women sentenced who have HIV/AIDS	2	1%

and would, therefore, reflect the application of the principle of expedited justice.

Of the 135 women who have been sentenced, the following categories exist:

- a) Women who have appealed the sentence: 2, or 1% of all women who have been sentenced.
- b) Women whose sentences have been overturned: 1, or 1%.
- c) Women who have asked for a review of their sentence: 1, or 1%.

There is also a group of women who have been sentenced with permission to leave on the weekends (pre-release) which include:

- a) Women with permission to leave every weekend: 2, or 1% of all women who have been sentenced.
- b) Women with permission to leave at the end of every month: 2, or 2%.

There are two women who have been sentenced who have HIV/AIDS. They have also *suspended* one woman's permission to leave as a disciplinary measure. And one case, which clearly demands an explanation from the Enforcement Judges, includes a woman who has been formally sentenced, but has yet to be notified of the ruling.

This table does not show data concerning women who have served at least half of their sentence and who are now benefiting from their right to parole.

Women detained in Honduran criminal facilities are subjected to punishments that violate their human rights including restricted visitation rights with their partners, friends, and family. Their sexual and reproductive rights are violated on a daily basis as they are denied the right to make decisions concerning their own bodies. This occurs when they are forced to use certain family planning methods without consideration for their individual health conditions.¹⁶⁶

166 Article 67 of the Criminal Rehabilitation Law establishes that the Director will decide on the necessary precautionary health and hygiene measures. But, in no way does the Law mention forcing women to engage in family planning.

General evaluation of articles found in the Criminal Rehabilitation Law (CRL) that relate to the violation of human rights of women deprived of liberty.

a)) *Inmate treatment*

Article 21

In order to have a prison system that operates effectively, the vocation, aptitudes, academic preparation, and personal background of all prison staff candidates, including directors, administrators, technical personnel, and assistants, must be considered during hiring and placement.

This article is violated because prison personnel often behave outside the legal framework. For example, they have been known to prohibit families from demonstrating affection during visits with inmates, interfering with intimate communication. Prison staff have also treated infants visiting their mothers in an unacceptable and rude manner.

Any order given by an authority should not, at any time, humiliate or scare inmates. Prison authorities must be aware that only the courts can rule on unlawful behaviour, and that their only responsibility is to achieve the social reintegration of the women who have already been sentenced. For those women have not been sentenced, prison personnel must provide them with basic assistance, and must respect their right to the presumption of innocence.

Excessive monitoring, interrupting sleep, keeping cell lights turned on, requiring women to sleep in a certain position, forcing women from their cells during sleeping hours, performing unreasonable check-ups, and prohibiting interpersonal communication among inmates are all considered cruel and discriminatory treatment.

Article 14

The premises designated for inmates must meet basic standards for health and hygiene, particularly in terms of air and water quality, lighting, and ventilation.

Article 32

In the facilities and sections for women, there should be special installations to care for pregnant inmates. All births should be registered at a

civil maternity hospital. At birth, there will be no mention made of the father or mother's residence at the social re-adaptation facility.

Prison system accommodations for woman is considered to be one of the most discriminatory areas within the system because there are generally very few prisons for women. As a result, women are generally housed far from their families, making contact with them very difficult. The impact is especially detrimental for women who are the only source of support for their children and relatives. The Criminal Rehabilitation Law mentions facilities or sections for women and for the special treatment of pregnant women. Except for the National Women's Prison for Social Adaptation (NWPSA), women throughout the country are relegated to annexes of the men's prisons. This alternative puts women at risk and subjects them to far stricter security regimes than they would encounter in women's prisons. It is possible that they receive fewer education and training opportunities, or that these opportunities are limited. There are also limited opportunities for recreation, sports, social interaction, etc.

b) System for visits and contact with families

Article 72

Oral communication with relatives and friends will take place on the days and hours established by the Regulation, which can be no less than three hours each week.

Communication with a lawyer is not subject to limitations, nor can it be suspended as a disciplinary measure.

For an individual deprived of liberty, visits are so important and positive that without this incentive, his or her entire rehabilitation process can suffer greatly. Prison authorities should create adequate conditions for meaningful family visits that strengthen inmates' ties to friends and family members. The visiting area should be arranged to achieve this objective.

Lawyers' visits cannot be prohibited or restricted even when inmates are in special treatment areas. They cannot be subjected to degrading reviews, and measures cannot be taken that would compromise the privacy between the lawyer and inmate.

It is important to acknowledge some fundamental aspects of family visits:

1. They cannot take place in degrading conditions.
2. The areas in which they take place must be adequate in size and provide sufficient ventilation.
3. Measures cannot be imposed that prohibit anyone from standing up, including children visiting their mothers.
4. Demonstrations of love and affection among family members may not be limited or prohibited.
5. No visitor, including children or elderly persons, shall be obligated to undress completely in front of prison attendants. It is important to remember that visits to prison establishments are intended to conserve and strengthen inmates' ties with their friends and family members.

Section VII of the Criminal Rehabilitation Law (CRL), on inmate's communications, refers to oral communication, and makes it clear that other forms of contact with family members, in addition to visits, are important. Women deprived of liberty should be able to send and receive correspondence with the greatest degree of freedom possible. When it is possible and feasible, they should also be able to make and receive telephone calls. Access to freely circulated reading materials such as newspapers, magazines and books, is a way to minimize the abnormality of the prison experience, as well as the complete isolation of inmates from the community to which they expect to return upon completing their sentence.

On some occasions, inmates' communications have been compromised by police authorities.

Article 74

Inmates who are married or who are part of de facto marriages can request intimate visits with their partners. The director or administrator of the criminal facility grants these visits, which may not be denied except for health reasons or other qualifying circumstances.

The matrimonial visit to which Article 72 of the Criminal Rehabilitation Law refers, applies to married inmates or inmates in de facto marriages. These visits cannot be denied by the Prison Director, except for on account of health reasons or certain qualifying circumstances. Because there is no regulation for this Law, we cannot establish, with certainty, what these qualifying circumstances are.

The frequency of matrimonial visits shall be regulated by the establishment's medical staff. The Law does not mention whether this means the director, psychologist, or social worker.

Matrimonial visits with female inmates at the National Prison are often suspended for the most trivial mistakes.

c) Check-ups

Article 18, Number 2

The Prison Facility Director is responsible for:

1) Overseeing the safety, order, discipline, hygiene, and health of the inmates.

Unexpected check-ups, which we refer to as operations, are often administered throughout Honduran criminal facilities. The Law establishes that the security, order, discipline, hygiene, and health of the inmates must be maintained. Article 18, section 2, establishes that the Prison Facility Director must visit all cells and establishment premises on a daily basis.

The following is unacceptable during these check-ups: inmates are forced to undress, aggressive dogs are used to incite fear, external security police conduct check-ups, or that high-force arms are used in the process. Prison authorities have been known to rape inmates, primarily when inmates have been separated indefinitely and subjected to inhuman conditions (no bed, sanitary installations, light, or natural ventilation) as a punishment for small mistakes, devoid of any legal basis.

Frisking, body searching, and removals should be subject to clear procedural guidelines that require prison personnel to demonstrate sensitivity while searching female inmates. These searches should never be conducted by men. To the extent that these rules are not applied, there is no doubt women face discrimination within prisons.

8. Article 14 ICCPR: Right to a fair trial

Legal framework

Institutions charged with ensuring the protection of human rights have free access to criminal holding centres without the need for authorization or an obligation to provide prior notice. This capacity is stipulated in the laws that created the institutions: Public Ministry Law, Art. 16.8; National Commission on Human Rights Law, Art. 7. However, due to the irregular presence of these institutions across the country and an instable working environment, it is difficult for these institutions to effectively fulfil their responsibilities.

In this section, we briefly discuss certain aspects of the Article which are directly related to the subject of this report:

1. **Right to a competent, independent and impartial tribunal established by law:** The national legal system establishes the independence of the judiciary from the other branches of government as well as the independence of each judge and magistrate in the exercise of their duties (Art. 4 and 303, NCH). Despite these clauses, actually achieving independence and impartiality within the judicial branch and among the judges and magistrates is one of the greatest challenges to strengthening the rule of law in Honduras. Other significant challenges to implementing this right include¹⁶⁷:
 - a. Common interferences in the development of cases by the judiciary as well as by external actors;
 - b. The politicization of justice, primarily through Supreme Court appointments;
 - c. Limited respect for the Judicial Career Statute, especially given the discretionary application of norms defining access, mobility, and dismissal of judges.

¹⁶⁷ Report by the Central American Network of Judges, Prosecutors and Defenders for the Democratisation of Justice, for the Inter-American Commission on Human Rights, March 2004; Study on the State of Judicial Systems in the Americas, Developed by the Centre for Legal Studies of the Americas, 2003, available on 29/06/04 at <http://www.cejamericas.org/>; National Commission on Human Rights, Special Report: The Need to Protect Judicial Independence, Tegucigalpa: 2000.

- 2. Right to be presumed innocent until proven guilty according to law:** State's report, the Honduran legal system recognizes and guarantees the right of individuals accused of committing a crime or offence to be presumed innocent until proven guilty. However, this right is often violated in practice:
- a. As discussed above, pre-trial detention is being applied excessively and has become the only acceptable precautionary measure for certain crimes.¹⁶⁸ As a result, pre-trial detention has become a premature punishment, contradicting the proclaimed right to the presumption of innocence.
 - b. Despite the importance of separating convicted and accused individuals as a means to protect the right to the presumption of innocence, and despite the ambiguous references to this measure in the State's report,¹⁶⁹ the Honduran prison system has time and time again demonstrated its inability to ensure the separation of convicted and accused individuals, as acknowledged by various public institutions. The evaluation carried out by the Inter-institutional Commission for Prison Reform confirmed this shortcoming, and was emphatic in its recommendation *"to separate the accused from the convicted in order to guarantee the principle of innocence for the former, as it is contemplated in the Republic's Constitution."*¹⁷⁰ Since this recommendation was issued, little if any progress has been made towards compliance.
- 3. Right to legal counsel:** Every person has the right to legal counsel (Art. 82 NCH and Arts. 14 and 15 CCP). For people without sufficient financial resources, free legal counsel is a constitutional right (Art. 83 NCH). According to recent data, there are 209 public defenders in Honduras. The Working Group on Arbitrary Detention acknowledged the limited personnel and financial resources of public defenders to provide an adequate defence for persons with few resources who are accused of criminal activity¹⁷¹.

168 See above, Art. 9.

169 State Report of Honduras to the Committee, CCPR/C/HND/2005/, section 98.

170 Inter-Institutional Commission on Prison Reform, Op. Cit. Recommendation 1.4.10.

171 United Nation's Working Group on Arbitrary Detentions, vid. 64.

RIGHTS OF WOMEN

Both national and international law recognize women's right to life, liberty, and security. However, the daily experience of women in Honduras is marked by constant violence. The State does not guarantee their safety anywhere they go, neither in their homes nor on the street. Women are murdered and the guilty walk free – 80% of female victims' murderers benefit from complete impunity. Additionally, despite a legal framework that punishes domestic violence, only 10% of the 11,392 formal complaints of domestic violence actually resulted in a conviction.

9. Articles 24 and 27 ICCPR: Prohibition of discrimination against children

DISCRIMINATION AGAINST CHILDREN

The Code on Children and Adolescents was developed in order to safeguard the well being of children in accordance with the Convention on the Rights of the Child. Article 11 of the Code guarantees children a number of rights in accordance with the Convention.¹⁷² Moreover, Honduran legislation concerning children grants equality among children as well as among vulnerable groups and the disabled.¹⁷³ In reality, children from the poorest sectors suffer discrimination in terms of disparate access to education, food, housing, health, personal and social safety, family protection, and work opportunities. As a result, many children opt to join gangs dedicated to criminal activity. This has become a vicious cycle. Unfortunately, there are few trustworthy statistics available to gauge the extent of the problem.¹⁷⁴

The obligation to register children at the time of birth is stated in Article 30 of the Code. The right of every child to nationality is stipulated in Article 29. Judges and other competent authorities are responsible for enrolling children in the Civil Registry.¹⁷⁵

THE STATUS OF CHILDREN BELONGING TO INDIGENOUS GROUPS

The status of indigenous children is extremely worrisome in terms of living conditions, compliance with children's rights, and protection against discrimination. No studies have been conducted specifically on ethnic children, but the Pan American Health Organization estimates

172 Code on Children and Adolescents, art. 11 : Children have the right to life, to health, to social safety, to dignity, to personal liberty, to freedom of speech, to nationality, to own identity and culture, to name, to education, to sports, to recreational activity and free time, to a healthy living environment and natural resources, to family, and to all other rights expressed in the Convention on the Rights of the Child, the present Code, and all other relevant general and special laws.

173 Code on Children and Adolescents, art. 111.

174 IACHR, press release No. 26/04.

175 Code on Children and Adolescents, art. 92.

the indigenous population to account for less than 10% of Honduras' total population. Calculations indicate that 95% of indigenous children under the age of 14 suffer from malnutrition. Also, the rate of maternal mortality among indigenous and afro-descendent peoples in Honduras – 147 of every 100,000 live births – is among the highest in Latin America, in large part because the majority of these communities lack access to adequate health services and medical attention.

Child labour is the greatest cause of scholastic dropout in areas with access to education. Bilingual and intercultural education programs directed at ethnic communities exist. However, they are still significantly limited by a lack of qualified staff and educational materials.¹⁷⁶

176 Health of Honduras' Indigenous and Black Communities, Interculturality, and Processes of National Convergence. Indigenous Peoples' Initiative (Salud de los Pueblos Indígenas y Negros de Honduras, Interculturalidad y procesos de Convergencia Nacional. Iniciativa de los pueblos indígenas.) Secretary of Health, Confederation of Autonomous Peoples of Honduras (Confederación de Pueblos Autóctonos de Honduras CONPAH), Swiss Agency for International Cooperation, OPS/OMS, 2001.

GENERAL CONCLUSIONS

Based on the findings presented in this report, we call attention to the grave conditions in which all of the country's criminal facilities and youth detention centres are currently found. The State has demonstrated its inability to protect the safety and order of its inmates.

Despite some variations among the criminal facilities, the prison system crisis has resulted from the accumulation of common problems that act to exacerbate each other. Here, we touch on a few of them.

1. Overcrowding

The maximum capacity of the prison system and the youth detention centres have been surpassed, and in some cases, have risen to critical levels. Overcrowding is due to a number of factors that have not been addressed effectively, including:

- The systemic employment of pre-trial detention. Historically, pre-trial detention was only applied as a precautionary measure.
- The new Code of Criminal Procedure was implemented in 2002 in order to change this practice. However, there has been little progress and the push for change is now at a standstill.
- Security policies. Due to criminal policies focused on repression, the prison population doubled during the 1990s. These criminal policies have severely affected youth, saturating youth detention centres and creating social stigma against this group.

2. Poor living conditions for persons deprived of liberty

The old facilities and structural problems in unplanned buildings, including some criminal centres and youth detention centres, have deteriorated to unacceptable levels. As a result, a majority of the population deprived of liberty is living in conditions that violate the right to health and personal integrity. Despite the State's knowledge of these problems and the urgent need for reform, the State continues to claim that there are no funds available to address these issues. This claim stands in stark contrast to the

Committee's doctrine that economic difficulties do not justify denying the basic human needs of persons deprived of liberty.¹⁷⁷

3. Violence

The State has allowed violence to become a primary means of interaction among the various actors involved in criminal detention including prison authorities, attendants, and inmates. Given the prevailing culture of repression, order has been maintained through the disproportionate use of force, including the use of lethal weapons. Such repression and force has caused greater harm than good (for example, the intervention at the "El Porvenir" Penal Camp) and fed new cycles of violence. Poor treatment during detention and/or toward youth inmates is common practice. Prison authorities apply disciplinary measures, including such severe measures as solitary confinement which is meted out in an arbitrary manner. Women often suffer from sexual abuse perpetrated by attendants in the female detention centres and by their male counterparts in the annexes of male facilities, all in the face of State passivity.

4. Lack of rehabilitation policies

The national prison system has failed to implement policies for the social reintegration of individuals deprived of their liberty, which is mandated under international and national law. This is particularly true in the juvenile detention centres. Here, the State has special obligations to protect the overall development of youth inmates, which necessarily includes providing access to education and healthy living conditions.¹⁷⁸

The State consistently argues that it lacks the resources to put such policies into place. However, the lack of resources is insufficient justification for the current state of the national prison system. Instead, our organizations argue that the State has failed to meet its obligations, converting detention centres into human storage areas with the only objective being to ensure public safety.

177 Committee on Human Rights, case *Kelly v. Jamaica* (253/1987), 8 April 1991. CHR Report (A/46/40) 1991; and *Párkányi v. Hungary* (410/1990) 27 July 1992. CHR Report (A/47/40) 1992.

178 Committee on the Rights of the Child, general observation 5; Inter-American Court of Human Rights, *Instituto de Reeducación del Menor v Paraguay*, section 170.

5. Institutional limitations: Inadequate regulatory framework and institutional weaknesses

Inadequate regulatory framework

Gaps in prison legislation have allowed prison administrators to use significant discretion in carrying out their responsibilities. This impacts such areas as the recognition of the rights of individuals deprived of liberty, inmates' living conditions, and the use of force. Prison legislation also does not contemplate the needs of specific groups, including women, the terminally ill, and the mentally ill. Within this framework, the institutions charged with protecting human rights have helped resolve specific human rights violations, but are incapable of responding to the more systemic problems.

Authorities are currently discussing the possibility of approving a new Prison Law that will rectify some of the aforementioned legislative gaps and will allocate prison system oversight to civilian groups.

Institutional weaknesses

Where the Law does provide guidelines for specific obligations, including those established by national and international human rights mechanisms, such as the treatment of prisoners, prison authorities routinely ignore them. In its report, the State identifies limited resources and the lack of qualified personnel as the main reasons why it does not fulfil its responsibilities defined by law. Nevertheless, our organizations are convinced that the underlying causes of these problems have more to do with the lack of political will to comply with the State's legal obligations than a lack of resources.

Lack of political will

The State of Honduras' strategy to deal with its prison population is reactive, rather than proactive. For example, it often establishes ad hoc committees and makes public announcements about special plans it has decided to carry out. Although the State has acted upon a few specific recommendations for reform issued by the national and international human rights mechanisms, it has not attempted to make the structural changes that are so clearly needed.

In this way, the State is unjustifiably ignoring or, at least, prolonging its failure to comply with orders issued by the Honduras Supreme Court and by

international human rights mechanisms. Among these international institutions is the Inter-American Commission, which recently issued Honduras precautionary measures and recommendations related to the topic at hand.

The limited attention afforded to the prison population exacerbates the social perception that prisons are communities isolated from society. The media has played into this idea by trivializing the situation and reinforcing social stigmas against individuals deprived of liberty.¹⁷⁹

In order to change this situation, we have come to ask that the State of Honduras commits itself to adopting the following measures.

179 Team for Reflection, Communication, and Research of the “Compañía de Jesús” in Honduras, Reflection on the Massacre at the National Prison on 5 January. *El Progreso*: February, 2006.

**RECOMMENDATIONS
FROM THE NGO COALITION**

GENERAL RECOMMENDATIONS

1. The State must quickly approve and implement the Honduran Law on Persons Deprived of Liberty which has been under consideration for more than two years.
2. The State must strengthen national legal mechanisms for defending the human rights of persons deprived of liberty. In particular, the State should lead efforts to establish the National Mechanism for the Prevention of Torture according to the terms set out by the Optional Protocol to the Convention against Torture, ratified by Honduras on 9 January 2006.

RECOMMENDATIONS PURSUANT TO THE OBLIGATIONS ASSUMED UNDER THE COVENANT – PERSONS DEPRIVED OF LIBERTY

Art. 6

3. The State must provide prison security with necessary non-lethal weapons and equipment. The State should also establish appropriate and independent mechanisms to supervise the State's security and defence operations intended to confiscate drugs and weapons from the criminal centres. The practice of delegating disciplinary power to inmates should be abolished from the prison system.
4. The State must speed up investigations to determine responsibility and to hold the implicated accountable, for deaths within prison facilities, particularly in the case of the massacres at the "El Porvenir" Prison Camp and the San Pedro Sula Criminal Centre.

Art. 7

5. The State must immediately and critically review the "One Person Prison Cell Regime" [Régimen Celular Unipersonal Penitenciario] isolation project established by Agreement No. 1367-2005 on 14 October 2005 within the framework of international law. This project contains provisions and practices that violate human rights.

Art. 9

6. The State must ensure that criminal cases are processed in a timely manner in accordance with the principles reflected in the Code of Criminal Procedure, so that no persons are detained during a case except in order to guarantee justice.

Art. 10

7. The State must immediately and fully comply with the Supreme Court's rulings which grant the writ of Habeas Corpus collectively to inmates stationed at the Marco Auerlio Soto National Prison and San Pedro Sula Criminal Centre.
8. The State of Honduras must allocate funds to ensure that persons deprived of liberty have: adequate sanitary installations, reasonable living space, natural light, ventilation, adequate and nutritious food, better and broader medical and psychological care, emergency response personnel, and means for transporting sick individuals to the hospital.
9. The State must carry out all of the urgent fiscal reforms dictated by the Inter-Institutional Commission on Prison Reform in 2003, and design contingency plans to address critical problems facing each of the prison facilities.
10. The State must immediately develop a special regulation which ensures that terminally ill inmates are released from prison without delay, in accordance with the "Criminal Without Punishment Law" [Ley del Reo sin Condena].
11. The State of Honduras must immediately organize inter-institutional and interdisciplinary committees to monitor, protect, and track the human rights of prisoners, as established by the National Policy on Mental Health.

RECOMMENDATIONS PURSUANT TO THE OBLIGATION TO PROTECT THE PERSONAL DIGNITY, SECURITY, AND INTEGRITY OF WOMEN

(Arts. 3, 6, 7, 23, 25 and 26)

12. Provide the necessary resources to prevent, investigate, and punish those individuals responsible for violent murders of women, in particular:
 - *Allocate sufficient funds to ensure the proper functioning of the Inter-Institutional Commission on Female Homicides and the District Attorney's special unit;*
 - *Train justice authorities and police in the application of the Law on Domestic Violence;*
 - *Create a special unit on female homicides in the Criminal Investigation Directorate.*
13. Apply the protective and safety measures identified in the Law for Women Suffering from Domestic Violence or Intra-Familial Disputes.
14. Increase the number of criminal facilities for women and accommodate them to meet the needs of pregnant women, in accordance with the Criminal Rehabilitation Law. This measure acknowledges that the National Women's Prison for Social Adaptation (NWPSA) is the only facility in the country where women are not forced to stay in the annex of male prisons under harsh and discriminatory conditions.
15. Ensure that 30% of personnel of public institutions are women, particularly at the municipal level, pursuant to the 2004 Electoral Law.
16. Facilitate information campaigns about, and provide access to prevention methods for, the transmission of HIV, especially among women.

RECOMMENDATIONS FOR THE PROTECTION OF THE RIGHTS OF CHILDREN PURSUANT TO THE COVENANT (ARTS. 6, 7, 8, 9, 10, 24 AND 27)

Art.6: Extrajudicial Executions

17. Protect the life and integrity of all children and order speedy investigations into child assassinations. Hold the responsible individuals accountable in order to put an end to impunity.

Art. 8: Sexual labour and exploitation

18. Establish new and effective mechanisms, such as labour inspectors, to prevent the hiring of children under the age of 14. Address the cases of illegal child labour by raising awareness among employers, parents, and educators.
19. Organize a comprehensive strategy for eradicating commercial sexual exploitation of children (CSEC). This strategy should include legislation that punishes and dissuades individuals responsible for CSEC, as well as measures to raise awareness against sexual tourism, and to treat and rehabilitate victims.

Art. 9 and 10: Justice and deprivation of liberty of minors

20. Develop alternative strategies for dealing with the “maras” and other gangs that do not rely solely on repression but, rather, address the root causes of this phenomenon. These strategies should be developed with children and their vulnerable condition in mind.
21. Reform juvenile justice legislation so that it stands in accordance with the relevant international standards, especially articles 37 and 40 of the Convention on the Rights of the Child, to which Honduras is a party.
22. Use deprivation of liberty, especially pre-trial detention, only as a last resort measure against children, and develop alternative strategies for regaining liberty.
23. Undertake the IACHR’s recommendations on the status of youth detentions.
24. Finally, stop the torture, unacceptable treatment, and murder of detained minors.

HUMAN RIGHTS COMMITTEE

Eighty-sixth session

13-31 March 2006

**LIST OF ISSUES TO BE TAKEN UP
IN CONNECTION WITH THE CONSIDERATION
OF THE INITIAL REPORT OF HONDURAS**

(CCPR/C/HND/2005/1)

UNITED
NATIONS

CCPR



**International covenant
on civil and
political rights**

Distr.
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HUMAN RIGHTS COMMITTEE
Eighty-sixth session
13-31 March 2006

**List of issues to be taken up in connection with the consideration of
the initial report of HONDURAS (CCPR/C/HND/2005/1)**

**Constitutional and legal framework within which the Covenant
and the Optional Protocol are implemented (art. 2)**

1. Please indicate what position the Covenant occupies in the internal legal hierarchy, what steps have been taken to disseminate it, whether individuals can invoke it directly in the courts and whether any have done so in specific cases. Supply examples of the practical application of the Covenant.
2. Please provide information on practical steps taken to investigate human rights violations and punish those responsible, and to compensate the victims, especially with regard to enforced disappearances of persons.
3. Please indicate to what extent the powers of the Inter-agency Commission on Human Rights set up by Government decree in the Office of the President duplicate or overlap those of the Office of the National Human Rights Commissioner. Indicate specific measures that have been taken or are planned to preserve the functional independence of the Office of the National Human Rights Commissioner as a national agency for the protection of human rights.

**Equality between the sexes and non-discrimination
(arts. 2.1, 3, 25 and 26)**

4. Please provide information on the practical outcome of the steps taken to combat discrimination against women with regard to access to and participation in elected office and civil service posts (report, paras. 31, 33 and 35).

**Violence against women and domestic violence
(arts. 3, 6, 7 and 24)**

5. Please indicate what steps have been taken in response to reports of violent deaths of women, especially in San Pedro Sula, and what penalties have been imposed on those responsible. Have the police been provided with training to ensure that they do not treat such acts as private matters and routinely shelve the cases? What other steps are planned to reduce the number of cases of domestic violence against women?

**Right to life, prohibition of torture and cruel, inhuman
or degrading treatment or punishment, right to security
of person (arts. 6, 7, 9 and 24)**

6. What practical steps have been taken to prevent extrajudicial deaths of children, in particular those reportedly involving street children and children and young people from economically vulnerable groups? Please also state what measures have been taken to identify, investigate and punish those responsible. In cases involving officials of the State party, what additional disciplinary steps have been taken, and what has been done to provide compensation and reparation for injury suffered by the victims and their families (report, paras. 45 ff.)?

7. Please provide information on practical steps that have been taken to investigate and punish those responsible for the ill-treatment and death of persons held in adult detention centres and detention centres for minors. Please also provide information on the effectiveness of the steps taken in response to the events of April 2003 at El Porvenir prison in La Ceiba, when 68 persons died, and in May 2004 at the San Pedro Sula prison, when 107 persons died, most of them minors (report, para. 57).

8. Please provide information on steps taken to prevent the excessive use of force and firearms by police and military personnel on urban security duty (report, para. 210), which is alleged to have caused extrajudicial deaths; and on the compatibility between article 39 of the Police and Social Coexistence Act and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

9. Please state what steps have been taken to prevent ill-treatment, threats, intimidation and attacks on human rights defenders and to investigate and punish those responsible.

Prohibition of slavery and forced labour (arts. 8 and 24)

10. What steps are the Honduran authorities taking to prevent and punish the trafficking of human beings for purposes of sexual exploitation and to eradicate child labour and the economic exploitation of children?

Personal safety and protection against arbitrary detention (art. 9)

11. Please indicate what steps the State party has taken to reduce the duration of pretrial detention and prevent the build-up of excessive numbers of unconvicted prisoners, particularly members of youth gangs (*maras*) charged with unlawful association.

12. Please provide information on steps taken to eradicate the practices of detention on suspicion and arbitrary detention referred to in the State party's report (paras. 85, 87 and 88).

Prison conditions (art. 10)

13. Please provide information on steps taken to remedy the problems of overcrowding and poor prison conditions and to improve the situation of minors in detention.

Right to a fair trial (art. 14)

14. Please provide information on the mechanisms to guarantee the independence of the judiciary and the proper functioning of the judicial service.

15. Please provide information on the steps taken to allow detainees - particularly minors held for alleged membership of youth gangs - access to their families and to lawyers.

Right to freedom of expression (art. 19)

16. Please provide information on steps taken by the State party to ensure respect for the right to seek, receive and disseminate information, given in particular that prior censorship continues to apply and contempt of court is still classified as a criminal offence. Please also provide information on cases of threats against, attacks on and deaths of journalists and press workers, and on any proceedings instituted against journalists for defamation.

Freedom of association (art. 22)

17. Please state whether there are any restrictions in practice on the formation of trade unions and provide information on effective steps taken to guarantee freedom of association.

Rights of the child and minority rights (arts. 16, 24 and 27)

18. Please provide information on any steps planned to ensure birth registration nationwide, especially in rural areas and indigenous communities.

19. Please provide specific information on problems affecting the indigenous communities and communities of African origin in Honduras (report, para. 15), such as non-recognition of their rights to ancestral land, seizure of communal land, little or no political participation by members of those communities, discrimination, lack of access to public services, including bilingual education, and poor working conditions. Indicate steps that have been taken in connection with these situations.

HUMAN RIGHTS COMMITTEE
Eighty-sixth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

**Concluding observations of the Human Rights Committee on
HONDURAS***

CCPR/C/HND/CO/1/CRP.1

* When this OMCT Report went to press, the Concluding Observations on Honduras were available only in Spanish. For the English translation, please see the website of the OHCHR at: www.ohchr.org

1. El Comité examinó el informe inicial de Honduras (CCPR/C/HND/2005/1) y HRI/CORE/1/Add.96/Rev.1) en sus sesiones 2398^a, 2399^a y 2400^a (CCPR/C/SR.2398, 2399 y 2400), celebradas el 16 y 17 de octubre de 2006, y aprobó, en su sesión 2414^a (CCPR/C/SR.2414), celebrada el 27 de octubre de 2006, las siguientes observaciones finales.

A. Introducción

2. El Comité acoge con satisfacción el informe inicial de Honduras. Lamenta, sin embargo, que éste haya sido presentado con más de seis años de retraso. Expresa su reconocimiento por la franqueza manifestada por el Estado Parte tanto en la preparación de su informe como en la presentación de sus repuestas escritas y verbales. Se congratula, asimismo, del alto nivel y buena disposición de la delegación del Estado Parte a contestar las preguntas del Comité, lo que permitió un diálogo abierto y constructivo sobre los diversos problemas existentes en su territorio.

B. Aspectos positivos

3. El Comité acoge complacido la ratificación por el Estado Parte del Estatuto de la Corte Penal Internacional (2002), así como la adhesión a los principales instrumentos internacionales de derechos humanos, incluida la Convención Internacional para la Eliminación de todas las formas de Discriminación Racial (2002), los dos protocolos facultativos a la Convención de los Derechos del Niño (2002), la Convención contra la tortura y otros tratos o penas crueles, inhumanos o degradantes (1996) y la Convención Interamericana sobre Desaparición forzada de Personas (2005).
4. El Comité toma nota con satisfacción de las reformas legislativas llevadas a cabo por el Estado Parte, en particular la abolición constitucional de la pena de muerte, las recientes reformas al Código Penal, la adopción del nuevo Código de Procedimiento Penal (1999) y del Código de la Niñez y Adolescencia (1996), así como la reducción de los casos pendientes como resultado de la adopción del sistema penal acusatorio. También acoge con agrado el establecimiento del Comisionado Nacional de los Derechos Humanos y del Ministerio Público.

C. Principales motivos de preocupación y recomendaciones

5. El Comité reconoce los esfuerzos del Estado Parte en identificar los casos de desapariciones forzadas, incluida la publicación por el Comisionado Nacional de los Derechos Humanos del Informe preliminar sobre desapariciones forzadas en Honduras en 1993, con un listado de 183 personas desaparecidas. Le preocupa, sin embargo, el hecho de que a falta de tipificación del delito de desaparición forzada en el Código Penal haya contribuido a la impunidad y que los casos incluidos en el listado mencionado no hayan sido todavía investigados, especialmente a la luz del tiempo transcurrido desde la publicación de dicho informe. (Artículo 2 y 6 del Pacto)

El Estado Parte debería modificar el Código Penal de forma que se tipifique el delito de desaparición forzada. Debería asimismo asegurar que los casos de desapariciones forzadas sean debidamente investigados, que los responsables sean juzgados y, en su caso, sancionados y que las víctimas o sus familiares reciban una indemnización justa y adecuada.

6. El Comité toma nota de la creación del Instituto Nacional de la Mujer, así como del progreso normativo realizado para promover la participación pública de la mujer, mediante la aprobación de la Ley de Igualdad de Oportunidades. Sin embargo, lamenta que la discriminación contra la mujer, en particular en lo que se refiere al acceso y participación en cargos de elección popular y en la administración pública, persista en la práctica y que el sistema vigente de listas abiertas no permita asegurar un adecuado nivel de representación femenina. (Artículos 3, 25 y 26 del Pacto)

El Estado Parte debería asegurar el adecuado financiamiento del Instituto Nacional de la Mujer, así como la efectiva aplicación de las medidas legislativas adoptadas para aumentar la participación de la mujer en todas las áreas de la vida pública.

7. Si bien el Comité celebra la aprobación de la ley contra la violencia doméstica, así como la creación de la línea telefónica 114, que faculta a la policía a intervenir en auxilio de las mujeres en situación de peligro por violencia doméstica. Le preocupa, sin embargo, la persistencia de un elevado número de muertes violentas de mujeres y de malos tratos como práctica recurrente, así como la impunidad de los agresores. (Artículos 3 y 7 del Pacto)

El Estado Parte debería tomar las medidas adecuadas para combatir la violencia doméstica y asegurar que se juzgue a los responsables y que éstos reciban una sanción adecuada. Se invita al Estado Parte a educar a la población en su conjunto sobre la necesidad de respetar los derechos y la dignidad de las mujeres, en aras de cambiar los patrones culturales. El

Comité invita asimismo al Estado Parte a proporcionar estadísticas sobre el número de intervenciones realizadas en aplicación de la línea telefónica 114.

8. El Comité expresa su preocupación por la legislación indebidamente restrictiva del aborto, especialmente en casos en que la vida de la madre esté en peligro. (Artículo 6 del Pacto)

El Estado parte debería modificar su legislación de forma que se ayude a las mujeres a evitar embarazos no deseados y que éstas no tengan que recurrir a abortos clandestinos que podrían poner en peligro sus vidas. Debería asimismo revisar su legislación sobre el aborto con miras a que concuerde con el Pacto.

9. El Comité toma nota de la creación de la Comisión para la Protección Física y Moral de la Niñez, así como otras instituciones para la investigación de casos de muertes de niños. Sin embargo, le preocupa la persistencia de un elevado número de ejecuciones extrajudiciales de niños, de las que serían víctimas especialmente los niños de la calle y miembros de “maras” o pandillas juveniles. (Artículos 6 y 24 del Pacto)

El Comité insta al Estado Parte a investigar todos los casos de ejecuciones extrajudiciales de niños, procesar a los responsables y asegurar que los familiares de las víctimas reciban una indemnización justa y adecuada. El Comité recomienda al Estado Parte que estudie la posibilidad de establecer un mecanismo independiente, como un defensor del niño. El Estado Parte debería asegurar que este tipo de incidentes no se repitan en el futuro. Debería organizar cursos de capacitación a los funcionarios que traten con niños. Debería asimismo establecer campañas para sensibilizar a la población en su conjunto sobre este problema.

10. Preocupa al Comité el uso excesivo de la fuerza y de armas de fuego por parte de agentes de seguridad y del personal penitenciario como práctica recurrente, incluyendo golpes y muerte de personas, en particular en centros penitenciarios de adultos y centros de internamiento de menores. Le preocupa especialmente que no se hayan tomado medidas de sanción contra los responsables de los incidentes ocurridos en las prisiones de El Porvenir y San Pedro Sula. También es motivo de preocupación la falta de aplicación práctica de los Principios de Naciones Unidas sobre el uso de la fuerza y de armas de fuego. (Artículos 6 y 7 del Pacto)

El Estado Parte debería proporcionar y controlar todas las armas pertenecientes a las fuerzas de policía y proporcionarles educación adecuada en materia de derechos humanos, de forma que se dé cumplimiento a

los Principios de Naciones Unidas sobre el uso de la fuerza y de armas de fuego por los funcionarios encargados de hacer cumplir la ley. El Estado Parte debería asegurar que se investiguen minuciosamente las alegaciones sobre el uso excesivo de la fuerza, que se procese a los responsables y que las víctimas de estas prácticas o sus familiares reciban una indemnización justa y adecuada.

11. Es motivo de preocupación para el Comité la situación de los niños de la calle, cuya proporción resulta alarmante. Estos niños son los que afrontan mayores riesgos frente a la violencia y están expuestos a las prácticas de tráfico sexual. (Artículos 7, 8, y 24 del Pacto)

El Estado Parte debería tomar medidas urgentes para identificar las causas de la proliferación de niños de la calle, desarrollar programas para combatir estas causas, ofrecerles refugio, identificar, indemnizar y asistir a las víctimas de abusos sexuales e investigar y juzgar a los responsables.

12. El Comité nota con preocupación la alarmante proliferación del trabajo infantil, especialmente en las comunidades rurales e indígenas. (Artículos 8 y 24)

El Estado Parte debería adoptar medidas urgentes para erradicar el trabajo infantil y asegurar la escolarización de todos los niños en edad escolar.

13. Preocupa al Comité la práctica común de detenciones por sospecha por parte de los agentes de seguridad, incluyendo redadas masivas de personas basadas en la mera apariencia y sin orden previa de autoridad competente. Observa con preocupación el alcance de la redacción del nuevo artículo 332 del Código Penal al establecer el delito de “asociación ilícita”, sobre la base del cual se realizarían numerosas detenciones de jóvenes, así como de activistas de los derechos humanos y homosexuales. (Artículos 9 y 26 del Pacto)

El Estado Parte debería asegurar que las detenciones se practiquen de conformidad con las exigencias del artículo 9 del Pacto y que las personas detenidas sean llevadas sin demora ante una autoridad judicial. Debería considerar asimismo la posibilidad de modificar el artículo 332 del Código Penal, de forma que se restrinja la tipificación del delito de asociación ilícita.

14. Si bien el Comité toma nota del progreso realizado por el Estado Parte desde la adopción del Nuevo Código de Procedimiento Penal para aliviar la situación de hacinamiento reduciendo el número de personas en prisión preventiva, preocupa al Comité la persistencia de una alta proporción de reclu-

sos en prisión preventiva, así como la larga duración de la misma. (Artículos 9 y 14 del Pacto)

El Estado Parte deberá continuar tomando todas las medidas necesarias para reducir el número de personas en prisión preventiva, así como el tiempo de su detención.

15. Al Comité le preocupan las condiciones carcelarias en el Estado Parte, a saber, el hacinamiento, las deficientes condiciones de reclusión, incluyendo en ocasiones la falta de agua potable y de servicios sanitarios, la falta de separación entre acusados y condenados y la práctica del aislamiento prolongado de reclusos. Le preocupa asimismo la facilidad de los reclusos para conseguir armas de fuego y estupefacientes. La situación afectando a los menores privados de libertad es particularmente fuente de preocupación. (Artículos 7 y 10 del Convenio)

El Estado Parte debería mejorar las condiciones carcelarias para adecuarlas a los requisitos del artículo 10 del Pacto. Debería asegurar asimismo que se dé cumplimiento a Reglas mínimas de Naciones Unidas para el tratamiento de los reclusos.

16. El Comité toma nota de la implementación por el Estado Parte de procesos de selección de jueces en cumplimiento de lo dispuesto por la Ley de la Carrera Judicial. Le preocupa, sin embargo, la falta de establecimiento de un órgano independiente encargado de asegurar la independencia del poder judicial y supervisar el nombramiento, promoción y disciplina de la profesión. (Artículo 14 del Pacto)

El Estado Parte debería adoptar medidas efectivas para asegurar la independencia judicial, incluyendo el pronto establecimiento de un órgano independiente que asegure la independencia del poder judicial y supervise el nombramiento, promoción y disciplina de la profesión.

17. El Comité ve con agrado la declaración por la Corte Suprema de inconstitucionalidad del delito de “desacato”, que se había convertido en un medio de limitación de la libertad de expresión. Le preocupa, sin embargo, los casos de hostigamiento y muerte de periodistas y defensores de derechos humanos, así como la aparente impunidad de la que gozan sus perpetradores. (Artículos 19 y 6 del Pacto)

El Estado Parte debería adoptar las medidas necesarias para prevenir todos los casos de hostigamiento de los periodistas y defensores de derechos humanos y velar por que se dé en la práctica pleno efecto a los requisitos establecidos en el artículo 19 del Pacto. El Estado Parte debería asegurar

asimismo que los responsables de las muertes de periodistas y defensores de derechos humanos sean procesados y sancionados y que las familias de las víctimas sean debidamente indemnizadas.

18. El Comité toma nota de los esfuerzos del Estado Parte por registrar todos los nacimientos. Lamenta, sin embargo, la persistencia de un elevado índice de niños no registrados, especialmente en zonas rurales y en comunidades indígenas. (Artículos 16, 24 y 27)

El Comité recomienda que el Estado parte adopte las medidas programáticas y presupuestarias necesarias para asegurar el registro de nacimientos, incluido el registro de adultos.

19. El Comité está preocupado por varios problemas que afectan a las comunidades indígenas, en particular en lo que se refiera a la discriminación en materia de salud, trabajo y educación, así como al derecho de estas comunidades a las tierras. Le preocupa la falta de inclusión en la Ley de reforma Agraria de un artículo específico sobre reconocimiento de títulos sobre tierras ancestrales indígenas. (Artículo 27 del Pacto)

El Estado Parte debería garantizar a los miembros de las comunidades indígenas el pleno goce del derecho a tener su propia vida cultural. Debería tomar las medidas necesarias para resolver el problema relativo a las tierras ancestrales indígenas.

El Comité pide que el informe inicial del Estado Parte y las presentes observaciones finales sean publicados y difundidos ampliamente en el Estado Parte en sus idiomas oficiales.

De conformidad con el párrafo 5 del artículo 71 del reglamento del Comité, el Estado Parte debería proporcionar, en el plazo de un año, la información pertinente sobre la evaluación de la situación y el cumplimiento de las recomendaciones del Comité contenidas en los párrafos 9, 10, 11 y 19.

El Comité pide que en su próximo informe, que ha de presentarse antes del 31 de octubre de 2010, el Estado Parte comunique información sobre las demás recomendaciones formuladas y sobre el Pacto en su conjunto.

