



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

**REPLIES BY THE GOVERNMENT OF HONDURAS TO THE LIST OF
ISSUES (CCPR/C/HND/Q/1) TO BE TAKEN UP IN CONNECTION
WITH THE CONSIDERATION OF THE INITIAL REPORT OF
HONDURAS (CCPR/C/HND/2005/1)**

[22 September 2006]

**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.

In the internal legal hierarchy, the International Covenant on Civil and Political Rights takes precedence over domestic law.¹

The National Autonomous University of Honduras, the Francisco Morazán Pedagogical University and the Higher Institute of Police Education (ISEP) have introduced Master's degree courses on human rights and gender, which include knowledge and dissemination of international instruments.

The Inter-agency Commission on Criminal Justice has approved the creation of an in-service training module for justice system officials, which is currently being developed and includes a specific module on the International Covenant on Civil and Political Rights.²

¹ Constitution of Honduras:

Article 16: "All international treaties must be adopted by the National Congress before being ratified by the Executive Branch. International treaties entered into by Honduras with other States form part of the domestic law once they come into force."

Article 17: "When an international treaty affects a constitutional provision, it must be adopted through the same procedure as that governing an amendment to the Constitution before being ratified by the Executive Branch."

Article 18: "In the event of conflict between a treaty or a convention and the law, the former shall prevail."

The International Covenant on Civil and Political Rights was adopted by Decree No. 64-95, published in Official Gazette No. 28293, and entered into force on 24 June 1997.

² The Inter-agency Commission on Criminal Justice was established by the Special Act on the Transition and Inter-agency Monitoring of the Criminal Justice System and comprises the Supreme Court of Justice, the National Congress, the Ministry of the Interior and Justice, the Ministry of Security, the Higher Court of Audit, the Office of the Public Prosecutor and the National Public Defence Department of the judiciary.

The Office of the National Human Rights Commissioner has done the same through a series of activities aimed at publicizing international instruments.³

As to whether individuals can invoke the Covenant directly in the courts, Honduran citizens can indeed do so. In the majority of cases, the Constitutional Chamber of the Supreme Court of Justice bases its judgements both on the Covenant, and on the other international instruments ratified by Honduras.

To cite specific cases, in actions brought for the guarantees of *amparo*, habeas corpus or unconstitutionality, the Constitutional Chamber bases its judgements specifically on articles 2, 3, 7, 9, 10, 14, 15, 16 and others. For example, Judgement RI 2686-03 declares an action admissible and repeals the criminalization of contempt of court as unconstitutional, while Judgement EP 1381-05 grants corrective habeas corpus to inmates of the Renaciendo Juvenile Centre.

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.

One practical step taken by the State was the establishment in 1992 of the Office of the National Human Rights Commissioner⁴ which, in accordance with its constitutional mandate, is responsible for guaranteeing the rights and freedoms recognized in the Constitution. This was followed in 1993 by the establishment of the Office of the Public Prosecutor, whose responsibilities include ensuring respect for and compliance with constitutional rights and guarantees, ensuring respect for human rights and taking the necessary action to ensure that the civil, criminal and administrative or disciplinary liability incurred by civilian or military officials or employees by reason of or in the course of their duties or their work is enforced.

In 1993, the Office of the National Human Rights Commissioner published a preliminary report on enforced disappearances in Honduras. The report contains a list of 183 persons who disappeared during the 1980s and describes the circumstances of their detention and disappearance. Based on this report, the Office of the Public Prosecutor, through its Human Rights Division, is launching investigations aimed at identifying the persons responsible for the detentions and disappearances. The first step was to locate the relatives of the victims in order to document their cases, relying on *antemortem* files for their identification.

Search activities have included exhumations at sites reported to be clandestine cemeteries and expert analyses of recovered remains that have permitted the identification of some victims, whose remains have already been handed over to their relatives.

³ Annex 2.

⁴ Established pursuant to Executive Decree No. 26-92 of 8 June 1992, as amended by Executive Decree No. 51-92 of 8 September 1992. Incorporated into the Constitution of Honduras pursuant to Executive Decree No. 191-94 of 15 December 1994, which was ratified by Legislative Decree No. 2-95 of 7 February 1995.

Criminal cases have been brought against several soldiers accused of belonging to Battalion 3-16, known as the “death battalion”.⁵

Alongside these procedures to locate the victims of enforced disappearances and in the context of two amicable settlement processes sponsored by the Inter-American Commission on Human Rights, a compensation process has also been implemented. In cases corresponding to the 1980s, the State of Honduras paid out compensation totalling 28,700,000 lempiras. A similar amount of compensation for the 1990s is currently being processed.⁶

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.

The Inter-agency Commission on Human Rights established by Executive Decree No. PCM-014-2004 is no longer in operation, having been dissolved by Executive Decree No. 07-PCM-2006, published in Official Gazette No. 30954 of 16 March 2006, pursuant to the judgement issued by the administrative court of first instance repealing the decree establishing the Commission.⁷

The State has sought to strengthen the Office of the National Human Rights Commissioner by increasing its budget, thereby enabling it to expand its operations into regional offices that provide nationwide coverage. This independence has enabled it to exercise its legal powers in accordance with its constitutional mandate.⁸

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).

⁵ Annex (cases brought by the Office of the Public Prosecutor).

⁶ Annex 6 (settlement agreements or other documents attesting to the payment of compensation).

⁷ Annex 7.

⁸ The Constitutional Chamber of the Supreme Court of Justice has recognized the competence of the Office of the National Human Rights Commissioner to institute proceedings on grounds of unconstitutionality.

Practical outcome:

The new Elections and Political Organizations Act, which in articles 103, 104 and 105 on “Equal opportunity”, “Guarantee of non-discrimination” and “Equitable distribution in elected office”, respectively, of Chapter II entitled “Equal political opportunity” sets a quota of 30 per cent for women’s political participation in elected office.

Adoption of the Equal Opportunity for Women Act,⁹ article 81 of which establishes a quota of 30 per cent for women’s participation as a starting point for negotiation. The introduction of this quota resulted in the election of 58 women to the 128-member National Congress, of whom 31 are titular members and 27 are alternates, equivalent to 24 and 21 per cent representation respectively, compared with only 9 in the previous legislature. There are 7 women in the current leadership of the National Congress, 1 of them a Vice-President and the others serve in ministries.

With regard to the offices of mayor and deputy mayor, 24 women mayors and 63 women deputy mayors have been elected. In the executive branch, 8 women have been appointed ministers.

Another practical outcome has been the adoption of international conventions such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Para) and the Convention on the Elimination of All Forms of Discrimination against Women, article 1 of which defines non-discrimination. To give effect to these conventions, the Honduran State established the National Women’s Institute (INAM) by Decree No. 232-98 of 11 February 1999, defining it as an autonomous body responsible for “formulating, promoting and coordinating the implementation and follow-up of the national policy on women”.

Lastly, discrimination was classified as an offence in article 321 of the Criminal Code.¹⁰

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?

The Femicide Commission was established as an inter-agency commission comprising the Women’s Division of the Office of the Public Prosecutor, the Office of the National Human Rights Commissioner, the Ministry of Security, the National Women’s Institute and the Supreme Court of Justice.

⁹ Annex 9 (include decree).

¹⁰ Decree No. 191-96, published on 8 February 1997 in *Official Gazette* No. 28182.

Amendments were submitted to Title II, Book Two, Special section of the Criminal Code, containing legislation relating to crimes against the physical, psychological and sexual freedom and integrity of persons.¹¹ Even though that legislation does not specifically mention the crime of femicide, it has made it possible to deal with the issue of sexual offences from a different perspective.

The National Plan to Combat Violence was launched by Executive Decree No. PCM-11/2006. The most important component of this Plan, and the one with the greatest impact, is prevention, which is decisive in tackling this problem.

In addition to integrating institutional policies and initiatives, for instance, through cooperation agreements, other planned steps include appointing judges specialized in this area,¹² improving the training process, organizing public information and awareness campaigns on women's rights and women's human rights and amending the Domestic Violence Act.¹³

It is important to note that while efforts have been concentrated primarily on urban areas, especially the most densely populated areas, rural areas also need counselling services, police and specialized judicial assistance, among other services.

The National Women's Institute (INAM) has developed a police training programme and a Master's degree in human security has been set up for that purpose. Refresher workshops are carried out on an ongoing basis.

A telephone hotline - 114 - has been set up in the Ministry of Security, known as the "Living with respect and without violence hotline". It offers free, round-the-clock, flexible, anonymous and immediate assistance and is operated by police staff trained in social and legal counselling, crisis management and emergency care.

**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.)?

¹¹ Annex 10.

¹² Statistics of cases brought before the domestic violence courts. Annex 11.

¹³ Annex 12.

The State has set up the Special Investigation Unit for Violent Child Deaths,¹⁴ with a team of investigators made up of police staff who have received specialized training in investigating crimes against life. In the interests of transparency and optimum use of resources, the Unit functions with the support of an inter-agency coordinating body, the Standing Committee for the Protection of the Physical and Moral Integrity of Children and Adolescents, comprising representatives of public institutions and civil society organizations, to which it reports.¹⁵

The Unit's activities are conducted under the supervision of the Office of the Public Prosecutor. In cases where agents of the State are implicated, such supervision is provided by the Human Rights Division of the Office of the Public Prosecutor.

Under Honduran law, all criminal acts entail civil liability. Civil servants acting as agents of the State are also liable for their official conduct. In order to give victims and their relatives access to an effective remedy for obtaining compensation, the State has instituted administrative courts as a mechanism for hearing these special cases, among others. Private individuals who believe that the State has infringed their rights are entitled to sue for recognition of their particular legal situation and for the corresponding compensation. At the international level, since Honduras has recognized the jurisdiction of the Inter-American Court of Human Rights, it has accepted the Court's judgements and is currently in the process of complying with some of them by compensating victims and their relatives for human rights violations. It is noteworthy that in the particular case known as "Cuatro Puntos Cardinales", in which police officers are accused of murdering several youths, the State of Honduras has partially¹⁶ admitted the claim before the Inter-American Court of Human Rights, which is hearing the case, without prejudice to continuation of the criminal proceedings instituted to investigate the facts and convict those found responsible.

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).

Pursuant to articles 381 and 382 of the Code of Criminal Procedure, the Supreme Court of Justice has created the position of executive magistrate, or enforcement judge responsible for overseeing and monitoring the enforcement of sentences and security measures and ensuring that the laws governing the prison system are properly applied. The Constitutional Chamber of the

¹⁴ Established in September 2002, attached to the Criminal Investigation Directorate and restructured in June 2003.

¹⁵ Annex 13 (Executive Decree No. PCM-006-2002, 27 May 2002).

¹⁶ Annex 14 (attach copy of admission of claim submitted to the Inter-American Court of Human Rights).

Supreme Court of Justice has also granted corrective habeas corpus to the inmates of the National Penitentiary, the Puerto Cortés Penal Centre and the Renaciendo and El Carmen detention centres (see annex 3).

In March 2006, the Ministry of Security created the position of Inspector General of the Preventive Services Directorate (DGSEP), in charge of the prison system, whose functions include monitoring living conditions, seeing to it that the rights of detainees are respected and ensuring the proper conduct of civil servants.

In addition, an exhaustive review is being carried out of legislation relating to the prison system in order to update it, bring it into line with international agreements and adapt it to current challenges. To that end, a preliminary draft prisons act has been submitted to the National Congress.

The events that occurred at the El Porvenir prison farm in Atlántida and at the San Pedro Sula prison were considered to be issues of national and international importance. They are currently under investigation by the Office of the Public Prosecutor and proceedings have been instituted before the competent criminal courts. The scientific evidence is being examined in order to shed light on what happened and convict those responsible. There are members of the National Police implicated in the events for whom non-custodial measures have been replaced by pretrial detention, in view of the magnitude and importance of the events.

The Centres for the Rehabilitation of Minors are directed and administered by the Honduran Children and Family Institute (IHNFA), a governmental body operating with the support of such organizations as the Spanish Agency for International Cooperation (AECI) and the United Nations Children's Fund (UNICEF). The police provide assistance and cooperation in the areas of security and surveillance of facilities, without having any contact with juvenile offenders.

In the case of the El Porvenir prison farm, the prosecutor's office brought prosecutions against 51 persons and obtained formal detention orders against 39 of them and a sentence of 19 years and 3 months of imprisonment against Oscar Reniery Sánchez, assistant director of El Porvenir prison at the time of the events.¹⁷ Proceedings for abuse of authority have also been brought against a group of civil servants working at the prison.

With regard to the events at San Pedro Sula prison, criminal proceedings were brought against the director of the prison after a finding of criminal liability by the court of first instance. The prosecutor's office is currently awaiting a decision by the Supreme Court of Justice in *amparo* proceedings brought on behalf of the victims.

¹⁷ Annex 15 (sentence in *El Porvenir* case).

The Office of the Public Prosecutor will request the Office of the Procurator-General to bring civil proceedings for compensation on behalf of the victims, pursuant to article 51 of the Code of Criminal Procedure.

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.

In this regard, the authorities intend to address these problems from various angles: by reviewing legislation relating to the police, improving police procedures and discipline, strengthening the Internal Affairs Unit and, above all, raising awareness through training.

Police procedures include orders and directives based on the Code of Criminal Procedure that limit the use of force to when it is strictly necessary for the effective discharge of their duties and to the extent required to make an arrest. The use of firearms is limited to situations where there is a grave, imminent or reasonable risk to the life or physical integrity of the officer or of third persons, where there is a fear of a serious disruption of public order or where it is needed to avoid the commission of an offence and no other equally effective and less dangerous means are available. Efforts are being made to limit the use of the armed forces for police work, in accordance with the Constitution.¹⁸

An innovative system of social oversight, known as “citizen security bureaux”, has also been set up, which uses civil society structures to support and monitor police action.

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.

The Ministry of Security maintains a proactive attitude towards any kind of situation that limits the individual rights of persons engaging in this kind of activity.

The State of Honduras guarantees the protection of all inhabitants. Similarly, the Ministry of Security, upon receiving an application for protection from any individual, is required to grant such protection by safeguarding the person’s physical integrity. Such actions are carried out without any distinction as to the applicant’s occupation. Personal protection is also guaranteed through the intervention of the Office of the National Human Rights

¹⁸ Article 274, paragraph 3, of the Constitution stipulates: “Furthermore, they shall cooperate with the public security agencies, at the request of the Office of the Secretary of State for Security, in combating terrorism, arms trafficking and organized crime, as well as in protecting the branches of Government and the National Tribunal of Elections, at their request, with respect to their establishment and operation.”

Commissioner, which ensures the safety of the population, and the Office of the Public Prosecutor, which acts informally and free of charge in criminal proceedings by instituting public criminal actions.

Article 209-A¹⁹ of the Criminal Code criminalizes torture, making it punishable by 10 to 15 years' imprisonment where serious harm has been caused, or by 5 to 10 years otherwise, in addition to ineligibility for reinstatement for double the term of imprisonment. Where this crime is committed by a private citizen, the penalties are reduced by one third.

Torture is a public order crime and the Office of the Public Prosecutor must therefore bring a public criminal action of its own motion (see: case of *Marco Omar Madrid Reyes*, Criminal *Amparo* No. 1914-02, date of judgement: 8 March 2004).²⁰

It should be noted that Honduras adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Decree No. 47-96, published in Official Gazette No. 28089 of 19 October 1996, and ratified it on 5 December 1996.

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?

Report on the steps that the State of Honduras is taking, through the Immigration and Foreign Nationals Directorate of the Ministry of the Interior and Justice, to eliminate the trafficking of adults and children for the purposes of economic and sexual exploitation. Also on the deaths of minors in Honduras.

¹⁹ Article 209-A: "Every civil servant or public employee, including the personnel of penitentiaries or youth protection centres, who exceeds his mandate while attempting to obtain a confession or information from any person or punishing him for any act that he has committed or is suspected of having committed by subjecting him to conditions or procedures which by their nature, duration or other circumstances cause physical or mental suffering or the destruction or impairment of his faculties of understanding, discernment or decision-making or are in any other way prejudicial to his moral integrity, shall be deemed to have committed torture. Every person found guilty of having committed torture shall be liable to 10 to 15 years' imprisonment where serious harm has been caused by the torture, or to 5 to 10 years otherwise, in addition to ineligibility for reinstatement for double the term of imprisonment. The above provisions shall not affect the penalties applicable for injury or harm to the life, physical integrity, health, sexual freedom or property of the victim or third persons. Where torture is committed by a private citizen, the penalties for which provision is made in the preceding paragraph shall be reduced by one third."

²⁰ Annex 16: *Amparo* judgement.

1. *Steps that the Honduran authorities are taking to prevent and punish the trafficking of human beings for purposes of sexual exploitation.*

An inter-agency committee to prevent the sexual exploitation of children and adolescents has been established. Relying on inter-agency coordination,²¹ this committee carries out prevention through training activities²² on child protection, drugs and youth gangs or *maras*. These training activities are carried out using crime mappings, talks and interactive workshops. Another of the committee's functions is to receive complaints of child abuse, which are transmitted through municipal defenders to the prosecutor's office for institution of the corresponding proceedings.²³

The Inter-agency Commission against Sexual and Commercial Exploitation of Children and Adolescents provides training in the prevention of trafficking to the general public.²⁴ This is in addition to any legal proceedings that may be brought by victims, which not only serve to punish the perpetrators but also have a deterrent effect. In this connection a special unit has been set up to train police officers to deal with child pornography.

A "migrant house" was set up in Ocotepeque, in western Honduras, and another in Choluteca²⁵ to deal with cases of human trafficking.²⁶ As a preventive measure unannounced inspections are carried out regularly in hotels, boarding houses and similar establishments. These involve inspecting rooms and guest registers. Similar inspections are carried out in restaurants and games rooms and hotel staff are warned about the illegal nature of this activity. Inspections are carried out in places frequented by foreigners in order to ascertain their immigration status and whether they have any connections with any boys and/or girls who may be there.

²¹ This committee comprises governmental, non-governmental and international institutions.

²² According to information provided by the Office of Migration in Tela, since the committee's inception, 17,000 persons have been trained. Topics covered by such training include applicable legislation, the media and public awareness-raising about the need to report these cases.

²³ Example: case brought against a United States national, Clark Perry Johns. The La Ceiba sentencing court held public oral proceedings, in which Johns was sentenced to three years and two months of imprisonment. His sentence was commuted to 9,000 lempiras and he was issued an expulsion order and deported to the United States of America.

²⁴ See Decree No. 234 of 4 February 2005, which entered into force on 11 March 2005 (annex).

²⁵ The activities of this "migrant house" are coordinated by the Catholic Church in conjunction with the Inter-agency Commission against Sexual and Commercial Exploitation.

²⁶ Under the responsibility of the Ministry of the Interior and Justice.

The immigration authorities also carry out inspections of overland transport stations. Public transport units are searched in order to be able to anticipate the movement of persons and children who may be the object of trafficking for sexual or economic purposes.²⁷

2. Steps to eradicate child labour and the economic exploitation of children.

2.1 Preventive searches are conducted by officials of the Ministry of Labour and the Ministry of the Interior and Justice.²⁸ In follow-up to a complaint or on a routine basis, officials of the Immigration and Foreign Nationals Directorate of the Ministry of the Interior and Justice carry out workplace inspections, asking to see the employee records of human resources departments in order to ascertain employees' immigration status, in order to prevent the economic exploitation of children. The Social Welfare Directorate of the Ministry of Labour and Social Security also has inspectors who are responsible for checking sectors where child labour might be used.²⁹ The number of child workers is currently estimated at 350,000 most of whom are working in rural areas.

2.2 The Regulations governing Child Labour in Honduras were adopted by Executive Agreement No. STSS-211-01 of 10 October 2001.

2.3 The National Commission for the Elimination of Child Labour in Honduras was established by Decree No. 017-98.

2.4 In 2001, eight regional subcommissions for the elimination of child labour were set up in the departments of Danlí, Choluteca, Comayagua, Juticalpa, Santa Bárbara, Santa Rosa de Copán, San Pedro Sula and La Ceiba.

2.5 The Technical Council for the Elimination of Child Labour in Honduras, which is responsible for carrying out the activities of the National Commission, was established in 2001.

2.6 The Office of the Executive and Coordinating Unit of the National Commission for the Elimination of Child Labour was established in August 2005.

2.7 A subregional office of the International Programme on the Elimination of Child Labour of the International Labour Organization (IPEC-ILO) began operating in Honduras in 2000.

²⁷ Cf. an incident that took place at the Guasaule crossing point in Choluteca on the country's southern border. With the cooperation of their Nicaraguan counterparts, officials were able to rescue children who were being transported by van, and carry out the corresponding legal procedures and refer the case to the investigating authorities and the Office of the Public Prosecutor.

²⁸ In both institutions, inspection work is carried out on a limited basis owing to a lack of human resources.

²⁹ For example, inspections are carried out in sectors producing "non-traditional" goods, such as melon, watermelon and shrimp. In the "maquila" sector, child labour has been virtually eliminated. It is calculated that 350,000 children are still working.

2.8 In 2001, the National Plan of Action for the Gradual Elimination of Child Labour in Honduras was formulated.

2.9 There are currently three projects under way in this area: (1) compilation of a list of the worst forms of child labour in Honduras; (2) reformulation of the National Plan of Action for the Gradual Elimination of Child Labour in Honduras; and (3) implementation of a process of institutional-building for the eight regional subcommissions and the Executive and Coordinating Unit of the National Commission.

2.10 In coordination with various cooperation agencies, studies and direct action programmes have been formulated on the issues of child domestic labour, child refuse collectors, commercial and sexual exploitation of children, and children working in the agro-industry (coffee, melon, sugar, etc.).

2.11 The issue of the elimination of child labour has been included in the implementing regulations for the Poverty Eradication Act, which will be implemented at the municipal level.

3. ***Steps that the State of Honduras is taking, through the Immigration and Foreign Nationals Directorate of the Ministry of the Interior and Justice, with respect to the elimination of the trafficking of adults and children for the purposes of economic and social exploitation.***

In order to prevent and eliminate the trafficking of children, immigration officials, under the law governing them, carefully check the documentation carried by adult migrants and that of the children accompanying them to verify the legality of the transit (entry or exit) being effected. If any irregularity is detected, action is taken according to established procedures.

WEAKNESSES

- One weakness in the system is that groups of adults and children being trafficked for sexual purposes enter or leave the country through unmonitored crossing points, guided by illegal traffickers or *coyotes* familiar with the system's loopholes.
- Another weakness is the lack of sufficient human and material resources to carry out all the preventive and monitoring activities needed to achieve maximum efficiency.
- Despite having received training on the subject, immigration officials do not have an official procedures manual that they can use in dealing with the illegal trafficking of persons for sexual and economic purposes.
- The prevention and control activities carried out by regional immigration offices are improvised.
- There is no specific database providing statistics that reflect the phenomenon and accurately reflect the activities carried out by the regional offices of the Immigration and Foreign Nationals Directorate in this area.

SUCSESSES

- The amendments made to Title II, book Two, Special section of the Criminal Code, establishing the offences of commercial sexual exploitation, which have been in effect since 4 February 2006.³⁰ These amendments are a key tool for combating this kind of organized crime (see annex containing amendments to article 140).

4. *Steps that the State of Honduras is taking with regard to the deaths of children in Honduras.*

4.1 The Commission for the Physical and Moral Protection of Children was established.³¹

4.2 The Special Investigation Unit on violent Child Deaths was set up within the Criminal Investigation Directorate to carry out the necessary specialized investigations into child deaths involving violence.³²

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.

Article 89 of the Constitution stipulates that judicial detention shall last not more than 24 hours, during which time the detainee must be brought before a competent judge. Under the Constitution, the judge has six days in which to decide whether the accused should be released or placed in pretrial detention. The current Code of Criminal Procedure stipulates that pretrial detention shall be the exception rather than the rule and shall be applicable only in justified cases assessed by the judge. Its length and application are regulated by articles 181 to 184 of the Code of Criminal Procedure.

The Code of Criminal Procedure makes provision for a series of procedural steps (non-judicial measures) that allow a judicial ruling to be made without having to exhaust full criminal proceedings, that is, without reaching the stage of oral proceedings.³³

³⁰ See Decree No. 234 of 4 February 2006, which entered into force on 11 March 2006.

³¹ This Commission was established by Decree No. PCM-007-2003. It is chaired by the Ministry of the Interior and Justice and comprises the Ministry of Security, the Ministry of Finance, the Ministry for Foreign Affairs, the Supreme Court of Justice, the Office of the Public Prosecutor, the Office of the Procurator-General, the Confederation of Evangelical Churches, the Catholic Church, the Office of the National Human Rights Commissioner and the non-governmental organization Covenant House.

³² See footnote 18.

³³ Articles 36 and 403 of the Code of Criminal Procedure, on the conditional suspension of criminal proceedings and the abbreviated procedure, respectively.

A temporary Act, known as the Special Act on the Transition and Inter-agency Monitoring of the Criminal Justice System, is currently in force. It establishes special deadlines for limitations on proceedings in cases brought under the repealed Code of Criminal Procedure that have been inactive for more than two years and in which no judgement has been issued. In order to expedite such proceedings, the Supreme Court of Justice has implemented the National Programme for Processing Criminal Cases, in which a group of judges with national jurisdiction are working hard to clear the backlog of cases brought under the old Code.³⁴

There is also the Unconvicted Prisoners Act, under which persons found to have been in pretrial detention for a period equal to or greater than the maximum sentence applicable to the offence with which they are charged, or equal to or greater than the sum of the maximum applicable sentences when a number of punishable acts have allegedly been committed or than the maximum allowed by the Constitution, are to be released without delay. The same right is extended to prisoners awaiting sentencing and convicted prisoners who are terminally ill, as determined by three medical professionals appointed by the competent judge and providing their services in State public institutions. The judiciary, in exercise of its constitutional power to propose legislation, has also submitted to the National Congress a preliminary bill on terminally ill detainees drawn up by the Inter-agency Commission on Criminal Justice.³⁵ The release of such persons is without prejudice to the State's obligation to provide them with assistance in public hospitals when they so request.

These laws are applicable to prisoners convicted of the crime of unlawful association, provided that they have not been convicted at the same time of such crimes as murder, rape, money laundering, drug possession or drug trafficking. This means that any person convicted of the crime of unlawful association shall be entitled to the speedy oral and immediate proceedings permitted by the current Code of Criminal Procedure and to benefit from the fact that pretrial detention has become the exception and is, in any case, subject to time limits established by law. Moreover, the Unconvicted Prisoners Act and the Special Act on the Transition and Inter-agency Monitoring of the Criminal Justice System may be invoked in cases brought under the old Code of Criminal Procedure.

With respect to the Office of the Public Prosecutor, instructions on applying the internal guidelines at national level for dealing with minors deprived of their liberty as a socio-educational measure have been issued on many occasions. Those instructions are designed to ensure strict compliance with article 37 (b) of the Convention on the Rights of the Child and article 207 of the Children and Adolescents Code. Those articles establish the legal obligation to ensure that in the case of both precautionary measures (pending a decision based on the investigation and judicial appraisal of the particular case) and socio-educational measures (convictions) and their duration, detention is used only as a last resort and the maximum sentence imposed is eight years in the most serious cases and no more than one year in other cases.

³⁴ Annex 18.

³⁵ Annex 19 (note referring the preliminary bill to the National Congress).

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).

The Constitutional Justice Act was adopted in 2003 by Decree No. 244-2003 and entered into force on 3 September 2005. It reiterates the State's obligation to guarantee the personal liberty, integrity and privacy of the individual, recognizing the guarantees of habeas corpus, *habeas data* and *amparo*. Its provisions replace those of the former *Amparo* Act of 1936, providing a broader, more modern legal framework based on the international human rights instruments incorporated into the domestic law of Honduras.³⁶

³⁶ ARTICLE 13 - OBLIGATION OF THE STATE TO GUARANTEE PERSONAL LIBERTY AND THE INTEGRITY AND PRIVACY OF THE INDIVIDUAL. The State recognizes the guarantees of habeas corpus and *habeas data*. Consequently, in the case of habeas corpus, any affected person or any other person acting on his behalf and in the case of *habeas data*, only the person whose personal or family data appear in the archives or public or private records may petition as follows:

1. *HABEAS CORPUS*:

(a) When the person is unlawfully imprisoned, detained or in any way restricted in the enjoyment of his liberty; and

(b) When, in the course of his lawful detention or imprisonment, the detainee or prisoner is subjected to, torture, harassment or extortion or to any coercion, restriction or inconvenience not necessary for his personal safety or to maintain prison order; and

2. *HABEAS DATA*:

Every person has the right to speedy, unimpeded access to information about himself or his property, whether contained in databases or public or private records, and to update, correct and/or modify it where necessary.

Only the Constitutional Chamber of the Supreme Court of Justice shall have jurisdiction to hear petitions for *habeas data*.

ARTICLE 14 - RESTORATION OR SAFEGUARDING OF LIBERTY - CESSATION OF TORTURE. Any person who finds himself in one of the situations mentioned in subparagraph (a) of the preceding article, or any other person acting on his behalf, shall have the right to request that he be brought before the competent bodies immediately with a view to the restoration or safeguarding of his liberty or the cessation of torture, cruel, inhuman or degrading treatment, harassment, extortion or any other coercion, restriction or inconvenience.

This legislation allows the Honduran State, through judges and magistrates, to monitor actions by civil servants that infringe the rights and guarantees of persons, thereby avoiding abuse in arbitrary detentions. Likewise, the Code of Criminal Procedure regulates cases of detention and arrest of suspects.

The Office of the Public Prosecutor has precise instructions, deriving from its own internal legal framework and from the Constitution, to be a guarantor of rights. This means that its actions must be conducted in accordance with the law. The decision to arrest or detain a person must therefore be based on the existence of a minimum burden of proof linking him with an act classified by Honduran law as an offence. Otherwise, if detention occurs outside these parameters and beyond the period of time permitted by law, it can be classified as illegal detention (article 333 of the Honduran Criminal Code), making the author of the detention and the person who allowed it subject to criminal prosecution. This means that the existence or occurrence of one of these situations would result in the prosecution of those directly responsible for enforcing the law.

At the same time, in-service training is permitting a significant reduction in procedural errors. The impetus given to professional police training is demonstrated by the fact that the country's top higher education authority, the Directorate of Higher Education of Honduras, has approved an undergraduate degree in criminal investigation and a Master's degree in human security. The latter is sponsored by the United Nations Population Fund (UNFPA) and is taught at the Higher Institute of Police Education, thereby guaranteeing the quality of those in charge of carrying out investigations.

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.

In a ruling issued by the Constitutional Chamber of the Supreme Court of Justice on 6 January 2006 (see annex 3), the Ministry of Security was ordered to take the necessary steps to put an end to violations of the human rights of detainees within one year from the date on which the ruling became enforceable.

Accordingly, the Preventive Services Directorate, in its capacity as the body responsible for administering the Honduran prison system and in conformity with the above-mentioned ruling, adopted the immediate corrective measures and arrangements ordered by the Constitutional Chamber of the Supreme Court of Justice, which are described below:

ARTICLE 15 - DECISION ON OTHER INFRINGEMENTS OF LIBERTY

When, in the petition for habeas corpus, other infringements related to personal liberty in any of its forms are alleged and the facts are connected with the act deemed unlawful in that they constitute its cause or its aim, a decision shall also be taken on these infringements.

A. Relieve overcrowding in cells and units that exceed the capacity for which they were designed, giving priority to inmates of the units known as “La Leonera”, “Diagnóstico” and “La Peseta”, as well as to inmates of isolation cells where there is more than one inmate and inmates of the unit shared by mentally ill persons, people with HIV and homosexuals.

STEPS TAKEN

La Leonera:

- The physical facilities were enlarged and remodelled.
- Sanitation services and drinking water were installed.
- Electricity was installed.
- Mattresses were provided.
- The number of inmates in the unit was reduced from 14 to 7.

El Locutorio (referred to in the ruling as “Diagnóstico”):

- Access to water, sanitation services and bathing facilities were provided in the premises designed for laundry services.
- The electrical system was improved.
- Sleeping mats were supplied.
- The number of inmates was reduced from 69 to 16 by transferring some of them to other prisons.

Isolation unit:

- The roof tiling of the isolation unit was made 80 per cent waterproof.

Unit for mentally ill persons, people with HIV/AIDS and homosexuals:

- 70 mattresses were supplied.
- Improvements were made to the inmates’ diet.
- The entire electrical system was overhauled.
- The metal gates separating individual units were partially overhauled.

CONSTRAINTS

The following deficiencies were noted by the Preventive Services Directorate:

- All the units mentioned lack adequate physical space for housing inmates permanently.
- There are insufficient financial resources for the physical maintenance of the isolation unit.
- There are insufficient financial resources for building, fitting out and maintaining the unit for mentally ill persons, people with HIV/AIDS and homosexuals.

B. Improve hygiene and safety conditions (health). This must include water purification, periodic fumigation, improvements to the electrical system and daily waste collection, as well as the filling in of a hole containing stagnant water and all kinds of waste matter and the removal of the refuse incinerator located next to the unit housing Mara 18 inmates, since both are highly polluting.

STEPS TAKEN

In the physical installations of the “Marco Aurelio Soto” National Penitentiary:

- Cleaning of the filtration basins that supply the water distribution tank (capacity 85,000 gallons of water).
- Cleaning of the drinking water distribution tank every 15 days and chlorination every 10 days with 32 pounds of hypochlorite.
- Testing every 15 days to check water purification levels, in coordination with the Vector Control Unit of the Támara Health Centre.
- Installation of a water suction pump for the “Escorpión” area.
- Application of insecticide to the water supply basins located in the modules and cleaning and checking every eight days.
- In cooperation with the Ministry of Health, three fumigations conducted throughout the prison complex in August 2005 and March and August 2006.
- Cleaning and application of herbicides to the oxidation pond five times, in September and November 2005 and February, March and June 2006.
- Installation of lamps (lanterns), light bulbs and candles in the “Casa Blanca” tower and in the prison guards’ dormitory block (tower 10); 30 light bulbs in the “Escorpión” area.
- Contracting of a rubbish disposal service three days a week.

- Repair of the water drainage system of units 1 and 2 for unconvicted prisoners and the “Diagnóstico” unit.
- Repair of two wells and wastewater containers at the entrance to tower block 1 and the Mara 18 unit.
- Removal of the incinerator and building a refuse disposal unit next to the Mara 18 unit.
- Installation of a wire mesh screen in the kitchen area to keep out insects.
- Arranging for the introduction of a solid waste management plan.
- Enclosing of the rainwater drainage channel coming from the “Diagnóstico” unit.

C. Supply the hospital with medicines, observing the medical care schedule set out for each unit and dealing with emergencies as and when they arise.

STEPS TAKEN:

In the area of medical services:

- The medical care schedule for the various units is being followed; at weekends and at night, medical care is provided by suitably qualified paramedical staff (final-year medical students).
- All the Ministry of Health programmes are being implemented: dengue, sexually transmitted diseases (STDs), HIV/AIDS and tuberculosis, vector-borne diseases (malaria, dengue, yellow fever), vaccine-preventable diseases (tetanus, etc.).
- The prison hospital has the minimum level of medicines required to provide adequate medical care.
- The Administration Department has been instructed to purchase medicines in accordance with the allocated budget.

D. Provide beds to detainees who are sleeping on the floor (older persons, mentally ill persons, people with HIV/AIDS and other people without beds):

- Beds have been provided to mentally ill persons, people with HIV/AIDS, homosexuals and older persons.

CONSTRAINTS

- There are constraints associated with the lack of medical and technical personnel in laboratories.

- Beneficiaries do not make proper use of the beds and mattresses allocated to them, instead selling them to other inmates or destroying them.
- The budget allocated to the prison is insufficient to purchase all the implements required by detainees.

E. Improve security by stepping up surveillance shifts, periodically rotating prison police personnel, carrying out regular operations in the presence of enforcement magistrates, human rights prosecutors and representatives of human rights bodies, installing security systems inside and outside the prison.

STEPS TAKEN

- Shifts have been stepped up by increasing the number of hours per police officer.
- Security personnel are being rotated between modules.
- Support was requested from the Director of the National Preventive Police, the Office of the Public Prosecutor and enforcement magistrates for conducting searches in convicted offenders unit 1, “Casa Blanca” and “Maquila”.
- A metal detector was installed in the customs area.
- An antenna that blocks mobile phone signals was installed.
- A decision was secured from the Telecommunications Commission, CONATEL, ordering mobile telephone providers to block signals in prisons.
- A prison information network was set up.
- Temporary support was obtained from a special unit of the Preventive Police (Special Operations Commando, COBRA).

CONSTRAINTS

- Insufficient number of police officers assigned to the prison.
- Lack of coordination among institutions
- Lack of maintenance and security of detection equipment.

F. Segregation of prisoners awaiting sentencing and convicted prisoners.

STEPS TAKEN

The classification and gradual segregation of prisoners awaiting sentencing and convicted prisoners is under way.

CONSTRAINTS

- Physical space limitations.
- Most people admitted to the prison are awaiting sentencing.
- The prison houses organized groups whose separation requires special handling.

G. Review the profile of prison staff to determine whether or not they are qualified to perform their assigned function, making appropriate changes.

STEPS TAKEN

The Human Resources Directorate was instructed to establish a profile of staff working for the National Penitentiary in order to determine whether or not they are qualified to perform their assigned function, making appropriate changes.

H. Press for the adoption of any legislative initiatives that would make it possible to:

1. Order the release of some inmates by means of a pardon, commutation of fines to work and other measures, while continuing to work for adoption of the prisons bill.
2. Increase the construction budget for prisons to be used for the rehabilitation of prisoners.
3. Recruit personnel trained in prison policy, as well as medical professionals, psychologists and social workers.
4. Implement the “Escorpión” project and other projects that would help improve conditions for detainees.

STEPS TAKEN

Activities undertaken to reduce prison overcrowding:

- 128 socio-economic and psychological studies were conducted from May 2005 to August 2006 in the context of community service and commutation procedures.
- 1,154 socio-economic and psychological studies were conducted from May 2005 to August 2006 in the context of parole procedures.
- 78 socio-economic and psychological studies were conducted with a view to transferring inmates from segregation and isolation units to other prisons.
- Work is being done in conjunction with the commission set up for the granting of presidential pardons, with more than 100 completed applications currently being processed in the Ministry of the Interior and Justice, and the identification, classification and selection process is continuing.

- Currently, more than 100 inmates have been granted early release after the corresponding socio-economic and psychological studies were conducted.
- Eight prisoners have been transferred to the Republic of Mexico through an exchange programme.

CONSTRAINTS

- Lack of trained social workers and psychologists.
- Large number of people placed in pretrial detention.
- Shortage of technical staff, such as social workers and psychologists, attached to enforcement courts, to avoid diverting scarce staff from the National Penitentiary.
- Lack of support from various public and private institutions in providing job opportunities to persons given community service sentences.
- The mechanisms for processing prisoners' applications for benefits such as parole and pardons must be streamlined.

It is important to mention that in 2005, the Marco Aurelio Soto National Penitentiary was recognized by the health authorities as the top-ranking prison in Latin America for implementing the tuberculosis programme.

The entry into force of the Code of Criminal Procedure saw the creation of the position of judge or magistrate responsible for enforcing sentences and security measures³⁷, with the task of verifying that pretrial detention enforcement of judgements and stay of proceedings are conducted in accordance with the law and with judicial decisions and of processing, deciding and monitoring parole and all events occurring at the stage of the enforcement of sentences and security measures. There are currently 13 enforcement judges or magistrates and, as a result of a recent selection process by competitive examination, a further 13 judges are to be recruited for assignment to various detention centres nationwide, and will take up their duties on 1 October 2006.

³⁷ Article 60 of the Code of Criminal Procedure: "EXCLUSIVE JURISDICTION OF ENFORCEMENT JUDGES AND MAGISTRATES. Judges and magistrates responsible for enforcing sentences and security measures shall verify that pretrial detention, enforcement of judgements and stay of proceedings are conducted in accordance with the law and with judicial decisions, as well as process, decide and monitor parole and all events occurring at the stage of the enforcement of sentences and security measures. They shall have jurisdiction to determine the appropriateness of any security measures that may be imposed by law after the prison sentence has been served or the prisoner has been released. They shall be responsible for ensuring that the objectives of the sentence and the security measures are being fulfilled and that prisoners' rights are protected. They shall also have jurisdiction to try actions in tort."

A study of the prison population is currently being conducted with a view to granting pardons to terminally ill prisoners, as a means of helping reduce prison overcrowding.³⁸

Similarly, there are plans to grant a general pardon to more than 900 inmates, for which the corresponding study is being completed, since it is clear that prison overcrowding is one of the major problems facing the penal system.

At the same time, the Supreme Court of Justice has presented to The National Congress a prison bill which, like many other such efforts, was drafted on a multidisciplinary basis in the Inter-agency Commission on Criminal Justice. Its aim is to improve the system dramatically by attempting to overcome both traditional problems and those associated with new forms of criminality.³⁹

The Government has given urgent attention to the prison situation, with the result that various approaches are being made at different levels - both to civil society organizations and to international and governmental bodies - to secure the building of high security and rehabilitation centres for prisoners.⁴⁰

A cooperation agreement has been signed with the Republic of Argentina for conducting a study in the country's prisons in cooperation with the Cascos Blancos Commission. The study will be funded by the Inter-American Development Bank (IDB) and national counterpart funding and is expected to produce recommendations for improving the prison system.

With the support of international cooperation, laws have gradually been enacted, joint action taken with non-governmental organizations and exchanges conducted with other countries.

The Government, in its determination to protect children and young people at social risk, coordinates efforts with associations, foundations and non-governmental organizations through the implementation of projects, programmes and other mechanisms.

Juvenile detention centres have been renovated to provide minimum hygiene and safety conditions. The diet and living conditions of minors held in these centres have improved; for instance, they have all been provided with sleeping mats and kitchen and cleaning staff have been recruited.

³⁸ Sixty pardons have been processed.

³⁹ Annex 21: Cooperation agreement with the Argentina Fund for Horizontal Cooperation (FOAR) and project to train personnel to assess the current situation of the country's prisons.

⁴⁰ Annex 19: Report on compliance with the sentence guaranteeing habeas corpus for prisoners in the National Penitentiary.

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.

By Decree No. 1 of 6 December 1972, the Council of Ministers of the ruling military junta enacted the present Judicial Service Act, which governs the functioning of administrative organs that regulate and monitor the proper functioning of the judiciary. The Act is not in keeping with the new requirements of the judiciary, which has undergone constitutional reform⁴⁰ involving changes in the way that judges and magistrates are selected⁴¹ and its being granted the power to set up, abolish, merge or transfer trial courts, courts of appeal and other units of the judiciary.

As a result of this new process of modernization of the judiciary, a preliminary draft organic law of the judiciary and a preliminary draft law on the Council of the Judiciary and the judicial service⁴² have been submitted to the National Congress.

The Constitution stipulates the separation of powers and provides that judges of the Supreme Court of Justice shall serve for a term of seven years and that the National Congress shall elect at least 45 candidates from a list of three candidates per post proposed by a Nominations Committee composed of representatives from various sectors of society.⁴³

⁴⁰ Legislative Decree No. 262-2000 of 22 December 2000, ratified by Legislative Decree No. 38-2001 of 16 April 2001.

⁴¹ Annex 22: Decree No. 140-2001, Organic Law of the Nominations Committee for the Election of Judges to the Supreme Court of Justice.

⁴² Established by article 317 of the Constitution: "There is hereby established a Council of the Judiciary, whose members shall be appointed by the Supreme Court of Justice. The law shall specify its organization, scope and functions. Judges may not be dismissed, suspended, transferred, demoted or retired for reasons and safeguards other than those provided by law."

⁴³ Article 311 of the Constitution of the Republic: "The Judges of the Supreme Court of Justice shall be elected by the National Congress from a list containing no less than three candidates for each post to be filled, requiring the vote of at least two thirds of all the members of Congress.

The election is held once the proposal containing the names of all the judges has been submitted.

In the event that there is no qualified majority for the election of the full list of judges, a direct, secret vote is held to elect the remaining judges individually; the vote is repeated as many times as necessary until the two-thirds majority is achieved.

Judges shall be elected from a list of candidates proposed by a Nominations Committee composed of the following:

However, pending the adoption of these preliminary draft laws, the judiciary has been applying the Judicial Service Act by implementing selection processes through public competitive examinations that have resulted in three intakes of trial judges, two of enforcement judges and two of professional judges and public defenders, thereby securing respect for the independence of judges and magistrates without losing sight of promotion as a means of strengthening the judiciary.

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.

The State recognizes that visits contribute to a detainee's emotional stability and hope. Accordingly, there are no restrictions on prison visits other than those related to the safety of detainees, which have to be followed in any centre of this kind. The same conditions apply to lawyers' visits.

With the implementation of the Code of Criminal Procedure in the various police stations, the Supreme Court of Justice has appointed at least one public defender, on duty 24 hours a day, to guarantee the rights of detainees. Similarly, any impairment of this right in prisons and juvenile detention centres can be reported to enforcement judges for the necessary investigations to be conducted and appropriate steps taken in accordance with the law.

Under the Code of Criminal Procedure, **acts carried out without the presence of counsel or legal advice are invalid.**

With regard to lawyers, Honduran procedural legislation provides for counsel at each stage of criminal proceedings including at police premises or the prosecutor's office. Moreover,

-
- (1) A representative of the Supreme Court of Justice elected by a vote of at least two thirds of all judges;
 - (2) A representative of the Bar Association of the Assembly of the Association;
 - (3) The National Commissioner for Human Rights;
 - (4) A representative of the Honduran National Business Council (COHEP), elected by the COHEP Assembly;
 - (5) A representative of the professors of Faculties of Law, recommended by the National Autonomous University of Honduras (UNAH);
 - (6) A representative elected by civil society organizations; and
 - (7) A representative of the country's trade union organizations.

The organizations that make up the Nominations Committee shall be regulated by an Act."

if the accused does not have the financial means to hire a lawyer to defend him, the State provides a public defender free of charge who is under the authority of the judiciary. This service is provided free of charge irrespective of the offence for which proceedings have been instituted and is available to both minors and adults.

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.

As mentioned earlier, the Supreme Court of Justice, through its Constitutional Chamber, declared the criminalization of contempt of court to be unconstitutional, basing its judgement on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the American Convention on Human Rights and on the fact that such criminalization was at variance with the Constitution of the Republic.⁴⁴

Similarly, the State of Honduras does not apply prior censorship or restrict the freedom to receive and disseminate information. With regard to defamation proceedings instituted against journalists, such proceedings are brought by individuals who consider their honour to have been tarnished by the journalists' statements. Since such proceedings are provided for by Honduran law, citizens who institute them do so in exercise of their individual rights.⁴⁵

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.⁴⁶

- In 1956, Honduras ratified International Labour Organization (ILO) Conventions No. 87 concerning Freedom of Association and Protection of the Right to Organise and No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively.
- Subsequently, in June 1959, the Labour Code regulating the exercise of those rights (freedom of association, collective bargaining and right to strike) was adopted.

⁴⁴ See Annex 3.

⁴⁵ Annex 23. Judgement in the *Renato Álvarez* case.

⁴⁶ See article 22, pp. 43 and 44, of the initial report for the number of trade unions (467) registered with the Department of Social Organizations, a branch of the Labour Directorate.

- Under the Labour Code, the right to organize applies to the entire public sector, both centralized and decentralized.
- The problems that often arise in the registration of a trade union stem from opposition from the workers themselves, in other words, from problems within the unions. Normally, if there is no opposition, registration is rapid. It is important to mention that employers cannot oppose the formation of trade unions.
- The right of association is guaranteed by and has been widely exercised since the promulgation of the 1957 Constitution.
- The right of association is a civil guarantee and its practical expression, guaranteed by the Constitution and the Labour Code, is the formation of trade unions.
- Title VI of the Labour Code regulates all the requirements and procedures for setting up a trade union. Some requirements are currently being simplified in order to expedite the exercise of these rights. It is a general policy of the State and the civil private sector to simplify administrative procedures.
- Currently, 496 trade unions of various kinds are registered with the Department of Social Organizations of the Ministry of Labour.
- Unionized workers account for around 8.6 per cent of the country's workforce.
- There are 65 trade unions in the public sector and 429 in the private sector.
- There are no restrictions on the exercise of the right to organize into unions. This right can be exercised by 30 workers or five employers, but only one trade union can be set up in the same firm or establishment.
- To register a trade union with the Ministry of Labour and Social Security, an application is submitted, accompanied by the corresponding documentary evidence from the union leadership.
- Through the Ministry of Labour, the State has taken administrative steps to protect the right to organize trade unions through labour inspectors. For this purpose, it has a motorized mobile unit for visiting industrial parks and has drafted amendments to labour law designed, inter alia, to simplify the procedures for organizing into a trade union.
- These amendments are currently before the Socio-Economic Council (CES) for discussion, approval and subsequent transmission to the National Congress for conversion into law.

- Through its decisions, the judiciary has strengthened the application of the Labour Code by ordering the reinstatement of trade union leaders dismissed without following the special procedure (trade union privilege) established by the Code.⁴⁷

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.

The State of Honduras and the authorities of the National Registry of Persons (RNP) are aware of the problems arising from the fact that many children in Honduras are not registered in due time. In view of one of the rights enshrined in article 7 (1) and article 8 (1) of the Convention on the Rights of the Child, namely, the right to a name and a nationality, and pursuant to articles 29, 30 and 31 of the Children and Adolescents Code, the State has encouraged the creation within the National Registry of a mobile registration project, under which mobile human resource units travel to remote areas of the country with the aim of combating this phenomenon, since it has been found that in many cases parents do not have the resources to travel to places where there are permanent municipal registry offices.

Moreover, with the ongoing support of UNICEF, vigorous campaigns have been undertaken to explain the process and the importance of child registration, whether in municipal registry offices or the National Registry of Persons.

In the context of the provisions of the new National Registry of Persons Act and its implementing regulations, the National Registry has carried out a series of activities designed to: guarantee the authenticity of the registration of acts and events related to the existence and civil status of natural persons; ensure respect for and the full exercise of the inherent rights of natural persons; promote discipline and a culture of registration; and contribute to strengthening democracy.

These actions can be summarized as follows:

1. Expansion of registration coverage by establishing 14 branch offices in remote rural areas or areas where national ethnic groups predominate. These branch offices are in addition to the 298 registry offices already in existence nationwide, making a total of 313 offices.
2. Appointment of 19 departmental or local registry officials, 1 for each departmental capital and a local official in the municipality of El Progreso in the department of Yoro, whose function is to issue “replacement” documents free of charge to people who were not registered in due time and form.
3. Organization of the campaign “I Have the Right to a Name and a Nationality” sponsored by UNICEF-RNP, with the following objectives:

⁴⁷ Annex 24. Labour judgements on trade union privilege.

- With funding from Italian cooperation, UNICEF and the National Registry of Persons, departmental training seminars were provided to municipal registrars and clerks in the departments of Intibuca, Lempira, Copán, Ocotepeque, Choluteca, Valle and Yoro with a view to updating registration technical know-how and raising awareness of the importance of promoting timely registration of births and a culture of registration in their communities.
- Launching in the various local and national media of the campaign “I Have the Right to a Name and a Nationality, Mum, Dad, Register Me”, which, in addition to radio and television advertisements, involved posters, stickers, brochures and flyers.
- Broadcasting of an information programme on Radio Globo, aimed at promoting and providing guidance and information on the registration of acts and events and on the requirements, legal deadlines and resulting benefits.
- Holding of the first national meeting of municipal registrars, entitled “Towards a registration culture of excellence and high quality”, which not only updated knowledge and standardized criteria and procedures but also placed emphasis on the promotion of a culture of registration through mobile brigades in the different villages and hamlets in rural areas.
- Holding of the second meeting of departmental and local registry officials, funded by RNP, UNICEF and the National Statistical Institute (INE), to standardize criteria used in the city of Tegucigalpa. One of its objectives was to standardize criteria regarding procedures and priority of requirements in the issuance of “replacement” registration documents to people who were not registered in due form and time. Several urgent amendments were also proposed to the law and regulations on administrative jurisdiction.
- With UNICEF support, a mass registration campaign is being conducted in the department of Gracias a Dios, involving the formation and deployment of 57 mobile brigades to an equivalent number of villages and hamlets in the six municipalities that make up the department.
- The registration and identification project is currently under way in the territories defined by the judgment of the International Court of Justice of 11 September 1992. The first stage of this project involved the adoption of the procedure for registering people living in the Nahuaterique border area and the registration and identification of the first 11 inhabitants of the area as Hondurans. The project also envisages sending mobile brigades to the different villages and hamlets in the area.
- Seminars and workshops on the theme “The National Registry of Persons (RNP) and its regulations with respect to the duties and rights of citizens” have been held for civil society organizations and secondary school and university students, explaining the relevant laws, innovations in the National Registry of Persons Act and its implementing regulations with respect to the registration of the acts and events of natural persons.

Because of constant internal migration, particularly from rural areas to urban centres, an automated registration and certification system was introduced in 44 municipal offices in order to expedite these procedures and avoid the expenditures incurred by members of the rural population in travelling to their places of origin to request documentation of their acts and events.

This automated system enables people, regardless of their place of birth and registration, to request certificates of birth and other acts and events free of charge in any of the above-mentioned offices.

- In the context of the programme to combat illegal trafficking in persons (especially children), funded by Italian cooperation, UNICEF and RNP, nine Departmental training seminars were held for municipal registrars and clerks in the departments of Atlántida, Colón Valle, Choluteca, El Paraíso, Copán, Santa Bárbara, Ocotepeque and Cortes, thereby helping to raise awareness among registry employees of the importance of timely registration of births in their jurisdictions as a means of reducing the potential for the illegal trafficking of children and adolescents.

In conjunction with the Inter-agency Committee on Vital Statistics (CIEV) and the National Statistical Institute (INE), new formats have been developed for the registration of births, deaths, marriages, divorces and de facto unions, as well as for statistical reporting thereon, with the ultimate aim of expediting registration procedures.

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.

The State of Honduras, through the National Agrarian Institute, the body responsible for implementing agrarian policy, is taking action for the recovery of the ancestral land of the indigenous and black peoples of Honduras, based on article 346 of the Constitution of the Republic.

Indigenous peoples have taken a number of actions to put pressure on the Honduran State to recognize their ancestral rights to their land. The recovery of ancestral land has been the most significant organized struggle that they have waged, a process involving many risk and tensions between indigenous peoples and landowners. In response, the Honduran State has taken action on their demands and has so far restored the rights of four indigenous peoples and peoples of African descent in Honduras.⁵¹

⁵¹ Annex 26. See the trust agreement concluded between the Ministry of Finance, the National Agricultural Development Bank and the National Agrarian Institute.

The land titling process involves three stages:

- (a) Land titling consists of the legalization of the ownership of occupied national or communal land;
- (b) For expansion into areas occupied by non-indigenous communities, an affidavit is requested from the occupants and the legality of the documentation presented is determined. If there is national land, it is recovered by paying only for improvements and then allocated to the community;
- (c) Compensation is the stage that requires major financial outlays, since it is necessary to pay for the absolute ownership rights held by non-indigenous owners. It is important to mention that the Institute does not have funds from the current budget to meet the demands for land ownership put forward by indigenous communities, which means that they are met from whatever funds the Institute has available.

In implementing the process within the areas claimed, a variety of problems are encountered, such as:

- (a) Presence of occupants with legal documents that prove their ownership;
- (b) Land situated in reserves, tourist areas or national parks;
- (c) Land situated in urban areas, giving rise to conflicts of jurisdiction with other State institutions such as municipalities, the Honduran Forestry Development Corporation (COHDEFOR) and the Ministry of Natural Resources and Environment (SERNA).

Indigenous peoples base their demands on ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which has been ratified by the Government of Honduras through a law that does not yet have implementing regulations and the rights acquired by other Hondurans must be resolved legally in order to obtain ownership of the land and be able to award it to indigenous communities.

The National Agrarian Institute (INA) works closely with organizations representing the country's indigenous and black peoples, signing agreements for short-term solutions to the problems of some communities.⁵²

The State of Honduras, through the institutions set up to resolve land disputes deals with the problem in accordance with applicable laws and available funding. Such actions include:

1. Recognition of ancestral titles by remeasuring land according to the contents of the title. This is done by an agrarian commissioner appointed for that purpose and by summoning the various neighbours. In the majority of such cases, the tribe concerned does not agree with the measurement and land may be measured up to five times without managing to satisfy the tribe's demands.

⁵² See the socio-political table of indigenous peoples.

2. Compensation for land covered by ancestral titles, where individuals not belonging to the tribe have occupied it peacefully and uninterruptedly. There are cases where the substantial investments and improvements made by those individuals would make the process very costly; consequently, solutions are sought that do not adversely affect any of the parties.

3. INA has purchased land owned by private individuals and occupied by indigenous communities and communities of African descent. In such transactions, problems are exacerbated by the owners' intransigence and threats of eviction, with the result that the procedure involves substantial financial outlays.⁵³

4. INA advice on lodging applications for annulment with the courts, in cases where the competent institutions have granted titles in areas owned by communities.

5. Coordination with the various institutions responsible for administering reserve areas, where communities live and work. A committee has been set up for this purpose to coordinate, reconcile, integrate and follow up all actions carried out for the benefit of the Garifuna and Miskito communities of Honduras with respect to land ownership.⁵⁴

6. Legalization of occupied areas for which absolute ownership is requested, in application of the National Land Titling Programme for the Indigenous Communities and Communities of African Descent of Honduras.⁵⁵

- The judiciary, for its part, through the rulings of the Constitutional Chamber, has recognized the right of peoples of African descent and indigenous peoples to their ancestral land, based on ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.⁴⁸
- Various activities have been conducted in the context of the National Education Programme for the Indigenous and Afro-Honduran Ethnic Communities of Honduras (PRONEEAAH):

1. Production of textbooks for preschool and primary school pupils in seven languages for indigenous and Afro-Honduran peoples and in Spanish as a second language. International consultants, community representatives, specialists in the humanities, graphic

⁵³ See the table summarizing purchases by indigenous communities.

⁵⁴ See Executive Agreement No. 035-2001.

⁵⁵ See the table on ethnic communities granted title by year.

⁴⁸ Annex 25. Ruling in favour of the Garifuna communities of Bolaños, Chachahuates and Eastend on the island of Roatán.

designers, data-entry operators and an industrial photographer, have been recruited for this purpose. The textbooks have been prepared using a contextualized approach, based on the Intercultural Bilingual Education (EIB) Model and the National EIB Curriculum for Preschool and Primary Education.

2. Production of a preschool teacher's guide and a primary schoolteacher's guide for teaching the National Core Curriculum for Intercultural Bilingual Education, also produced by the personnel mentioned above. Altogether, 11 publications have been produced and are ready for printing next year, when funds will be available to do so.

3. Implementation of the first year of the training programme for teachers who do not have teaching qualifications, with 672 students enrolled in San Pedro Sula (Garifuna people), Puerto Lempira (Miskito people), Intibuca (Lenca people), Roatán (black island people), Montaña de la Flor and Yoro (Tolupan people). This training programme will be implemented over two years, in coordination with six teacher-training colleges. Everything is in place for it to continue next year. Students receive training and textbooks free of charge.

4. Completion of the stage of providing universal access to the programme, with 119 students enrolled in Santa Maria del Carbón and Dulce Nombre del Culmi (Pech people), Wampusirpi (Tawahka people) and San Pedro Sula (Garifuna people).

5. Monitoring and follow-up of 150 schools using the Honduran Community Education Programme (PROHECO) EIB approach and of 152 community preschool education centres with their corresponding Community Education Associations (AECO) set up by decentralized units of PRONEEAAH, whose teachers have been trained in the community education approach and educational projects for centres.

6. Opening of 316 community preschool education centres with financial support from The Education for All Programme and support from PREPI and the Government of Taiwan, with a total enrolment of 4,000 children.

7. Strengthening of the structure of both the central unit and the decentralized EIB departmental units of the National Education Programme for the Indigenous and Afro-Honduran Ethnic Communities of Honduras (PRONEEAAH). Fifteen departmental EIB coordinators followed up and monitored Community Preschool Education Centres (CCEPREB), Honduran Community Education Programme (PROHECO) schools and ordinary education centres for ethnic communities. Professionally qualified technical staff at both the central level and in decentralized units have been recruited using Project 3497 funds, meaning that their contracts end on 31 December 2005.

8. Training activities for PRONEEAAH staff, comprising courses, internships, conferences, seminars, workshops on EIB topics teacher training, and production of schoolbooks and other textbooks, both within the country and internationally.

9. Purchase of materials and equipment for the central unit and decentralized units of PRONEEAAH (computers, software, desks, chairs, filing cabinets, cupboards, stationery, office supplies) as well as educational materials for CCEPREB pupils which are ready for distribution in 2006.

10. Validation of the EIB Model with technical personnel from the Ministry of Education, representatives of federations and specialists in the issue, both national and international, as well as PRONEEAAH staff.
11. Compilation and systematization of information on successful EIB experiences in the country, such as those involving the Tolupan people, the EIB committee of the Miskito people (CEBIMH), the EIB project of the Tawahka people (PEBIT), the Garifuna people, and PRONEEAAH, for which a national consultant was responsible.
12. Definition of linguistic policies for indigenous and Afro-Honduran peoples, which took place at special events with federations, PRONEEAAH staff, staff of other units of the Ministry of Education and other Government bodies and national and international specialists on the issue, the outcome of which was a document setting forth those policies and ready for formalization.
13. Drafting of a proposal for converting PRONEEAAH into an Intercultural Bilingual Education Directorate with the participation of PRONEEAAH technical personnel, other units of the community education project and the Ministry of Education and other State bodies which is ready for formal adoption.
14. Launching of PRONEEAAH outputs: EIB Model, adaptations of the preschool and primary school curricula, teacher-training programme, systematization of successful experiences, educational assessment of the ethnic peoples of Honduras, first phase.
15. Implementation of adult training and literacy activities in the Tolupan (Montaña de la Flor) and Pech (Santa Maria del Carbón) communities, under a pilot project on education for work, developed in coordination with the National Vocational Training Institute (INFOP), and the Cultural Exchange Network (CENET) with ILO funding.
16. Management, negotiation, planning and personnel recruitment for the Meso-America Intercultural Education Project, with funding from Finland and in coordination with the United Nations Development Programme (UNDP), under which linguistic research will be carried out, a degree in Intercultural Bilingual Education will be set up and materials on the subject will be produced.
17. Recruitment of 12 indigenous and Afro-Honduran outreach workers to assist the PROHECO-EIB schools for communities in the various departments with ethnic populations.
18. Recruitment of 15 departmental EIB coordinators (1 per department) to function as the decentralized level of the National Education Programme for the Indigenous and Afro-Honduran Ethnic Communities of Honduras.
19. Participation in the EIB project being developed in coordination with the Ministry of Education of Mexico, with the participation of the Central American countries, Belize, Panama and Mexico, in the framework of the Tuxtla Cooperation Agreement sponsored by UNESCO. Under that project, the guidelines for Intercultural Bilingual Education and the profile of EIB teaching personnel have been defined and experiences in intercultural bilingual education have been exchanged among the participating countries.

Initiatives under way

- For 2006, activities are being carried out in continuation of those already begun in 2005 which are imperative if the EIB curriculum is to take shape locally, in accordance with the PRONEEAAH strategic plan:
 1. Continuation of the teacher-training programme in intercultural bilingual education, in two phases - that ending with the 2006-2007 holiday period and that ending in December 2007. For 2006, the funds set aside from the national counterpart contribution for Community Education Project 3497 are available.
 2. Second phase of the assessment of the educational situation of indigenous and Afro-Honduran peoples; since the first phase involved documentary research, a second phase involving field research is required.
 3. Printing and distribution of the various documents produced, for which the funds set aside for Community Education Project 3497 are available. The textbooks and their respective teachers' guides must comprise:
 - The Intercultural Bilingual Educational Model;
 - The adaptation of the preschool curriculum;
 - The contextualized national core curriculum;
 - The textbook for preschool and primary school pupils in indigenous languages (L1) and in Spanish as a second language (L2);
 - The textbooks for first grade pupils in seven languages (seven textbooks);
 - A Garifuna storybook;
 - The curriculum guide for preschool teachers;
 - The curriculum guide for primary schoolteachers.
 4. Training of Teachers working in schools of the indigenous and Afro-Honduran communities in how to use the above documents, for which funds set aside for Community Education Project 3497 are available.
 5. Reorganization of the EIB management unit, at both the central and the decentralized level, in accordance with the new structure to be assigned to it by the Ministry of Education. Such a structure is envisaged in the proposal for an Intercultural Bilingual Education Directorate.
 6. Conduct of a publicity campaign on intercultural bilingual education, in order to raise public awareness of the issue nationwide. A proposal has already been drawn up for this purpose.

7. Continuation of the activities of PROHECO-EIB schools and community preschool education centres (CCEPREB), for which educational materials have been purchased and are ready for distribution in 2006.
8. Infrastructure maintenance of schools for the indigenous and Afro-Honduran communities many of which require repairs and/or building work.
9. Formalization of the linguistic policies for indigenous and Afro-Honduran peoples. There is a proposal on the subject which the federations helped to draft.
10. Adoption of the proposal for an Intercultural Bilingual Education Directorate which has been drafted and is ready to be legalized.

The following laws and programmes currently in force include a component on the issue:

1. Constitution of Honduras.
2. Convention on the Inter-American Indigenous Institute.
3. General regulations on primary education.
4. Community education project.
5. Improvement of the quality of preschool and primary education.
6. Expansion of the Honduran Community Education Programme (PROHECO).
7. Agricultural Sector Modernization and Development Act.
8. Honduran Forestry Development Corporation Act.
9. Agrarian Reform Act.
10. General Environment Act.
11. Office of the Public Prosecutor Act.
12. Municipalities Act (Decree-Law No. 134-90).
13. Organic Law of the Honduran Anthropology and History Institute.
14. Drafting of the Territorial Organization Act (Decree No. 180-2003).
15. Framework Law for the Drinking Water and Sanitation Sector (Decree No. 118-2003).
16. Property Act (Decree No. 82-2004).

17. Honduran Social Investment Fund (FHIS).
18. Programme of Support for Indigenous and Black Populations (PAPIN).
19. Poverty Reduction Strategy (PRS).

In response to the request for the titling of indigenous land and territories, the National Agrarian Institute of Honduras (INA) has granted 325 agrarian property titles to the Lenca, Garifuna, Tolupan, Chortí and Pech communities, corresponding to a total of 186,916 hectares. Nevertheless, it is felt that there is a need to take immediate steps to end the legal uncertainty surrounding land ownership by indigenous peoples and peoples of African descent by recognizing their ancestral titles, providing compensation and expanding their territories.

Through the Programme of Support for Indigenous and Black Populations (PAPIN),⁴⁹ the Ministry of the Interior and Justice is implementing projects with nine indigenous and black peoples of Honduras, which include federations, communities, women and children of Honduras and, indirectly, local and national authorities. This programme also promotes dialogue and rapprochement between indigenous peoples and the Government, thereby supporting conflict resolution and recognition of the rights and responsibilities of both parties.

PAPIN has three components. Component I: “Workshops on adapting the ethnic engineering model” aims to identify, design and implement infrastructure work of greatest priority for communities, taking into account the specific social, cultural and environmental characteristics of the two recipient communities. Component II: “Strengthening ethnic ties and the national regulatory framework” aims to fund the training of representatives of federations and other Government and civil society bodies involved in indigenous and black issues; it will also fund a proposal for legal reform to incorporate the rights of indigenous and black peoples into national laws and will train and fund women’s cultural circles in all communities.⁵⁰ PAPIN is supporting harmonization of basic cultural and legal concepts and legal terminology that support the rights of the indigenous and black peoples of Honduras. Component III: “System for monitoring and evaluating the implementation of the Programme” involves the monitoring and evaluation of the implementation of PAPIN and the compilation and storage of data representative of specific indicators.

⁴⁹ Established by Legislative Decree No. 26-2002.

⁵⁰ See: Review of the Programme of Support for Indigenous and Black Populations (PAPIN), Ministry of the Interior and Justice. Garifuna people workshop, Miskito people workshop, Tawahka people workshop, island people workshop, Maya Chortí local workshop, Pech local workshop.