



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Initial reports due in 2008

HONDURAS^{*}, ^{}**

[8 April 2008]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

** The annexes to the present report may be consulted in the files of the Committee secretariat.

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I. INTRODUCTION

1. Honduras signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 10 December 1984, ratified it by Decree No. 47 of 16 April 1996, and published it in Official Gazette No. 28,089 of 19 October 1996. Like other international human rights instruments, it forms part of domestic law on ratification and may be invoked and applied before the relevant authorities.
2. The State of Honduras, as a party to the Convention, hereby submits its initial report to the Committee against Torture in fulfilment of its obligations under article 19 of the said international instrument.
3. Different kinds of institutions for the promotion and protection of human rights with different objectives and scope have been established in Honduras. In addition, groups, foundations, university chairs, regional commissions and official institutions have been created, and non-governmental organizations operate freely and are treated with respect and esteem by the State and its constituent authorities.
4. In legal terms, major changes have occurred in the area of human rights protection with the establishment of institutions such as the Public Prosecution Service and the National Commissioner for Human Rights, the separation of the National Police Force from the armed forces and its incorporation in the Office of the Minister of Security, and the implementation of the Code of Criminal Procedure as an instrument designed to safeguard the rights of both victims and accused persons.
5. The inter-agency team responsible for drafting the report was composed of the Office of the Minister for Foreign Affairs (coordinator), the Supreme Court of Justice, the National Congress, the Public Prosecution Service, the National Commissioner for Human Rights, the Ministry of the Interior and Justice, the Ministry of Security, the Ministry of Defence, the Office of the Attorney-General, the National Women's Institute (INAM) and the Honduran Child and Family Institute (IHNFA). Information was also provided by some NGOs such as Casa Alianza and the Committee for the Defence of Human Rights in Honduras (CODEH).
6. The present report reviews progress by the State of Honduras in guaranteeing full enjoyment of human rights for its population, especially progress in eliminating torture and other cruel, inhuman or degrading treatment or punishment.

II. GENERAL LEGAL FRAMEWORK UNDER WHICH TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ARE PROHIBITED AND ELIMINATED

7. In accordance with the Constitution of the Republic, Honduras is a sovereign State based on the rule of law, and constituted as a free, democratic and independent republic with the aim of guaranteeing justice, freedom, culture and economic and social well-being for its population.
8. The form of government is republican, democratic and representative. It is exercised by three branches of power, the legislature, the executive and the judiciary, which are complementary and independent, with no branch being subordinate to either of the others.

The office of President of the Republic is exercised on the basis of the principle of mandatory rotation.

9. Sovereignty is vested in the people, who are the source of all State powers which are exercised by representation. Public officials are entrusted with authority and are legally responsible for their official conduct. They are subject to the law and are never above the law¹.

A. The legislature

10. Legislative power is exercised by a Congress composed of a fixed number of 128 representatives and their alternates, who are elected by the people by direct suffrage. Members of Congress are representatives of the people, elected for a period of four years and eligible for re-election; their principal duty is to draft, enact, interpret, amend and repeal legislation. The following have sole authority to enact legislation: members of the National Congress, the President of the Republic through the ministries and, in their areas of jurisdiction, the Supreme Court of Justice and the Supreme Electoral Court.

11. Decisions by the legislature must be taken by at least half of the total number of elected representatives plus one, i.e. 65 votes. However, a number of decisions require a qualified majority of two thirds of the votes cast, for instance when the executive vetoes a bill and the National Congress tables it a second time, it must be ratified by two thirds of the votes cast, following which it is again referred to the executive as a “constitutionally ratified” bill, upon which the executive must promulgate it without delay. A two-thirds majority is also required for the election of judges to the Higher Audit Court, the Supreme Court of Justice and the Supreme Electoral Court, and of the Chief Public Prosecutor and the Deputy Chief Public Prosecutor.

12. Serving members of Congress may not hold paid public office during the term for which they were elected, except teaching or cultural posts and those related to professional social welfare services. However, they may hold the office of minister, deputy minister, chair or manager of a decentralized body, or head of a diplomatic or consular mission, and they may undertake ad hoc diplomatic missions. In such cases, they resume their membership of the National Congress when their duties cease. Alternates may hold public posts or offices without losing their status by accepting and exercising such duties².

B. The executive

13. The executive is composed of the President and the Vice-President of the Republic, the ministers and deputy ministers and their subordinate officials. Executive power is exercised in conformity with the Constitution of the Republic and the General Public Administration Act. The President and the Vice-President of the Republic are elected jointly and directly by the people by a simple majority of the votes cast. The presidential term of office is four years and begins on 27 January following the date on which the election is held.

¹ See Annex II, arts. 1, 2, 4 and 323, of the Constitution of the Republic.

² See Annex II, arts. 52, 189, 196, 202, 203, 205, 216, 223 and 311, of the Constitution of the Republic.

14. The ministers collaborate in steering, coordinating, directing and supervising the general public administration agencies and bodies in their areas of jurisdiction³. In accordance with article 28 of the General Public Administration Act, the President of the Republic is responsible for the general administration of the State. The following ministries have been created to discharge the tasks of general administration of the country entrusted by the Constitution of the Republic to the executive: Interior and Justice; Education; Health; Security; Office of the President; Foreign Affairs; National Defence; Finance; Industry and Commerce; Public Works; Transport and Housing; Labour and Social Security; Agriculture and Stockbreeding; Natural Resources and the Environment; Culture, the Arts and Sport; and Tourism.

15. Decree No. 155-98 of 28 May 1998, published in Official Gazette No. 28629 of 1 August 1998, established the Ministry of Security, which is responsible for formulating the national internal security policy and for the National Police Force. The National Police Force has thus been separated from the armed forces.

16. The Ministry of National Defence is responsible for formulating, coordinating, implementing and assessing national defence policies and for running affairs pertaining to the armed forces. Moreover, articles 272, 273 and 277 of the Constitution of the Republic state that the armed forces of Honduras are a permanent, basically professional, apolitical, subordinate and non-deliberative national institution. They are composed of the High Command, the Army, the Air Force, the Navy and the bodies provided for in the Organization Act. The President of the Republic, as Commander-in-Chief, is directly responsible for the armed forces.

C. The judiciary

17. The judiciary of Honduras is responsible under the Constitution for dispensing justice, applying the laws to concrete cases, adjudicating and enforcing judgements. It is composed of the Supreme Court of Justice, the appeal courts, the courts of first instance and other judicial bodies provided for by law.

18. All judges and magistrates are independent and subject solely to the Constitution and the laws. Their services must be provided exclusively to the judiciary and they may on no account become involved in party political activities of any kind, except in order to cast their personal vote. They are also prohibited from forming trade unions or declaring a strike.

19. The Supreme Court of Justice is the highest judicial body; it has jurisdiction over the whole territory of the State and has its seat in the capital city. It is composed of 15 judges, one of whom holds the office of President. The President is elected by the judges not more than 24 hours after their election by two thirds of the votes cast. Decisions are taken by a majority of the members of the Court.

20. Judges are elected for a period of seven years and are eligible for re-election. The Court is composed of the following four chambers: the Constitutional Chamber, the Criminal Chamber, the Civil Chamber, and the Labour and Administrative Disputes Chamber. When the chambers issue judgements unanimously, the judgements are delivered on behalf of the Supreme Court of

³ See Annex II, arts. 235, 236 and 245 of the Constitution of the Republic.

Justice and are deemed to be final. Judgements delivered by a majority of the adjudicating chamber must be referred to the Supreme Court of Justice.⁴

21. The appeal courts are courts of second instance composed of a panel of three judges whose decisions are taken by a majority of the panel. They hear, inter alia, appeals filed against rulings and interlocutory decisions delivered at various stages of criminal proceedings.

22. The courts of first instance and small claims courts are single-judge courts, except for trial courts, which hold oral proceedings in public in criminal cases and are composed of four judges, three sitting judges and one alternate.

23. It is important to note that the new Code of Criminal Procedure entered into force in 2002, replacing the previous Code based on a written and inquisitorial approach. It introduced a new system of legal proceedings based on oral and public hearings and principles of speed, adversarial argument and equality before the court. Judicial bodies dealing with criminal matters now have new functions and new courts have been established for oral and public hearings and for the enforcement of sentences.

24. The small claims courts hear arguments and issue decisions on misdemeanours. They also have jurisdiction to receive reports and complaints and to refer the former to the Public Prosecution Service for the conduct of investigations and the latter to the relevant trial court. They are also responsible for removing and identifying corpses in the absence of the public prosecutor.

25. The courts of first instance are responsible for the preparatory and intermediate stages of cases of public and private prosecution as well as for summary proceedings and the suspension of criminal proceedings. They guarantee respect for constitutional rights, since they are the only courts that can authorize searches of private homes, the inspection of correspondence and telecommunications, and other acts that may jeopardize and/or restrict citizens' basic rights and freedoms.

26. The trial courts have exclusive jurisdiction to hold oral and public proceedings; the enforcement courts handle matters pertaining to the enforcement of judgements and sentences, and special proceedings to determine civil responsibility and security measures.

27. The appeal courts hear appeals against rulings at first instance and against final judgements in summary proceedings. They also serve as courts of first instance in special cases established by law.

28. The Supreme Court of Justice hears criminal appeals in cassation and petitions for review (Criminal Chamber, with final decisions taken in plenary session). It also handles proceedings to determine the responsibility of senior State officials and to resolve conflicts of jurisdiction between courts, and it acts as a court of second instance in cases in which the appeal courts have acted as courts of first instance.

⁴ See Annex II, arts. 303, 308, 314, 315, 316 and 319 of the Constitution of the Republic.

1. Office of the Attorney-General

29. This body is entrusted with the legal representation of the State and is responsible for defending its interests and preventing the misuse of public funds. The Attorney-General and the Deputy Attorney-General are elected by the National Congress for a four-year term and are not eligible for re-election. They must meet the same conditions as those applicable to judges of the Supreme Court of Justice under the Constitution; they also enjoy the same prerogatives and are subject to the same disqualifications.

30. Civil proceedings resulting from prosecutory action by the Higher Audit Court are handled by the Attorney-General, except those pertaining to the municipalities, which are handled by the officials designated for that purpose by law and, if none are designated, by the Deputy Attorney-General.

2. Public Prosecution Service

31. The Public Prosecution Service was established by Decree No. 228-93, published in Official Gazette No. 27241 of 6 January 1994, as an organized professional body, which is free from any sectarian political interference and operationally independent of State authorities and entities. It is responsible, inter alia, for handling public criminal proceedings under all circumstances and by virtue of its mandate. The special police squad engaged in the fight against drug trafficking, the forensic medicine services, and other bodies established under the relevant legislation constitute an integral part of the Public Prosecution Service.

32. The Chief Public Prosecutor is responsible for the management, guidance, administration and supervision of the Public Prosecution Service. The incumbent is assisted by a Deputy Chief Public Prosecutor, who replaces the Chief during temporary absences, when a new Chief is being appointed and in cases of self-disqualification or recusal. Both officials are elected by the National Congress by a two-thirds majority of its members for a five-year term, and are eligible for re-election for only one term. The list of five candidates is submitted by a Nominations Board convened and chaired by the President of the Supreme Court of Justice and appointed by the plenary of the Court, the Vice-Chancellor of one of the country's universities, a representative of the Bar Association of Honduras nominated by its Board of Governors, and the National Commissioner for Human Rights.

33. The Directorate of Public Prosecutions is a department of the Public Prosecution Service responsible for the administration, coordination and direct supervision of the activities of Prosecution Service officials. It is run by a Director who is appointed by the Chief Public Prosecutor⁵.

D. Other public-sector bodies

1. National Women's Institute

34. The National Women's Institute (INAM) is an independent social development institution with legal personality and equity capital. It was established by Decree No. 232-98 of 29 August

⁵ See Annex II, arts. 1, 2, 4, 17, 18 and 28 of the Public Prosecution Service Act.

1998 in response to the international treaties adopted by the Honduran State and is mandated with promoting women's full involvement in the sustainable development process, on a basis of gender equality, and in all social, economic, political and cultural affairs. It is an autonomous body responsible for "formulating, promoting and coordinating the implementation and oversight of the national policy on women and integrating women into sustainable development and the action plans to operationalize such development".

2. Honduran Child and Family Institute

35. The Honduran Child and Family Institute (IHNFA) was established by Decree No. 199-97 of 29 December 1997 for an indefinite period as an independent social development institution with legal personality and equity capital. Its principal aim is to ensure the comprehensive protection of children and the full integration of the family, in accordance with the provisions of the Constitution of the Republic, the Childhood and Adolescence Code and the Family Code.

3. National Commissioner for Human Rights

36. The National Commissioner for Human Rights is a constitutional and national institution established by the National Congress by Decree No. 2-95, amending article 59 of the Constitution of the Republic to guarantee respect for the rights and freedoms recognized in the Constitution and in the international treaties ratified by Honduras. The incumbent of the office of National Commissioner for Human rights is elected by a simple majority of the National Congress for a six-year term and is eligible for re-election⁶.

E. International treaties

37. Human rights are progressive in the sense that, according to article 64 of the Constitution, government-enacted or any other laws and provisions regulating the exercise of the declarations, rights and guarantees enshrined in the Constitution shall not be applied if they diminish, restrict or distort them in any way.

38. Once international treaties concluded by Honduras with other States enter into force, they form part of domestic law. In the event of a conflict between a legal norm and a norm contained in an international instrument, the latter shall have primacy (arts. 16 and 18 of the Constitution of the Republic).

39. It is not a prerequisite for the implementation of international treaties that they should have been incorporated in secondary domestic legislation or administrative regulations, since, as already noted, they form part of domestic law as soon as they are ratified. For example, article 41, paragraph 1, of the Constitutional Justice Act authorizes aggrieved persons, victims of the violation of a right contained in a treaty or any person acting on their behalf to file an *amparo* complaint with the Constitutional Chamber of the Supreme Court of Justice.

40. Within the United Nations, Honduras is a party to the following international instruments which prohibit torture: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Covenant on Civil and

⁶ See Annex II, arts. 1 and 4, of the National Commissioner for Human Rights Organization Act.

Political Rights; the Convention on the Rights of the Child and its two Optional Protocols; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; and the International Covenant on Economic, Social and Cultural Rights.

41. In the inter-American regional context, Honduras is a State party to the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention). Honduras has also recognized, by an explicit declaration, the jurisdiction of the Inter-American Court of Human Rights to hear individual complaints of violations of the rights contained in the American Convention on Human Rights.

42. With regard to international human rights procedures, Honduras has ratified the Optional Protocol to the International Covenant on Civil and Political Rights establishing the procedure for the submission of individual communications to the Human Rights Committee. Recourse may be had to this international procedure once the remedies available under the domestic legal system have been exhausted. This complementarity of procedures means that an additional remedy is available to any aggrieved person in Honduras.

43. The Constitution of the Republic lays down rules that offer effective protection against torture: article 68 states that everyone has the right to respect for his or her physical, mental and moral integrity. No one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Persons deprived of their liberty shall be treated with the respect due to the inherent dignity of the human person. This provision is further developed in article 2-B of the Criminal Code, which states that any person accused of a crime or misdemeanour has the right to be treated with the respect due to the inherent dignity of the human person. It follows that penalties or security measures entailing inhuman or degrading treatment may not be imposed. Moreover, article 88 of our Constitution stipulates that no one shall be subjected to any form of violence or coercion to compel him or her to testify. Similarly, no one can be compelled, in criminal, disciplinary or police proceedings, to testify against him or herself, his or her spouse or live-in partner, or relatives up to the fourth degree of consanguinity or the second degree of affinity.

44. With a view to preventing the police force from endeavouring to obtain confessions from persons deprived of their liberty, article 88 of the Constitution stipulates that only statements made before a competent judge shall have probative value and that any statement obtained through the breach of any of the respective provisions shall be null and void, and that those responsible shall be subject to the penalties established by law. This constitutional provision is further developed in article 282, paragraph 4, of the Code of Criminal Procedure. In addition, article 282, paragraphs 1 to 6, of the Code of Criminal Procedure states that members of the police force, when apprehending, detaining or arresting a person, shall proceed in accordance with the following rules:

- (a) They shall identify themselves, at the time of arrest, as law enforcement officers, showing the card or badge that establishes their status;
- (b) They shall use force only when it is strictly necessary to ensure the effective discharge of their duties, and the force used shall be proportionate to that required to make the arrest;

- (c) They shall use weapons only in the event of a serious, imminent or reasonably foreseeable risk to the life or physical integrity of the officer or third parties, or of a serious threat to law and order, or where their use is necessary to prevent the commission of a crime and no other equally effective and less dangerous means are available;
- (d) They shall not commit, encourage or permit the use of torture, persecution or other cruel, inhuman or degrading treatment or punishment at the time of arrest or during the period of detention;
- (e) They shall not parade detainees before representatives of the media and shall protect their right to be considered and treated as innocent and their right to respect for their image;
- (f) They shall inform arrested or detained persons as clearly as possible, at the time of their arrest or detention, of the ground for their arrest, and shall advise them of the following rights: the right to inform a relative or person of their own choosing of their circumstances; the right to the assistance of counsel; the right to remain silent; the right not to testify against themselves, their spouse or live-in partner, or relatives up to the fourth degree of consanguinity or the second degree of affinity, and the fact that only statements made before a competent judge have probative value; the right to be examined by a forensic physician or, if the attendance of such a physician would entail a serious delay, by another physician so that he or she can report on their physical condition and provide treatment if necessary; and, in general, other rights to which accused persons are legally entitled.

45. As an administrative measure applicable to detainees, the National Police force is required, in the performance of its duties, to take care of and protect the physical and mental health of detainees or persons under their control, and to respect their honour and dignity while they remain in custody (art. 22, para. 3 (c), of the National Police Force Organization Act).

46. The following are some of the institutions whose jurisdiction and mandate cover matters dealt with in the Convention:

- (a) The judiciary is entrusted with power to impart justice, which emanates from the people and is imparted free of charge on behalf of the State by independent magistrates and judges who are subject only to the Constitution and the law. The Constitution confers on military courts jurisdiction to try major and minor military offences, and stipulates that their jurisdiction may not, under any circumstances, be extended to cover persons who are not in the active service of the armed forces;
- (b) The Office of the Minister of the Interior and Justice is responsible for affairs relating to population and migration, including the immigration regime through the Migration and Aliens Department;
- (c) The Office of the Minister of Security, which runs the National Police Force, is composed of five departments, including the Special Preventive Services Department, which is responsible for the security, administration and maintenance of prison facilities, and the security of social reintegration centres for juvenile offenders

and young people detained for irregular conduct, in conformity with the relevant special legislation (arts. 2, 11 and 52 of the National Police Force Organization Act);

- (d) The Office of the Minister of National Defence, which is responsible for the armed forces of Honduras; article 292 of the Constitution of the Republic confers on this Office exclusive authority over the manufacture, import, distribution and sale of weapons, ammunition and similar articles; once such articles are in the hands of members of the public, responsibility is transferred to the Ministry of Security through the National Police Force;
- (e) The Public Prosecution Service, in keeping with its mandate, is the institution responsible for investigating whether any person has been illegally arrested or detained or prevented in any way from enjoying his or her individual liberty, or whether a person has been subjected to ill-treatment, torture, extortion or coercion; it is also responsible for reporting such acts to the appropriate authority for the purpose of habeas corpus and for initiating criminal proceedings itself where appropriate;
- (f) The Office of the Attorney-General is the legal representative of the State and its mandate includes representation of persons who, for economic reasons, are unable to take legal action and of victims who have no attorney or legal representative;
- (g) The National Commissioner for Human Rights (Ombudsman) is authorized to have direct recourse to any public official or to any agencies or institutions and their office holders, who are obliged to respond to the petitions and requests addressed to them. In the performance of his or her duties, the National Commissioner for Human Rights has free access to all civilian and military establishments and places of detention, imprisonment or internment and no objection whatsoever may be raised to such visits;
- (h) The Honduran Child and Family Institute (IHNFA), one of whose responsibilities is to establish, support and run programmes, rehabilitation centres and other establishments required to deal with cases of persons who, pursuant to the provisions of the Childhood and Adolescence Code, are held to be in breach of the law;
- (i) The National Women's Institute (INAM), as coordinator of the national policy on women, offers guidance for the implementation of priority actions aimed at promoting effective compliance with the principle of equality between men and women in Honduras, especially in the five core areas that are assigned priority under the Plan: health, education and the media, social and political participation, the economy, poverty and violence.

47. With regard to the practical implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as Honduras is a Republic and not a federal State, there are no factors impeding compliance with the obligations that the State assumed upon ratification.

III. IMPLEMENTATION OF THE ARTICLES OF THE CONVENTION

A. Article 1

48. Legislative Decree No. 191-36 of 31 October 1996 added article 209-A to the Criminal Code. This article defines the crime of torture, stipulating that the crime of torture is committed by any public employee or official, including employees or officials of penal establishments or juvenile protection centres, who, acting in abuse of their office and with a view to obtaining a confession or information from any person or punishing the person for any act that he or she committed or is suspected of having committed, subjects the person to conditions or procedures which, by virtue of their nature, duration or other circumstances, lead to physical or mental suffering, the deprivation or diminution of the person's consciousness, discernment or decision-making faculties or inflict any other form of mental injury. The Code further stipulates that, when the crime of torture is committed by individuals, the penalties prescribed for public officials shall be reduced by one third.

49. Most of the content of the foregoing definition of torture is in conformity with the Convention, since both instruments define torture as a means of obtaining a confession or information, by inflicting pain on the victim or mental injury.

50. There is a discrepancy in the fact that the Convention includes in its definition of torture any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of: "intimidating or coercing him or a third person" and "for any reason based on discrimination of any kind"; these circumstances are not mentioned in the definition of torture contained in article 209-A of the Criminal Code.

51. Without prejudice to the foregoing, our criminal legislation expressly and independently proscribes coercion, discrimination and ill-treatment in articles 209, 321 and 333, paragraph 3, of the Criminal Code, according to which: "Any person in the service of an authority or any public official or employee who, with a view to obtaining a confession of responsibility for a particular offence or for some other similar purpose, threatens a person with physical or mental violence shall be punishable by a term of imprisonment of between three (3) and six (6) years and by general disqualification for a period equal to double that of the term of imprisonment"; "anyone who discriminates against another person on grounds of sex, race, age, class, religion, party or political activism, or any kind of disability, or who treats the person in any other way that is prejudicial to human dignity, shall be punishable by a term of imprisonment of between three (3) and five (5) years and a fine of between thirty thousand (30,000) and fifty thousand (50,000) Honduran lempiras. If the responsible person is a foreigner, he or she shall be expelled from the national territory once the sentence has been served"; and "Any public official or employee who [...] (3) subjects persons in his or her custody to ill-treatment or illegal harassment shall be punishable by a term of imprisonment of between three (3) and six (6) years, a fine of between fifty thousand (50,000) and one hundred thousand (100,000) Honduran lempiras and general disqualification for a period equal to double that of the term of imprisonment".

52. Honduras has signed various international instruments, which form part of our domestic legislation and include such far-reaching legal provisions as the following: article 5 of the American Convention on Human Rights, article 7 of the International Covenant on Civil and

Political Rights, article 37 of the Convention on the Rights of the Child, articles 1 and 2 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention).

B. Article 2

1. Paragraph 1

53. Pre-trial detention may last, as a rule, for up to one year. When the penalty applicable to the offence is greater than six years' imprisonment, pre-trial detention may last for up to two years. In exceptional cases, depending on the complexity, dispersion or scale of the evidence that must be presented, the Supreme Court of Justice can extend the periods referred to in this article by six months in response to a substantiated request from the Public Prosecution Service. Pre-trial detention may not under any circumstances exceed one half of the minimum duration of the penalty applicable to the offence. Once a judgement of conviction has been rendered, pre-trial detention may be extended during any appeal proceedings and rulings until one half of the sentence subject to appeal has been served. If the maximum period thus determined exceeds the customary period prescribed in this article, the court shall, upon a request from the parties and having heard the opposing arguments, approve the extension on the basis of a reasoned decision. When calculating the period in question, account shall not be taken of the time taken up by defence applications that have been found to be devoid of merit. If the proceedings have not been concluded when the time limit expires, the accused shall be released on remand, subject to any of the precautionary measures provided for in article 173 of the Code of Criminal Procedure, without prejudice to the continuation of the proceedings, until such time as a final decision is rendered. If the proceedings have not been concluded within the prescribed time-limit, any officials and employees who have caused the delay by malice, fault or negligence shall be punishable pursuant to the Judicial Career Act, without prejudice to any criminal responsibility they may have incurred. The Supreme Court of Justice and the Public Prosecution Service shall ensure strict compliance with the provisions set forth in this paragraph⁷.

54. Similarly, the law stipulates that the court shall, of its own motion or on application by a party, rescind the decision ordering that the accused be placed in pre-trial detention or replace it by other precautionary measures when the maximum period of pre-trial detention has expired, or the decision to extend such detention where an extension has been granted in exceptional circumstances⁸. To ensure compliance with the aforementioned provisions, article 2 of the Unsentenced Offender Act stipulates: "That where it is established that an accused person has remained in pre-trial detention for a period equivalent to or greater than the maximum sentence applicable to the offence with which he or she is charged or the sum of the maximum sentences when more than one punishable act has allegedly been committed, or for the maximum period permissible under the Constitution, he or she shall be released forthwith."

55. With regard to the duration of incommunicado detention, article 71 of the Constitution of the Republic stipulates: "No one may be detained or held incommunicado for more than 24 hours

⁷ See Annex II, art. 181, of the Criminal Code.

⁸ See Annex II, art. 188, para. 3, of the Code of Criminal Procedure.

without being brought before a competent legal authority. Judicial detention pending inquiries may not exceed six days from the time of its commencement.” This constitutional provision is further developed in articles 176 and 192 of the Code of Criminal Procedure.⁹ With a view to ensuring compliance with this rule, article 182 of the Constitution itself guarantees habeas corpus by stipulating that any aggrieved person or anybody else acting on his or her behalf may apply for habeas corpus: when he or she has been illegally arrested, detained or in any way impeded from enjoying his or her individual liberty; and when, during lawful detention or imprisonment, the detainee or prisoner is subjected to persecution, torture, ill-treatment, illegal extortion and any form of coercion, restriction or harassment that is unnecessary for his or her individual safety or for maintaining order in the prison. This guarantee is further developed in the Constitutional Justice Act, which entered into force on 22 September 2005 and which provides for a brief, simple and effective procedure, whereby an executing officer appointed by the judiciary has broad authority to safeguard the life and physical and mental integrity of a person who has been subjected to torture or is at risk of being tortured.

56. The rights of detainees are regulated by article 101 of the Code of Criminal Procedure which stipulates: “Accused persons and their rights. A person shall be deemed to be accused when he or she, on the basis of a complaint or an application by the public prosecutor, is held to have participated in the commission of an offence or misdemeanour, whether he or she is in custody or at liberty; or when a person has been deprived of his or her liberty as a precautionary measure by arrest, detention or pre-trial imprisonment; as such, he or she may henceforward exercise all the rights recognized by the Constitution of the Republic, international treaties and this Code, from the first step of the procedure until its completion. All accused persons are guaranteed the right to a defence. Hence they have the right:

- (a) To be informed by the competent authority, in clear and precise terms, of the acts constituting the offence with which they are charged;
- (b) To inform a natural or legal person of their choosing forthwith of their detention and the place in which they are detained. If the natural or legal person who is the addressee of the communication is outside the territory of the Republic of Honduras, the fact and place of their detention shall be brought to the notice of the relevant diplomatic or consular mission. If none of those circumstances is applicable, the National Commissioner for Human Rights shall be informed. Detained persons may communicate the information themselves unless the investigation has been declared confidential, in which case it shall be communicated by the authority or official responsible for the detainee;

⁹ See Annex II, art. 176 of the Code of Criminal Procedure authorizes the Public Prosecution Service to order the pre-trial detention of a person in cases specifically defined by law on condition that the competent judge is informed thereof. Under no circumstances may such detention exceed 24 hours. Art. 192 also authorizes the judge, on application by the public prosecutor responsible for the investigation, to order that the accused be placed in incommunicado detention for a period of not more than 24 hours, if there are grounds to fear that he or shall might obstruct a specific investigatory act.

- (c) To be assisted by counsel from the time of detention or of being required to make a statement. Counsel may be appointed by the detainee, his or her spouse or live-in partner, or a relative up to the fourth degree of consanguinity or the second degree of affinity. If counsel is not appointed by the aforementioned persons, the services of counsel shall be performed by a public defender appointed by the relevant judicial body or, if the public offender is not available, by another court-appointed counsel;
- (d) To communicate privately with counsel from the beginning of the period of detention, also during police custody and before making a statement, if they so desire;
- (e) To refrain from making a statement without this decision being invoked to their detriment, and if they agree to make a statement, to have counsel present at the time, this rule being applicable to any other procedure calling for the presence of the accused;
- (f) Not to have measures used against them that in any way affront their personal dignity;
- (g) Not to be subjected to techniques or methods that undermine their ability to know or understand the implications of their acts or their free will, such as: ill-treatment, threats, physical or mental violence, torture, use of psycho-active drugs, hypnosis and polygraphs or lie detectors;
- (h) Not to be subjected to measures that impede their mobility during the proceedings. This right shall be construed without prejudice to security measures that the court or Public Prosecution Service deems to be necessary in special cases;
- (i) To be assisted by an interpreter or translator if they do not know Spanish, if they are deaf, if they are unable to make themselves understood in writing or if they are unable to express themselves for any other reason;
- (j) To be present, together with counsel, during all proceedings involving evidence except where otherwise provided in this Code;
- (k) To request the Public Prosecution Service to undertake any investigatory measure that might assist them in their defence if it has not already done so. In such cases, the Prosecution Service shall issue a reasoned decision within 24 hours. If it refuses to undertake the requested measure, counsel for the accused may request the competent court of first instance to order its execution. The court shall issue an appropriate ruling within 48 hours. If it considers that the measure is reasonable, it shall order the Prosecution Service to take the requisite action. The person being investigated by the Prosecution Service has the right, even without having the status of an accused person, to appear before the Prosecution Service, with or without the assistance of counsel, to comment on the allegations and to have his or her version of the facts heard. The National Police Force, the Prosecution Service and the courts shall inform the accused, or a person who has not yet acquired that status but who, being under investigation, appears before the Prosecution Service for a hearing,

immediately and in comprehensible terms, of all the rights referred to in this article. This shall be stated in the record, which shall be signed by the person who has appeared or shall record his or her refusal to sign. If this article is breached, the detention shall be considered illegal, solely for the purposes of criminal responsibility.

57. To safeguard these rights, the National Commissioner for Human Rights, with the aim of standardizing data concerning conditions in the country's prison facilities and police holding centres since 2003, designed an inspection procedure to be followed by every delegation conducting inspections. Visits are made at least twice a month to inspect physical and sanitary conditions and hygiene, education, management conditions, punishment cells, food quality, medical services and enjoyment of sexual rights. Complaints are automatically filed regarding every irregularity noted and steps are taken to ensure that the competent authorities restore the rights that have been violated. Provision is made for oversight of compliance with the recommendations¹⁰.

58. With the same end in view, the Public Prosecution Service conducts regular inspections through the Special Human Rights Prosecutor's Office, in coordination with the Centre for the Prevention, Treatment and Rehabilitation of Torture Victims and their Relatives (CPTRT), of both police holding centres and prison facilities in order to check conditions of detention and the treatment of detainees (food, medical services, etc.). They also check whether the places of detention meet basic infrastructural, health and sanitary requirements. The inspections are carried out without prior notification and independently of the procedure for consideration of complaints submitted to the institution.

59. Emergency or counter-terrorist legislation that may limit the safeguards enjoyed by detainees is contained in Chapter III, articles 187 and 188, of the Constitution of the Republic entitled "Concerning the Restriction or Suspension of Rights". Pursuant to this legislation, the exercise of the following rights – inviolability of personal liberty, incommunicado detention for not more than 24 hours, the right to freedom of expression, the right to association and assembly, freedom of movement and residence, the right to protection against arbitrary detention, the right to release on bail, the inviolability of the home (house searches) and the right to property, in the event of an invasion of the national territory, a serious breach of the peace, an epidemic or any other public disaster – may be suspended by the President of the Republic, with the consent of the Cabinet, by a decree which shall set forth: (a) the grounds warranting the suspension; (b) the guarantee or guarantees that are being limited; (c) the territory affected by the restriction; and (d) the duration thereof. The same decree shall convene the National Congress within thirty days so that it can take note of the said decree and ratify, amend or reject it. If Congress is already in session, it shall consider the decree at once. The period during which guarantees are restricted shall not exceed 45 days for each decree. If the motives for the decree disappear before the expiry of the period set for the restriction, it shall cease to be effective and any member of the public is entitled under such circumstances to file an application for the decree to be reviewed. Once the period of 45 days has expired, the guarantees shall be automatically restored, unless they have been restricted by a new decree. The decreed restriction of guarantees shall in no way

¹⁰ See Annex II, inspection procedures of the National Commissioner for Human Rights and the Public Prosecution Service.

affect the functioning of State agencies, whose members shall continue to enjoy the immunities and prerogatives conferred on them by law.

60. The territory in which guarantees have been suspended under the aforementioned article shall be governed during the suspension by the State of Siege Act, but neither that Act nor any other legislative enactment may be invoked to suspend guarantees other than those mentioned. No action may be taken either during the suspension to establish new offences or to impose different penalties from those already prescribed under the laws in force when the suspension is decreed.

(i) Subparagraph (b)

61. The State of Honduras has taken significant steps to ratify relevant international treaties, for instance those concerning the adoption of legal provisions that not only grant and guarantee rights to persons deprived of their liberty, but also prohibit and punish all acts of torture. We note with great concern, however, that torture has not been eradicated, since there are frequent complaints of the commission of such offences by the police authority, which is responsible for the custody of such persons.

62. One of the reasons for the failure to eradicate torture is impunity, which stems from weakness of the investigation process because the Public Prosecution Service, as the authority responsible for bringing public prosecutions, currently has no police investigation body under its control. As matters stand, the Criminal Investigation Department is administratively part of the Office of the Minister of Security and functionally part of the Public Prosecution Service. The National Congress, being aware of this problem, is currently discussing the establishment of a special investigatory police force attached to the Public Prosecution Service.

2. Paragraph 2

63. Under the Constitution of the Republic, the right to respect for a person's physical, mental and moral integrity is inviolable and cannot be restricted under any circumstances, since it is not included among the rights listed in aforementioned article 187, which permits the temporary restriction or suspension of other rights in the event of the declaration of a state of siege.

3. Paragraph 3

64. With regard to the legislation prohibiting the invocation of an order from a superior officer as a justification for torture, article 323 of the Constitution of the Republic stipulates that officers are vested with authority, legally responsible for their official conduct, subject to the law and never above the law. It follows that no civilian or military officer or employee is required to obey orders that are illegal or that entail the commission of an offence.

65. Furthermore, article 24, paragraph 6, of the Criminal Code stipulates that the following shall be exempt from criminal responsibility: "Anyone who performs an act of due obedience provided that the following conditions are met: (a) that the order is issued by a competent authority; (b) that the official is under an obligation to act upon it; (c) that the act or omission that has been ordered does not violate or restrict the exercise of the rights enshrined in the Constitution of the Republic and in the international human rights treaties to which Honduras

is a party.” Similarly, article 23 of the Constitutional Justice Act requires wardens, chiefs, supervisors and subordinate staff of an establishment or other place in which persons are detained, imprisoned or deprived of their liberty to report immediately any act requiring the personal appearance of the detainee or prisoner before any of the judicial bodies provided for by law. The Act further states that the fact that the order in question was issued by a superior officer does not release a person from the obligation to report it.

66. Issuing an order to commit acts of torture may be characterized as the offence of abuse of authority and as a violation of the duties of officials, as set out in article 249, paragraph 2, of the Criminal Code, which states that such wrongful acts are committed by: “... An officer who issues or executes orders, judgements, decisions, resolutions, agreements or decrees that are contrary to the Constitution of the Republic or the law, or who refrains from complying with the provisions of any such legal provisions...” Furthermore, article 22, paragraph 2(ch), of the National Police Force Organization Act stipulates: “When orders or actions entail the commission of offences or misdemeanours or when they are contrary to the law, due obedience may not be invoked under any circumstances as a ground for exemption from or mitigation of criminal responsibility, especially when they involve acts of torture or cruel, inhuman or degrading treatment.”

67. It may be stated, in the light of the above-mentioned legal provisions, that while due obedience certainly exists as a circumstance mitigating criminal responsibility in Honduran legislation, it is not applicable to cases of torture, since one of the conditions for its application is that the act or omission ordered did not violate or restrict the exercise of the rights and guarantees enshrined in the Constitution of the Republic and the international human rights treaties to which Honduras is a party, such as, in particular, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the American Convention on Human Rights and the International Covenant on Civil and Political Rights, which expressly prohibit torture. It follows that any subordinate may refuse to commit acts of torture, with the backing of the Constitution of the Republic and the Criminal Code.

68. In the case of the police and armed forces, a remedy available to any person refusing to comply with an illegal order is the filing of a complaint with the National Commissioner for Human Rights (CONADEH). If the Commissioner decides, on completing an investigation, that there is evidence of an offence, he or she will bring the matter to the attention of the Chief Public Prosecutor so that the appropriate criminal proceedings may be instituted (art. 40 of the CONADEH Organization Act). In the case of the armed forces, the procedure or remedy consists in filing a formal complaint with the Army High Command or instituting criminal proceedings before the military courts. The police may also complain directly to the Special Human Rights Prosecutor’s Office, a branch of the Public Prosecution Service.

C. Article 3

69. The current legislation regarding the expulsion, refoulement or extradition of a person to a State in which he or she may be subjected to torture is contained in the Constitution of the Republic and in the Migration and Aliens Act and its Regulations. Thus, article 101 of the Constitution of the Republic states: “Honduras recognizes the right to asylum in the form and subject to the conditions laid down in the relevant legislation. When it is legally appropriate to revoke or not to grant asylum, a fugitive from political persecution or a refugee may not, under

any circumstances, be expelled to the State demanding his or her return. The State shall not authorize the extradition of persons accused of political and related offences.”

70. Article 102 of the Constitution stipulates with respect to the extradition of nationals: “No Honduran may be expatriated or handed over by the authorities to a foreign State.” Any official or employee who orders, executes or consents to the expatriation of a Honduran national is punishable under the Criminal Code with a term of imprisonment and a fine.

71. According to the Migration and Aliens Act, no person or group of persons belonging to the category of refugees, stateless persons or migrant workers shall be obliged under any circumstances to return to a country in which their rights might be jeopardized. It is also prohibited to return an asylum-seeker or a refugee from the frontier, port or airport on arrival or once the person concerned has entered Honduran territory. With regard to the resettlement of refugees in a third country or their repatriation to their country of origin, the Migration and Aliens Department is required to coordinate such actions with the Office of the United Nations High Commissioner for Refugees and other relevant authorities.

72. Persons awaiting recognition of their refugee status or persons who have acquired such status shall not be deported or expelled from the national territory save on clearly substantiated grounds of security or public order. Asylum-seekers shall not be subjected to pecuniary or other penalties for irregular entry into or residence in the national territory. They shall also be exempt from the fees payable for immigration procedures and services and from airport taxes¹¹.

73. In accordance with the Constitution of the Republic of Honduras, there is no exception to the prohibition of expulsion, refoulement or extradition of a person to a State where he or she might be tortured, since it is not included among the rights listed in aforementioned article 187, which permits the temporary restriction or suspension of other rights in the event of the declaration of a state of siege.

74. The Criminal Chamber of the Supreme Court of Justice hears cases of extradition and other cases to be adjudicated in accordance with international law, as set forth in treaties and conventions to which Honduras is a party¹².

75. The Migration and Aliens Department at the Office of the Minister of the Interior and Justice is responsible for applying the Migration and Aliens Act and its Regulations and for implementing the Government’s immigration policy. It is therefore responsible for ordering deportation where such action is legally appropriate.

76. The courts of the Republic have jurisdiction to hand over foreigners who have been convicted of an offence during their stay in the country to the immigration authorities for their deportation or expulsion once their sentence has been served.

¹¹ See Annex II, art. 51, Migration and Aliens Act.

¹² See Annex II, art. 313, para. 4, of the Constitution of the Republic: jurisdiction of the Supreme Court of Justice.

77. The following remedies are available against these decisions under the Administrative Procedure Act:

- (a) Remedy of reconsideration: an application for reconsideration may be filed against an administrative decision handed down at first or second instance with the body that issued the decision;
- (b) Remedy of appeal: an appeal petition may be filed with the body that took the contested decision, which will refer it to a higher body, together with the case file and its report, within five days;
- (c) Remedy of judicial review: an extraordinary petition for review of final decisions may be filed under any of the following circumstances: (i) where the decision was based on a clear and manifest error of fact that had a bearing on the merits, provided that the error in question is clearly demonstrated in the documents substantiating the petition; (ii) where, after adoption of the decision, vital documents come to light which were overlooked, owing to circumstances beyond the control of the body taking the decision, or because they could not have been included at the time in the petition; (iii) where the decision was based on a document which, at the time of adoption of the decision, unbeknown to the parties concerned, had been recognized and declared to be a forgery in a final judicial ruling, or on a document which was subsequently recognized or declared to be a forgery; (iv) where, after a decision was adopted on the basis of witness statements, the witnesses concerned were convicted in a final judgement of giving false testimony in the statements that served as a basis for the decision; (v) where the decision was rendered on the basis of malfeasance, bribery, violence or any other fraudulent procedure, and where this fact was confirmed in a final judicial ruling¹³.

78. Article 4 of the Migration and Aliens Act includes among the powers of the Ministry of the Interior and Justice a procedure known as “migratory amnesty”, which consists in granting a “pardon” in the area of immigration for failure to comply with the obligations laid down in the Migration and Aliens Act and extraordinary deadlines for regulating migratory situations (art. 3, of the Act). This “pardon” is requested by the foreign national who committed an offence for which he or she was expelled or deported from the country (art. 4, para. 9, of the Act).

79. The criteria applicable to extradition are laid down in article 91 of the Migration and Aliens Act, which stipulates: Responsibility for handing over or receiving persons extradited in accordance with the law and international treaties ratified by the State of Honduras shall lie with the Office of the Minister for the Interior and Justice in coordination with the Office of the Minister for Foreign Affairs and other relevant authorities. In the event of extradition of a foreign resident, the Office of the Minister for the Interior and Justice shall first annul the residence permit. The Supreme Court of Justice shall deal with requests for extradition, and shall base its reasoning on the provisions of the treaties that Honduras has signed which include torture as an offence giving rise to extradition, citing the following treaties:

¹³ See Annex II, arts. 137, 139 and 141, of the Administrative Procedure Act.

- (a) The Extradition Treaty between the Governments of the Republics of Honduras, Costa Rica, Guatemala, Nicaragua and El Salvador;
- (b) The Treaty between the Government of the Republic of Honduras and Mexico;
- (c) The Extradition Treaty between the Republic of Honduras and the United States of America;
- (d) The Convention on Extradition signed at the Seventh International Conference of American States;
- (e) The Extradition Treaty between Washington and the five Central American republics;
- (f) The Extradition Treaty between the Republic of Honduras and the Kingdom of Spain;
- (g) The Rome Statute of the International Criminal Court¹⁴.

80. In accordance with article 88 of the Migration and Aliens Act, the Migration and Aliens Department shall deport foreigners in any of the following circumstances: (a) when they enter or reside in the country with forged documents without prejudice to any relevant criminal proceedings; (b) when they remain in the country although their residence permit has been annulled; (c) when they entered the country illegally or without complying with the rules laid down in this Act or its Regulations concerning the admission of foreigners; and (d) when they remain in the country beyond the authorized period of residence. In such cases, however, the Migration and Aliens Department may commute deportation to a pecuniary sanction without prejudice to the option to extend the residence permit for the additional period permissible under the Act or its Regulations. The pecuniary sanction mentioned in the preceding paragraph shall be applicable to each excess month and the amount calculated shall be equivalent to 10 per cent of the highest minimum wage corresponding to the relevant branch of employment.

81. The Migration and Aliens Act requires the Office of the Minister of the Interior and Justice to order the expulsion of foreigners in the following cases: (a) persons convicted of crimes, once they have served the sentence or have obtained a commutation; (b) persons engaged in illicit activities or activities that are not authorized by their entrance or residence permit; (c) persons who jeopardize the health, economy, environment, international peace and good international relations of Honduras with other friendly countries; (d) persons who participate in movements of any kind that use or promote violence to achieve their aims or in riots or disorderly assemblies, or who in any way promote or incite national or international armed conflicts, social instability, disorder, law-breaking or social or political unrest; (e) persons who enter the country, concealing the fact that they have been expelled from Honduras; (f) persons who maliciously use or assume a migratory status that is different from that granted by the Honduran immigration authorities; (g) persons who have fraudulently obtained a residence permit or naturalization card or whose naturalization card has been cancelled; and (h) persons who engage in activities other than those authorized or who fraudulently practise a profession or discharge an office¹⁵.

¹⁴ See Annex II, extradition treaties.

¹⁵ See Annex II, art. 89, of the Migration and Aliens Act.

82. The Migration and Aliens Act lays down rules governing rejection, which is immediate and occurs in the following cases: (a) when a person fails to meet admission requirements and does not possess the immigration documents required by this Act; (b) where admission is prohibited by order of the competent authority; (c) when a person falls into one of the categories listed in article 81 of this Act; (d) when a person is found attempting to enter the country through an unauthorized port of entry or is seeking to evade the relevant immigration control; and (e) when a person has been deported or expelled from the country and has not obtained a re-entry permit from the competent authority¹⁶.

83. Article 36 of the National Police Force Organization Act provides for the establishment of the Immigration and Border Police Force, attached to the Special Investigation Services Department, to support and coordinate activities with the Migration and Aliens Department, which is solely and exclusively responsible for migration oversight in respect of nationals and foreigners, in keeping with the provisions of the Migration and Aliens Act.

84. The Office of the Minister of the Interior and Justice, acting through the Migration and Aliens Department, systematically organizes training courses in fundamental rights for employees and officials responsible for implementing this body of rules. The training is conducted jointly with the Honduras Bureau of the Office of the United Nations High Commissioner for Refugees, the International Organization for Migration (IOM) and the country's human rights institutions.

D. Article 4

85. Honduras incorporated the crime of torture in its Criminal Code in 1996. The definition of the crime covers persons acting in an official capacity who, with a view to obtaining information or a confession, subject the person to conditions or procedures which, by virtue of their nature, duration or other circumstances, lead to physical or mental suffering, the deprivation or diminution of the person's consciousness, discernment or decision-making faculties or inflict any other form of mental injury. Under the Code, persons guilty of this type of crime are punishable by a term of imprisonment of between 10 and 15 years if the resulting damage is severe and of between 5 and 10 years if it is not. They are furthermore subject to general disqualification for a period equal to double that of the term of imprisonment, an accessory penalty that prevents the person convicted of this crime from discharging official duties. When the crime of torture is committed by individuals, the aforementioned penalties are reduced by one third. These penalties are without prejudice to such other penalties as may be applicable in respect of injuries or damage to the life, physical integrity, health, sexual freedom or property of the victim or a third party.

86. Any person in a position of authority or any public official or employee who threatens another person with physical or mental violence in order to obtain a confession to a particular crime or for some other similar reason, shall be punishable by a term of imprisonment of

¹⁶ See Annex II, art. 87, of the Migration and Aliens Act.

between three and six years and shall be subject to general disqualification for a period equal to or double that of the term of imprisonment¹⁷.

87. Moreover, any public official or employee who subjects persons in his or her custody to ill-treatment or illegal harassment shall be punishable by a term of imprisonment of between three and six years, a fine of between 50,000 and 100,000 Honduran lempiras and general disqualification for a period equal to double that of the term of imprisonment¹⁸.

88. Any member of the armed forces who, when carrying out an order or instruction, subjects any person to unwarranted ill-treatment shall be punishable with the minimum term of imprisonment (between 61 days and a year), unless the act constitutes a more serious offence¹⁹.

89. With regard to the existence of the crime of torture within the armed forces, it should be noted that compulsory military service was abolished in 1994 and replaced by voluntary military service based on educational and humanist principles and professionalism. Absolute respect for human rights is required as part of the military career. There have been a few cases in which a superior officer used excessive force against a subordinate. The officers in question are immediately arraigned before the military courts of first instance, which are located in the Municipality of the Central District, Choluteca, Comayagua, La Paz, Santa Rosa de Copán, San Pedro Sula, La Ceiba, Danlí, Olancho and Puerto Lempira, which try them for the offence of abuse of authority. When members of the armed forces are tried by one of these military courts of first instance, they are dismissed or suspended if the acts perpetrated are strictly related to their office.

90. The Honduran legal system provides for statutory limitations in respect of all offences, in accordance with article 97 of the Criminal Code. The statutory limitation period for the crime of torture and for associated criminal proceedings is a period equal to the maximum duration of the penalty applicable to the crime, increased by one half. The statutory limitation period applicable to offences and criminal proceedings begins to run on the date on which the offence was committed, and, in the case of ongoing offences, from the date on which the last act was committed or the last proceedings were conducted. In the case of an attempt, the period begins to run on the date on which the perpetration of the offence was suspended. It should be borne in mind, however, that the statutory limitation period is increased, pursuant to a constitutional provision, in the case of public officials; thus, article 325 of our basic law provides that the statutory limitation in those cases is double the period prescribed under the Criminal Code and begins from the date on which the public official left the office in which he or she incurred criminal responsibility. There is no statute of limitations in cases in which the death of one or more persons is caused by a wilful act or omission for political motives. When the offender appears or is turned in after half of the period required for the statutory limitation concerning the criminal act or penalty to come into effect has elapsed, the court shall take that period of time

¹⁷ See Annex II, art. 209, of the Criminal Code.

¹⁸ See Annex II, art. 333, para. 3, of the Criminal Code.

¹⁹ See Annex II, art. 218, of the Military Code.

into account and reduce the penalty prescribed or that imposed in the sentence by between one third and one half²⁰.

91. According to the statistics provided by the judiciary for the period running from 2003 until July 2007, seven judgements were handed down for the crime of torture, of which three resulted in a stay of proceedings and one in a dismissal of the case. Two of the three remaining cases resulted in convictions and a final decision is still pending in the third case.

92. We found on reviewing the final judgements that led to a stay of proceedings and to dismissal that the rulings were based on the failure to demonstrate that the crime had occurred. For example, in the investigation conducted in the case of the police officer Elvin Humberto Montoya Valladares in Unión Municipality, Olancho Department, in 2005, it was found that the light injuries sustained by the alleged victim were due to struggles and that there was no proof of the commission of the crime of torture. As a result, the court, acting strictly in accordance with the law and respecting the principles of legality and due process, decided to stay the proceedings.

93. The following may be stated with regard to the convictions:

- (a) In the town of San Pedro Sula, Cortés, in 2003, the investigating officers Rafael Jonatán Gálvez Carias, Walter Ratliff Juárez and Oscar René Ríos were sentenced to prison terms of five years for having committed the crime of torture against Rubén Darío Martínez. The judgement was appealed and a final judgement upholding or quashing that decision is pending before Alzada Court;
- (b) In 2005, in the town of Choluteca, the police officers Israel Alvarado Chirinos and Julio Ronmies Muñoz Aguiire were sentenced in strict conformity with the law to prison terms of four and five years respectively for committing the crime of wrongful detention and torture against Julián Martínez, Liborio Carranza, Santos Ramos and Gregorio Herrera²¹;
- (c) The judgement rendered on 25 September 2006 by the Sentencing Court of San Pedro Sula, Cortés, in the case against two police officers: Oscar Armando Gámez Bonilla and Roger Javier Matute Fonseca. Oscar Armando Gámez Bonilla was convicted of multiple crimes and sentenced to a prison term of 12 years and 5 months for the crime of wrongful detention and torture in the case of Juan Manuel Aguilar Martínez and Marvin Daniel Ortiz Manjívar; to a term of 15 years for simple homicide in the case of Juan Manuel Aguilar Martínez; and to a term of 20 years for murder in the case of Marvin Daniel Ortiz Manjívar. The cumulative sentences handed down amounted to 47 years and 5 months. Roger Javier Matute Fonseca was convicted as an accomplice and sentenced to a prison term of 6 years and 6 months for the crime of torture in the case of Juan Manuel Aguilar Martínez and Marvin Daniel Ortiz Manjívar; to a term of 10 years for simple homicide in the case of Juan Manuel Aguilar Martínez; and to a term of 13 years and 4 months for murder in the case of Marvin Daniel Ortiz Manjívar. The cumulative sentences in his case amounted to 29 years and 10 months. Both officers were also sentenced to accessory

²⁰ See Annex II, art. 104, of the Criminal Code.

²¹ See Annex II, art. 322, para. 1, of the Code of Criminal Procedure.

penalties of general disqualification and deprivation of civil rights for a period equivalent to the main sentence and also to public work or work within the prison facility in accordance with the law governing the national prison system. The civil liability of the convicted persons was declared²².

94. With regard to the disciplinary measures applicable to law enforcement officers during the investigation of an alleged case of torture, article 85, paragraph 2, of the National Police Force Act stipulates that “any conduct characterized by the law as a criminal offence shall be treated as a serious misdemeanour”; as torture is so defined in our Criminal Code, any official who is charged with committing torture is punishable not only by the penalty applicable under the Criminal Code but also by the penalty prescribed under the National Police Force Act, article 86, of which states that the perpetrator of a serious misdemeanour shall be suspended forthwith as a provisional precautionary measure. Furthermore, article 82 of the same Act stipulates that an officer who commits serious misdemeanours loses the right to promotion and that the commission of very serious misdemeanours entails dismissal from the force.

95. It is important to note that Honduran legislation takes account of the serious nature of the crime of torture, as reflected in the penalty of between 10 and 15 years of imprisonment that it prescribes. Further penalties are applicable for other offences involved in the commission of the crime of torture such as injuries, or damage to the life, physical integrity, health, sexual freedom or property of the victim or a third party.

E. Article 5

96. With regard to the measures taken to establish jurisdiction in the cases envisaged in article 5, subparagraphs 1(a), (b) and (c), of the Convention, article 3 of the Criminal Code stipulates that criminal legislation is applicable to any person who commits a punishable act in the national territory and in other places subject to the jurisdiction of Honduras, save where exceptions are laid down in international law. Furthermore, the 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: (a) where the person concerned has not been tried for an offence committed on board a merchant or private Honduran ship or aircraft or where, having been tried, the person has escaped and failed to serve the whole or part of the sentence imposed; (b) where the accused is a Honduran and his or her extradition has been requested by the State in whose territory the punishable act was committed; (c) where the offender is a Honduran Government official and enjoys diplomatic or official immunity; (d) where a person who has committed an offence against a Honduran national has not been tried in the country in which the offence was committed, where his or her extradition has not been requested, or where, having been tried, he or she has escaped and failed to serve the whole or part of the sentence imposed; and (e) where, pursuant to the international treaties to which Honduras is a party, the offence is subject to Honduran criminal legislation for reasons different from those just mentioned, or seriously violates universally recognized human rights. Preference shall be given, however, to

²² See Annex II, judgements concerning the crime of torture handed down by the Supreme Court of Justice.

the claim of the State in whose territory the punishable act was committed, so that this claim shall be enforced before criminal jurisdiction is exercised by the competent Honduran court²³.

97. With regard to the measures taken to establish jurisdiction in cases where the alleged offender is in the territory of the State presenting the report and that State refuses extradition to a State with jurisdiction over the said offence, it may be noted that: where the person who is guilty of the crime of torture is a Honduran, article 102 of the Constitution of the Republic stipulates that “No Honduran may be expatriated or handed over by the authorities to a foreign State”, so that he or she may not be extradited to any State claiming jurisdiction over the offence; it follows that there are no cases in which subparagraphs 1(b) and (c) of article 5 of the Convention have been applied.

98. The Criminal Code provides for an exception to the application of territorial jurisdiction under our criminal legislation in the case of foreign leaders present in our national territory, diplomatic agents and other persons who enjoy immunity under international law²⁴.

99. The Criminal Code stipulates that foreign criminal convictions in respect of the offences characterized in article 3 (when the offence is committed in Honduran territory) and article 4 (crimes against public health, public confidence, the economy or the internal or external security of the State) shall not have the status of *res judicata* under Honduran law. However, any sentence served wholly or partially by the offender for such convictions shall be taken into account in assessing the sentence to be imposed under Honduran law if the two are similar; if they are not, provision shall be made for a reasonable mitigation of the penalty. Apart from the aforementioned cases, foreign acquittals in criminal cases shall be regarded, to all legal intents and purposes, as *res judicata*. Convictions shall be taken into account in the case of repeat or habitual offenders and in civil proceedings resulting from the judgement, which shall be governed by Honduran law²⁵.

100. According to research conducted by the Supreme Court of Justice, no extradition request concerning the crime of torture has been received to date from countries with which we have signed this type of treaty.

F. Article 6

101. The Honduran State has the power to take into custody a person who has committed the crime of torture pursuant to the Convention, a treaty of mutual cooperation with another country or domestic legislation. The detained person shall enjoy all the rights recognized by our legislation and by the international human rights treaties to which Honduras is a party.

102. The following are the relevant provisions of domestic law: article 172 of the Code of Criminal Procedure stipulates that the purpose of precautionary measures is to ensure the efficiency of the proceedings by guaranteeing the presence of the accused and orderly access to

²³ See Annex II, art. 5, of the Criminal Code.

²⁴ See Annex II, art. 8, of the Criminal Code.

²⁵ See Annex II, arts. 6 and 7, of the Criminal Code.

sources of evidence. The following conditions must always be met when taking a protective measure aimed at restricting personal liberty: (a) there must be sufficient evidence to reasonably infer that the accused is the perpetrator of, or has participated in, an act characterized as an offence; (b) the accused has fled from justice or there are substantiated grounds to fear that he or she might flee if left at liberty; and (c) there are substantiated grounds to fear that, if left at liberty, the accused might seek to destroy or tamper with sources of evidence. Furthermore, article 173 of the Code of Criminal Procedure stipulates that the judicial body may, provided that the relevant legal conditions are met, take one or more of the following precautionary measures based on a reasoned decision: (a) apprehension or arrest; (b) pre-trial detention; (c) pre-trial imprisonment; (d) house arrest in the suspect's own home or in that of another consenting person, with or without surveillance; (e) placement in the care or under the surveillance of a particular person or institution that submits regular reports to the court; (f) the accused may be required to report regularly to a specific court or authority specified by the judicial body; (g) the accused may be prohibited from leaving the country, his or her place of residence or a part of the territory specified by the judicial body; (h) the accused may be prohibited from attending certain meetings or from going to specific places; (i) the accused may be prohibited from communicating with certain persons, provided that such prohibition does not affect his or her right of defence; (j) provision by the accused or another person of any of the following surety guarantees to the State: a deposit of money or securities, a mortgage security or a pledge or personal recognizance; (k) provisional confinement, on the basis of an expert opinion, in a psychiatric establishment; (l) suspension from office when the accused is suspected of having committed a public administration offence. The same article states that, for the purposes of the investigation, the Public Prosecution Service may, in cases of urgent necessity where judicial authorization cannot be obtained, take one or more of the precautionary measures envisaged in paragraphs 1, 2, 7, 9 and 11 of the article. It shall immediately inform the judicial body thereof, stating the reasons that prevented it from obtaining such authorization. The judicial body, having heard the accused and his or her counsel, shall endorse or annul the steps taken by the Public Prosecution Service.

103. Article 82 of the Constitution of the Republic of Honduras recognizes the right of detainees to have the assistance of counsel. It stipulates that "the right to present a defence is inviolable". Moreover, article 83 states: "The State shall appoint counsel to defend persons who are destitute, minors and persons without legal capacity." These rights are further developed in article 101 of the Code of Criminal Procedure cited above.

104. The authorities responsible for implementing the various components of article 6 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are: the judiciary, through the trial courts and the Public Defence Department; the Public Prosecution Service; the Office of the Minister of Security, through the Preventive Police Force Department, the Special Investigation Services Department, the Criminal Investigation Department and the Special Preventive Services Department; the Office of the Minister of the Interior and Justice, through the Migration and Aliens Department; the National Commissioner for Human Rights; and the Honduran Child and Family Institute (IHNFA).

105. In most legal proceedings concerning the crime of torture, when an arrest warrant is issued for the alleged perpetrators, pre-trial detention is also ordered as a precautionary measure, since it is virtually always warranted by the seriousness of the offence.

G. Article 7

106. With regard to provisions aimed at guaranteeing fair treatment of the alleged offender, article 15 of the Code of Criminal Procedure stipulates: “Technical assistance and defence. Everybody has the right to the technical assistance and defence of a legal professional, from the time of his or her arrest as an alleged participant in an offence, or from the time when he or she voluntarily makes a statement, until the final judgement has been rendered. If the accused does not appoint counsel, the judicial authority shall immediately request the public defence system to appoint one or shall appoint counsel itself. This right cannot be waived. Any violation thereof shall render absolutely void any proceedings that occur without the participation of counsel for the accused.”

107. The Public Defence Service was established on 15 May 1989 as an experimental judicial project funded by the United States Agency for International Development (USAID). In 1990 the project was converted into a permanent State service attached to the judiciary. Its purpose is to ensure compliance with article 83 of the Constitution, which requires the State to guarantee the defence of destitute persons facing legal proceedings, making available the services of a public defender. There were initially nine defenders, and as the institution was consolidated more public defenders were recruited to meet the demand of clients. There are now 233 public defenders in the offices of the Public Defence Service throughout the country, which corresponds to one public defender for every 31,618 inhabitants in a total population of 7,367,012, the figure recorded for Honduras in 2006. The Public Defence Service is currently organized as follows: a Directorate and Sub-Directorate, both with countrywide jurisdiction, and four Regional Coordinating Offices, each of which is run by a Coordinator, in the cities of Tegucigalpa, San Pedro Sula, Santa Rosa de Copán and Ceiba. They operate on a rota system and serve police stations, criminal courts of first instance, and courts for children and adolescents.

108. With regard to the presumption of innocence, article 89 of the Constitution of the Republic states: “All persons are innocent until they have been declared responsible by a competent authority.” This article is further developed in article 2 of the Code of Criminal Procedure (Presumption of innocence), which states: “An accused person shall be presumed and treated as innocent until he or she is found guilty by the competent judicial body in accordance with the rules laid down in this Code. It follows that, until such a finding is made, no authority may hold a person to be guilty or present him or her as such before third parties. Statements shall therefore be confined to a description of the offences of which he or she is suspected. Any person breaching the provisions of the preceding paragraph shall be required to compensate the victim for the damage caused. Such damages shall be claimed in civil proceedings, without prejudice to criminal or administrative responsibility, where appropriate.”

109. With regard to the right to equality before the courts, articles 60 and 61, of the Constitution of the Republic guarantee such equality as follows: “all persons are born free and equal in terms of rights. There are no privileged classes in Honduras.” Article 61 stipulates that: “The Constitution guarantees to Hondurans and foreigners resident in the country the inviolable right to life, the right to individual security, liberty and equality before the law, and the right to property.” Furthermore, article 101 of the Code of Criminal Procedure guarantees the rights of all accused persons, without differentiating between nationals and foreigners; and article 13 (Equality of parties) stipulates: “The courts and judges shall ensure effective equality for all parties to legal proceedings.”

110. In cases in which the alleged offender is a foreigner who has committed acts of torture abroad, article 5 of the Criminal Code provides that: “The Honduran courts shall also deal with offences committed abroad when the accused is present in Honduras and one of the following conditions is met: (a) where the person concerned has not been tried for an offence committed on board a merchant or private Honduran ship or aircraft or where, having been tried, the person has escaped and failed to serve the whole or part of the sentence imposed; (b) where the accused is a Honduran and his or her extradition has been requested by the State in whose territory the punishable act was committed; (c) where the offender is a Honduran Government official and enjoys diplomatic or official immunity; (d) where a person who has committed an offence against a Honduran national has not been tried in the country in which the offence was committed, where his or her extradition has not been requested, or where, having been tried, he or she has escaped and failed to serve the whole or part of the sentence imposed; and (e) where, pursuant to the international treaties to which Honduras is a party, the offence is subject to Honduran criminal legislation for reasons different from those just mentioned, or seriously violates universally recognized human rights. Preference shall be given, however, to the claim of the State in whose territory the punishable act was committed, so that this claim shall be enforced before criminal jurisdiction is exercised by the competent Honduran court.”

111. The institutions that implement criminal justice include training activities in their annual operational plans which are carried out within and among the institutions with a view to ensuring that all officials respect constitutional rights and guarantees when performing the duties entrusted to them. To that end, the Inter-Agency Criminal Justice Commission, composed of a number of institutions responsible for implementing criminal justice, was established. It adopted a “Joint Training and Instructor Training Programme” with a view to ensuring uniformity of criteria and the integrity of criminal proceedings. Priority is given in these programmes to the subject “Substantive criminal law” involving analyses of every component of the various types of criminal offence, including torture under article 209-A.

112. The Inter-Agency Criminal Justice Commission, established when the Code of Criminal Procedure entered into force, is regulated by the Special Act concerning transition and inter-agency oversight of the criminal justice system, promulgated by Decree No. 31-2002. The Inter-Agency Criminal Justice Commission is composed of the following State institutions: the Supreme Court of Justice, represented by its President and the judges of the Criminal Chamber; (b) the National Congress of the Republic, represented by a member appointed by the President of Congress; (c) the Chief Public Prosecutor or, in his or her absence, the Deputy Chief Public Prosecutor; (d) the Office of the Attorney-General, represented by the Attorney-General or his or her legal substitute; (e) the President of the Higher Audit Court; (f) the National Public Defence Directorate, represented by its Director; (g) the Directorate of Public Prosecutions, represented by the Director; (h) the legal advisors who have served as ad hoc members of the Inter-Agency Criminal Justice Commission²⁶.

113. In the context of inter-agency action to enhance the protection of human rights in 2006, the Commission elaborated a Human Rights Training Module and, during the first stage of its implementation in 2007, organized the Consultancy on Technical Assistance and Training in Human Rights and Access to Justice. The preparation and drafting of the technical documents for

²⁶ See Annex II: Inter-Agency Agreement of the Criminal Justice Branch.

the consultancy were coordinated in the first half of 2007. Administrative steps are currently being taken to have them submitted to the Managerial Team prior to their adoption by the Administrative Plenary of the Judiciary. The consultancy will involve approval of the Training Module prepared for the launching of the Inter-Agency Plan for Joint Training and Instructor Training in Human Rights, which is to be used to train judicial staff, to comply with the judgement of the Inter-American Court of Human Rights requiring police officers and prosecutors to be trained in human rights, to prepare a pedagogically designed self-training manual, and to produce a compendium of the jurisprudence of the Inter-American Court of Human Rights. In November 2007 the consultancy was launched, beginning with the pre-classroom stage during which the International Consultant of the Republic of Costa Rica supplemented the Training Module with material on special protection for children in Honduras, in the light of the judgement of the Inter-American Court of Human Rights of 21 September 2006. In the second week of January the classroom phase was begun. It includes endorsement of the additions made during the non-classroom stage; a human rights teacher training course followed by an evaluation; the elaboration of a training plan and programme for a group of inter-agency participants in Tegucigalpa and San Pedro Sula; training of the specialized inter-agency working group on follow-up to cases brought against Honduras; organization of a workshop to review and analyse proceedings currently under way against Honduras; elaboration of the first draft of the self-training manual to illustrate the content of international treaties in graphic form; elaboration of a compendium of national and international jurisprudence in the area of human rights; and, lastly, endorsement of the material produced by the workshop.

114. With a view to guaranteeing the right to the presumption of innocence and other basic rights, it was agreed as an eminently practical measure aimed at ensuring a smooth flow of information between the institutions represented in the Commission to set up the “Integrated Centres for Inter-Agency Work Processes”. The Centres are designed to ensure that the police, the Public Prosecution Service, and the public defence and forensic medicine services are located in the same area and all enjoy the technical and logistical support required to respond immediately and effectively to complaints of alleged acts of torture and other acts. The Centres operate in the following cities: Tegucigalpa, San Pedro Sula and La Ceiba. This service is provided on a 24-hour shift basis on both working and non-working days by an inter-agency team composed of prosecutors, public defenders, forensic doctors and the Criminal Investigation Department.

115. Acting in pursuance of article 23 of the Code of Criminal Procedure, the Supreme Court of Justice has issued binding regulations and instructions to criminal justice officials aimed at facilitating the implementation of the Code of Criminal Procedure. They include, for instance: (a) Regulations governing the handling of evidence obtained as a result of the commission of an act constituting an offence; (b) Instructions for the running of the Integrated Centres; (c) Instructions for undercover agents (special investigation techniques).

116. No cases were recorded, prior to the date of preparation of this report, of foreigners who had committed the crime of torture in Honduras or had been tried for such a crime in the country.

H. Article 8

117. Article 102 of the Constitution of the Republic stipulates that: “No Honduran may be expatriated or handed over by the authorities to a foreign State.” Similarly, article 10 of the

Criminal Code states that: “In no case shall an extradition request be granted in respect of Hondurans who, having committed an offence abroad, are present in the national territory. An extradition request in respect of foreigners may be granted, pursuant to the law or a treaty, only for ordinary offences carrying a penalty of not less than one year of deprivation of liberty; it may never be granted in respect of political offences, even where such offences involve an ordinary offence.”

118. The extradition of persons allegedly responsible for the commission of acts of torture is possible only in the case of foreigners and only where an extradition treaty has been signed with the country of which the person concerned is a national. Pursuant to article 16, paragraph 2, of the Constitution of the Republic, international treaties concluded between Honduras and other States form part of domestic law once they have entered into force.

119. Mention may be made of the following treaties signed by Honduras which include torture as an offence giving rise to extradition: the Extradition Treaty between the Governments of the Republics of Honduras, Costa Rica, Guatemala, Nicaragua and El Salvador; (b) the Treaty between the Government of the Republic of Honduras and Mexico; (c) the Extradition Treaty between the Republic of Honduras and the United States of America; (d) the Convention on Extradition signed at the Seventh International Conference of American States; (e) the Extradition Treaty between Washington and the five Central American republics; (f) the Extradition Treaty between the Republic of Honduras and the Kingdom of Spain; (g) the Rome Statute of the International Criminal Court.

120. As already mentioned, according to research conducted by the Supreme Court of Justice, no extradition request concerning the crime of torture has been received to date from countries with which we have signed this type of treaty.

I. Article 9

121. Honduras cooperates with other countries in response to requests. This applies to all types of offences and not only to torture and other cruel, inhuman or degrading treatment or punishment. In such cases, article 149 of the Code of Criminal Procedure is applicable. It reads as follows: “Applications to foreign courts. Applications sent to or received from foreign courts or authorities shall be transmitted through diplomatic channels. In exceptional cases of the utmost importance, the judge or a designated member of a trial court may take such steps in the other State as are authorized by the latter...”.

122. The following bilateral and multilateral mutual judicial assistance treaties have been signed and are in force: (a) Inter-American Convention on Conflict of Laws concerning Checks, signed in Panama on 30 January 1975 and published in Official Gazette No. 22512 on 1 June 1978; (b) Inter-American Convention on Mutual Assistance in Criminal Matters and the Optional Protocol thereto, published in Official Gazette No. 31009 of 6 September 2006; Treaty on Mutual Judicial Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, published in Official Gazette No. 28623 of 20 May 1997; (d) Treaty on Mutual Judicial Assistance in Criminal Matters between the Republics of Honduras and the United Mexican States, published in Official Gazette No. 31171 of 4 December 2006 (e) Treaty between the Government of the Republic of Honduras

and the Government of the Federative Republic of Brazil on Mutual Judicial Assistance in Criminal Matters, published in Official Gazette No. 301521 of 30 January 2008²⁷.

123. According to information provided by the Supreme Court of Justice, Honduras has not submitted requests to other countries nor has it received requests for assistance in solving cases concerning the crime of torture and other offences covered by the Convention or for cooperation in the investigation and trial of such cases.

J. Article 10

1. The judiciary

124. Since signing agreements with the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), a forum has been held on constitutional rights and criminal proceedings, which was attended by representatives of the Centre for the Prevention, Treatment and Rehabilitation of Torture Victims and their Relatives (CPTRT), the Lawyers' College, the Law Faculty of the National Autonomous University of Honduras (UNAH) and the Consultorio Jurídico Popular (People's Legal Advice Centre). Assistance was provided by prosecutors from the Public Prosecution Service, civil society, the Public Defense Service and members of the Centre for the Prevention, Treatment and Rehabilitation of Torture Victims and their Relatives. A Discussion of Prison Issues in Latin America was also organized for directors and psychologists from the country's prison facilities. In 2007 the Francisco Salomón Jiménez Castro Legal School organized the following training courses: (a) a total of six training events to date on "domestic violence legislation" in the cities of Tegucigalpa and San Pedro Sula for clerks and recording officers employed by courts and tribunals; (b) with regard to human rights protection, seminars on "restoration of minors' rights" were held in Tegucigalpa and San Pedro Sula for lower-court judges and public defenders with competence in that area throughout the country.

125. In 2007 the following workshops were held in coordination with the judiciary and the Centre for the Prevention, Treatment and Rehabilitation of Torture Victims and their Relatives (CPTRT):

- (a) Training courses on "Implementing and disseminating the regulations under Chapter IV of the Police and Harmonious Social Relations Act concerning good practices applicable to police custody and the Handbook concerning the rights of detainees" were run on behalf of 72 police custody officers from the holding centres of Comayagua, La Paz, Marcala, La Esperanza, Choluteca and Nacaome, with the cooperation of the trial courts of Comayagua and Choluteca;
- (b) Training courses on "Implementing and disseminating the regulations under Chapter IV of the Police and Harmonious Social Relations Act concerning good practices applicable to police custody and the Handbook concerning the rights of detainees" were run on behalf of 75 basic-grade police officers in the cities of Tegucigalpa and San Pedro Sula;

²⁷ See Annex II, Treaties of mutual assistance in criminal matters.

- (c) Three workshops were held on “Documenting and handling cases of torture and cruel, inhuman and degrading treatment”:
- (i) In the town of La Ceiba: training was provided for 19 persons representing organizations that visit prisons;
 - (ii) In the town of San Pedro Sula: training was provided for 12 persons representing organizations that visit prisons;
 - (iii) In the town of Comayagua: training was provided for 16 trial judges, forensic doctors, prosecutors, a doctor from Comayagua Prison Farm and representatives of the National Commissioner for Human Rights. A handbook entitled “Monitoring the right to life and to physical and mental integrity of detainees” was prepared to facilitate the workshops.

126. With regard to women’s issues, the judiciary and the National Women’s Institute (INAM) signed a mutual Cooperation Agreement in June 2004, which led to the implementation of the system of follow-up to complaints of domestic violence, under which courts collect data, undertake follow-up and engage in consultations concerning cases of domestic violence. It is a tool that serves to centralize reports of domestic violence at the national level and to generate statistical data used for policy- and decision-making in relevant institutions. The system is operating in the Tegucigalpa courts of first instance specializing in domestic violence and in the first- and second-instance family courts of San Pedro Sula²⁸.

2. The Office of the Minister of Security

127. The subject of human rights is included from all levels of police training. (a) A master’s degree in human security based on the following two modules is currently being taught: human security and human rights law; and human security and gender equality. The master’s degree course was completed in 2007 and dissertations are currently being written. (b) The Higher Police Training Institute provides diploma and postgraduate advancement courses that include the subject “Training in police service values”, which covers values, morals and ethics. (c) The National Police Academy awards degrees in political science and criminal investigation and its curriculum includes human rights as a subject with four credit units and 60 hours of tuition. (d) The School for Non-Commissioned Officers has a 25-hour course in family law and gender equality. (e) The Police Training Centres in the towns of La Paz and Puerto Cortes offer the following courses: a 14-hour course in gender equality, a 16-hour course in sexual exploitation of adolescents, and a 10-hour course in human rights. (f) The Prison Training School offers the following subjects: a 35-hour course in humanist social training, a 20-hour first refresher course in humanist social training, and a 20-hour second refresher course in humanist social training. (g) The Centre for the Investigation and Promotion of Human Rights (CIPRODEH) runs a

²⁸ See Annex II, Cooperation Agreement on Technical Assistance between the Judiciary and the National Women’s Institute and Agreement No. 001 of 7 March 2007.

continuous workshop on human rights in all study centres, focusing on the human rights approach in police procedures²⁹.

128. On 12 March 2003 the Centre for the Prevention, Treatment and Rehabilitation of Torture Victims and their Relatives (CPTRT), an NGO, renewed its undertakings and agreements with public-sector bodies such as the Public Prosecution Service and the Ministry of Security and with international human rights organizations, including the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD). It thus formalized its joint action in support of the integrated training of police officers, running training courses for students and instructors in the different centres³⁰.

Table 1. Training and further training from 1999 to 2006; persons deprived of their liberty

Year	Number
1999-2002	2,600
2003-2006	2,628
Total	5,228

Table 2. Custodial police

Year	Number
1999-2002	504
2003-2006	142
2007	116
Total	762

Table 3. Students at the Police Training Centre (CIP)

Year	Number
1999-2002	3,561
2003-2006	1,938
Total	5,499

Table 4. Teachers and administrative staff: Higher Police Training Institute (ISEP), National Police Academy (ANAPO) and Police Training Centre (CIP)

Year	Number
1999-2002	220
2003-2006	235
Total	455

²⁹ See Annex II, training programmes in human rights and related subjects in police study centres.

³⁰ See Annex II, Cooperation Agreement between the Ministry of Security and the Centre for the Prevention, Treatment and Rehabilitation of Torture Victims and their Relatives (CPTRT).

Table 5. Students at the National Police Academy

Year	Number
1999-2002	0
2003-2006	235
Total	235

Table 6. National Police Force inspectors, deputy inspectors and instructors

Year	Number
1999-2002	0
2003-2006	302
Total	302

129. The Ministry of Security, supported by human rights NGOs, disseminated the handbook entitled “Human Rights in Police Practice”.

130. Pursuant to Agreement No. 0251-A 2003 of 20 February 2003, the Ministry of Security established the “Gender Unit” with the following mandate: (a) to give advice on the formulation of policies designed to achieve effective gender equality as well as equality of opportunity between male and female police officers; (b) to analyse and propose solutions to the problems encountered by women in the institution; (c) to coordinate and assess gender training; (d) to promote national and international cooperation; (e) to coordinate with other similar institutions with a view to sharing experience; (f) to carry out other assignments.³¹ The Gender Unit has drawn up two plans, the first Pilot Plan for the period 2002-2005 and the second for the period 2006-2010, to promote the modernization and development of the National Police Force both internally, by incorporating a gender approach, and externally, by responding to the population’s security needs.

131. In the context of the training component, the Ministry of Security signed a Cooperation and Technical Assistance Agreement, financed by the United Nations Population Fund (UNFPA), with the National Women’s Institute (INAM) in June 2002 to implement, inter alia, the project entitled “Institutionalization of gender equality and the prevention of domestic violence and violence within the family in the National Police Force of Honduras, 2002-2005”. The requisite training and further training courses were held simultaneously in the Police Training Department and the five departments of the Ministry of Security.

132. In the context of the study and internal discussion component, the first and second stages of the “Critical appraisal of the status and participation of women and men in the National Police force of Honduras” were organized with a view to contributing to progress in existing initiatives aimed at identifying and eradicating gender bias. In addition, the event “Procedures for dealing with telephone line 114 ‘Living with respect and without violence’”, funded by the United

³¹ See Annex II, Agreement No. 251-A 2003 of the Ministry of Security: incorporation of a gender approach in the Ministry of Security.

Nations Development Programme, was organized to discuss the psychological, legal and social aid to be provided to women survivors of violence. The National Congress is currently discussing the preliminary draft of a bill to amend the National Police Force Organization Act, which includes criteria based on the gender approach.

3. The Office of the Minister of Defence

133. On 1 January 1999, pursuant to Agreement EMH-0012, the Human Rights and International Humanitarian Law Directorate was established to fill a vacuum in work aimed at preventing human rights violations. The Directorate is divided into two departments: one deals with complaints of human rights violations in peacetime and humanitarian law in times of conflict; and the other is responsible for training in and dissemination of human rights and international humanitarian law. Human rights sections have also been created in each component of the armed forces (army, navy and air force). Since its establishment, the Directorate has looked into the need for human rights training for all armed forces personnel. To that end, it signed a training agreement with UNDP support in 2004 on the implementation of the following three projects: (a) Structuring of the human rights curriculum for all the study centres; (b) establishment of a Lessons Learned Centre and design of advisory software on cases in which the armed forces were involved in human rights violations, to be distributed to military academies and the human rights sections of the armed forces; and (c) filming of human rights learning clips for use in training courses.

134. Human rights education in the armed forces is designed to train all personnel from the basic to the higher levels, as authorized by the Defence University of Honduras (UDH). Human rights are taught as follows in the training centres: (a) a 16-hour “National security course” at the National Defence College; (b) a 24-hour “General Staff course” at the Command and General Staff School; (c) two courses at the army, navy and air force training schools, one a 20-hour course for lieutenants and the other a 15-hour course for captains; (d) the curriculum for degree courses in military, aeronautic and naval science at the military academies of the three branches of the armed forces includes human rights as a compulsory subject with three credit units; (e) the School for Non-Commissioned Officers has a 30-hour training course and the Intelligence Service School has a 10-hour basic intelligence study course; there are three levels of training in the military units: a basic 15-hour course; an advanced 15-hour course; and a 10-hour unit course.

135. In November 2007 a two-year renewable Technical Assistance Agreement was signed with the National Women’s Institute, comprising the following activities: (a) lectures on women’s rights and gender equality for officers, non-commissioned officers and auxiliary staff; (b) a review of the academic curriculum of the human rights chair at the Defence University of Honduras (UDH), incorporating a women’s rights and a gender equality approach (women were previously employed in the armed forces only for administrative and health-care work; now all members of the armed forces, both men and women, enjoy equality in terms of their conditions and responsibilities); (c) organization of special training and awareness-raising days on the subject of women’s rights and gender equality for cadets in the military academies of the armed forces of Honduras from the beginning of the 2008 academic year until the end of the current Agreement, following which cadets from the three military academies who successfully complete the course will be awarded a certificate.

136. Human rights teachers are trained each year within the country and abroad. Ten thousand human rights booklets have been printed for the members of the army, 1,500 for pilots and 1,500 for naval officers, depending on their field of specialization and their areas of operation.

4. Office of the Minister of the Interior and Justice

137. This Office runs the “Childhood Pact”, which constitutes an undertaking by local government authorities and organized civil society to improve the living conditions of Honduran children on the basis of the Convention on the Rights of the Child, ensuring their survival, development, protection and participation. In addition, the Municipal Office of Children’s Defenders has been established. In the context of this initiative, governors and mayors have drawn up a strategic plan for children, also based on the Convention. The Office is involved, inter alia, in addressing cases of ill-treatment and abuse of children. Training workshops have been held for municipal defenders, community defenders and municipal authorities, at which the subject of ill-treatment of children is discussed³².

138. The Migration and Aliens Department (DGME) organized three two-day workshops in 2007: the first on “Human trafficking and other crimes” was supported by Save the Children; the second on “International and national refugee law” was supported by CIPRODEH; and the third on “Mapping of human slavery and trafficking” was supported by Save the Children. The Minister of the Interior and Justice has created an Older Persons Department which will begin to run training courses this year.

5. The Public Prosecution Service

139. The Public Prosecution Service signed an Agreement in the context of compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment concerning the protection of persons deprived of their liberty with the Centre for the Prevention, Treatment and Rehabilitation of Torture Victims and their Relatives (CPTRT). Under the Agreement, representatives of CPTRT, accompanied by prosecutors, can inspect police stations and punishment cells in prisons and can create investigation links with the Forensic Medicine Department in cases that might involve the offence of torture. The CPTRT has undertaken to submit information to the Public Prosecution Service regarding acts constituting violations of the human rights of detainees³³.

140. In the context of its activities involving collaboration with UNDP, the Public Prosecution Service has provided training courses on the subject torture and arbitrary detention for both public officials and individuals. Mention may be made in this connection of the Programme of Action for the Prevention and Elimination of Arbitrary Detention, held pursuant to the mandate set out in article 16, paragraph 7, of the Public Prosecution Service Organization Act. Prior to the launching of the Programme of Action for the Prevention and Elimination of Arbitrary

³² See Annex II, Childhood Pact of the Ministry of the Interior and Justice.

³³ See Annex II, Cooperation Agreement between the Public Prosecution Service and the Centre for the Prevention, Treatment and Rehabilitation of Torture Victims and their Relatives (CPTRT).

Detention, the current situation and existing issues were assessed by means of routine inspections of a number of police stations by the Special Human Rights Prosecutor's Office in coordination with CPTRT. It was decided that the approach based solely on punishment through public criminal proceedings needs to be supplemented by preventive action, which should not only target the police force, which is largely responsible for cases of arbitrary detention, but also assist victims and officials responsible for controlling the legality of detention. The following activities have been undertaken in this connection:

- (a) Draft regulations were drawn up as well as a practical handbook on the implementation of good practices by the authorities in respect of detention procedures. The following activities are planned for their dissemination: six training workshops for 600 police patrol officers, 400 prosecutors, 235 public defenders, and municipal judges exercising summary jurisdiction (two of the workshops have already been organized in the country's two main cities, Tegucigalpa and San Pedro Sula, and 80 police officers have so far been trained). The workshops have been run jointly by the Special Human Rights Prosecutor's Office, the National Commissioner for Human Rights and CPTRT;
- (b) A total of 1,500 posters have been printed, illustrating both detainees' rights and officials' duties; they have been placed in police stations, courts and offices of the Public Defence Service and the Public Prosecution Service throughout the country.

6. National Commissioner for Human Rights

141. One of the Commissioner's duties is to prepare and carry out human rights prevention and awareness-raising programmes in the political, legal, economic, educational and cultural fields. In pursuance of this mandate, the Commissioner undertook a comparative analysis in 2004 of statistical data concerning complaints, concluding that the Minister of Security (preventive police, criminal investigation police, border police, custody police) ranked first in terms of complaints of violations of human rights. The violations that led to complaints against the National Police Force concerned ill-treatment of detainees, negligence in enforcing judicial orders, abuse of authority in police operations, torture and even offences against life (involving deaths).

142. In the light of this finding, it was decided to mount a countrywide campaign focusing on discussions of what a police officer should do and avoid, and also on peoples' duties as citizens to assist police work. It was also decided to promote awareness among preventive police officers of the duty to respect the human person and human dignity by holding one-day educational events, using specially designed teaching aids. During the period July to September 2004, a radio campaign concerning the police entitled "Defending the rights of others and defending my own" was broadcast in the country's 18 departments. Furthermore, 135 one-day human rights training courses were held for 3,662 national preventive police officers throughout the country.

143. The Special Programme on Women's Rights of the National Commissioner for Human Rights organized the following workshops on domestic violence and femicide in 2003: (a) a panel on the gender approach in the media was held in Tegucigalpa on 11 September for 97 students of journalism at the National Autonomous University of Honduras; (b) a workshop on human rights, gender and domestic violence was held for 26 adolescents in the municipalities

of San Miguelito and La Libertad in Francisco Morazán Department on 26 September; (c) a workshop to disseminate and harmonize proposals for amendment of the Law against Domestic Violence was held in Tegucigalpa on 15 October for 17 persons, including representatives of the National Women's Institute, the Special Prosecutor's Office for Women, NGO domestic violence courts and family advisory offices; (d) a panel on the gender approach in the media was held in Tegucigalpa on 16 October for 23 students of journalism at the National Autonomous University of Honduras; (e) a panel on legislation and women was held in Tegucigalpa on 27 October for 62 students of juvenile legislation at the Law Faculty of the National Autonomous University of Honduras; (f) a workshop on domestic and intra-family violence was held in Tegucigalpa on 14 November for 25 persons, including judges serving in criminal courts of first instance, justices of the peace, domestic violence judges, prosecutors from the Public Prosecution Service handling cases involving women and serving in the rota and summary procedure offices, and staff of the National Women's Institute.

144. In 2004 the Special Programme on Women's Rights trained women's organizations that are members of the National Commission of Indigenous and Black Women of Honduras. It held the following workshops on gender and the Convention on the Elimination of All Forms of Discrimination against Women: (a) 30 Tolupan women from El Palmar, Yoro, on 15 and 16 May; (b) 30 Mayan and Chorti Women from Ocotepeque Department on 28 and 29 May; (c) 30 Pech women from Subirana Olancho on 17 and 18 June; (d) 30 Misquitia women from Mosquitia on 25 and 26 June; (e) 30 Garifuna women from Cristales, Colón, on 27 and 28 June.

145. In 2006 the Inter-Agency Commission on Femicide was reactivated. Its membership is as follows: the National Women's Institute, the Special Prosecutor's Office for Women, the Women's Rights Centre, the Women's Studies Centre – Honduras, the Supreme Court of Justice, the Feminist Collective of University Women, the Criminal Investigation Department, the Forensic Medicine Department, the Collective against Violence, and the Latin American and Caribbean Committee for the Defence of Women's Rights – Honduras Section (CLADEM-H).

146. The following are some of the Commission's main achievements: (a) allocation of 16 million Honduran lempiras to the Special Prosecutor's Office for Women to set up the Special Unit to Investigate Violent Deaths among Women at the prosecutor's office of Tegucigalpa and San Pedro Sula; (b) establishment in August 2007 of the Unit to Investigate Violent Deaths among Women at the Tegucigalpa Criminal Investigation Department, which employs eight officers whose sole task is to investigate violent deaths among women; (c) preparation of the first report on femicide at the Central American level (Chapter on Honduras), a process that began in January and was concluded in October;³⁴ (d) presentation of the first regional report on femicide to 105 persons, including representatives of the three branches of State power and representatives of civil society, in San Pedro Sula on 23 November; (e) a workshop on domestic violence and femicide for staff of the National Commissioner for Human Rights and justices of the peace throughout the country, held on 10 November in Tegucigalpa; and (f) a workshop on domestic violence and femicide for staff of the National Commissioner for Human Rights and justices of the peace throughout the country, held on 10 November in San Pedro Sula.

³⁴ See Annex II, Regional report: Situation and analysis of femicide in the Central American region.

147. The following activities were carried out in 2007: (a) On 19 April a peaceful march was organized in San Pedro Sula in coordination with the Regional Delegation of the North to demand an end to impunity for femicide. The relatives of victims of femicide and representatives of NGOs and institutions with an interest in the subject participated in the march. (b) A workshop on human rights, gender and the Law against Domestic Violence was held in El Zamorano on 14 May for 20 women working as heads of household for SOS Villages (Aldeas SOS) at the national level. (c) A workshop on human rights and domestic violence was held in Tegucigalpa on 15 August for 17 employees of hospitals and health-care units in the towns of Comayagua, Juticalpa and Choluteca. (d) A workshop on human rights, gender, domestic violence and femicide was held in the town of Santa Bárbara on 24 and 25 October for 24 persons, including police officers, health-care officials, representatives of municipal authorities and community leaders.

148. On 30 April 2007 the National Commissioner for Human Rights (CONADEH) signed a Cooperation Agreement with Plan Internacional and the National Preventive Police Force. Its implementation on behalf of the National Commissioner for Human Rights has been assigned to the special programmes on the rights of women, children and persons with disabilities. A workshop on domestic violence, intra-family violence and ill-treatment of children was organized under the Agreement on 5 and 6 June for 36 persons, including representatives of the National Preventive Police Force, Plan Internacional and the National Commissioner for Human Rights, so that they could provide training courses in those areas within their own departments.

149. Persons trained as facilitators held 62 workshops throughout the country, two-day workshops for adults and one-day workshops for children, on domestic violence, intra-family violence and ill-treatment of children in the least developed municipalities of the following departments: (a) 10 workshops in the five municipalities of Choluteca (El Corpus, Marcovia, Santa Ana de Yusguare, Namasigue and El Triunfo); (b) 10 workshops in the five municipalities of Intibucá (Jesús de Otoro, Masaguara, La Esperanza, San Isidro, Intibucá); (c) 10 workshops in the five municipalities of Santa Bárbara (San Nicolás, Atima, Concepción, San Luis and Protección); (d) 10 workshops in the five municipalities of Copán (Copán Ruinas, Santa Rita, San Nicolás, San José and Corquín); (e) 10 workshops in the five municipalities of Comayagua (Aguantequerique, Guajiquiro, Santiago de Puringla, Chinacla and Santa Elena); and (f) 12 workshops in the six municipalities of Lempira (Gracias, Las Flores, La Unión, La Iguala, Caiquín and San Marcos).

150. The workshops were attended by 662 adults, including representatives of municipal, educational and health authorities and the police, parents and community leaders; they were also attended by 477 teenage secondary school students from each of the municipalities mentioned above. The total number of persons trained was thus 1,139. The workshops were held simultaneously during the period from July to October of the current year. The second stage of the Agreement, which is still pending, will be launched in November and will cover five more departments: Colón, Atlántida, Cortés, Olancho and Francisco Morazán.

7. Honduran Child and Family Institute

151. In 2005 a total of 11 workshop-seminars on human rights and childhood were held for staff of the institution. They were coordinated with the Committee for the Defence of Human Rights in Honduras (CODEH) and the Public Prosecution Service and dealt with the following subjects:

the Childhood and Adolescence Code, the Convention on the Rights of the Child and human rights.

152. In 2006 the following activities were carried out: (a) educational talks about human rights and a workshop on effective communication in the Centro Renaciendo which looks after juvenile offenders; (b) an awareness day on “Our commitment to children” for nursery staff, child minders, social workers, teachers, and members of the institution’s surveillance staff working in protection centres and homes; (c) in coordination with Casa Alianza and the International Labour Organization’s International Programme on the Elimination of Child Labour (ILO-IPEC), an eight-person technical group is being set up and from June onwards will attend different types of training courses in caring for adolescent victims of commercial sexual exploitation.

153. In 2007 training was provided in the following areas: (a) a one-day awareness-raising session on the Convention on the Rights of the Child for nursery staff, child minders, social workers, teachers, and members of the institution’s surveillance staff working in protection centres and homes; (b) procedures for implementing the Protocol for the Repatriation of Children and Adolescents who are Victims of or Vulnerable to Human Trafficking .

154. Staff of the following institutions were trained under the project “Protection of Children and Adolescents: Rights and Social Reintegration”: the Honduran Child and Family Institute (IHNFA), teaching staff from the National Autonomous University of Honduras (UNAH) specializing in social work, and staff of the Training and Development Centre (CENFODES). The training covered the following topics: educational creativity and strategies, methodology and problem-solving, gender, communication, management and participation.

8. National Women’s Institute

155. The National Women’s Institute (INAM) has signed inter-agency cooperation agreements with the judiciary, the Ministry of Security, the Ministry of Defence and the Public Prosecution Service with a view to developing training and awareness-procedures relating to the legal framework for effective protection of women’s rights. The aim of the agreements is to improve women’s access to justice and they are coordinated by the INAM unit for the prevention of violence. During the year 2006-2007 training courses were developed with legal staff through the Legal Service Training College and a gender certificate is being introduced for legal officers.

- (a) On 1 and 2 March 2007 a “Workshop on the application and interpretation of the legal provisions governing domestic violence” was held for legal staff and national police officers from the department of Francisco Morazán in order to present and assess the outcome of Central American regional research;
- (b) At a workshop on the application and interpretation of the legal provisions governing domestic violence for legal staff and national police officers, held under the Agreement signed between INAM, the Supreme Court of Justice and the Justice and Gender Foundation, strategies to implement the legislation were coordinated among legal staff;
- (c) An awareness-raising day on the subject of virtual violence was attended by representatives of the authorities, the women’s movement, the Special Prosecutor’s Office

for Women and the National Police Force, and by the President of the National Telecommunications Commission (CONATEL);

- (d) A seminar-workshop for awareness-raising, training, dissemination and assessment of the Protocol to the Law against Domestic Violence and its amendments, for national police officers and prosecutors, was coordinated with the Criminal Justice Commission of San Pedro Sula. It was held from April to June 2007 and was attended by 340 legal officers;
- (e) A seminar-workshop on the inter-agency response to and dissemination of the Law against Domestic Violence in the departments of Atlántida, Cortes and Intibucá for legal staff, human rights organizations, women's organizations, national police officers and officers of the Criminal Investigation Department (DGIC) was held in March and June 2007 and was attended by 150 people;
- (f) A seminar-workshop on integrated public and civil security policy from an equity perspective, for legal staff, police officers, prosecutors and women's organizations was held in Tegucigalpa on 8 November 2007 and was attended by 150 people;
- (g) Two one-day forums on updating the human rights bodies of the armed forces of Honduras were held on 28 and 29 November for national police officers in San Pedro Sula;
- (h) Between 8 and 15 October 2007, five one-day awareness-raising and training sessions on legal rules pertaining to women's rights and the Law against Domestic Violence were held in coordination with the Gender Unit of the Ministry of Security and attended by a total of 340 national police officers;
- (i) A "Forum on violence against women – a human rights problem" was held on 23 November 2007 in connection with the International Day for the Elimination of Violence against Women. The 69 participants included legal staff, national police officers, and representatives of civil society, women's organizations and human rights organizations;
- (j) A social communication campaign on "Access of women to justice as a human rights, specifically in cases of gender violence" was held in December 2007.

156. INAM and other institutions have designed handbooks and guidelines for service providers:

- (a) Preparation, in coordination with the Ministry of Security, of handbooks for facilitators and participants on dealing with the subject of gender equality and prevention of domestic and intra-family violence for the Police Training Centre and the National Police Academy;
- (b) Guidelines on implementing the Law against Domestic Violence for different service providers;
- (c) Handbook of jurisprudence, applying a gender approach, a tool that can be used by the judiciary's jurisprudence team to identify the gender approach when they study the judgements rendered by various courts and tribunals;

- (d) Guidelines on caring for women survivors of violence, for staff of the Integrated Care Office of the National Police Force in Ocotepeque, in coordination with the Project for Women and Adolescents at Social Risk in Central America (MARS);
- (e) Textbooks adopting a gender equality approach for first-year students attending the diploma course in nursing: one for teachers and another for students;
- (f) Guidelines on the implementation of the Law against Domestic Violence, Decree No. 132-97 as amended by Decree No. 2 50-2005, in coordination with the judiciary, the Technical Reform Unit (UTR) and the Justice and Gender Foundation;
- (g) Analytical study of the inter-agency response to cases of domestic violence, in coordination with the judiciary, the Technical Reform Unit (UTR) and the Justice and Gender Foundation;
- (h) Handbook of rules and procedures relating to integrated care for women, and rules governing integrated care for adolescents, including sections dealing with the detection and handling of violence; and Ministry of Health guidelines on the detection of domestic and sexual violence at the primary care level;
- (i) Guidelines on caring for women survivors of violence, by the Programme on Care for Women of the National Commissioner for Human Rights;
- (j) Translation of the Law against Domestic Violence and the Equality of Opportunity Act on behalf of the following ethnic groups: Miskitos, Garifunas and Tawakas.

9. Casa Alianza

157. Under its Legal Support Programme, the non-governmental organization Casa Alianza trained 1,720 police officers throughout the country during the period 1999-2004 in children's rights and in dealing with child offenders and young offenders living on the street.

K. Article 11

158. In addition to the obligations it has assumed through the ratification of international treaties, the State of Honduras has a variety of internal rules governing the treatment of persons deprived of their liberty, including the following: the Constitution of the Republic, the Criminal Code, the Code of Criminal Procedure, the National Police Force Organization Act, the Offender Rehabilitation Act, and the Police and Harmonious Social Relations Act.

159. With regard to the requirement of rapid notification of and access to lawyers, doctors and family members, article 101, paragraph 2, of the Code of Criminal Procedure stipulates that all detainees have the right to inform a natural or legal person of their choosing forthwith of their detention and the place in which they are detained. If the natural or legal person who is the addressee of the communication is outside the territory of the Republic of Honduras, the fact and place of their detention shall be brought to the notice of the relevant diplomatic or consular mission. If none of those circumstances is applicable, the National Commissioner for Human Rights shall be informed. Detained persons may communicate the information themselves unless the investigation has been declared confidential, in which case it shall be communicated by the

authority or official responsible for the detainee. Paragraph 3 of the same article recognizes the right of all persons to be assisted by counsel from the time of detention or of being required to make a statement. Counsel may be appointed by the detainee, his or her spouse or live-in partner, or a relative up to the fourth degree of consanguinity or the second degree of affinity. If counsel is not appointed by the aforementioned persons, the services of counsel shall be performed by a public defender appointed by the relevant judicial body or, if the public offender is not available, by another court-appointed counsel. With regard to the provision of medical services, article 30, of the Offender Rehabilitation Act stipulates that medical services in prison establishments shall be equipped with the facilities needed to provide inmates with due care, adding that if inmates cannot be treated in the medical wing or infirmary, they shall be transferred to a hospital. Furthermore, article 29 of the Offender Rehabilitation Act stipulates that all persons admitted to a penitentiary or prison shall be examined upon arrival by a physician in order to determine their physical and mental state so that the relevant measures can be taken. If the medical examinations show that an inmate is suffering from a physical or mental disorder that calls for internment in a specialized institution, the inmate shall be transferred to that institution as soon as the relevant procedure has been completed and the decision taken by the relevant authority.

160. The judiciary, acting through the enforcement courts, oversees and supervises the enforcement of sentences and security measures, and is responsible for ensuring that the rules governing the prison regime are properly implemented, for handling complaints filed by inmates concerning denial of their right to enjoy prison benefits by the authorities of the establishment concerned, and complaints by inmates regarding disciplinary sanctions. The judiciary has so far appointed 24 enforcement judges through a competitive procedure³⁵.

161. In response to the need for an up-to-date information system regarding the situation of persons deprived of their liberty in the country, the judiciary launched the Prison Audit Project in 2006 to oversee and monitor the prison population and to provide the Public Defence Service and the enforcement courts with the data they require to handle proceedings relating to benefits on behalf of persons deprived of their liberty. The Project has already been completed; one of its findings was the need to establish a permanent prison audit programme, which is expected to be launched this year³⁶.

162. The Public Prosecution Service is authorized to inspect prison facilities and police holding centres throughout the country. Within the Service, the Special Human Rights Prosecutor's Office, in coordination with the Centre for the Prevention, Treatment and Rehabilitation of Torture Victims and their Relatives (CPTRT), carries out random periodic inspections of all police stations in Tegucigalpa and some stations in San Pedro Sula (the country's two main cities) in order to verify the legality of the custody. Similarly, unannounced visits are paid to the National Penitentiary to check prison conditions and investigate cases in which torture has allegedly been committed by the authority responsible for such facilities. In the rest of the country inspections are conducted by specially appointed prosecutors in each region³⁷.

³⁵ See Annex II: Code of Ethics for Legal Officials and Employees.

³⁶ See Annex II: Prison Audit Project.

³⁷ See Annex II: Code of Ethics for Legal Officials and Employees.

163. The National Commissioner for Human Rights is the national institution responsible for guaranteeing respect for the rights and freedoms recognized in the Constitution of the Republic and the international treaties ratified by Honduras. Article 7 of its Organization Act states that the National Commissioner for Human Rights has free access to all civilian and military establishments and places of detention, imprisonment or internment and that no objection whatsoever may be raised to such visits. This function is performed by each of the Commissioner's 16 delegations throughout the country, so that all 24 prison facilities are inspected.

164. In pursuance of its functions under the Constitution and with the aim of standardizing information on conditions in police holding centres and prison facilities for adults and interment centres for minors in the country since 2003, an inspection procedure to be followed by every delegation conducting inspections was designed. Visits are made at least twice a month to inspect physical and sanitary conditions and hygiene, education, management conditions, punishment cells, food quality, medical services and enjoyment of sexual rights. Complaints are automatically filed regarding every irregularity noted and steps are taken to ensure that the competent authorities restore the rights that have been violated. Provision is made for oversight of compliance with the recommendations.

165. Honduras signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment on 18 December 2002. It was adopted by the National Congress on 20 January 2006 by Decree No. 374-2006 and published in Official Gazette No. 30958 on 21 March 2006. With a view to implementing article 17 of the Protocol, an Inter-Agency Commission composed of representatives of the National Congress, the Supreme Court of Justice, the Public Prosecution Service, the Minister of Security and the CPTRT was set up and prepared a preliminary draft law concerning the establishment of an independent national mechanism for the prevention of torture at the national level. It has already been submitted to the legislature.

166. With regard to measures to ensure that all places of detention are officially recognized, article 85 of the Constitution of the Republic states: "No one may be detained or imprisoned save in such places as are determined by law." This constitutional prohibition is further developed in article 24, paragraph 3, of the Constitutional Justice Act, which reads as follows: "Concerning cases of deprivation of liberty that are deemed to be unlawful and arbitrary. Any form of detention or imprisonment in places other than the centres designated by the State for that purpose is unlawful and arbitrary."

167. With regard to the principles of medical ethics to be observed by medical staff attending to prisoners and detainees, the Medical College of Honduras adopted a Code of Ethics on 11 February 2006, which characterizes as a serious breach of medical ethics the involvement of physicians and their health-care staff, actively or passively, in acts that constitute participation or complicity in, or incitement or an attempt to commit torture or other acts of cruel, inhuman or degrading treatment. The physician must report or file a complaint concerning cases of torture or cruel, inhuman or degrading treatment of which he or she is aware. The report or complaint must be submitted, depending on the circumstances, to national or international medical and legal authorities, non-governmental organizations or the International Criminal Court. In cases involving conflicting ethical obligations, the physical shall comply with the Istanbul Protocol, which states that international codes and ethical principles require the reporting of information

concerning torture or maltreatment to a responsible body, and that the basic principle guiding their action should be the avoidance of harm³⁸.

168. With regard to arrangements for oversight of the conduct of law enforcement personnel responsible for interrogations and for the custody of detainees or prisoners, and the results of such oversight, there is no provision for this type of assessment in Honduras. Police officers are general sanctioned in response to a complaint filed against them by the victim, his or her relatives or human rights bodies.

169. With regard to safeguards aimed at protecting persons at special risk, article 182 of the Constitution of the Republic guarantees habeas corpus by stipulating that any aggrieved person or anybody else acting on his or her behalf may apply for habeas corpus when, during his or her lawful detention or imprisonment, the detainee or prisoner is subjected to persecution, torture, ill-treatment, illegal extortion and any form of coercion, restriction or harassment that is unnecessary for his or her individual safety or for the security of the prison.

170. According to article 5 of the Code of Criminal Procedure (Protection of participants in proceedings): “Where necessary, the State shall, of its own motion, provide assistance and protection through its competent authorities to victims, witnesses and other participants in the proceedings.”

L. Article 12

171. The Public Prosecution Service is responsible for supervising the members of the Criminal Investigation Department and for advising them on how to conduct investigations of punishable acts. It is also responsible for bringing criminal actions on behalf of society and, with that end in view, it takes all the steps required to prepare and present the prosecution and to participate in the criminal proceedings³⁹.

172. Within the Office of the Minister of Security, the Internal Affairs Unit is responsible for conducting preliminary investigations of acts involving elements that could constitute an offence committed by members of the police force, including technical and administrative staff, and, if necessary, for arresting them in accordance with legal procedures and handing them over to the competent authorities. The Unit is required to deal with complaints and applications submitted to it by any member of the public or by the National Council for Internal Security (CONASIN)⁴⁰.

173. In investigating a criminal complaint, the National Police Force, the Public Prosecution Service or any other competent authority takes all necessary and appropriate steps to determine whether a punishable act has been committed. Where a complaint concerns the crime of torture, one of the first steps taken in the investigation procedure is an examination of the victim by the Forensic Medicine Department.

³⁸ See Annex II, arts. 59, 60 and 61, of the Code of Ethics of the Medical College of Honduras.

³⁹ See Annex II, arts. 92 and 279, of the Code of Criminal Procedure.

⁴⁰ See Annex II, art. 8, of the National Police Force Organization Act.

174. Article 173, paragraph 9, of the Code of Criminal Procedure prohibits, as a precautionary measure, any communication between the accused and specific persons, seeking in this way to ensure that the victim is not subjected to coercion or to other types of threat that would impede the normal course of the investigation. With regard to suspension from office, article 173, paragraph 12, of the Code of Criminal Procedure permits the adoption of this precautionary measure only in the case of offences committed against the public administration, which do not include the crime of torture. However, given the seriousness of the penalty prescribed for this offence (a term of imprisonment of between 10 and 15 years where the damage caused is severe, and of between 5 and 10 years where it is not severe), pre-trial detention may be ordered as a precautionary measure, which implies, to all intents and purposes, that the person concerned will be suspended from office.

175. The disciplinary regime applicable to members of the National Police Force stipulates that the perpetrator of a serious misdemeanour shall be suspended forthwith, as a provisional precautionary measure. Any abuse of authority or ill-treatment of persons is regarded as a serious misdemeanour, even where it does not constitute an offence⁴¹.

M. Article 13

176. The State guarantees to any person who alleges that he or she has been subjected to torture or to cruel, inhuman or degrading treatment the right to file a complaint and to have the case promptly and impartially examined. Our Code of Criminal Procedure lays down the corresponding procedures. Criminal proceedings are instituted by filing a complaint regarding the criminal act to the National Police Force or to the Public Prosecution Service, or by reporting information regarding such a fact, without prejudice to any action taken by the State prosecuting authorities. Any person who witnesses or has direct knowledge of the commission of a publicly actionable offence or misdemeanour, or his or her legal representative, may report it to the police or to any other competent authority. Minors under 18 years of age may also file a complaint concerning an act that allegedly constitutes an offence or misdemeanour. The National Police Force or another competent authority shall immediately report any complaints or information it receives to the Public Prosecution Service. Privately actionable offences shall be investigated and punished only in response to an action by the party concerned.

177. The following are under an obligation to report publicly actionable offences: (a) public officials or employees who obtain information concerning such offences in the performance of their duties; (b) doctors, pharmacists, dentists, students of medicine or dentistry, nurses, paramedical staff, midwives and other persons involved in health-related professions, offices or techniques, who obtain information concerning criminal acts or omissions during the performance of their activities; and (c) representatives of natural persons, managers, administrators or legal representatives of legal persons and, in general, persons owing a duty of care in respect the property of others, who obtain information concerning offences committed against the interests they represent.

178. The complaints may be filed orally or in writing; oral complaints are recorded in a document drawn up for the purpose, and both types of complaint must meet the following

⁴¹ See Annex II, arts. 81, 85, paras. 7, 86 and 88, of the Code of Criminal Procedure.

requirements: (a) they must indicate the place and date; (b) the first name, family name and place of residence of the complainant, supported by a personal identity document; (c) the details of the act reported; (d) the first name, family name and place of residence of any persons who were involved in the act or can provide information concerning what occurred or, where those data are unknown, any other details that may serve to identify and locate such persons; and (e) the signature of the complainant and the authority who drew up the record. The authority who receives the complaint may require the complainant to provide any additional information it deems necessary in order to ascertain the reliability of the information. The complainant has the right to request that his or her name and identity be kept confidential and to be provided with a copy of the record of the complaint.⁴²

179. The following may file complaints with the National Commissioner for Human Rights: (a) persons alleging that they have been subjected to torture and other cruel, inhuman or degrading treatment or punishment; the Commissioner may initiate, *ex officio* or at the request of a party, any investigation that may shed light on facts pertaining to human rights violations in the broadest sense of the term; (b) natural persons who consider that they have been adversely affected by arbitrary administrative acts, human rights violations or other unlawful acts. The complaints may be submitted in writing or orally and by any means of communication. A person's nationality, age, sex, place of residence or the fact that he or she is an inmate of a place of detention or a prison does not constitute an impediment to the submission of a complaint or a report to the National Commissioner for Human Rights. The right to file a complaint to the National Commissioner for Human Rights is not restricted either by internment in a psychiatric establishment. In such cases, it is filed by the person's relatives, those responsible for his or her internment or any other interested party.

180. To ensure that the Honduran population is given every opportunity to file a complaint, the National Commissioner for Human Rights (CONADEH) launched the Immediate Reaction Programme (rapid response facility) on 9 June 2004 for complaints of human rights violations. It consists of a continuous 24-hour telephone service, every day of the year, which can be accessed simply by calling the telephone number 800-220-0007 free of charge from anywhere in the country. The corresponding number for cell phones is (504) 220-76-48. The programme is based at CONADEH headquarters in the capital city of the Republic and is run by specialized staff.

181. An application for a writ of habeas corpus may also be filed with all judicial authorities in their respective areas of jurisdiction and competence.⁴³ Article 182 of the Constitution of the Republic stipulates in this regard: "The State recognizes the guarantee of habeas corpus or personal appearance. It follows that any aggrieved person or anybody else acting on his or her behalf may apply for habeas corpus: (1) when he or she has been illegally arrested, detained or in any way impeded from enjoying his or her individual liberty; and (2) when, during lawful detention or imprisonment, the detainee or prisoner is subjected to persecution, torture, ill-treatment, illegal extortion and any form of coercion, restriction or harassment that is unnecessary for his or her individual safety or for maintaining order in the prison. A habeas

⁴² See Annex II, arts. 267 to 270, of the Code of Criminal Procedure.

⁴³ See Annex II, art. 17, of the Constitutional Justice Act.

corpus action may be instituted without any oral or written authority or formality, by any means of communication, on working days or non-working days and free of charge. Judges or magistrates may not dismiss the habeas corpus action and are under an absolute obligation to take immediate steps to halt the violation of liberty or personal safety. Courts that fail to hear such actions incur criminal and administrative responsibility. Authorities who order and officials who act on the order to conceal the detainee or who breach this guarantee in any other way shall be punishable for the offence of wrongful imprisonment.”

182. The police authorities are responsible for investigating offences related to torture and other cruel treatment, and their action is coordinated by the Public Prosecution Service. In the event of a refusal to open an investigation, or a decision to suspend an investigation that has been initiated, an objection may be filed, in accordance with the Code of Criminal Procedure, with the superior of the prosecutor involving in the proceedings.⁴⁴

183. Moreover, article 32 of the Code of Criminal Procedure provides that, where a case has not come before the courts and the prosecutor decides to close the file, the victim may request the court of first instance with jurisdiction over the preliminary investigation to invalidate it. The court then requests the Public Prosecution Service to state the grounds for its closure of the case, and decides within five working days whether to ratify or quash the decision. Provision is also made for the case of lack of conformity, whereby the court can reject a request from the Public Prosecution Service for dismissal of the investigation.⁴⁵

184. A complainant may file a complaint against an authority who refuses to investigate his or her case pursuant to article 16 of the National Commissioner for Human Rights Organization Act, which reads as follows: “The National Commissioner for Human Rights may initiate, *ex officio* or at the request of a party, any investigation that may shed light on facts involving unlawful, arbitrary, abusive, flawed, negligent or discriminatory action on the part of the public administration and private entities providing public services, in accordance with the procedure applicable to violations of human rights in the broadest sense of the term.”

185. Article 237 of the Code of Criminal Procedure provides for the following measures of protection for victims who may be exposed to any form of intimidation or ill-treatment: “Where the judicial body, on its own initiative or in response to a statement by the witness, reasonably considers that there is a serious risk to the person or property of the witness, his or her spouse or partner, or an ascendant, descendant or sibling of any of those persons, as a consequence of the testimony to be given, shall, having heard the parties, adopt such protective measures as it deems to be appropriate, which may include any of the following: (1) that the record of the proceedings shall not indicate the first name, family name, place of residence, workplace and occupation of the witness (data which, being recorded in a document to be kept in an officially sealed envelope, shall be known only to the judicial body and the registrar), or contain any other data that might be used to ascertain his or identity or location; during the proceedings the victim shall be identified by a number or code; (2) that the witness, when appearing before the judicial body during the proceedings, shall use any expedient designed to prevent the accused or the public

⁴⁴ See Annex II, art. 16, para. 5, of the Code of Criminal Procedure.

⁴⁵ See Annex II, art. 299, of the Code of Criminal Procedure.

from identifying him or her by normal visual means; and (3) that the seat of the relevant judicial body shall be used as the place of residence for communications relating to the proceedings, which shall then be sent confidentially to their addressee.”

186. Article 248 of the Code of Criminal Procedure also provides for the protection of expert witnesses as follows: “The protective measures on behalf of witnesses envisaged in article 237 of this Code shall be applicable to expert witnesses taking part in the proceedings where the circumstances warranting the adoption of such measures under that article exist.”

187. With regard to rules and practices aimed at preventing the harassment of victims or their exposure to renewed trauma, the Witness Protection Act was adopted by Decree No. 63-2007, published on 18 July 2007, in Official Gazette No. 31358, which established the programme for the protection of witnesses in criminal proceedings, to be run and coordinated by the Criminal Prosecution Service. The programme is designed to provide protection for witnesses in criminal proceedings who, by virtue of their efficient and effective participation therein, are admitted to the programme. It is important to note that although this Act had already entered into force on the date of preparation of the present report, it has not yet been implemented for budgetary reasons⁴⁶.

188. Of the total number of complaints received by the National Commissioner for Human Rights between 2003 and 2006, 7.31 per cent concerned acts of torture and other cruel, inhuman or degrading treatment or punishment; 43 per cent of the victims of these acts were men and 57 per cent women. The alleged perpetrators were: Office of the Minister of Security: 50 per cent; Office of the Minister of Health: 2 per cent; Office of the Minister of Labour and Social Security: 1 per cent; individuals: 47 per cent⁴⁷.

189. Article 60 of the Constitution of the Republic states: “All persons are born free and equal in terms of 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. The law shall prescribe the penalties and sanctions to be imposed for breaches of this rule.” Article 31 states: “Foreigners shall enjoy the same civil rights as Hondurans, subject to restrictions established by law on substantiated grounds of law and order, security or social interest.” Moreover, article 61 of the Constitution guarantees Hondurans and foreigners resident in the country the right to the inviolability of life, individual safety, liberty, equality before the law and property.

190. Judicial authorities may not dismiss a constitutional action and are under an absolute obligation to take immediate steps to halt any violation of liberty or personal safety. Judicial authorities who refuse to admit such actions incur criminal and administrative responsibility. Authorities who order officials to conceal a detainee or who breach this guarantee in any other way shall be punishable for the offence of wrongful imprisonment. Wardens, chiefs, supervisors and subordinate staff of an establishment or other place in which persons are detained,

⁴⁶ See Annex II, arts. 1 and 2, of the Witness Protection Act.

⁴⁷ See Annex I, table No. 2, Complaints dealt with by CONADEH during the period 2003-2006 concerning offences of torture and ill-treatment.

imprisoned or deprived of their liberty are required to report immediately any act requiring the personal appearance of the detainee or prisoner before any judicial body. The fact that the order in question was issued by a superior officer does not release a person from the obligation to report it. Anybody who breaches this rule shall be punishable with the penalty prescribed by the applicable criminal legislation⁴⁸.

191. To ensure more effective protection of the rights of victims of alleged cases of torture or cruel, inhuman or degrading treatment or of violence against women or against ethnic or other minorities, the Public Prosecution Service established special prosecutor's offices for women, children, human rights, ethnic groups and the cultural heritage.

192. The judiciary, acting in pursuance of article 13 of the Law against Domestic Violence contained in Decree No. 132-97 of 11 September 1997, established a special domestic violence jurisdiction to hear cases and to apply the provisions of the Law. It operates through specialized courts and tribunals in different parts of the country.

193. In implementation of the foregoing, special courts against domestic violence were created in 2007 by Agreement No. 1 of 7 March 2007 in Francisco Morazán and Cortés with jurisdiction to hear cases related to the special legislation governing such matters in those departments. The office of trial judge attached to a special court against domestic violence was also established to oversee and supervise the implementation of the protection arrangements as well as measures and penalties imposed pursuant to the special legislation. Under the same Agreement, a specialized chamber of the Second Court of Appeal was created in the Department of Francisco Morazán to hear family and domestic violence cases. The chamber has already begun its work⁴⁹.

194. By Decree No. 71-95 five juvenile courts of first instance were established in the cities of Tegucigalpa, Department of Francisco Morazán; San Pedro Sula, Cortés Department; La Cieba, Atlántida Department; Choluteca, Choluteca Department; and Santa Rosa, Copán Department⁵⁰.

195. With regard to violence against women, the "Gender Unit" in the Office of the Minister of Security attends to free telephone line 114⁵¹, which is reserved for complaints of violence against women and which is open 24 hours a day, 365 days a year.

N. Article 14

196. The Code of Criminal Procedure establishes the procedure for ensuring that the victim of a crime, including torture, can obtain compensation; articles 432 to 440 of the Code describe the

⁴⁸ See Annex II, arts. 18 and 23, of the Constitutional Justice Act.

⁴⁹ See Annex I, table No. 5, statistics of cases of domestic violence for the period 2003-2007.

⁵⁰ See Annex II, Decree No. 71-95, art. 1, concerning the creation of juvenile courts of first instance.

⁵¹ See Annex I, table No. 4, statistics for complaints on line 114 – Office of the Minister, January-October 2007.

procedure as follows: As soon as the conviction has been confirmed or criminal liability ruled out in cases of lack of criminal responsibility, force majeure, insuperable fear and state of necessity referred to in the Criminal Code, the victim, his or her heirs or the Office of the Attorney-General, as the case may be, may request the trial judge to issue a court order for restitution, reparation of material or non-material damage and compensation in cases where such an order is appropriate. A victim who has not taken part in the proceedings may opt for this procedure within three months of being informed of the final judgement.

197. The application should be directed against the convicted persons, persons civilly liable pursuant to the Criminal Code or third parties who, by force of law or by virtue of a contractual relationship, are civilly liable for the consequences of the conduct that gave rise to the proceedings. The application should contain: (a) data identifying the applicant and, where appropriate, his or her attorney, and indicating his or her place of residence; (b) the identity of the person or persons who are the subject of the application, and their respective place of residence where necessary; (c) the legal ground invoked; (d) a description of the restitution, reparation or compensation claimed, with an individual quantitative breakdown for the parties to be indemnified; and (e) the evidence to be used in support of the alleged damages and its relationship with the circumstances that led to the unlawful act. The application should be accompanied by a certified copy of the judgement.

198. The court considers the application and if any of the formal requirements mentioned in the article just cited have not been met, the applicant will be asked to remedy the situation within five days. If no corrective action is taken within that period, the application is rejected. Rejection of the application on formal grounds may be appealed before the relevant court of appeal. If the appeal is dismissed, the applicant can only resubmit the application through the ordinary channels. If the court decides that the application is formally admissible, it orders the submission of the evidence proposed by the applicant within 15 working days, a period that may be extended to 20 working days on substantiated grounds. As soon as the evidence is submitted, the court renders a reasoned judgement, which may be appealed to the relevant court of appeal.

199. If the application is approved, the court issues a reasoned decision ordering, on a provisional basis, the restitution, reparation or compensation requested in the application. The decision should contain: (a) the identity and place of residence of the applicant and, where appropriate, of his or her attorney; (b) the identity and place of residence of the respondent; (c) the order to restore, to repair material or non-material damage, or to make compensation, together with a concrete and detailed description and the exact amount; and (d) the order to seize sufficient property to meet the order for restitution, reparation or compensation and the costs, or to take any other precautionary measure pertaining to real property. If the measures adopted call for the removal of property from the respondent, the executor must provide security to guarantee the final result of the enforcement of the order. If the seized property remain in the possession of its owner, the latter is warned that he or she will be held responsible for concealment of assets, in accordance with the Criminal Code, if the property is transferred or encumbered without prior judicial authorization. In the same ruling, the court informs the respondent that he or she has ten days in which to challenge the decision.

200. The respondent may challenge only the legal standing of the applicant and the quantity of the claim. Civilly liable third parties may, in addition, challenge the existence or lawfulness of their own liability. The challenge, submitted in writing, must be substantiated and accompanied

by all the evidence invoked in support thereof. If the decision is not challenged within the specified time period, the order concerning restitution, reparation or compensation is upheld and the court executes the decision, applying the rules laid down in the Code of Civil Procedure. If the challenge is filed, the court convenes the parties for a settlement and evidentiary hearing within ten days.

201. The court endeavours at the hearing to bring about a settlement between the parties. The evidence is produced and the grounds supporting the claims are heard. If the applicant fails to appear, the court concludes that the claim has been withdrawn and dismisses the application. If the respondent fails to appear, the decision is upheld and is executed. The court renders the final decision on restitution, reparation or compensation or rejects the application. In both cases, the decision may be appealed. Action to determine civil liability by means of this special procedure is barred after the expiry of a five-year period from the date of the final conviction.

202. Article 51 of the Code of Criminal Procedure stipulates that the Office of the Attorney-General may bring a civil action on behalf of persons who, for economic reasons, are unable to file an application and on behalf of victims who have no authorized agent or legal representative. According to the information provided to date by the Office of the Attorney-General, nobody has yet applied for such services. It is also important to note that, according to article 52 of the Code of Criminal Procedure, the premature termination of criminal proceedings does not constitute a bar to civil proceedings.

203. Pursuant to articles 324 and 325 of the Constitution of the Republic, public officials who break the law, thereby harming individuals, in the performance of their duties are civilly and jointly responsible with the State or the public-sector institution that employs them, without prejudice to any action for recovery that may be brought against the official concerned in cases of misconduct or fraud. Furthermore, civil liability does not rule out the filing of charges of administrative and criminal responsibility against the offender.

204. The right to bring civil liability actions against public officials is extinguished after a period of 10 years, and, in the case of a criminal action, after double the period laid down in the Criminal Code, calculated from the date of separation from office. Moreover, articles 2236 and 2237 of the Civil Code state that the obligation to repair damage caused by an act or omission involving misconduct or negligence lies with the obligor, but that the State is liable in such circumstances when it acts through a special agent, unless the damage is caused by the official tasked with undertaking the measure in question, in which case the obligor is held responsible.

205. This being the case, the State is jointly responsible, in civil terms, in the aforementioned circumstances and is therefore required to compensate victims if they so demand. According to information provided by the Supreme Court of Justice, no case has been recorded to date of an award of compensation related to the crime of torture. Similarly, the Office of the Attorney-General reported that it had no record of having represented the State in a case involving such circumstances.

206. There are no State-run rehabilitation programmes in Honduras on behalf of victims of torture. There are no special measures either on behalf of victims of torture. In general, victims of any crime enjoy the rights recognized in article 16 of the Code of Criminal Procedure, which reads as follows: "Rights of victims of an offence or misdemeanour. The victims of an

offence or misdemeanour have the right: (1) to join the proceedings as civil parties or complainants, in accordance with the present Code; victims have the right to seek the assistance of the Public Prosecution Service if they lack the financial means to do so; (2) to be informed, at their request, of the results of the proceedings even if they have not participated in them; (3) to be heard, at their request, before any ruling that terminates or suspends the criminal proceedings; (4) to attend the public hearings, in accordance with the provisions of this Code; (5) to challenge the unwarranted administrative dismissal of the proceedings before the superior of the prosecutor concerned in the cases envisaged in this Code; and (6) to exercise the rights recognized in other legislation. Victims shall be informed of their rights at the time of filing a complaint with the Public Prosecution Service or the prosecution, or, where a complaint is filed with the competent court, at the time of making their first appearance in the proceedings.

O. Article 15

207. Article 88 of the Constitution of the Republic stipulates that no one shall be subjected to any form of violence or coercion to compel him or her to testify, and that only statements made before a competent judge shall have probative value. It further stipulates that any statement obtained through the breach of any of these provisions shall be null and void, and that those responsible shall be subject to the penalties established by law.

208. Moreover, article 101, paragraphs 6 and 7, of the Code of Criminal Procedure stipulates that accused persons have the right not to be subjected to measures that in any way affront their personal dignity, and not to be subjected to techniques or methods that undermine their ability to know or understand the implications of their acts or their free will, such as: ill-treatment, threats, physical or mental violence, torture, use of psycho-active drugs, hypnosis and polygraphs or lie detectors.

209. Article 200 of the Code of Criminal Procedure concerning prohibited or unlawful evidence reads: "The following shall be inadmissible as evidence: acts or facts that breach the guarantees of due process laid down in the Constitution of the Republic and the international human rights treaties to which Honduras is a party; and any evidence that is the necessary outcome of such acts or facts and that could not have been obtained without the information derived therefrom, without prejudice to the responsibility that may have been incurred by the person who obtained such information unlawfully."

210. Indirect or circumstantial evidence is admissible as indicia under our legal system. Article 202 of our Code of Criminal Procedure stipulates in this regard that the judicial body shall assess the evidence on the basis of sound critical analysis, and shall arrive at a conviction by assessing all the evidence produced jointly and consistently.

211. In addition, article 199 of the Code of Criminal Procedure states that: "Any evidence may be used to demonstrate the facts and circumstances pertaining to the offence that is the subject of the proceedings, even evidence that is not expressly regulated in this Code, provided that it is objectively reliable. If it is not covered by the provisions of this Code, reference shall be had, directly or indirectly, to the rules governing evidence to which it bears the closest resemblance. Evidence shall be admissible only if it is relevant and relates directly or indirectly to the subject under investigation; if it serves to ascertain the truth; and if it is not disproportionate or manifestly excessive in relation to the result it is proposed to achieve. If there are eyewitnesses,

and they may be summoned to testify, their testimony cannot be challenged by hearsay witnesses.”

P. Article 16

212. Article 68 of the Constitution of the Republic states that: “Everyone has the right to respect for his or her physical, mental and moral integrity. No one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Persons deprived of their liberty shall be treated with the respect due to the inherent dignity of the human person.” In the light of this article, the State of Honduras has, as already noted, characterized the crime of torture in articles 209 and 209-A of the Criminal Code.

213. Among the measures adopted by the State of Honduras to prevent acts of torture, we may report that the Constitutional Chamber of the Supreme Court of Justice rendered decisions in 2006 on five habeas corpus applications submitted by the Special Human Rights Prosecutor’s Office on behalf of all children deprived of their liberty in the Renaciendo and El Carmen internment centres, and adult inmates of the Marco Aurelio Soto National Penitentiary, the National Penitentiary of San Pedro Sula and the Criminal Detention Centre of Puerto Cortés, ruling in favour of the habeas corpus applications on behalf of the persons deprived of their liberty. The Office of the Minister of Security was ordered to take the necessary measures to halt the human rights violations committed against the inmates and to act on the provisions of the judgement; the executive and legislature were urged to formulate and implement a public policy concerning prisons that complied with the provisions of the Constitution and international human rights instruments; and the Public Prosecution Service and the National Commissioner for Human Rights were urged to oversee the formulation and implementation of the prison policy that had been ordered, in accordance with their constitutional and legal mandates⁵².

214. With regard to the recommendations made to Marco Aurelio Soto and San Pedro Sula national penitentiaries and the Criminal Detention Centre of Puerto Cortés, although the one-year time limit granted to the authorities to take action has elapsed, the recommendations have not been fully implemented owing to the small size of their budget, which makes no provision for improvements to the infrastructure of the centres. However, some corrective measures have been adopted, such as: (a) some of the inmates in overcrowded cells were transferred to other centres; (b) the physical space in some blocks was increased: they were redesigned and provided with sanitary facilities and drinking water, and with mattresses; (c) mentally ill persons, persons living with HIV/AIDS and persons with other illnesses were provided with mattresses, their diet was improved and electric power services were installed; (d) the sanitary conditions were improved by means of regular fumigation and cleaning campaigns⁵³.

⁵² See Annex II, Habeas corpus judgements on behalf of all children deprived of their liberty in internment centres and adult inmates of the Marco Aurelio Soto National Penitentiary, the National Penitentiary of San Pedro Sula and the Criminal Detention Centre of Puerto Cortés.

⁵³ See Annex II, Ministry of Security report: “Action to implement the immediate corrective measures and provisions of the Constitutional Chamber of the Supreme Court of Justice”.

215. With regard to the implementation of these judgements in the Renacimiento and El Carmen internment centres for children, the one-year time limit granted to those centres has also expired and the recommendations have not been fully implemented, a fact attributed by the authorities to the small budget allocated to them. However, some improvements have been made in the following areas: (a) to address the problem of overcrowding, two blocks were enlarged; (b) bunks and mattresses were installed in the blocks; (c) the drinking-water supply was improved; (d) the electric power system was repaired; (e) equipment was installed in the occupational training workshops and classrooms; (f) internal regulations specifying permissible disciplinary measures were adopted.

216. Judicial oversight exists, since enforcement courts were introduced when the Code of Criminal Procedure entered into force on 20 February 2002. The courts oversee and supervise the enforcement of sentences and security measures. Twenty-four enforcement judges have been appointed to date.

217. The enforcement of sentences and judicial oversight are regulated as follows by the Code of Criminal Procedure: An enforcement court shall oversee and supervise the enforcement of sentences and security measures, ensuring that the rules governing the prison regime are properly applied, that the constitutional aims of the penalty are respected, and that the judgements handed down by judicial bodies are strictly implemented. The enforcement court shall also remedy any abuses and deviations that occur in the process of implementation of the rules contained in the prison legislation, and shall hear appeals against the decisions taken by prison managerial, administrative and technical bodies⁵⁴.

218. Pursuant to the last paragraph of article 2 of the Unsentenced Offender Act, accused and convicted detainees suffering from a terminal illness shall be released on the basis of the opinion of three medical professionals appointed by the competent court and employed in public-sector institutions. The release of such persons shall be without prejudice to the State's obligation to provide them with assistance, if necessary, in public-sector hospitals.

219. With a view to improving the conditions of detainees suffering from a terminal illness, the Special Act concerning persons deprived of their liberty who are suffering from terminal illnesses and degenerative diseases of the nervous system was adopted. It lays down special rules governing budgetary funds and other circumstances pertaining to detainees who are in the final stages of an incurable illness, and specifies the legal procedures to be followed prior to their release⁵⁵.

220. Police custody centres, commonly referred to as police stations, are used only to detain persons for 24 hours, a period during which investigations must be conducted prior to their appearance before the relevant courts. Most of the cells consist of compartments in which minors, men, women and persons with different sexual preferences are held separately. The conditions in some of these cells are inadequate; they lack adequate ventilation and lighting;

⁵⁴ See Annex II, art. 381, of the Code of Criminal Procedure.

⁵⁵ See Annex II, Special Act concerning persons deprived of their liberty who are suffering from terminal illnesses and degenerative diseases of the nervous system, Decree No. 5-2007.

there are usually no sanitary facilities within the cells; on days when a large number of arrests are made, the cells are overcrowded and this may give rise to abuses among the detainees themselves⁵⁶.

221. With regard to conditions in penitentiary centres, article 14 of the Offender Rehabilitation Act stipulates: "The premises in which prisoners are detained shall comply with hygiene and sanitation standards, especially in terms of air quantity, water, minimum area, lighting and ventilation." In general, the living conditions of persons deprived of their liberty, except at PNFAS women's prison, are sub-standard, since the prisons lack the requisite infrastructure to apply the above-mentioned legislation and to ensure their reintegration into society.

222. In March 2007 the prison population totalled 11,723 persons, held in 24 prison facilities. The inmates are not classified according to the offence committed, but only in terms of sex, nationality and the stage reached in the proceedings (convicted and remand prisoners)⁵⁷.

223. The capacity of the 24 prisons is 8,280 persons, a number that has been exceeded in recent years. In 2004 the population was 10,931, i.e. an excess population of 2,651, and the current population, with unchanged prison capacity, is 11,723, i.e. an excess population of 3,393 inmates.

224. With regard to conditions in prisons, the law requires men and women to be placed in different prisons or, if this is not possible, to be placed in separate wings or blocks. In each establishment persons convicted of wilful or culpable wrongs must be segregated from persons convicted of ordinary offences, political offences, related ordinary offences or military offences. There must be one or more pre-trial establishments for detainees or remand prisoners attached to but separate from the criminal facilities⁵⁸.

225. In practice, only a few facilities make a distinction between remand and convicted prisoners. With regard to classification by sex, as there is only one women's prison in the country, some women are held in men's prisons, but in different areas, during the period of pre-trial detention. Once they are convicted, they must be transferred to the women's prison, but in some cases they may, on request, serve their sentence in such facilities in order to remain close to their relatives.

226. With regard to torture and ill-treatment, article 63 of the Offender Rehabilitation Act stipulates: "The use of force against prisoners is prohibited unless it is essential to restore order among undisciplined inmates." Violence in prison generally occurs between inmates, especially in the highly overcrowded national penitentiaries, where the numbers are increasing every year. Thus, 44 deaths from natural causes and violence were recorded in 2005, 50 in 2006 and as many as 19 during the period up to March 2007.

⁵⁶ See Annex II, Countrywide report on conditions in custody cells in different police stations.

⁵⁷ See Annex I, statistical table No. 6: Statistics of illnesses requiring special care.

⁵⁸ See Annex II, arts. 15 and 78, of the Offender Rehabilitation Act.

227. As far as medical services and food are concerned, articles 30, 31, 34, 66 and 67 of the Offender Rehabilitation Act state: “The medical service shall be equipped with the facilities needed to provide inmates with due care. The service shall be located in a wing within each establishment and shall also have an isolated unit for persons suffering from infectious or contagious diseases. If it is not possible to treat the inmates in the medical wing or infirmary, they shall be transferred to a hospital; appropriate security measures shall be taken to prevent them from escaping. [...] The physician in charge of the service shall collaborate with the prison management in all matters pertaining to hygiene and sanitation, and in ensuring compliance with the provisions concerning food, physical education, work and sports. [...] There shall also be one or more dentists in each establishment to attend to inmates’ needs. (The cost of denture work, however, shall be charged to the inmate.) [...] The director or administrator of the prison shall decide, after consulting the prison physician, on the nutrition plan for inmates, which should be sufficient to ensure their physical well-being. [...] The director or administrator of the prison shall determine any necessary prophylactic and hygienic measures, in consultation with the prison physician, and the inmates shall cooperate in ensuring their implementation. Any acts of disobedience, carelessness or negligence shall entail disciplinary action.”

228. Notwithstanding the provisions of the legislation, among the 24 prisons only the Marco Aurelio Soto and San Pedro Sula national penitentiaries and the PNFAS have medical and dentistry units and they depend on a meager annual budget for the purchase of medical supplies (150,000 Honduras lempiras, or US \$7,883); when inmates in the other prisons fall ill, they receive treatment in public-sector hospitals or the nearest health-care centres. With regard to food, the prisons have a budget of 11.00 lempiras, or \$0.58 per inmate per day, which is not enough to provide them with a balanced diet.

229. With regard to the disciplinary measures applied to inmates, articles 25, 61 and 64 of the Offender Rehabilitation Act stipulate: “Each penal establishment shall employ custodial staff, served by a special civil corps reporting to the Penal Establishments Directorate. [...] The following correctional and disciplinary measures may be imposed: (1) caution; (2) deprivation of recreation and sport; (3) performance of hygiene services; (4) suspension of outings; (5) temporary deprivation of communications or visits; (6) deprivation of food other than regulation meals; (7) prohibition of free use of private funds; (8) deprivation of auxiliary trust-based responsibilities; and (9) reversion to the progressive regime period. [...] The custodial staff of the penal establishments shall be authorized to bear arms, but their use shall be strictly confined to emergency cases and circumstances in which they are absolutely necessary for self-defence.”

230. Juvenile offenders are not incarcerated in penitentiary centres for adults. Pursuant to articles 198 and 262 of the Childhood and Adolescence Code, socio-educational internment measures may be applied in the case of child offenders. Such measures may not exceed eight years and are implemented in the internment centres run by the National Child and Family Institute, in which the living conditions do not correspond to those required to ensure their reintegration into society.

231. The mandate of the **Renaciendo Internment Centre** is to look after young people in the 12 to 18 age group who are sent to it by various courts throughout the country because they are in conflict with the law. On arrival they are examined by psycho-social and medical specialists so that they may be prepared, through appropriate educational and vocational services,

for reintegration into society. As the average number of young people catered for each month is 118 and the Centre's current capacity is 100, there is overcrowding.

232. Dental services are provided to the adolescents every Monday and Tuesday, in accordance with an employment contract. The services include extractions, teeth cleaning, root canal treatment and talks on oral hygiene. Casa Alianza provides the support of a psychiatrist, a therapist, a social worker and a nurse. Full-time medical care is provided on the basis of an IHNFA contract.

233. With regard to infrastructure and other services, Renaciendo Internment Centre currently has seven wings as well as a school and school library, a kitchen, a food store, a reflection cell, a multiple-use hall, a medical and dental clinic, administrative offices and the "Growth Block" area. Only two of the seven wings are in good condition. One wing requiring repairs houses 29 young people, and conditions in the remaining facilities are inadequate. With a view to improving the infrastructure in these facilities, a Cooperation Agreement was signed between IHNFA and the Fundación MB-Proyecto Honduras. The civic work planned under the agreement will include the remodelling of the kitchen and living area and their fittings⁵⁹. Rehabilitation is promoted through vocational workshops on art, painting and tailoring, as well as educational talks, therapy, counselling, guidance and behaviour monitoring. A period is reserved every Friday for sports, organized games and other activities, always under the supervision of the staff on duty.

234. With regard to education, the Centre runs the "Renovación" school, approved by the Ministry of Education in 1996 and supervised by District No. 11. There are two programmes: Educatodos (Education for All) and the Honduran Institute for Education by Radio (IHER). Three counsellors serve as primary teachers in the school, and there is one middle-school teacher, an educational coordinator and a volunteer from Orphan Helpers organization who teaches English. The school has a library with 300 books and board games; it is open from 9 a.m. to 1 p.m., and a video room will soon be installed.

235. The **Sagrado Corazón de María Internment Centre** is located in Aldea de Támara, Francisco Morazán Department, and currently looks after adolescents in the 12 to 18 age group who are sent there by the sectional and departmental juvenile courts of first instance as a preventive and socio-educational internment measure. The young people who are admitted to the Centre enjoy all the rights and guarantees set out in the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. As soon as they arrive, they enjoy protection, personal care, and social, psychological, educational, medical and physical care corresponding to their age and individual characteristics with a view to preparing them for reintegration into society. The Centre operates 24 hours a day throughout the year, and on three days employs staff who carry out therapeutic, training and ethical activities. With a view to ensuring the full rehabilitation of young people, the Centre provides services in the following areas: psychology, social work, permanent medical care, dentistry and vocational training.

⁵⁹ See Annex II, Cooperation Agreement between the National Child and Family Institute and the Fundación MB-Proyecto Honduras.

236. The **Jalteva Educational Complex** looks after 40 adolescents. It is located in Cedros, Francisco Morazán Department, and operates on an internment and semi-custodial basis, providing educational, academic and vocational services and engaging in social, medical and administrative work. Adolescents who are sent to the Complex are alleged to have committed the following offences: homicide, rape, robbery, unlawful association, murder, aggravated robbery, special rape, threats, unlawful possession of weapons, simple homicide, acts of lechery and intra-family violence.

237. The **El Carmen Educational Complex, which** is located in Aldea de El Carmen, San Pedro Sula, Cortés Department, looks after young people in the 12 to 18 age group by means of an internment regime, and tends to the basic needs of adolescents sent to it from the country's departmental juvenile courts and/or courts of first instance. Arrangements are made for coordination and strategic alliances with the juvenile courts and the sectional courts of first instance in various departments, the Special Prosecutor's Office for Children of San Pedro Sula, the Office of the First Lady, the Preventive Police Department and other related offices.

238. The Complex also houses the Hogar Casita Adolescentes, a temporary home for adolescents in the 12 to 18 age group, who are taken in on account of physical and emotional ill-treatment, sexual abuse, abandonment, being orphaned or on other grounds. They are sent to the home, which is currently looking after 84 adolescents, by the judicial authorities, hospitals, churches and non-governmental organizations. The Hogar Nueva Esperanza provides integrated care for children under 12 years old, facilitating their overall development in circumstances of social risk or extreme vulnerability. They are admitted at the request of the juvenile courts, the prosecutors' offices or the police.⁶⁰

239. The **Day Care Centre** in Victoria, Yoro, provides support, educational backing, food and health care and coordination services for 35 children. It has a total capacity of 45. As medical services are lacking, the children are taken to the community health centre. The infrastructure of the Centre is in a state of total dilapidation. The ground for admission in most cases is parental poverty. The parents rely on the Centre to provide the children with basic nutrition, to look after them during the day and to assist them with school work. The children attend the community kindergarten and primary school.

240. **Casitas Adolescentes de Niñas** is a temporary home for between 60 and 70 young people in the 12 to 18 age group, who are admitted on grounds of social risk: physical or emotional ill-treatment, sexual abuse, abandonment, etc. They are sent to the home by the judicial and police authorities, hospitals, non-governmental organizations, churches and families, or they admit themselves; its current capacity is 54. For medical care it relies on the support of the Orphan Helpers organization; it runs literacy programmes authorized by the Ministry of Education with the Alfasic Programme, as well as handicraft and computer workshops.

241. Lastly, we wish to inform the Committee that the Honduran Government has made considerable progress in eliminating all forms of torture, thereby ensuring compliance with the

⁶⁰ See Annex I, table No. 8, Internment centres of the Honduran Child and Family Institute (IHNFA).

provisions of the Convention. The Government is aware that it must take further action, of both a legislative and administrative nature, to eliminate torture once and for all.

242. In submitting this report, the State of Honduras wishes to reiterate its determination and commitment to ensure full compliance with its human rights obligations as a member of the international community represented in the United Nations.
