



Convention on the Rights of the Child

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Consideration of reports submitted by States parties under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Initial reports of States parties due in 2004

Honduras*

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Introductory remarks

It is with great pleasure and in a spirit of commitment to the children of Honduras that the President of the Republic, Mr. Porfirio Lobo Sosa, acting in his capacity as the Administrator of the State of Honduras, and the Ministry of Justice and Human Rights, directed by Ms. Ana A. Pineda H., address the United Nations Committee on the Rights of the Child to submit the initial report of the State of Honduras pursuant to article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

Within the framework of its international commitments and obligations to protect the rights of the child, the State of Honduras signed the Convention on the Rights of the Child on 31 May 1990, ratified it on 24 July 1990 pursuant to Legislative Decree No. 75-90 and deposited its instrument of ratification with the Secretary-General of the United Nations on 10 August 1990.

In order to align the national legal order with this important international instrument, Honduras adopted the Code on Children and Adolescents on 30 May 1996 as its principal legal instrument for the protection of the rights of persons under 18 years of age.

In keeping with international developments and its commitment to the rights of the children of Honduras, the State of Honduras also became party to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict pursuant to Legislative Decree No. 63-2002 of 2 April 2002 and deposited its instrument of accession on 14 August 2002.

This report describes the legislative, administrative, judicial and other measures adopted by the State to ensure the fulfilment of the provisions set forth in the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

The preparation of this initial report was coordinated by the International Commitments Directorate of the Ministry of Justice and Human Rights and includes input from a broad range of public institutions in all three branches of government, the Office of the Special Prosecutor for Children of the Public Prosecution Service, civil society organizations working on issues related to the rights of children and international cooperation agencies.

During the preparation process, technical support was provided by the Office of the United Nations High Commissioner for Human Rights (OHCHR). The Honduras Country Office of the United Nations Children's Fund (UNICEF) provided ongoing assistance and worked with the Ministry of Justice and Human Rights to conduct a training programme entitled "Reporting to International Human Rights Mechanisms, with Emphasis on the Guidelines Issued by the Committee on the Rights of the Child". The programme was attended by representatives of institutions and organizations participating in the working group established to prepare the report.

Participating public agencies included the Ministry of Foreign Affairs, the Office of the Special Prosecutor for Children of the Public Prosecution Service, the Ministry of Defence, the Ministry of Finance, the Ministry of the Interior and Population, the Ministry of Education, the Ministry of Social Development, the Technical Secretariat of Planning and External Cooperation, the Honduran Institute for Children and the Family, the National Institute for Youth, the Ministry of Tourism, the Ministry of Health and the National Institute for Women.

The 33 civil society organizations that are members of the Coordinating Office for Private Institutions Working for Children and Children's Rights (COIPRODEN) played an active part in the preparation process: the SOS Children's Villages, Asociación Brigadas de Amor Cristiano (ABAC), Hogar Renacer, Asociación Compartir, Asociación Hondureña de Apoyo al Autista (APOAUTIS), Asociación Juventud Renovada (Hogar Diamante), Asociación Cristiana de Jóvenes (A.C.J.), Casa Alianza de Honduras, Casa del Niño, Centro de Formación, Capacitación y Gestión Social (CENFODES), Centro San Juan Bosco, Asociación de Consultores Municipales para el Desarrollo (COMUPADE), Fundación Abrigo, Fundación Desarrollo, Amistad y Respuesta (FUNDAR), Fundación Hondureña de Rehabilitación e Integración del Limitado (FUHRIL), Fundación Antonio Nasser (FUNDANASE), Fundación Ambos, GOAL International Honduras, Hogar Nuevo Amanecer, Hogar San Jerónimo Emiliano, Instituto Psicopedagógico "Juana Leclerc", Doctors Without Borders, the Girl Guides of Honduras, Nuestros Pequeños Hermanos, Special Olympics, ONG-Gaviota, Programa de Rehabilitación de Parálisis Cerebral (PREPACE), Prevención de Discapacidades (Pre-Natal Honduras), Proyecto Alternativas y Oportunidades, RPAHDEG, Unidos para Mejorar, World Vision Honduras, Proyecto Victoria, Asociación Libre Expresión and Save the Children Honduras.

The Ministry of Justice and Human Rights, working in conjunction with the COIPRODEN network of children's rights organizations and the Honduras Country Office of UNICEF, held a seminar on this initial report which was attended by children and adolescents who form part of the COIPRODEN network. Their inputs have been incorporated into this report.

For the Government of Honduras and for the committed civil society children's rights organizations that worked actively on this report, the preparation process afforded a valuable opportunity to analyse the national context and the status of children's rights and to review the legislative, administrative and other measures that are designed to prevent people under 18 years of age from entering the Armed Forces or the national police and to thereby preclude their participation in armed conflict. It also provided an opportunity to review the country's fulfilment of its commitments in relation to the Optional Protocol and the Convention on the Rights of the Child in this connection.

In addition, it facilitated a review and analysis of the preventive measures and prohibitions that are in place, as suggested by the Committee on the Rights of the Child, and paved the way for a further analysis of the new challenges which Honduras shares with the neighbouring countries of El Salvador, Guatemala and Mexico owing to the participation of children in gangs and other criminal organizations that, while not classified as armed groups under international law, pose the same threat to children, their property and the full exercise of their rights.

Based on its examination of the issues addressed in the course of the preparation of this report, the Government of Honduras recognizes that it must continue to develop constitutional and legal measures that expressly prohibit the participation of children in the Armed Forces and the national police, not only in times of peace, but also in times of war, and that make the act of recruiting children under 18 or allowing them to join the Armed Forces or national police a punishable offence. The Government is committed to moving forward with the adoption of the remaining legislative, administrative and other measures identified in this report as necessary preventive mechanisms that will preclude any occurrence of the acts prohibited by the Optional Protocol.

Lastly, in the light of the relevant constitutional rights and guarantees, we wish to reaffirm to the Committee on the Rights of the Child our overall commitment to respect and protect the dignity of the human person — and particularly of Honduran children and adolescents based on the principle of the best interests of the child — as the ultimate aim of society and the State.

Tegucigalpa, Honduras, October 2012.

Porfirio **Lobo Sosa**
President of the Republic of Honduras

Ana A. **Pineda H.**
Minister of Justice and Human Rights

I. Introduction

1. The State of Honduras signed the Convention on the Rights of the Child on 31 May 1990, the National Congress having approved it on 24 July 1990 by Legislative Decree No. 75-90. It was deposited with the Secretary-General of the United Nations on 10 August 1990.
2. In accordance with this important international instrument, Honduras adopted the Code on Children and Adolescents pursuant to Legislative Decree No. 73-96 on 30 May 1996.
3. Honduras signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (hereinafter referred to as “the Protocol” or “the Optional Protocol”) on 2 April 2002 pursuant to Legislative Decree No. 63-2002 and deposited its instrument of accession on 14 August 2002. An initial report was to be submitted two years after the Protocol entered into force concerning the measures taken by the State party pursuant to the Protocol.
4. In the periodic reports submitted under article 44 of the Convention on the Rights of the Child (in 1994, 1997 and 2007), Honduras has provided the Committee on the Rights of the Child with information on matters relating to the Protocol, such as the amendments made to the Constitution in 1995. Under these amendments, it is stipulated that military service is to be organized on a voluntary basis within an educational, social, humanistic and democratic framework for persons between the ages of 18 and 30, thereby excluding persons under the age of 18 from such service.
5. Honduras is pleased to submit this initial report to the Committee on the Rights of the Child in accordance with article 8, paragraph 1, of the Protocol. It describes the legislative, administrative, judicial and other measures taken to ensure compliance with this international legal instrument.
6. In 1995, Honduras instituted constitutional safeguards which have proved effective in preventing girls and boys from participating in the Armed Forces of Honduras (hereinafter “the Armed Forces”). Notwithstanding the fact that the Armed Forces have participated only in international peacekeeping missions, since they have not been involved in internal or international wars, Honduras considers it appropriate to continue to take precautions to ensure that children will never be involved in armed conflict.
7. The preparation of this report was coordinated by the International Commitments Directorate of the Ministry of Justice and Human Rights. A broad range of public institutions representing the three branches of government, the Office of the Special Prosecutor for Children of the Public Prosecution Service, civil society organizations working on matters related to the rights of the child and international cooperation agencies all took part in its compilation.
8. The Office of the United Nations Human Rights Adviser in Honduras provided technical support for the preparation of this report, as did the Honduras Country Office of the United Nations Children’s Fund (UNICEF). These two organizations and the Ministry of Justice and Human Rights conducted a training programme on the submission of reports to international human rights mechanisms, with emphasis on the Committee on the Rights of the Child, which was attended by representatives of the institutions involved in the working group on the preparation of the report.
9. Participating institutions included the Ministry of Foreign Affairs, the Office of the Special Prosecutor for Children, the Ministry of Defence, the Ministry of Security, the Ministry of Finance, the Ministry of the Interior and Population Affairs, the Ministry of

Education, the Ministry of Social Development, the Technical Secretariat of Planning and External Cooperation, the Honduran Institute for Children and the Family, the Ministry of Tourism, the Ministry of Health and the National Institute for Women.

10. Several one-day workshops were conducted with civil society groups that belong to the Coordinating Office for Private Institutions Working for Children and Children's Rights (COIPRODEN), which consists of 33 organizations devoted to the well-being of children in Honduras. The participating groups included: the SOS Children's Villages, Asociación de Padres y Amigos de Jóvenes Especiales (APANAJE), Asociación Brigadas de Amor Cristiano (ABAC), Hogar Renacer, Asociación Compartir, Asociación Hondureña de Apoyo al Autista (APOAUTIS), Asociación Juventud Renovada (Hogar Diamante), Asociación Cristiana de Jóvenes, Casa Alianza de Honduras, Casa del Niño, Centro de Formación, Capacitación y Gestión Social (CENFODES), Centro San Juan Bosco, Asociación de Consultores Municipales para el Desarrollo (COMUPADE), Fundación Abrigo, Fundación Desarrollo, Amistad y Respuesta (FUNDAR), Fundación Hondureña de Rehabilitación e Integración del Limitado (FUHRIL), FUNDANASE, Fundación Ambos, GOAL Honduras, Hogar Nuevo Amanecer, Hogar San Jerónimo Emiliano, Instituto Psicopedagógico "Juana Leclerc, Doctors Without Borders, the Girl Guides of Honduras, Nuestros Pequeños Hermanos, Special Olympics, ONG-Gaviota, Programa de Rehabilitación de Parálisis Cerebral (PREPACE), Prevención de Discapacidades (Pre-Natal Honduras), Proyecto Alternativas y Oportunidades, REPAHDEG, Save the Children Honduras, Unidos para Mejorar, World Vision Honduras, Proyecto Victoria and Asociación Libre Expresión.

11. This report is thus a jointly produced summary of the situation in Honduras with regard to the fulfilment of the State's obligations under the Optional Protocol and the challenges that remain to be overcome in order to bring the country's legislative, administrative and other measures into line with the requirements of the Convention on the Rights of the Child and the Optional Protocol.

12. The Ministry of Justice and Human Rights, together with COIPRODEN and the UNICEF Honduras Country Office, conducted a seminar on the subject of this initial report which was attended by 48 children and adolescents who are members of the Young Journalists Network of Honduras and COIPRODEN.

13. During this seminar, the content and scope of the Convention on the Rights of the Child and its optional protocols were discussed with the participants, who also developed the relevant workplans. Their contributions have been incorporated into this document.

14. This initial report was drafted in accordance with the revised guidelines regarding initial reports to be submitted by State parties under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of September 2007 (CRC/C/OPAC/2).

II. General measures of implementation

A. Definitions of child and adolescent in Honduran law

15. Congress approved the Code on Children and Adolescents by Legislative Decree No. 73-96 of 30 May 1996. Article 1 of the Code states that: "Legal minority comprises the following periods: childhood, which begins at birth and ends at 12 years of age for boys and 14 years of age for girls, and adolescence, which begins at these ages and ends at 18 years of age." It also states that: "Should a child's age be in doubt, it shall be assumed that the child is under 18 years of age until such time as his or her real age is established."

16. Honduras notes that in the Committee's recommendations Nos. 28 and 29 regarding the State's third periodic report, the Committee stated, with reference to the Code on Children and Adolescents of Honduras, that "the biological criterion of puberty" is used to set "different ages of maturity between boys and girls" and noted that this is not in keeping with the Convention on the Rights of the Child, which does not make distinctions of this nature.

17. Article 3 of the Code on Children and Adolescents establishes the sources of law that apply to children, indicating the Constitution as the first source, the Convention on the Rights of the Child and other childhood-related treaties or agreements to which Honduras is party as the second and the Code on Children and Adolescents as the third. It follows from this that the Convention's definition overrides the definition set forth in the Code on Children and Adolescents and renders it inapplicable, inasmuch as treaties take precedence over national laws, as will be discussed in greater detail below.

18. In order to bring the Code on Children and Adolescents into line with the Convention and act upon the Committee's recommendations regarding inconsistencies between national laws and international children's rights standards, the Ministry of Justice and Human Rights and the Office of the First Lady resumed work on a bill, which had been initiated years earlier by various government and civil society bodies, to harmonize child and family law.

19. With the support of an inter-institutional commission composed of representatives of the judiciary, the Public Prosecution Service, the Honduran Institute for Children and the Family (IHNFA), UNICEF, the United States Agency for International Development (USAID) and the Central American Integration System (SICA), together with ongoing guidance from the Judicial Affairs Committee, the final draft of the reform bill was prepared and later approved by the Judicial Affairs Committee and submitted to the General Secretariat of Congress for debate and adoption.

20. The bill would amend article 1 of the Code to read:

For the purposes of this Code, anyone under the age of 18 shall be considered a child.

The provisions of this Code are a matter of public policy, and the children's rights set forth herein are inalienable and immutable and must be applied in all administrative, judicial or other acts, decisions and measures taken with regard to persons under 18, who for all legal purposes shall be considered children.

Should a child's age be in doubt, it shall be assumed that the child is under 18 years of age until such time as his or her real age is established.

B. Applicability of the Optional Protocol in Honduras

21. Article 15 of the Constitution stipulates that the State "endorses the principles and practices of international law whose aim is human solidarity, the self-determination of peoples, non-intervention, peace and universal democracy". This provision suffices to accommodate many sources of international obligations, including international treaties (accords, conventions, covenants and optional protocols), customary law or international custom, general principles of law, resolutions and international court rulings.

22. Articles 16 and 18 of the Constitution lay down the legal weight and rank of treaty obligations in the Honduran legal order. Article 16, paragraph 2, stipulates that "international treaties to which Honduras and other States are a party become part of national law upon their entry into force", while article 18 states that "should a treaty or convention conflict with the law, the former shall prevail". Thus, the Optional Protocol of the Convention on the Rights of the Child on the involvement of children in armed conflict

has been part of the Honduran legal order from the moment of ratification and ranks above other national laws.

23. Regarding the specific scope of international human rights treaties, the Constitution provides that the Constitution and international treaties have equal rank, and this is expanded upon in other national laws. Article 41 of the Constitutional Justice Act stipulates that: “The State recognizes the remedy of *amparo*. Consequently, any aggrieved person or anyone acting on behalf of such a person has the right to bring an *amparo* action: (1) In order to preserve or recover the enjoyment of rights or guarantees set forth in the Constitution, treaties, conventions and other international instruments.” It therefore follows that rights covered in the Optional Protocol occupy a rank in the national legal order comparable only to that of rights enshrined in the Constitution.

C. Circumstances that could impede the implementation of the Optional Protocol

24. Honduras has become, or is in the process of becoming, party to most of the conventions and optional protocols of the United Nations treaty body system. However, the harmonization of its national legislation has not progressed at the same pace. The country is also behind schedule in the promotion and dissemination of the international instruments to which it is a party and in the development of national public policies for children and adolescents.

25. Regarding the alignment of the legal order with international standards, the Ministry of Justice and Human Rights has recently set up a division for the dissemination of information and research on the national legal order to promote the review and modernization of national laws and their harmonization with international standards. The Government is also striving to bring national laws dealing with matters relating to children into line with international human rights norms. In December 2011, a bill on the comprehensive reform of laws dealing with children and family affairs, which, as mentioned previously, was drafted with the support of government institutions and civil society (op. cit., para. 13), was submitted to Congress.

26. The Ministry is aware of gaps in the observance, protection and promotion of international human rights law and is therefore running a campaign to raise awareness of this domain among workers, civil servants and the general public.

27. It is also designing, in conjunction with all public institutions and civil society organizations, the first public policy and national action plan on human rights, which will set out a road map for the fulfilment of national and international human rights obligations.

D. Implementation of the Optional Protocol in accordance with the general principles of the Convention

1. Non-discrimination (art. 2 of the Convention)

28. The principle of equality and non-discrimination is a right that is set forth in article 60 of the Constitution: “All persons are born free and with equal rights. There are no privileged classes in Honduras. All Hondurans are equal before the law. Anyone who discriminates on grounds of sex, race or class or acts in any other way that is injurious to human dignity shall be liable to punishment.”

29. The Code on Children and Adolescents lays down a broad range of rights applicable to all children and adolescents, without any form of discrimination whatsoever. For

example, article 28 stipulates that all children have the right “to freely participate in family and community life, without discrimination of any sort”.

30. The ultimate goal of the Optional Protocol is to prevent all children under 18 years of age from taking part in hostilities or being conscripted. This aim is upheld by the principle of equality and non-discrimination, which is enshrined in the Constitution and the Code on Children and Adolescents in order to ensure that children enjoy all the rights that participation in hostilities or conscription into the armed forces would deny them.

2. Best interests of the child (art. 3 of the Convention)

31. The best interests of the child or adolescent constitute the guiding principle of all legislative, judicial, administrative and other measures taken in direct connection with the children of Honduras. Article 7 of the Code on Children and Adolescents mandates the consideration of the best interests of the child in the following terms:

Judges and administrative officials who hear cases concerning a child or children shall, when considering the facts, take into account the prevailing practices and customs in the child’s or children’s social and cultural setting. Where applicable, they shall also consult with the community’s traditional authorities and take account of their recommendations, provided that they are not contrary to the law or the best interests of the child or children.

32. The State’s commitment to preventing children from participating in hostilities or being conscripted should be understood in the light of the best interests of the child. In other words, it is this principle that prevails over the State’s other key interests, such as security and national defence.

3. Right to life, development and survival (art. 6 of the Convention)

33. Article 65 of the Constitution establishes that “the right to life is inviolable”.

34. Article 12 of the Code on Children and Adolescents also guarantees the right to life, stipulating that “every human being has the right to life from the moment of conception. The State shall protect this right by adopting all necessary measures to ensure that human dignity is safeguarded during gestation, birth and development.” The right to health and social security are laid down in subsequent articles.

35. The right to life is an essential right, as it is a prerequisite for the development and enjoyment of the other rights to which all children and adolescents are entitled, including health, education, family, social security, dignity, personal freedom, freedom of expression, nationality, identity, name and self-image, culture, sports, recreation and leisure, the environment and natural resources, in addition to the other rights set out in the Convention and other national laws.

36. The purpose of the Optional Protocol is to prevent children from being recruited and from participating in hostilities and to protect their life, health, development and survival. The Optional Protocol therefore constitutes a further source of legitimacy, lawfulness and relevance in national law.

4. Respect for children’s views (art. 12 of the Convention)

37. Article 72 of the Constitution states that “opinions may be freely expressed and disseminated by any means without prior censorship”.

38. Article 11 of the Code on Children and Adolescents explicitly sets out this right, stating that minors are entitled to “express their opinions”, and refers repeatedly to the

importance of taking account of minors' views about matters of concern to them and when making decisions that may affect them.

39. Title I, section three, chapter III, of the Code is devoted to the right to dignity, liberty and freedom of opinion. Article 28, paragraph (c), guarantees "the freedom to express their opinions and to have their views considered in a context of respect and tolerance ...".

40. In the Honduran legal order, the fact that the opinion of children wishing to take part in hostilities is disregarded under the Optional Protocol does not reveal a conflict between this instrument and the country's implementation of the principles of the Convention so much as the fact that children's best interests, their right to life and other rights, which would be jeopardized by their participation in hostilities, clearly take precedence over respect for their views in this connection.

III. Prevention (arts. 1, 2, 4 (para. 2) and 6 (para. 2) of the Optional Protocol)

A. Participation of children under 18 years of age in hostilities (art. 1 of the Optional Protocol)

41. Under article 1 of the Optional Protocol, States parties must take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

42. In order to prevent the participation of children in hostilities, Honduras authorizes only citizens over age 18 to perform their military service as members of the Armed Forces. To this end, article 276, paragraph 1, of the Constitution was amended in 1995 to read as follows:

Citizens between the ages of 18 and 30 years shall undertake military service on a voluntary basis in peacetime within the framework of an educational, social, humanistic and democratic system. The State shall have the power to call up citizens in accordance with the Military Service Act.

43. The participation of children in a country's police force could place them in similar danger. Accordingly, no one under the age of 18 may become a member of the Honduran police force. Under article 91 of the National Police Act, prospective police officers must:

- (a) Hold Honduran nationality by birth;
- (b) Be over 18 years of age;
- (c) Successfully complete medical tests that certify that they are fit to perform police duties;
- (d) Have completed their primary education, as a minimum, and, where applicable, have the level of education and hold the corresponding professional or vocational certificates required for a given position;
- (e) Meet the criteria defined by national police academies, except in the case of staff and public servants in support (*auxiliar*) positions.

44. Since the entry into force of the Optional Protocol and the aforementioned constitutional amendment, the State has not permitted persons under 18 to join either the Armed Forces or the police. Moreover, the country has not taken part in hostilities of any sort. Honduras has therefore fulfilled its obligations under article 1 of the Optional Protocol.

B. Compulsory recruitment (art. 2 of the Optional Protocol)

45. Article 2 of the Optional Protocol stipulates that States parties must ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

46. Under article 276 of the Constitution, only persons over 18 “shall undertake military service on a voluntary basis in peacetime within the framework of an educational, social, humanistic and democratic system”. It also stipulates that the State has the power to call up citizens in accordance with the Military Service Act. Article 30 of the Armed Forces Personnel Act further provides that “enlistment in the Armed Forces is voluntary [...]”

47. The absolutely voluntary nature of military service for Honduran men and women over 18 is established both in the Constitution and in other laws. In other words, if there is a call-up in peacetime, all those concerned are free to decide whether or not to perform their military service; coercion of any sort would bring the mechanisms that are in place for the protection of individual freedoms into play.

48. Pursuant to the Constitution, military service is voluntary and the minimum age of enlistment is 18. These are the two main limitations placed on this institution. The same limitations are also set forth in article 3 of the Armed Forces Act:

Military service shall be performed in the manner defined in the Constitution. Military education shall prepare citizens for their duties and their involvement in sustainable development and shall inculcate ethical considerations and certain values, especially patriotism and respect for human rights.

The Special Military Service Act shall regulate the establishment and operations of the reserve force.

49. Honduran men and women who meet the age requirement and other criteria set out in the Constitution, the Armed Forces Act and the Armed Forces Personnel Act may enlist in one of the various units that make up the Armed Forces of Honduras on a voluntary basis.

50. The children and adolescents belonging to the Young Journalists Network of Honduras and COIPRODEN who took part in consultations regarding this report stated that they did not oppose military service, provided that it concerned persons over 18 who enlisted voluntarily, which entailed ensuring that they were not being compelled to do so by their parents. In addition, they felt that military service should contribute to enlistees’ development in other areas, in addition to their military training.

51. All candidates for the Armed Forces (and the national police force) are referred to the relevant human resources department, which then ensures that eligibility requirements have been met. In order for those requirements to be met, the following steps must have been completed:

- Candidates must successfully complete the entrance examination;
- Candidates must successfully complete psychological and physical tests;
- Candidates must submit a birth certificate and identity card proving that they are of eligible age for educational volunteer service;
- The human resources department must explain that military service lasts two years and can then be extended if the candidate wishes to pursue a military career; and
- The human resources department must inform recruits of their benefits and rights as members of the Armed Forces and of their obligations to society, especially in terms of human rights and international humanitarian law.

52. As mentioned previously, the Human Resource Department of the Ministry of Defence is responsible for checking that requirements are met and that all prior steps have been taken before recruits can enlist for voluntary military service.

53. Another internal mechanism for preventing the participation of children in the Armed Forces is the Humanitarian Law Department, whose mandate includes monitoring and enforcing laws and regulations and ensuring that members of the Armed Forces are given the benefit of due process and that their fundamental rights are protected in their own dealings and when interacting with the public.

54. The Humanitarian Law Department receives, classifies and investigates complaints and turns suspected offenders over to the relevant authorities. Anyone who is aware of the compulsory recruitment or entry of a minor into the Armed Forces can file a report with the Department.

55. Honduras does not practise conscription and has put in place the aforementioned internal safeguards regarding enlistment in the Armed Forces and the national police force to ensure that compulsory recruitment does not occur. External safeguards are also in place, such as the protection measures implemented by the Office of the National Commissioner for Human Rights, which is mandated to ensure that all the rights and guarantees enshrined in the Constitution and the law are upheld. In addition, constitutional justice mechanisms have been set up, most notably the remedy of habeas corpus, which is available to individuals who “are illegally arrested, detained or in any way impeded from enjoying their individual liberty” (Constitutional Justice Act, art. 13). This provision also applies to compulsory recruitment and entails the criminal liability of perpetrator(s) of such acts.

56. Access to the aforementioned protection mechanisms is quite straightforward, so anyone aware of the enlistment or compulsory recruitment of a minor may report it to the Office of the Special Prosecutor for Human Rights in the Public Prosecution Service and request that such infringements of the Optional Protocol and Constitution be brought to an end.

C. Factors that could impede the implementation of the Optional Protocol in the event of an international war

57. As mentioned previously, article 276 of the Constitution was amended as part of a constitutional reform process (instituted by means of Decree No. 24/1994 and ratified by means of Decree 65/1995) which abolished compulsory military service and converted military service into a voluntary and educational process.

58. The amended constitutional provision also establishes that “the State shall have the power to call up citizens in accordance with the Military Service Act” and that “in the event of an international war, all Hondurans able to defend and serve their country shall be considered to be soldiers”. The Military Service Act is thus the proper legal instrument for setting limits on military call-ups in both peacetime and wartime. The Act should also rectify any omissions in the amended constitutional provision in respect of the minimum age of those eligible for service during wartime.

59. Should an international war break out prior to the entry into force of the Act or of an amended constitutional provision, the minimum age for enlistment in the army is currently governed by article 38, paragraph 3, of the Convention, which stipulates that: “States parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces.”

60. Given that the Convention is part of, and prevails over, Honduran laws and is immediately applicable, pursuant to the same article, children between the ages of 15 and 18 must not participate in hostilities if persons over 18 are available to do so in their place.

61. The Inter-American Charter of Social Guarantees bans the involvement of minors in dangerous work, which obviously includes participation in hostilities, while under the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182) and the ILO Worst Forms of Child Labour Recommendation, 1999 (No. 190), States parties have an obligation to adopt measures to eliminate child labour of this sort, including the forced or compulsory recruitment of children for use in armed conflict. However, ILO Convention No. 182 does not address voluntary recruitment in the event of war. The Honduran legal order remains unclear on this point, and this shortcoming could expose children to the types of violations of their rights that could result from their membership in the Armed Forces.

62. Although, legally speaking, the only risk of children being conscripted into the army would be in the event of an international war, the children and adolescents belonging to the Young Journalists Network of Honduras and the COIPRODEN children's rights network who took part in the consultations on this report expressed their concern that "the country's high crime rates might lead the authorities to think that compulsory military service is the best way to tackle juvenile delinquency".

63. In order to correct these legal shortcomings, the Division for the Dissemination of Information and Research on the National Legal Order of the Ministry of Justice and Human Rights is drafting a constitutional amendment that would unequivocally prohibit the involvement of children outside of peacetime.

D. Regulation of schools run by or under the jurisdiction of the Armed Forces (non-applicability of the minimum age)

64. The following training centres come under the Armed Forces:

(a) The University of National Defence, which is based in the capital, Tegucigalpa, and specializes in higher military education;

(b) The General Francisco Morazán National Military Academy, which was established in 1959 and was the first military centre for the training of officers in the Armed Forces;

(c) The Air Force Academy, which was established in 1932 for the purpose of training officers and aviation technicians;

(d) The National Naval Academy, which has bases on the coasts and trains officers and naval technicians;

(e) The Northern Military School, which is a private mixed institution (civilian and military) that was established in 1983 to train junior officers and graduates for the Armed Forces reserves. As this is the only school that is run by the Armed Forces, additional information is included below:

(i) It is run by the Armed Forces;

(ii) It was founded in 1983 as a military education centre, but became a mixed academy (civilian and military) in 1994 and admits primary- and secondary-school pupils aged from 6 to 18;

(iii) Pupils are trained to take up the various professions required by the country; civilian students graduate as second lieutenants in the Armed Forces reserves;

- (iv) Enrolment is voluntary and subject to parental authorization.

E. Disseminating and promoting the principles and provisions set forth in the Protocol

65. It is important to begin by noting that, since children have not previously been used in the Armed Forces or in armed conflict, public institutions and NGOs have not given priority to disseminating information or launching awareness-raising campaigns on this issue.

66. The important task of disseminating information on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict as a preventive measure principally takes the form of academic activities in the field of international humanitarian law and information activities conducted by universities, the Ministry of Foreign Affairs, the Armed Forces, the national police force, the International Committee of the Red Cross and, more recently, the Ministry of Justice and Human Rights.

67. The following institutions offer specialized training regarding the issues addressed in the Protocol:

- (a) The Faculty of Law of the National Autonomous University of Honduras;
- (b) Private universities offering degrees in law;
- (c) The Ministry of Foreign Affairs, in particular through the Honduran Commission for International Humanitarian Law, which offers training and gives lectures at public and private universities for public officials and key members of the Joint General Staff of the Armed Forces;
- (d) Training in informal settings is imparted to members of the Armed Forces by the Human Rights and International Humanitarian Law Directorate and by the humanitarian law sections of the different branches of the Armed Forces (army, navy and air force) through lectures, seminars and training visits to offices and departments of the Joint General Staff, force command centres, large unit command centres, and naval and air force units and bases;
- (e) Within the Armed Forces, the relevant subjects are covered in the curricula of:
 - (i) The Faculties of Military, Aeronautical and Naval Sciences of the Defence University of Honduras;
 - (ii) The National Defence College;
 - (iii) The Army Command and Officers School;
 - (iv) The Demonstration School for Officers;
 - (v) The Non-commissioned Officers' School;
 - (vi) The Military Intelligence School;
 - (vii) The military training centres for each branch of the Armed Forces (army, navy and air force).

68. The Ministry of Defence reports the following:

- (a) The Armed Forces provide training courses, seminars and lectures for their members on human rights and international humanitarian law, the rights of women, armed conflict and other subjects. This training is conducted in coordination with national and international agencies such as the International Committee of the Red Cross, World Vision

International, the Office of the National Commissioner for Human Rights (CONADEH), the Office of the Special Prosecutor for Human Rights, the National Institute for Women, the Committee of the Families of Detained and Disappeared Persons in Honduras and the Ministry of Justice and Human Rights;

(b) Human rights and international humanitarian law have been included in the academic curriculum of Armed Forces training centres;

(c) Representatives of the Armed Forces participate in national and international events aimed at promoting respect for human rights and for international humanitarian law.

69. The Ministry of Justice and Human Rights has been incorporating the issues covered by the Protocol into its training programmes on human rights and especially in its training programmes relating to the rights of children. These programmes are attended by members of the national police force and the Armed Forces, prison staff, judicial officials, public servants and members of the media. From 5 to 10 December 2011, the Ministry of Justice and Human Rights and the Government held the first Blanca Jeannette Kawas Fernández National Congress on Human Rights, in which more than 600 representatives from community organizations and the academic world participated and learned more about Honduran legislation on the subject.

70. Other organizations offering training on the rights of children and adolescents to Armed Forces personnel, police officers, judges and other judicial officials include: the Honduran Institute for Children and the Family, the Office of the Special Prosecutor for Children, the Inter-Agency Commission to Combat the Commercial Sexual Exploitation of Children and Adolescents, COIPRODEN and private human rights institutions.

F. Participation of children in gangs (*maras*) and other criminal organizations

71. No non-State armed forces operate in Honduras. Therefore, the problem posed by children participating in irregular armed groups, and thus perhaps becoming involved in hostilities, does not arise.

72. A different problem, one which is not associated with the definition of “armed groups” under international humanitarian law, is that of the participation of children in youth gangs, or *maras*, which puts them in a vulnerable position and exposes them to danger. In this regard, the Government of Honduras would like to make the observations set forth in the paragraphs below.

73. The participation of children in gangs began to become evident in the 1990s. The phenomenon was related to the increased use, some years earlier, of deportation policies by the Government of the United States when what are now known as “*maras*” began to form in the northern triangle of Central America. The activities of these groups undeniably involve the use of arms by minors and the commission of offences, mostly against property, but there has been a gradual increase in offences that endanger people’s lives and well-being, sometimes in connection with organized crime. Not enough research has been done on the links between organized crime and the *maras* to determine the extent of their ties or what impact they may have on the level of violence and delinquency.

74. According to one recent study, there are currently 4,728 active gang members in Honduras. It has not been possible to establish how many of them are under the age of 18. This is because, on the one hand, gang members, due to the nature of the groups to which they belong, seek to remain anonymous and, on the other hand, some of the leaders and members are being held in custody or deprived of their liberty.

75. There is an outcry from civil society against the use of children by organized criminal groups, but State-sponsored studies on this issue are still lacking.

76. For their part, the children and adolescents belonging to the Young Journalists Network of Honduras and COIPRODEN have expressed the view that the State must adopt preventive measures that will put a stop to the exploitation of children by organized crime. These measures should include training programmes as well as appropriate communication on the subject with families, schools and the State.

77. The State is well aware that children do indeed participate in gangs and, as a preventive response to this social problem, it has created the National Prevention, Rehabilitation and Social Reintegration Programme for children and adolescent gang members. This initiative was coupled with the passage of the Prevention, Rehabilitation and Social Reintegration Act, which was adopted by Congress on 18 December 2001.

78. The aforementioned study notes that the National Prevention, Rehabilitation and Social Reintegration Programme for children and adolescent gang members has a preventative focus and makes use, among other things, of technical, vocational and entrepreneurship projects, along with components dealing with moral and religious values. The Programme is being implemented in coordination with more than 110 local governments and concentrates on creating opportunities for children, adolescents and young people.

IV. Prohibition and related matters (arts. 1, 2 and 4, paras. 1 and 2)

A. Legal framework

79. In the Republic of Honduras, the legal framework governing the matters covered in the Protocol chiefly consists of the following:

- (a) The Constitution of the Republic;
- (b) The Convention on the Rights of the Child;
- (c) The Armed Forces Act;
- (d) The Armed Forces Personnel Act;
- (e) The National Police Act;
- (f) The Criminal Code;
- (g) The Code of Criminal Procedure;
- (h) The Witness Protection Act;
- (i) The Code on Children and Adolescents.

B. Current criminal law covers and defines the acts listed in articles 1 and 2 of the Optional Protocol

80. The Honduran Criminal Code does not specifically define the acts described in articles 1 and 2 of the Protocol as offences. However, committing those acts would involve an infringement of the limits set down in the Constitution, which would in itself entail criminal responsibility, as the following extract shows:

Article 276 of the Constitution: “Citizens between the ages of 18 and 30 shall undertake military service on a voluntary basis in peacetime within the framework of an educational, social, humanistic and democratic system. The State has the power to call up citizens in accordance with the Military Service Act.

In the event of an international war, all Hondurans able to defend and serve their country shall be considered to be soldiers.”

81. The limits placed on military service by the Constitution should be analysed within the context of the two scenarios described below.

1. Military service in times of peace

82. With reference to the obligation to ensure that persons who have not attained the age of 18 years are not compulsorily recruited into the Armed Forces, as stipulated under article 2 of the Optional Protocol on the involvement of children in armed conflict, the Constitution prohibits the obligatory recruitment of anyone in times of peace. With regard to the non-involvement of persons under 18 in hostilities, it should be noted that the Constitution restricts military service to persons over the age of 18.

83. It follows, then, that people who, in times of peace, recruit someone on a compulsory basis or order a person’s compulsory recruitment or who recruit or agree to the recruitment of persons under the age of 18 are in violation of the Constitution. Doing so would, under article 349, paragraph 2, of the Criminal Code, constitute an abuse of power. Furthermore, compulsory recruitment would, under article 193 of the Criminal Code, constitute illegal detention. Those articles, which should be viewed in relation to article 276 of the Constitution, read as follows:

(a) Abuse of power: “Article 349. Imprisonment for between three (3) and six (6) years and specific disqualification for double the term of imprisonment shall be imposed upon public officials who: (2) Issue or carry out orders, decisions, measures, resolutions, agreements or decrees which are contrary to the Constitution or laws of the Republic or who fail to comply with those legal provisions”;

(b) Deprivation of liberty: According to article 193 of the Criminal Code, apart from cases of kidnapping, “anyone who unjustly deprives another person of his or her liberty shall be punished by imprisonment for between three (3) and six (6) years.”

2. Military service in the event of an international war

84. The Constitution states that: “In the event of an international war, all Hondurans able to defend and serve their country shall be considered to be soldiers.”

85. Should an international war break out prior to the entry into force of the Military Service Act or of an amended constitutional provision on this subject, the minimum age for enlistment in the army is currently governed by article 38, paragraph 3, of the Convention on the Rights of the Child, which states that: “States parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces.”

86. Also pursuant to article 38 of the Convention on the Rights of the Child, which is part of, and prevails over, Honduran law and is immediately applicable, persons between the ages of 15 and 18 must not participate in hostilities if persons over the age of 18 are able to do so in their place.

87. As a consequence of the foregoing, if a person under the age of 18 is permitted to participate directly in hostilities when he or she could be replaced by someone above that age, those responsible would be answerable for the offence of abuse of power under article 349, paragraph 2, of the Criminal Code in accordance with article 38, paragraph 3, of the

Convention on the Rights of the Child. Anyone who, in time of war, recruits or allows the recruitment of a person under the age of 15 into the Armed Forces or the police would also be committing an offence, which, as will be seen below, is considered by the State of Honduras to be a war crime.

C. Shortcomings in the criminal legal framework

88. Constitutional and legal shortcomings regarding military service also have repercussions in terms of criminal law. More specifically, there is no provision in place that states that, even in times of war, only persons over the age of 18 may join the Armed Forces. This constitutional lacuna has not been remedied by the Military Service Act, which is mentioned in the Constitution but has not yet been issued.

89. The absence of criminal legislation that makes it a specific, separate offence to practise compulsory recruitment or to grant permission for persons under the age of 18 to join the Armed Forces (whether in times of peace or in times of war) represents a significant legal shortcoming, inasmuch as the existence of such a law would alert Honduran society to the importance of abstaining from the types of conduct prohibited under the Optional Protocol.

90. The Directorate for the Harmonization and Promotion of Law of the Ministry of Justice and Human Rights is working on a constitutional amendment which would make it illegal to recruit anyone under the age of 18 into the Armed Forces, even in wartime. Work is also continuing on the adaptation of the Criminal Code to the provisions of the Protocol and of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

D. Jurisdiction

91. The offence of abuse of power, as defined in article 349, paragraph 2, has no equivalent in the Military Code, which, although it does contain a provision on the offence of abuse of power, defines it differently. Consequently, anyone who commits the offence as defined earlier would come under the jurisdiction of the ordinary justice system.

E. Extraterritorial jurisdiction in cases of serious violations of international humanitarian law

92. Article 5 of the Honduran Criminal Code states: "Honduran courts are authorized to try persons for offences committed abroad when the alleged offender is in Honduras and any one of the following conditions is met:

"... 5. Where, pursuant to the international treaties to which Honduras is a party, the offence is subject to Honduran criminal law for reasons other than the aforementioned or constitutes a serious violation of universally recognized human rights. Preference shall be given, however, to the claim of the State in whose territory the punishable act was committed, as long as that State makes its claim before criminal proceedings are initiated by the competent Honduran court."

93. It is evident, then, that article 5, paragraph 5, of the Criminal Code, cited above, articulates the universal principle, or principle of universal justice, which is to be applied in the case of serious human rights violations.

94. Since ratifying the Rome Statute of the International Criminal Court in 2002, Honduras expressly recognizes that conscripting or enlisting children under the age of 15 into the armed forces, or using them to participate actively in hostilities, represents a war

crime pursuant to article 8, paragraph 2 (b) (xxvi), of the Statute. In other words, Honduras considers such conduct to be prohibited, and a perpetrator of such an act would be extradited to the International Criminal Court.

F. Extradition

95. Honduras recognizes extradition as a mechanism for combating impunity in the case of serious offences, including offences involving actions prohibited under the optional protocols to the Convention on the Rights of the Child. The country is currently reviewing its constitutional provisions on this matter.

96. The Constitution currently places two limitations on extradition, which are set forth under chapter II (“Individual rights”) of title III (“Declarations, rights and guarantees”):

(a) Article 101, third paragraph: “The State shall not authorize the extradition of persons accused of committing political crimes or related common offences”; this is not, in principle, an obstacle to punishment for actions prohibited under the Convention on the Rights of the Child;

(b) Article 102: “No Honduran may be expatriated or handed over by the authorities to a foreign State”.

97. However, on 25 January 2012, during its second term, Congress approved Legislative Decree No. 02-2012 by which it ratified the amendment of article 102 of the Constitution, thereby allowing the extradition of Honduran citizens. The Decree was published in the Official Gazette on 26 January 2012 and reads, in part, as follows: “... extradition is allowed in cases of drug trafficking and related offences, organized crime and terrorism. It cannot be applied in cases of political crimes or related common offences”.

98. In order to bring these measures into effect, Honduras will have to establish extradition agreements with each country. The constitutional reform process has yet to specify what would occur in cases involving the extradition of Honduran citizens under a multilateral treaty, such as the Rome Statute of the International Criminal Court.

99. As regards secondary legislation, the extradition of Honduran citizens is prohibited under article 10 of the Criminal Code, cited below. However, this provision will now have to be reviewed in the light of the aforementioned constitutional amendment.

Article 10. “In no case shall an extradition request be granted in respect of Hondurans who, having committed an offence abroad, are present on Honduran territory. An extradition request in respect of foreign nationals may be granted, pursuant to law or to a treaty, only for ordinary offences carrying a penalty of not less than one (1) year of imprisonment; it may never be granted in respect of political offences, even where such offences result in the commission of an ordinary offence.”

100. Foreign nationals can currently be extradited under either a bilateral agreement with another country or a multilateral treaty such as the Rome Statute of the International Criminal Court.

101. The offences defined under the Rome Statute of the International Criminal Court also constitute illegal actions in Honduras and can therefore lead to extradition on the basis of a bilateral or multilateral agreement. In this context, “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities” constitutes a war crime under article 8, paragraph 2 (b) (xxvi), of the Statute and constitutes grounds for extradition, not only to the International Criminal Court

but also to another country with which a bilateral treaty exists that requires that the acts in question are unlawful in Honduras.

102. One difficulty in enforcing extradition to combat impunity for actions defined under the optional protocols to the Convention on the Rights of the Child lies in the fact that, according to article 10 of the Criminal Code, a foreign national can be extradited only pursuant to law or a treaty. This means that, in the absence of a treaty (and given the fact that an extradition law does not exist), it is not possible to extradite a foreign national. Another difficulty lies in the feasibility of reciprocity policies.

103. It is important to note that there are no precedents in national case law which would make it possible to affirm that the Supreme Court of Justice would in fact not reject an extradition request in the absence of a treaty or a law. It would therefore seem appropriate for this matter to be regulated by an extradition law.

104. On the subject of mechanisms for protecting children's rights, in paragraph 18 of the concluding observations of the Committee on the Rights of the Child regarding the third periodic report of Honduras, the Committee recommended that "the State party establish a national Ombudsman for Children, and provide that person with adequate human and financial resources". The United Nations Human Rights Council considered the same subject in its recent universal periodic review and recommended that Honduras "establish an institution specifically addressing the rights of children" (recommendation 83.6).

105. The Government of Honduras is aware that it does not yet have an institution that specifically addresses the rights of children. However, it does have the Office of the National Human Rights Commissioner and the Honduran Institute for Children and the Family.

106. The Office of the National Human Rights Commissioner was established pursuant to the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) that were approved by the United Nations General Assembly in 1993. The Office was established pursuant to Legislative Decree No. 2-95, which amended article 59 of the 1982 Constitution. Article 59 reads as follows: "... The Office of the National Human Rights Commissioner shall be established in order to guarantee the rights and freedoms set forth in this Constitution. The organization, prerogatives and powers of the Office of the National Human Rights Commissioner will be set forth in a law that shall be adopted specifically for that purpose."

107. The Office of the National Human Rights Commissioner includes teams specialized in dealing with complaints at the national level. They receive and follow up on reports of any violation of individuals' rights, including the rights of children. To date, however, no specialized programmes exist which could be classified as national protection mechanisms for the rights of children (including the rights set forth in the Optional Protocol). For this reason, a number of civil society organizations are calling for action to be taken in response to the aforementioned recommendations (83.6 of the Human Rights Council and 18 of the Committee on the Rights of the Child).

108. The Honduran Institute for Children and the Family was created in 1997 pursuant to Legislative Decree No. 199-97 as an autonomous, financially independent, social development organization possessing legal personality. The Institute, whose operations are not time-bound, is the principal technical authority of the State in matters related to children and families. Its main objective is the comprehensive protection of children and family integration. Its mandate notwithstanding, the Institute has not made a significant impact in protecting children's rights and, in fact, it currently spends more than 90 per cent of its budget on wages.

109. In light of the recommendations made by the Human Rights Council and the Committee on the Rights of the Child, and given the state of affairs described above, in August 2012 the executive branch announced the forthcoming issuance of legislation under which the Institute's services are to be decentralized and to be provided by the country's 298 municipalities (the Institute currently serves just 36 municipalities).

110. Under the new legislation, the Institute will be responsible for formulating, coordinating, administering, monitoring and evaluating public policies, programmes and services relating to children within the framework of the Constitution, the Code on Children and Adolescents, other pertinent national laws, and the Convention on the Rights of the Child and other relevant treaties to which Honduras is a party.

V. Protection, recovery and reintegration

A. General aspects

111. The absence of any cases in which children have been recruited into the Armed Forces or police force renders the implementation of recovery and reintegration mechanisms for children participating in armed conflict unnecessary. However, if the participation of children in armed conflict or their conscription were to occur, the Honduran Institute for Children and the Family would be responsible for creating programmes for the care and rehabilitation of such victims.

112. The Office of the Special Prosecutor for Children of the Public Prosecutor's Office oversees the design and implementation of the State's criminal prosecution policy regarding cases involving children. It works to combat offences against children, ensure that perpetrators of such offences are punished, rescue victims and afford them protection.

113. No complaints relating to the presence of children in the Armed Forces are being processed by the justice system at the present time. A complaint was filed by the Reflection, Investigation and Communication Team (Equipo de Reflexión, Investigación y Comunicación) (ERIC) and the Centre for Research and Promotion of Human Rights (CIPRODEH) during the breakdown of constitutional order in 2009 and was processed by the Office of the Special Prosecutor for Children of the Public Prosecutor's Office. During the authorities' on-site inspection, however, no children were found to be in the battalions or military units to which the complaint related.

B. Judicial proceedings in cases involving child victims and/or child witnesses

114. When a child under 15 appears in a criminal trial and is required to give evidence, he or she is not subject to the regulations governing adults; the child is not first questioned by the judge, but instead by the parties concerned, in the presence of his or her parents or legal representative. If the child becomes upset, the court may suspend the hearing.

115. These provisions are applicable to both child victims and child witnesses of acts prohibited by the Optional Protocol.

116. If a child's life or well-being is in grave danger as a consequence of his or her testimony, the court, of its own motion or on the application of a party, should adopt measures to safeguard the child.

117. In order to implement legislative measures to safeguard the life and well-being of children who testify at a trial, the Honduran State adopted the Criminal Proceedings

Witness Protection Act by means of Legislative Decree No. 63-2007. That legislation provided for the establishment of the Criminal Proceedings Witness Protection Programme, which is administered and coordinated by the Public Prosecutor's Office and affords protection to witnesses, their families and other persons involved in legal proceedings.

118. Despite the existence of this law and programme, victims, experts, witnesses and members of the general public have been demanding that the corresponding mechanisms be created, since the Public Prosecutor's Office, the body responsible for the Criminal Proceedings Witness Protection Programme, has not allocated the technical and financial resources required for it to function properly.

C. Protection of children's identity so as to preserve confidentiality and prevent the exploitation of victims and their stigmatization by the media

119. In the case of child victims of acts prohibited by the Optional Protocol, the Code on Children and Adolescents and the Code of Criminal Procedure of Honduras prohibit publicity and provide for such children to be protected from the media in order to avoid their stigmatization.

120. Article 34 of the Code on Children and Adolescents states: "The mass media are required to respect children's privacy and personal life. Therefore, they shall not publish any interviews, reports, news or information relating to children, their families or their friends that may in any way do harm to their human dignity." Violations of this article are sanctioned by fines of between 5,000 and 50,000 lempiras.

121. Article 308 of the Code of Criminal Procedure provides that, although trials are public in Honduras, the court, by its own motion or on the application of a party, may decide to make an exception and to hold all or part of a trial in private under certain circumstances. Those circumstances include cases in which a witness or victim is aged under 18.

VI. International assistance and cooperation

122. Because the participation of children in hostilities or even their presence in the Armed Forces has not been an issue in Honduras, there has been no related assistance or cooperation.

123. The exception to the above relates to the international criminal justice system, given that Honduras has been a State party to the Rome Statute of the International Criminal Court since 2002. As noted in chapter IV of this report, the conscription or enlistment of children under the age of 15 years into the armed forces or their use in hostilities are classified as a war crime under the Rome Statute. Honduras therefore has an obligation to surrender any persons who have been accused of such crimes to the International Criminal Court upon its request.

124. The Honduran State also attaches importance to the international regulation of the control, manufacturing, trafficking and proliferation of firearms and has therefore ratified the following international legal instruments dealing with this subject:

(a) Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, 1997, ratified by means of Legislative Decree No. 4-2004 of 10 February 2004 and published in Official Gazette No. 30,426 of 26 June 2004;

(b) United Nations Convention against Transnational Organized Crime, ratified by means of Legislative Decree No. 108-2003 of 22 July 2003 and published in Official Gazette No. 30,223 of 27 October 2003;

(c) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, ratified by Legislative Decree No. 108-2003 of 22 July 2003;

(d) Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, ratified by means of Legislative Decree No. 198-2002 of 21 May 2002 and published in Official Gazette No. 29,909 of 14 October 2002;

(e) Framework Treaty on Democratic Security in Central America, ratified by means of Legislative Decree No. 51-96 of 16 April 1996 and published in Official Gazette No. 28,142 of 21 December 1996;

(f) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, ratified by means of Legislative Decree No. 92-98 of 21 April 1998 and published in Official Gazette No. 28,653 of 29 August 1998.

VII. Other legal provisions

125. The revised guidelines regarding initial reports to be submitted under the Optional Protocol indicate that States parties should cite any domestic legislative provisions or provisions of international law that they consider to go beyond the Optional Protocol in contributing to the realization of the rights of the child.

126. The State of Honduras notes that articles 1 and 2 of the Optional Protocol permit persons aged between 15 and 18 to join the Armed Forces, providing that they have not been forcibly recruited.

127. However, the Constitution of the Republic of Honduras provides that only persons aged between 18 and 30 may volunteer for military service.

128. The following major international instruments relating to humanitarian law on the recruitment of children and their deployment in hostilities have been ratified by Honduras:

(a) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 1949, ratified on 31 December 1965;

(b) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 1949, ratified on 31 December 1965;

(c) Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), 1949, ratified on 31 December 1965;

(d) Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949, ratified on 31 December 1965;

(e) Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), 1977, ratified on 16 February 1995;

(f) Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), 1977, ratified on 16 February 1995;

(g) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention on Landmines), 1987, ratified on 24 September 1998.

VIII. Concluding remarks

129. Since the adoption in 1995 of amendments to the Constitution whereby military service was established as an educational, social, humanistic and democratic system that is to function on a voluntary basis, public institutions, civil society organizations that promote the rights of the child and society at large have not re-examined the issue of the involvement of persons under 18 in the Armed Forces or their possible participation in hostilities.

130. For the Government of Honduras, with the aid of the Ministry of Justice and Human Rights and in conjunction with civil society organizations dedicated to the rights of the child, the process of preparing this report provided an opportunity to analyse the national context and the status of children's rights and to review the legislative, administrative and other measures that are designed to prevent persons under 18 years of age from entering the Armed Forces or the national police and to thereby preclude their participation in armed conflict. This also provided an opportunity to analyse the preventive measures and prohibitions that are suggested by the Committee on the Rights of the Child in its revised guidelines for the preparation of this initial report.

131. In addition, it paved the way for a further analysis of the new challenges which Honduras shares with the neighbouring countries of El Salvador, Guatemala and Mexico, such as the participation of children in gangs and other criminal organizations, which, while not classified as armed groups under international law, pose just as much of a threat to children, their property and the full exercise of their rights. The Committee's experience in these areas will no doubt prove to be useful in taking stock of this problem in Honduras.

132. Based on the examination of the issue that served as a basis for the preparation of this report, the time has now come to proceed with the formulation of specific legislative measures that expressly prohibit the participation of children in the Armed Forces, not only during times of peace, but also in times of war, and that make the act of recruiting children under 18 or allowing them to join the Armed Forces or the national police punishable as a specific criminal offence.

133. Lastly, the State of Honduras, as represented by the Ministry of Justice and Human Rights, recognizes that it should move forward with the adoption of the remaining legislative, administrative and other measures identified in this report as necessary preventive mechanisms that will preclude any occurrence of the acts prohibited by the Optional Protocol.
