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

Initial report

HONDURAS*

[21 February 2005]

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INFORMATION RELATING TO INDIVIDUAL ARTICLES OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

I. Article 1

1. The fundamental principles underlying Honduran public law are as follows: democracy, the principle of the separation of powers or autonomy of functions, the principle of constitutionality or supremacy of constitutional norms, the principle of legality, and the principle of surveillance.

2. The origins and development of constitutional law can be traced from the time of the earliest Spanish constitutions down to the present Constitution of the Republic, which was adopted in 1982. Since the latter date, Honduras has held six elections, all of them characterized by an authentic spirit of democracy and responsibility on the part of citizens; another election is scheduled to be held shortly, in 2005. In May 2004, the Supreme Electoral Tribunal (TSE) was established, replacing the former National Tribunal of Elections, which had become obsolete. One of the main advantages of this change is that the Tribunal is now distinct from the National Registry of Persons.

3. The National Tribunal of Elections was the institution mandated to oversee electoral procedures and activities. Under the authority of the Elections and Political Organizations Act, it regulated all matters relating to voting and the operation, formation, registration and dissolution of political parties.

4. The constitutional history of Honduras may conveniently be divided into a number of periods, as follows:

- (a) Pre-independence period, 1808-1821, and period of the annexation of Central America to Mexico, 1821-1823;
- (b) Period following the separation of the Central American provinces from Mexico, 1824-1838;
- (c) Period following the breakup of the Federation of the United Provinces of Central America, 1838-1873;
- (d) Period of the modernization of the Republic, 1876-1982.

5. Article 1 of the Constitution lays down the basic parameters whereby Honduras is a free, democratic and independent republic. These characteristics underpin the purpose of the republic, which is to ensure its inhabitants the enjoyment of economic well-being as well as justice, liberty and culture.

6. Honduras reaffirms that the right of self-determination is a fundamental human right, as stated in the International Covenant on Civil and Political Rights and other international instruments. Article 15 of the Constitution of the Republic states expressly, "Honduras supports the principles and practices of international law, that promote the solidarity and self-determination of peoples, nonintervention and the strengthening of universal peace and democracy." This provision reflects the Honduran State's acceptance of the principle of the right of self-determination of all peoples and the principle of nonintervention in the affairs of other States, and its commitment to strive to build and strengthen universal peace and democracy.

7. Under articles 1, 4, 102, 103 and 106 of the General Environment Act, "The protection, preservation, rehabilitation and sustainable management of the environment and natural resources are in the public interest and serve the general welfare. The central Government and municipalities shall promote the rational use and sustainable management of those resources in order to permit their conservation and development for economic purposes." Similarly, "The integral organization of the national territory, taking into account environmental aspects and economic, demographic and social factors, is in the public interest. Public and private projects that affect the environment shall be designed and executed having regard to the fact that all natural resources are interrelated and the fact that man and the world around him are interdependent," while "Local community residents shall participate directly in actions aimed at the protection and preservation of the environment and the rational use of the country's natural resources..." and "The people shall be entitled to be informed about the state of the environment and all operations and actions with environmental implications undertaken by governmental institutions and municipalities." Furthermore, "Every person who contaminates the environment and performs actions affecting the ecological system that contravene the provisions of the General Environment Act and sectoral Acts shall be liable for the costs associated with environmental rehabilitation measures that may be required as a result of such actions or omissions, without prejudice to the criminal or other liability that he may thereby incur."

8. One obstacle to the free availability of natural wealth and resources is the fact that the management of natural resources is centralized in the hands of the central Government. This situation gives rise to conflict between the central Government and municipalities for the right to develop resources.

9. In forested areas, the availability of resources is determined by legal security and equity in the matter of land distribution. There are various aspects that place limitations on the availability of forest resources, including: (i) the lack of a clearly defined forest resource management policy; (ii) the issue of security of access to and tenure of forested lands; (iii) the issue of sustainable harvesting; (iv) absence of incentives for reforestation and afforestation; (v) the fact that standard-setting, regulatory and supervisory functions relating to timber production are exercised by various authorities, including the Ministry of Agriculture and Livestock, municipalities, and private owners.

10. With the implementation of the Honduras State Policy for the Agri-Food Sector and Rural Areas, 2004-2021, a medium- and long-term policy has now been developed to serve as an adequate sectoral framework tailored to the needs of the residents of Honduras. The Policy is structured around a specific vision of agriculture, one that includes the objective of agricultural development in a more efficient and competitive context with a view to helping mitigate poverty and ensure the country's food security.

11. In addition, a series of immediate measures designed to help farmers are currently under consideration. These include: (i) implementation of the National Forest Protection Strategy; (ii) development and implementation of the Forest Policy; (iii) expansion of the Community Forestry Programme; (iv) the design and implementation of a national reforestation programme; (v) action to combat unlawful timber harvesting; (vi) promotion of plantation projects for wood energy production with a view to ensuring firewood supplies that are adequate to meet consumption.

12. As regards access to land and land tenure, the main difficulties at present include: (i) a scarcity of fertile agricultural land; (ii) an inequitable landholding structure (very large holdings on the one hand and very small ones on the other); and (iii) lack of land ownership security in rural areas. In view of this situation, the agriculture policy that has been developed for the period 2004-2021 includes a series of proposed actions and measures that seek to provide a response to current difficulties through a variety of programmes and projects.

13. In this context, actions in prospect include: (i) modernization of the Property Register and Cadastral Survey; (ii) expansion of the Land Ownership Title Programme; (iii) preparation of a national agreement on legal security and social equity in the matter of land tenure, and others.

14. These actions, combined with the measures contemplated under the Honduras State Policy for the Agri-Food Sector and Rural Areas, 2004-2021, are being developed in response to the problems of inequity and insecurity in the matter of land tenure. Substantial efforts are being deployed in this connection at the present time in the form of such projects as PACTA, the PAAR project, and the National Agrarian Institute, which are designed to address a variety of issues, including: (i) a land register for rural and forested areas; (ii) confirmation of the legal status of land; (iii) distribution of property titles to landless farmers; (iv) a land market with the private sector; (v) training for rural residents, both men and women; (vi) development of community forestry projects; (vii) finalization of the farmland and forest land register; (ix) legal and economic solutions to agrarian conflicts, and the like.

15. It is a simple fact of life in Honduras that Governments have paid very little attention to the indigenous population, which lives by subsistence activities, especially in remote areas of the country. Governmental policies relating to the provision of basic social necessities (health care, schools, food) for these people have been harmful and inconsistent, tending as they have to promote human settlements in areas with abundant natural resources without providing either infrastructures (roads, electricity, basic sanitation) or oversight. Nor have the inhabitants of these settlements had the education and knowledge they would have required in order to make rational, sustainable use of the available natural resources (e.g. the Patuca area), with the result that those resources have been harnessed primarily to serve the interests of a small group of individuals (politicians and entrepreneurs). These persons have promoted the overexploitation of natural resources, both renewable and non-renewable, and their actions have not only degraded and contaminated the environment, they have also adversely affected the interests of the people as a whole. Their undue, unlawful and arbitrary appropriation of large tracts of land, which is a natural source of wealth, has prevented the residents of local communities from having access to the available resources to obtain the income and food that they need in order to sustain their families. In some instances, indeed, people (e.g. Janeth Kawas) who have attempted to defend the local natural resources and the environment have lost their lives while opposing the destruction or undue appropriation of sites that were regarded as the heritage of all because of their scenic beauty and their utility as a source of employment (e.g. the Bahía de Tela), providing families with an opportunity of earning income and obtaining food. Carlos Luna was another martyr who lost his life while defending the forest resources of Olancho. Other local people who have attempted to exercise their right to dispose freely of the country's natural wealth and resources (such as estuaries, natural lagoons or mangrove swamps) have also been known to lose their lives when they have got in the way of powerful economic interests (e.g. 12 fishermen in the southern part of Honduras were murdered between 1990 and 2001), and these murders have gone unpunished.

16. On 29 May 2003, the Honduran legislature adopted Decree No. 93-2003, authorizing the Government to send troops of the country's armed forces to Iraq for the purpose of contributing to the stabilization and reconstruction of that country and providing its people with humanitarian assistance. The authorization was valid for a period of one year, with the soldiers to serve six-month tours of duty.

II. Article 2

17. Article 60 of the Constitution of the Republic reads as follows: "All men are born free and equal in rights. There are no privileged classes in Honduras. All Hondurans are equal before the law. All forms of discrimination on account of sex, race, class or any other reason prejudicial to human dignity shall be punishable. The law shall establish the crimes and penalties for violators of this provision."

18. Honduras is a party to a number of international instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, which was published in No. 29826 of the *Official Gazette* on 6 July 2002, and the Convention on the Elimination of All Forms of Discrimination against Women, which was published in No. 23203 of the *Official Gazette*. These instruments are now part of Honduras' domestic law, in accordance with article 16 of the Constitution of the Republic.

19. Article 59 of the Constitution of the Republic, as amended, provides for the appointment of a National Human Rights Commissioner, whose duties are set forth in detail in the Organic Law establishing the office (Decree No. 153-95). Under the Law, the Commissioner is responsible for "the enforcement, defence and dissemination of human rights", among other duties.

20. The provisions of the Constitution relating to foreigners are as follows: "Foreigners are obligated from the time they enter the national territory to respect the authorities and comply with the laws. Foreigners enjoy all of the same civil rights of Hondurans with the restrictions established by the laws for qualified reasons of public policy, security, national interest or convenience. Foreigners are also subject to the same ordinary and extraordinary taxes of a general character to which Hondurans are obligated, in accordance with the law. Foreigners may not engage in political activities of national or international character in the country, under penalty of sanctions in accordance with the law. Foreigners may not file claims nor demand indemnity of any kind from the State, except in the form and in the cases in which Hondurans may do so. They may not resort to diplomatic channels except in cases of denial of justice. For such purposes a decision that is unfavourable to the claimant is not to be taken as a denigration of justice. Persons who contravene this provision shall lose their right to reside in the country. Within the limits established by the law, foreigners may only hold positions in teaching the sciences and the arts or render technical or advisory services to the State, when there are no Hondurans who can fill these positions or render such services." (Arts. 30, 31, 32, 33 and 34). Immigration into Honduras is regulated by the Immigration and Foreign Nationals Act. Under article 11 of that Act, "Foreigners are subject to the same rights and obligations as Hondurans, with the restrictions established by the Constitution and the laws for qualified reasons of public policy, security, national interest or convenience." Under article 16, "Non-resident foreign nationals may not engage in gainful work or activities either on their own account or as employees, except such work or activities as may be authorized under special circumstances by the Minister of the Interior and Justice, such as artistic or sporting activities, public performances,

temporary work or business activities. In the case of migrant workers, authorization shall be granted or withheld by the Minister in consultation with the Minister of Labour and Social Security". Under article 41, "In the case of persons seeking special permission to reside in Honduras for the purpose of practising an academic profession, the Immigration and Foreign Nationals Directorate shall grant authorization where the foreign national concerned meets the established legal requirements for the practice of the profession in question. In addition, special permission to reside in Honduras shall be granted to foreign nationals employed as professors by public or private universities or as teachers in any institution of the national education system."

21. In Honduras, a number of vulnerable groups have enjoyed special treatment as a result of the enactment of particular laws. An example is the HIV/AIDS Act, the purpose of which is to strengthen preventive action and promote the health of individuals, thereby contributing to research on and the control and treatment of the human immunodeficiency virus and the AIDS syndrome (Decree No. 147-99, HIV/AIDS Act).

22. Honduras has been the subject of a petition to the Inter-American Commission on Human Rights on the grounds that it has failed to protect persons infected with HIV/AIDS. The complainant alleges discrimination and charges that the persons concerned are in imminent danger of death because they do not have access to treatment with antiretroviral medications. The Commission has urged Honduras to apply preventive measures.

23. The Global Fund recently signed an agreement with the Honduran AIDS Foundation under which the Fund provided US\$26 million to fight the disease in Honduras.

24. On 10 September 2000, the National Congress of the Republic, at the instance of the Ministry of Health, issued Decree No. 303-2002 approving the "Act concerning the acquisition of strategic public-health products through the PAHO/WHO revolving fund". This Decree represents a major gain for the health of the people of Honduras, as it affords a timely means of obtaining substantial quantities of high-quality medications, including antiretrovirals.

25. As we have seen, Honduras has acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (Decree No. 61-2002).

26. A special law has been enacted to create and expand scope for participation by Honduran women (Decree No. 34-2000, Equal Opportunity for Women Act).

27. In accordance with the terms of the International Covenant on Civil and Political Rights, our legislation makes provision for the ordinary judicial remedies of request for reconsideration and appeal. In addition, the Constitution includes guarantees on *habeas corpus* (this is the speediest of all remedies, protecting as it does personal freedom and physical integrity), *amparo*, unconstitutionality and review (which applies only in criminal and civil cases). Another remedy is the special appeal for the quashing of a decision by a lower court.

III. Article 3

28. The body of Honduran legislation that ensures the equal right of men and women to the enjoyment of all civil and political rights comprises the Constitution of the Republic, the Elections and Political Organizations Act, the Equal Opportunity for Women Act and the Family Code.

29. These statutory instruments constitute the basis for the exercise of civil and political rights by men and women and have contributed to greater participation by citizens, especially women. However, the various forms of gender inequality that persist in our society are still a factor affecting women's exercise of some of their civil rights.

30. Generally speaking, our country's laws are not characterized by a gender focus. However, women's rights have recently been recognized, both in legal terms and through the formulation of policies aimed at the promotion of gender equity, complete with implementation mechanisms, and these measures constitute a fundamental part of the transformation process that the political culture of Honduras is currently undergoing.

31. Honduras has adopted measures designed to give practical effect to the principle of the equal right of men and women to the enjoyment of civil and political rights as enunciated in the Covenant. In particular, it has enacted the Equal Opportunity for Women Act, which promotes participation by women in decision-making within the power structure. It promotes women's rights in other ways as well: under the Act, women are expressly stated to be eligible to stand as candidates for election to public office. In practice, however, more men candidates are elected than women candidates.

32. Notwithstanding the above, there is undeniably room for more meaningful participation by women as full Honduran citizens, and accordingly the National Women's Institute (INAM) has initiated a process aimed at amending both the Elections and Political Organizations Act and the Equal Opportunity for Women Act in an effort to close any legal loopholes that might restrict or present obstacles to their enjoyment of the rights here under consideration.

33. At the present time, women constitute a significant presence in the political life of Honduras. None the less, it is fair to say that men continue to predominate both nationally and locally. In all cases, men occupy more prominent positions than women (they tend to come at the head of lists of candidates and hold the senior posts in most State institutions, especially at the higher levels of the pyramid).

34. Honduran women have made substantial gains with respect to participation, as is apparent from the various forms of promotion, which have been an invaluable contribution to the task of building a culture of equity.

35. In the last six elections, approximately 10 per cent (152) of the successful candidates were women, while approximately 90 per cent (1 304) were men. These figures include both primary candidates and substitutes.

IV. Article 4

36. The third chapter under Title IV ("Constitutional Guarantees") of the Constitution of the Republic is headed "Restriction or Suspension of Rights", and includes the following provisions: "Article 187. The exercise of the rights established in articles 69 (inviolability of personal freedom), 71 (judicial detention), 72 (free expression of thought), 78 (freedom of association and assembly), 81 (freedom of movement), 84 (protection from arbitrary detention), 93 (detention after providing bail), 99 (inviolability of domicile) and 103 (right to private property) may be suspended in the event of invasion of the national territory, serious disturbance of the peace, an epidemic, or other general disaster, by the President of the Republic in agreement with the Council of Ministers, by means of a decree that shall contain: (1) the reasons justifying the

suspension; (2) the guarantee or guarantees that are restricted; (3) the territory to be affected by the restriction; and (4) the duration of the restriction. In addition, Congress shall be convened by the same decree in order that, within a period of thirty days, it may take cognizance of the decree and ratify, modify or reject it. In the event that Congress is in session, it shall take immediate cognizance of the decree. The restriction of guarantees shall not exceed a period of forty-five days for each time it is decreed. If before the expiration of the period set for the restriction the causes underlying the decree have disappeared, it shall cease to be effective, and in this case, every citizen shall have the right to urge its revision. Upon expiration of the period of forty-five days, the guarantees shall be restored automatically unless a new restriction has been decreed. Restriction of guarantees decreed shall in no way affect the functioning of State organisms, whose members shall always enjoy the immunities and privileges granted by the Law." The immunity formerly enjoyed by certain members of State bodies has now been withdrawn pursuant to Decree No. 175-03 of 19 December 2003, which was ratified by Decree No 105-2004 of 11 September 2004 and came into force on 11 October 2004.

37. "Article 188. The territory in which the guarantees mentioned in the preceding article are suspended shall be governed during the suspension, by the Law of the State of Siege, but neither that law nor any other may provide for the suspension of any guarantees other than those already mentioned. Likewise, during the suspension no new offences may be established or penalties imposed other than those established by laws in force at the time the suspension was decreed." Under article 205, which lists the powers of the National Congress, paragraph 23 reads as follows: "To declare the restriction or suspension of rights in accordance with that provided in the Constitution, and to ratify, modify or disapprove the restriction or suspension that has been enacted by the Executive Power in accordance with the law." Under article 245, which lists the powers of the President of the Republic, paragraph 7 reads as follows: "To restrict or suspend the exercise of rights, in agreement with the Council of Ministers, subject to that established in this Constitution." It thus appears that the standards established under the basic laws of Honduras are consistent with the provisions of article 4 of the International Covenant on Civil and Political Rights.

38. Under the present Constitution of the Republic, Honduras has never been subjected to the effects of a decree suspending or restricting constitutional guarantees, or emergency measures such as were regulated in former decades by the Law of the State of Siege of 10 September 1924.

39. In November 1998, however, a number of constitutional guarantees were suspended because of Hurricane Mitch. Under Executive Decree No. PCM-019-98, published in the *Official Gazette* on 23 November 1998, the exercise of the rights established in articles 71 (no one may be held incommunicado for longer than 24 hours without being placed at the disposal of the competent authorities for trial), 81 (freedom of movement), 84 (no one may be arrested or detained except by virtue of a written mandate from a competent authority), 99 (inviolability of domicile) and 103 (right to private property) was suspended for 15 days from the date of publication of the decree.

V. Article 5

40. The provisions of the Covenant are consistent with the provisions of articles 63 and 64 of the Constitution and the standards derived therefrom that are set forth in the Civil Code.

41. There is nothing in Honduran legislation that would permit any restriction upon or derogation from the fundamental human rights recognized or existing in the Covenant.

VI. Article 6

42. Title III of the Constitution of the Republic is headed, "Declarations, Rights and Guarantees". Article 61, which comes under Title III, reads as follows: "The Constitution guarantees to all Hondurans and to foreigners residing in the country the right to the inviolability of life, and to individual safety, freedom, equality before the law, and property. " Article 65 states, "The right to life is inviolable." Under article 66, "The death penalty is abolished." The Criminal Code, for its part, considers the issue under Book II, Title I of which is headed, "Offences against Life and Physical Integrity." In addition, Chapter II of the Children and Adolescents Code, which is headed "Right to Life, Health and Social Security", states in article 12, "Every human being has a right to life from the moment of his or her conception."

43. The State will protect that right by adopting such measures as may be necessary to ensure that the gestation, birth and subsequent development of the individual concerned are attended by conditions compatible with human dignity. Article 126 of the Criminal Code defines abortion as "the termination of pregnancy by the premature, violent expulsion of the products of gestation or the termination of gestation in the mother's womb". The penalty for causing abortion depends on whether the case involves (1) causing abortion with the woman's consent, in which case the offender is liable to three to six years' imprisonment, (2) causing abortion without the consent of the mother and without the use of violence or intimidation, in which case the offender is liable to six to eight years' imprisonment, or (3) causing abortion with the use of violence, intimidation or deception, in which case the offender is liable to eight to ten years' imprisonment.

44. Honduras is a party to the Inter-American Convention on Human Rights or Pact of San José. Article 4, which is headed "Right to Life", states that "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life." Honduras is also a party to the Convention on the Rights of the Child, which states (article 6, paragraph 1) that "States Parties recognize that every child has the inherent right to life." Under paragraph 2 of the same article, "States Parties shall ensure to the maximum extent possible the survival and development of the child."

45. Approximately 800 young people under the age of 18 were murdered in Honduras between 1998 and August 2003. Most of these killings occurred in urban areas, in the country's two main cities, Tegucigalpa and San Pedro Sula. To date, the perpetrators of most of these crimes have not been apprehended.

46. With respect to this appalling situation, the Government of Honduras reiterates categorically that it does not tolerate, consent to or promote criminal acts of this kind in any way. Substantial efforts are being devoted to the task of bringing the truth about these murders to light. On 27 May 2002, a day before the United Nations Commission on Human Rights published a report submitted pursuant to its resolution 2002/36 by Ms. Asma Jahangir, the Commission's Special Rapporteur on extrajudicial, summary or arbitrary executions, President Ricardo Maduro established a "**Commission for the Physical and Moral Protection of Children**". The Commission is made up of the Minister of the Interior and Justice (who is the chairman), the Minister of Security, the Minister for Foreign Affairs, the National Human Rights Commissioner, the Public Prosecutor of the Republic, the Director of the Honduran Children and Family Institute (IHNFA), representatives from the Supreme Court, the National Commission for Internal Security (CONASIN), the Catholic Church of Honduras, the Evangelical Confraternity of

Honduras, and the Coordinator of COIPRODEN, a network of institutions working to promote children's rights in Honduras.

47. The establishment of just such a Commission was one of the Special Rapporteur's recommendations.

48. Pursuant to its mandate, the Commission has adopted a number of measures. First, in September 2002, it established a "**Special Investigation Unit on Violent Child Deaths**", consisting of detectives specializing in the investigation of homicides. The Unit comprises two teams of investigators, one for the eastern/central region of the country and the other for the northwestern region. Second, the Commission has set up an "**Inter-institutional coordinating body**" or "Task Force" to facilitate the practical work of investigating cases involving killings of children, apprehending the perpetrators and subsequently bringing them to justice. The Task Force also serves as a clearing-house for relevant information and an instrument for the implementation of the Commission's resolutions. The Task Force is currently engaged in a strategic planning process in collaboration with security experts, experts in the field of children's welfare, and a non-governmental organization (NGO) known as Covenant House. Third, NGOs concerned with children's issues have been integrated into investigation and monitoring processes. Fourth, the Commission has decided to develop and implement a public policy expressly designed to implement and follow up the recommendations contained in the Special Rapporteur's report. Fifth, it has set up feedback mechanisms to provide reliable, adequate information on the progress of its work and that of the Special Investigation Unit both within the country and internationally. Lastly, the Commission supports other existing State-sponsored initiatives aimed at preventing crime in general and this type of crime in particular, focusing on the recruitment of children and adolescents into gangs, weapons control, and prevention of abuses of authority, whether by action or omission.

49. The Government of Honduras is currently developing a number of activities aimed at addressing the phenomena of violence and criminal activity. These include:

- (a) the "**Safer community programme**", which is an urban security programme based on the concept of policing in close proximity to the community;
- (b) the "**Peace and coexistence**" programme, a prevention and rehabilitation programme in the Sula Valley aimed primarily at improving security conditions in an area that has one of the highest crime rates in the country;
- (c) the "**National weapon registry programme**", which is designed not only ensure that all weapons are registered and that weapons are carried only by persons licensed to do so, but also to facilitate the criminal investigation process through ballistics testing;
- (d) **National disarmament**: as a supplementary measure, the Government will promote a national disarmament campaign covering all types of unregistered weapons in addition to the registry programme;
- (e) introduction of a **National prevention, rehabilitation and social reintegration programme for gang members**: this programme will be the practical application of a plan (which has already been prepared) for the rehabilitation and social reintegration of gang members through a variety of activities administered jointly by the State and

private institutions. The "prevention" component of the plan comprises a number of State policies aimed at motivating children and young people not to join gangs.

50. The Supervisor of the "*Special Investigation Unit on Violent Child Deaths*" informed us that a total of 16 investigators were assigned to the Unit, distributed as follows: 10 in Tegucigalpa, covering the eastern/central region of the country, and six in San Pedro Sula, governing the northwestern region. It is those two cities that report the largest numbers of cases of killings of children and adolescents. Each of the Special Unit's two offices has one information analyst, the remainder of its staff members being detectives. A special prosecutor provide technical support for the Unit's work. Fourteen killings have been solved in the past three months, and 64 are still under investigation.

51. The Special Unit has determined that of the 300 cases of child killings reported in 2002, 74 have now been proved to be linked to gang violence. Of those 74 cases, 43 are currently before the courts, nine are in the hands of the Office of the Public Prosecutor, and 22 are being investigated. In two of these cases, police officers were found to have been involved; the individuals concerned have been charged and tried according to law.

52. The Special Unit has brought greater efficiency to the investigation of more recent cases of killings of young people by acting swiftly to determine facts and follow up leads. This has been apparent in the solving of a number of cases, of which two may be mentioned by way of example. The first of these involved five young people, José Varela (21), José Velásquez (20), José Castillo (22), Ema Banegas (20) and Wendy Cerrato (21), all of whom were found dead from gunshot wounds in the vicinity of a reservoir supplying the capital with drinking water. Thanks to the quick action of the Special Unit, four persons were arrested and charged with the murders. Those four persons have been in detention since 28 June 2003, awaiting trial. The second case, which occurred on 6 May 2003, involved a young man named Elmer Fúnez Fúnez (19), who was found dead from gunshot wounds under obscure circumstances. The results of the investigation, which included ballistics tests, pointed to a police sub-inspector as the most likely suspect. The man in question has been detention awaiting trial since 20 August 2003.

53. As far as the obligations of the State of Honduras are concerned, it is essential to state once again that the Government accepts its responsibility for "investigating every one of these crimes, preventing juvenile delinquency, enforcing the human rights of children and young people, and bringing all who violate those rights to justice"¹.

54. The Human Rights Division of the Office of the Public Prosecutor recently prosecuted a police officer from the "Cobra" special squad on a charge of attempted homicide against a citizen. The officer in question was sentenced to five years' imprisonment for causing grievous bodily harm, but not for attempted homicide as the Division had requested. In another case brought by the Human Rights Division, a security guard was sentenced to 15 years' imprisonment for homicide committed against a minor, while in a third case a guard at the National Penitentiary was sentenced to 20 years' imprisonment for killing an inmate (Office of the Public Prosecutor, Annual Report for 2002, pp. 31 ff.).

¹ Report on progress in judicial and investigative proceedings relating to killings of children and young people in Honduras. Ministry of the Interior and Justice, 2003.

55. In all, eight security service personnel have been arrested and charged, including one member of the "Cobra" squad, five members of Preventive Police Forces, one junior officer of the FFAA Special Forces, and one member of the Air Force. Five of these cases involve homicide charges, one a charge of murder, one bribery, and one homicide and attempted homicide (Office of the Public Prosecutor, Annual Report for 2002).

56. Petitions addressed to the Inter-American Commission on Human Rights involving allegations against the State of Honduras during the period covered in this report refer to the following cases: No. 11.073, Juan H. Sánchez; No. 11.802, Ramón Hernández Berríos *et al.* (minors tortured while in detention in Comayagua); No. P-3101, Oscar Daniel Medina Cortés and José Luis Hernández; No. 12.331, Marco Antonio Servellón *et al.*; No. 11.545, María Marta Saire; No. 11.805, Carlos Enrique Jaco; No. 11.562, Dixie Miguel; No. 060/2003, Antonio Luna López; No. 326/2003, Arístides Soto Soto; No. 061/2003, Blanca Jeannette Kawas Fernández; No. 059/2003, Carlos Escaleras Mejía; No. 721-00, Rigoberto Cacho Reyes; No. 11.87, Ernst Otto Stalinsky; No. 1119-03, Comunidad Garífuna Punta Piedra; No. 1118-03, Comunidad Garífuna Cayos Cochinos; No. 906-03, Comunidad Triunfo de la Cruz; No. 432-03, Raúl Pinot Armino; No. 11.735, María Teresa Bulnes; and No. 2570/2002, Nasry Javier Ictech Guifarro, among others. In addition, the State of Honduras has paid compensation when allegations of human-rights violations have been upheld by the Inter-American Court of Human Rights, or pursuant to an out-of-court settlement between the parties.

57. It is also relevant for purposes of this article to recall the events that occurred on 5 April 2004 at the El Porvenir penitentiary, which left 39 persons injured and 69 dead. Of the dead, 61 were members of the Mara 18 gang, five common criminals or persons who did not belong to a gang, and three women who were visiting the penitentiary at the time. These cases are currently being investigated by the competent authorities, spurred on by heavy pressure from civil society.

58. Honduras is a signatory to the Rome Statute of the International Criminal Court.

VII. Article 7

59. The applicable Honduran legislation includes the Constitution of the Republic, the Criminal Code, the Code of Criminal Procedure, the Children and Adolescents Code, the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners, the Inter-American Convention on Human Rights, the Organic Law on the Office of Human Rights Commissioner, the International Covenant on Civil and Political Rights, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

60. Article 68 of the Constitution of the Republic states clearly that every person has the right to have his physical, mental and moral integrity respected, that no one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment, and that every person deprived of his liberty shall be treated with respect for the inherent dignity of the human person.

61. The laws of Honduras include no provisions by which persons may be held incommunicado or in solitary confinement for long periods; they provide only for detention in places known to the law, such as the police cells of the Criminal Investigation Directorate and those in the country's various penitentiaries. The rules governing the detention or arrest of individuals are set forth in article 282 of the Code of Criminal Procedure. Under paragraph 8 of that article, the place, date

and time of detention shall be entered in a special register that shall be deemed to constitute a public document and shall be authorized by the Minister of Security.

62. Honduran law prescribes strictly separate places of detention for persons awaiting trial and convicted persons. Article 86 of the Constitution reads, "Any persons subject to criminal prosecution shall, while in detention, have the right to be segregated from convicted persons." Article 191 of the Code of Criminal Procedure, article 78 of the Rehabilitation of Offenders Act and rules 84 and 85 of the United Nations Standard Minimum Rules for the Treatment of Prisoners also refer expressly to the segregation of different categories of detainees. The issue of overcrowding in Honduras' prisons and other places of detention has been addressed by the Act Respecting Detained Persons who have not been Convicted, which was brought into force by Decree No. 127-96 of 13 August 1996, as subsequently amended by Decree No. 183-97. This Act governs the situation of detained persons who, despite having been held for a considerable length of time, have not yet been either convicted of an offence or acquitted by the competent judge or court.

63. The rules to which detained persons are subject are set forth in article 282 of the Code of Criminal Procedure. Under paragraph 4 of that article, "It is unlawful to commit or to encourage or permit any act of torture, mistreatment or other form of cruel, inhuman or degrading punishment either at the time of arrest or during detention."

64. The country's detention centres and penitentiaries are not equipped to inflict torture or mistreatment upon inmates. By law, inmates are entitled to prompt access to physicians and lawyers to assess, assist and defend them. They also receive periodic visits from friends and family members.

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

66. Honduran law provides guarantees for the immediate cessation of any act prohibited under the above article of the Criminal Code, and also for suitable redress. Every person has the right to file a petition alleging mistreatment, and the law makes provision for the prompt, impartial investigation of all such cases and sets forth the resources available to petitioners. The guarantees recognized by the State are set forth in articles 182 and 183 of the Constitution, while articles 381, 382, 383 and 384 of the Code of Criminal Procedure provide that complaints by

detainees against actions on the part of the prison authorities that violate their fundamental rights shall be heard by an Executive Magistrate.

67. Police forces work in an atmosphere of constant pressure because of public anxiety generated by the current high crime levels. How the police respond to this public pressure will depend to a considerable extent on the quantity and quality of the human resources at their disposal. On the whole, however, they have endeavoured to provide efficient service in so far as possible.

68. No one is officially tortured in Honduras, and consequently there can be no such thing as an amnesty for persons who have committed acts of torture.

69. Persons responsible for law enforcement, such as medical practitioners and police officers, are all provided, in the course of their training, with full information about the prohibition of torture and other unlawful forms of treatment. In addition, the Preventive Services Directorate operates a penitentiary training centre designed to train penitentiary personnel in issues of security and other aspects of the penitentiary system, in coordination with the Police Education Directorate.

70. Articles 381 and 382 of the Code of Criminal Procedure make provision for an official known as an Executive Magistrate, who is mandated to see to it that sentences imposed by the judicial authorities are duly carried out, to oversee and monitor security measures, and to ensure that the standards governing the penitentiary system are duly applied pursuant to the constitutional purposes deemed to be served by the penalties provided by law. Other noteworthy institutions in this connection include the Technical Councils for which provision is made in articles 27 and 28 of the Rehabilitation of Offenders Act, the Office of the National Human Rights Commissioner, the Human Rights Division of the Office of the Public Prosecutor, and various NGOs such as the Centre for the Prevention, Treatment and Rehabilitation of Victims of Torture and their Families (CPTRT), the Catholic Church, the Prison Brotherhood, the Committee of the Families of Detained and Disappeared Persons in Honduras (COFADEH), the Committee for the Defence of Human Rights (CODEH) and various others, all of which participate actively in the task of monitoring and protecting the rights of persons in detention.

VIII. Article 8

71. The State of Honduras has ratified ILO Conventions No. 29, concerning forced or compulsory labour, and No. 105, concerning the abolition of forced labour, which were adopted by the General Conference of the International Labour Organization at its fourteenth and fortieth meetings held in Geneva, Switzerland on 28 July 1930 and 30 June 1957 respectively.

72. Governmental supervision in this area is the responsibility of the Ministry of Labour and Social Security. The Ministry's General Labour Inspectorate is mandated to ensure that labour standards are observed in workplaces, and to conduct field inspections in all suspected cases of forced or compulsory labour.

73. The applicable legislation prohibiting slavery, servitude and forced labour begins with the Constitution, article 60 of which states, "All men are born free and equal in rights. There are no privileged classes in Honduras. All Hondurans are equal before the law. All forms of discrimination on account of sex, race, class, or any other reason prejudicial to human dignity

shall be punishable. The law shall establish the crimes and penalties for violators of this provision." Under article 87 of the Constitution, "Prisons are establishments for security and social defence. They shall be used in an effort to bring about the social rehabilitation of prisoners and their training for work." Article 51 of the Rehabilitation of Offenders Act provides that an inmate may be required to perform labour only subject to the following conditions: (1) the prospective labour is consistent with the inmate's wishes, vocation, attitude and training; (2) the prospective labour assignment takes the facilities of the prison into account; (3) the prospective labour assignment takes the characteristics of the local economy into account, and (4) the prospective labour assigned takes the characteristics of the official market into account.

74. Article 97 of the Constitution, for its part, provides that "Infamous, proscriptive and confiscatory punishment is forbidden. An offender may be sentenced to life imprisonment where his crime has been committed under serious, offensive and degrading circumstances and has caused shock, revulsion, indignation and repugnance in the national community. The specific offences for which this sentence may be imposed shall be determined by the criminal law. Sentences to imprisonment for single offences and cumulative sentences for several offences shall be determined by the criminal law."

75. Under no circumstances may persons serving prison sentences work for private individuals or private corporate entities. Similarly, articles 52, 53, 54, 55, 56 and 57 of the Rehabilitation of Offenders Act refer explicitly to work that a person serving a prison sentence may be required to perform for his own rehabilitation. In addition, articles 36-46 of the Act outline a progressive approach to the use of sentences of imprisonment as a way of dealing with offenders.

76. In practice, persons serving prison sentences perform only work designed to further their own rehabilitation. There are some model prison farms (e.g. in Comayagua) where the inmates grow and harvest their own food in preparation for their reintegration into society when they are released. Undeniably, there is overcrowding in some prisons, and this is certainly one of the most serious problems confronting the system of correctional institutions in Honduras.

77. Compulsory military service was abolished in Honduras in April 1994 by Decree No. 24-94, which makes military service voluntary in peacetime. Conscriptio was replaced by voluntary enlistment, although the power to conscript citizens for military service is still listed in the Constitution as one of the powers of the President of the Republic. The immediate cause of the abolition of compulsory military service was strong public pressure.

78. Under Honduran law, forced labour may not be required of any person. The State has endeavoured to bring national legislation into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners by enacting the Rehabilitation of Offenders Act, but there have been difficulties, and the Act is not yet fully in effect in the country's prisons.

79. Honduran law includes no provisions for the performance of forced labour or service of a like nature. Under family law—specifically, under the Domestic Violence Act—persons found guilty of having committed acts of domestic violence may be required to perform community service for a period of one to three months and from three months to one year in cases where the violence involved has not caused injury to the point of being deemed a criminal offence (Domestic Violence Act, article 7).

IX. Article 9

80. The applicable legislation is the Constitution of the Republic, articles 69, 84 and 98; the Code of Criminal Procedure, articles 172, 173, 175, 176, 178, 182, 183 and 185; the Civil Coexistence Act, articles 91, 94, 100, 101, 128.3, and 11; the Immigration and Foreign Nationals Act, article 8.16; the Domestic Violence Act, article 6(c); and the Children and Adolescents Code, article 188(c) and (h).

81. The history of Honduras has been marred by violations of human rights on various occasions. The Inter-American Court of Human Rights has ruled that the State of Honduras has been guilty of such violations. Yet in recent years we have introduced structural changes aimed at more effective enforcement of fundamental rights. The institution of the Office of the Ombudsman in 1990 and the establishment of the Office of the Public Prosecutor under Decree No. 228-93, published in the *Official Gazette* on 6 January 1994, mark the dawn of an era of civilian rule in our society, which in the decades preceding the 1980s had frequently been governed by military regimes. When the Code of Criminal Procedure came into force on 20 February 2002, the inquisitorial system previously in use in Honduras was replaced by an adversarial system in which procedures are based on the principles of orality, openness to the public, concentration, timeliness, procedural equality of the parties, adversariality, the presumption of innocence, and legality. *This new process is permeated by the concept of respect for human rights, in which freedom is the norm and prison the exception.*

82. Under the Code of Criminal Procedure, every person who is arrested has his rights read out to him at the time of his arrest. Those rights are as follows: the right to be informed about the facts of the offence that he is suspected of having committed, the right to communicate the fact of his arrest to the person of his choice, the right to be assisted in his defence by a solicitor (as soon as he has been arrested), the right to confer in private with his counsel, and the right to an interpreter.

83. The law specifies the procedure that the Criminal Investigation Directorate is required to observe when making an arrest. That procedure is as follows:

- (a) Offender arrested pursuant to a written warrant issued by the competent authority: under articles 84 ff. of the Constitution: (a) every warrant of arrest must be issued on grounds previously established in the law and (b) must be issued by a competent authority; (c) every warrant of arrest must be issued in accordance with legal formalities and pursuant to a resolution, writ or judgement; (d) for the execution of a warrant of arrest, the designated public officer shall take all appropriate measures to determine the whereabouts of the suspect, obtaining all available information in that connection from public and private sources of information, documents, the National Registry of Persons, photographs and the like; (e) every arrested person must be informed that as of the time of his arrest he is under detention, and he must be informed of the reasons for his arrest and the identity of the person who issued the warrant, having regard to the constitutional rights referred to above; (f) these various measures must be noted in a written statement, which must be signed by the arrested person, the investigator and a witness.
- (b) Offender caught in the act: under article 11 of the Code of Criminal Procedure, (a) where the person is found in the very act of committing an offence or (b) moments

after having committed it, (c) where the person is being pursued by a public hue and cry as the perpetrator of an offence or an accomplice of the perpetrator, (d) where the person is caught with instruments, weapons, effects or papers in his possession giving rise to a reasonable suspicion that he is the perpetrator of an offence or an accomplice of the perpetrator, (e) he may be deemed to have been caught in the act and may be apprehended by any person for the purpose of being handed over to the authorities. (f) Every person who is arrested after having been caught in the act must be informed forthwith of his rights and the acts which he is suspected of having committed, and he must be permitted to communicate the fact of his arrest to a relative or other person of his choice.

84. Every person who is held in detention has the right to:

- (1) communicate the fact of his detention and the place where he is being held to a relative or other person of his choice. If unable to do so, he may communicate this information to the Office of the National Human Rights Commissioner. In either case, this right may be exercised immediately;
- (2) be defended by a solicitor. If the accused person cannot afford a solicitor, the State will assign a public defender to represent him free of charge;
- (3) confer in private with his counsel, if he so desires;
- (4) to make no statement to the authority holding him without counsel being present;
- (5) to refuse to make any statement, without such refusal's being used against him. If the accused agrees to make a statement, he has the right to have counsel present when making it. This right applies to all other procedures for which the presence of the accused is required;
- (6) not to be subjected to any measures that are prejudicial to his personal dignity;
- (7) not to be subjected to any mistreatment, physical or psychological violence, torture, mind-altering substances, hypnosis or lie-detector tests;
- (8) to have the services of an interpreter or translator if he does not speak Spanish or if he is deaf and dumb;
- (9) to have counsel present at all times in all proceedings involving evidence;
- (10) to ask the Office of the Public Prosecutor to conduct any investigation that the accused deems relevant for his defence.

85. In practice, the police routinely arrest and search persons in the absence of any grounds for suspecting that an offence has been committed. Vehicles are indiscriminately stopped and the occupants required to produce identification and registration documents even where the police have no grounds for suspecting that the persons concerned are not carrying their documents, where the vehicles have not been reported stolen, and where there is no reason to suspect that an offence of any kind has been committed. Similarly, breath testing for alcohol is done indiscriminately, and persons are rounded up *en masse* for "looking suspicious", which is the rule

of thumb used by the police. As a rule, arrests are not made in execution of a writ issued by a competent authority, but simply on the basis of the power of the police to arrest a person and hold him for a period of 24 hours pending investigation where a complaint of an offence has been received. In a word, the rule is “arrest first and investigate afterward”.

86. In an effort to mitigate the effects of these practices, the OPP has its prosecutors monitor police operations and arrange for the release of persons who have been arbitrarily arrested. In addition, where it appears that abuses have been committed, the Human Rights Division of the OPP orders investigations to determine where responsibility lies. The State of Honduras is endeavouring, with the limited resources at its disposal, to abolish these practices.

87. Under article 140 of the Civil Coexistence Act, the police Conciliation Bureau or a Municipal Department of Justice may impose house arrest for a period of not more than five days. In practice, this provision of the Act is frequently used improperly to apply a form of imprisonment, and this violates the constitutional guarantee of due process, inasmuch as a non-judicial (i.e. administrative) authority, which is what the police Conciliation Bureau is, applies preventive detention for 24 hours without hearing the offender or holding any form of hearing beforehand, but rather on the basis of nothing but a police report which in most cases does not give an account of the facts that prompted the arrest of the person concerned, simply indicating the offence that he allegedly committed. After having been held for 24 hours in a police cell, the offender is required to pay a fine then and there, for which, as a rule, he is not even given a receipt.

88. Under article 182 of the Constitution, a writ of *habeas corpus* (or “personal appearance”) is recognized. Any person, or another person acting on his behalf, may file a petition for *habeas corpus* when he is unlawfully imprisoned, detained or restrained in any way in the enjoyment of his personal freedom, or when during lawful imprisonment or detention he is subjected to mistreatment, torture, harassment, unlawful demands or any other form of coercion, restriction or molestation that is unnecessary for his personal safety or for the order of the prison. In practice, this remedy is largely ineffectual, owing to the fact that a writ of *habeas corpus* is unlikely to be executed with diligence; in many instances the person concerned has been released by the time the Executive Magistrate appears at the place of detention, whereupon the case is dismissed. Article 381 of the Code of Criminal Procedure makes provision for an official known as an Executive Magistrate, who is mandated to see to it that sentences imposed by the judicial authorities are duly carried out and to ensure that the standards governing the penitentiary system are duly applied pursuant to the constitutional purposes deemed to be served by the penalties provided by law. In addition, the Executive Magistrate is required to correct any abuses or errors that may occur in the application of legislation relating to the prison system, and to deal with any complaints against decisions by managerial or technical staff in a prison administration.

89. Every person who has been unjustly convicted may bring legal action against the responsible authorities and obtain economic redress and the quashing of his criminal liability.

X. Article 10

90. According to the International Centre of Sociological, Penal and Penitentiary Research and Studies, Honduras has the worst prison overcrowding of all Central American countries. El Salvador makes the best showing, with 7% overcrowding, while Honduras comes a dismal last, with 109%.

91. Judicial reform has proved inadequate to bring about the far-reaching changes needed to correct the inhuman conditions in which thousands of detained persons live.
92. The operation of prisons and detention centres in our country is regulated by the Organic Law on National Police Services, chapter IV, article 52, under which the Preventive Services Directorate is responsible for the security, administration and surveillance of prisons and for security at social rehabilitation centres for minor offenders and delinquents as defined under the relevant provisions of Honduran law. Articles 68, 85 and 87 of the Constitution and article 5 of the Rehabilitation of Offenders Act are also applicable in this connection.
93. The procedure relating to the segregation of different categories of inmates in prisons is governed by articles 84 and 85 of the Rehabilitation of Offenders Act and rule No. 7 of the United Nations Standard Minimum Rules for the Treatment of Prisoners. As regards the investigation of complaints, the Office of the National Human Rights Commissioner and the Human Rights Division of the Office of the Public Prosecutor have full legal authority to investigate and follow up any complaints filed by prison inmates.
94. In general, we may say that in practice the United Nations Standard Minimum Rules for the Treatment of Prisoners are not applied by prison authorities because they are not familiar with them. Their training does not include instruction in the matter of the treatment of inmates; most of them come from a military background. The United Nations Code of Conduct for Law Enforcement Officers, like the Minimum Rules, is little known and consequently not observed.
95. In 1999, the Human Rights Division of the Office of the Public Prosecutor and the Centre for the Prevention, Treatment and Rehabilitation of Victims of Torture and their Families (a non-profit civil society human-rights organization) signed an inter-institutional agreement (see OPP report, annex 4) on the monitoring of the status of fundamental human rights in the country's prisons and detention centres with a view to ensuring that inmates are not tortured or subjected to cruel, inhumane or degrading treatment, and that the Minimum Rules are enforced.
96. In practice, prison inmates or their families submit complaints relating to arbitrary treatment to local offices of the OPP or to the Office of the National Human Rights Commissioner, which has set up drop boxes at various correctional institutions to receive complaints for subsequent investigation.
97. The office of Executive Magistrate was established on 20 February 2002, and since that date the Human Rights Division of the OPP has coordinated actions aimed at eliminating violations of the human rights of prison inmates. On 19 August 2003, a magistrate upheld a complaint brought by the Division concerning the use of solitary confinement in dark, damp cells with no natural light and no sanitary facilities as a disciplinary measure. Prison administrations were ordered to discontinue the use of that form of punishment.
98. It must be acknowledged that correctional institutions in Honduras are short of funds and do not have the physical and logistic resources to deal with the prison population. Efforts have been made to make them more humane places, and since 1997 the National Penitentiary has been in operation as a model prison, in which accused persons are held separately from convicted persons. In most correctional centres, visits are unrestricted, and inmates may receive visitors on the three days every week that are designated visiting days. Lawyers and NGO personnel are also admitted without restriction, except that they must come during working hours (7.30 a.m. to 5.00 p.m.).

99. Article 119 of the Constitution reads as follows: "The State has the duty to protect children. Children shall enjoy the protection afforded to them in international treaties which look after their rights. Child protection laws are matters of public policy, and the official establishments serving this purpose shall have the status of social welfare centres." Article 122 states, "The law shall establish the jurisdiction and the special tribunals which shall hear family and juvenile matters. No one under eighteen years of age shall be permitted to be confined in a jail or prison."

100. Honduras has a separate system of juvenile courts for young offenders, and juvenile cases are tried in accordance with a special procedure set forth in the Children and Adolescents Code.

101. In keeping with the State's duty of maintaining public safety and ensuring that all citizens are able to enjoy the fundamental right of an orderly society, the Honduran Children and Family Institute (IHNFA) sets legal standards and develops psychoeducational programmes aimed at contributing to the rehabilitation of young offenders and reintegrating them into their family and community environment as productive members of society.

102. With this end in view, IHNFA has designed what is known as the Rehabilitation and Social Reintegration Programme. This is an institutional mechanism that develops activities in the framework of an educational process aimed at bringing about behavioural change in young offenders and reintegrating them into society. Family participation and inter-institutional coordination are important contributing factors in this connection.

103. This programme targets persons in the 12-18 age group who have been in conflict with the law and have been referred to IHNFA by the competent courts. The involvement of their families and society in the rehabilitation process includes the following aspects: education with responsibility, psychosocial guidance and support for the juvenile and his or her family, occupational training, academic training and habit formation. The programme comprises two subprogrammes:

- (a) Alternatives to imprisonment: This subprogramme is aimed at young persons in conflict with the law who have been allowed to remain at large but have been ordered to comply with measures prescribed by the court: (1) mandatory supervision, aimed at ensuring that the young person will appear at his or her hearing; or (2) socioeducational measures, which are applied in cases of young persons who have been convicted of an offence. The aim of socioeducational measures is to develop the critical awareness of the young person concerned, based on the principles of freedom, individual participation and equality of opportunity, creating a condition of equilibrium that can be achieved with the participation of the young person himself, his family and society. In pursuit of this end, IHNFA has organized training courses for law enforcement officers, aimed at teaching them to deal with young persons in conflict with the law. The purpose of this training is to ensure that due process is followed (the fact that the rights of organization and participation are contained in the Convention on the Rights of the Child is not overlooked). Workshops are held on subjects relevant for the issue of young people, such as self-esteem, sexuality, crisis intervention, adolescence, values necessary for attaining goals, and attitude change.

- (b) Detention: This subprogramme is aimed at young persons in conflict with the law who have been sentenced to some form of detention by the judge of a juvenile court or other court.

104. At the present time, IHNFA runs a number of centres where it administers mandatory supervision and socioeducational measures. These include (1) the "Sagrado Corazón de María" educational complex, located in the Támara Valley, Francisco Morazán Department; (2) the "Renaciendo" educational complex, located in the Támara Valley, Francisco Morazán Department; (3) the "Jalteva" educational complex, located in the Municipality of Cedros, Francisco Morazán Department, and (4) the "El Carmen" educational complex, located in the village of El Carmen, Cortés Department.

105. IHNAF is also pursuing the social reintegration aspect by means of a system of grants that make it easier for young offenders to return to school and develop new life projects based on voluntary participation. To date, 59 young persons have been awarded grants of this kind.

106. The Young Offenders Division of the Office of the Public Prosecutor works in coordination with judges to conduct inspections at prisons and juvenile detention centres to verify the conditions under which young detainees are being held, to determine whether their rights are being respected, and to make sure that no adult offenders are being held at juvenile detention centres and that no juvenile offenders are being held in prisons for adults.

107. In Honduras, children are subject to a special system of justice, not the regular system for adult offenders. When an underage person is charged with an offence, he or she can be held liable only in accordance with the procedures set forth in the Children and Adolescents Code and subject to the rights and guarantees enshrined in the Constitution of the Republic. When a young offender is sentenced to a term of detention, he or she is turned over immediately to IHNFA, which maintains separate detention centres for juveniles. The procedure is oral, quick, and reserved for minors exclusively.

108. The minimum age for trial in the juvenile justice system is 12, and the maximum age 18. Article 1 of the Children and Adolescents Code states, "... for all legal purposes, the term 'child' means any person under the age of 18." The article goes on to specify that legal minority comprises two periods: childhood, which begins at birth and ends at the age of 12 in the case of boys and at the age of 14 in the case of girls, and adolescence, which begins at the minimum ages just mentioned and ends at the age of 18. Persons between the ages of 18 and 21 are referred to as young adults. In case of doubt as to the age of a child, pending determination of his or her actual age, he or she shall be deemed to be under the age of 18.

109. The United Nations Standard Minimum Rules for the Treatment of Prisoners and other international instruments are used in the training given to prison personnel, in order to enable them to put the provisions of those instruments into practice in their day-to-day dealings with the detainees in their charge. We may note in passing that detainees have full access to the various national and international instruments in which their rights are enshrined, and some prison inmates are thoroughly familiar with them. The Executive Magistrate, the Human Rights Commissioner, the Human Rights Division of the Office of the Public Prosecutor and various NGOs are responsible for seeing to it that persons in detention are permitted to exercise the legal remedies at their disposal, and for hearing complaints from any person in detention who considers that he has been denied his rights.

110. Under article 199 of the Children and Adolescents Code, "Children in detention shall retain the following rights... (k) The right to profess the religion that they have freely chosen." There are various organizations (Evangelical and Catholic) that support juvenile detainees' freedom to exercise that right.

XI. Article 11

111. Failure to comply with a court order to fulfil a contractual obligation has never led to the imprisonment of any citizen.

112. In Honduras, under article 98 of the Constitution, no person may be detained, arrested or imprisoned for debts or obligations which do not arise from crimes or offences. It is important to emphasize that this constitutional provision has been enforced for the past five years. Before that time, it was possible to be charged with fraud because of civil or commercial obligations secured or settled by means of cheques (securities).

113. Under articles 2 and 14 of the Code of Criminal Procedure, every person charged with an offence is guaranteed the right to be represented by counsel.

XII. Article 12

114. The Constitution of the Republic guarantees freedom of movement and and the free choice of place of residence for everyone in the country. Article 81 states, "Every person has the right to circulate freely within the national territory, as well as leave, enter and remain in it. No one may be obligated to change his domicile or residence, except in special cases and in accordance with the law". In practice, everyone enjoys freedom of movement within the country and may go to any place in it, except persons who are in court-ordered psychiatric confinement, in prison or preventive detention, or under some form of house arrest pursuant to the terms of one of the alternatives to preventive detention listed in article 173 of the Code of Criminal Procedure (in force since 20 February 2002), which makes provision for a number of precautionary measures involving restrictions on personal freedom. Measures referring explicitly to the residential setting include paragraphs 4 to 8 of the above-mentioned article: "(4) Arrest at the individual's own home or at the home of some other person with the consent of the latter, whether under surveillance or not; (5) Release of the individual into the care or supervision of a particular person or institution, such person or institution to report periodically to the court; (6) The individual ordered to appear periodically before a particular court or authority designated by the court; (7) The individual ordered not to leave the country, his place of residence or such other area as the court may determine; (8) The individual ordered not to attend specified meetings or go to specified places." Furthermore, under article articles 54 and 59 of the Police and Social Coexistence Act, the police authority may restrict individuals' freedom of movement in special cases. Article 54 of the Act states, "The National Police may limit or restrict, for as long as may be necessary, the movement or presence of persons in streets or public places that are high-risk areas where crime flourishes to the detriment of public order, for the purpose of protecting public safety and peaceful civil coexistence or preventing or combating organized crime, where such measures are essential for the restoration of order..." Article 59, for its part, states that such measures may be taken "in cases of emergency or by court order for the purpose of maintaining security, order and public safety." In practice, controls or restrictions on the free movement of

persons are imposed only under the above-mentioned circumstances, and they are always temporary, pending the restoration of public order.

115. Although there is no formal, express obligation to have a domicile, the Regulations made under the Municipalities Act (Order No. 018-93 of 1 February 1993) provide that "... (a) The term 'resident' of a municipality shall mean a person having his usual domicile in that municipality, regardless of whether he lives there by choice with the intention of doing so indefinitely or whether he has an employment, office or function that makes it necessary for him to live there ... (b) Every person who has lived in a municipality for a period of more than six months shall be deemed to be... a resident of that municipality. Every person who has a domicile in two or more municipalities shall be deemed to be a resident of the municipality in which he lives during the greater part of the year, while also being registered in the other municipality or municipalities; (c) The foregoing provisions shall be applicable both to Honduran citizens and to foreign nationals possessing resident status."

116. There is no formal registration procedure involved in becoming a resident of a municipality, but a person who is a resident as the term is defined in the Regulations made under the Municipalities Act acquires *ipso facto* rights and duties in respect of the municipality in which he resides. It might be argued that one of those duties, namely the payment of taxes in accordance with the Local Taxation Plan and article 24, paragraph 3 of the Municipalities Act, implicitly involves registration as a resident of the municipality to which the taxes are paid.

117. In Honduras, no one is required to obtain any sort of official authorization in order to go temporarily from one place to another within the country, nor are there any State controls on Honduran or foreign travellers. Article 58 of the Police and Social Coexistence Act states expressly that "every Honduran or foreign national enjoys freedom of movement within the country. The police authority is responsible for protecting freedom of movement and the free circulation of persons, vehicles and goods in general."

118. There are no temporary or permanent restrictions on the free movement of persons through, into and out of any part of Honduras. The only controls in effect are checks of the transit and operating permits of vehicles for hire, such as taxis or inter-city buses, which must report to transit posts on major access roads when entering or leaving one of the main cities. The purpose of these controls is to make sure the vehicles in question are not engaging in commercial activities outside the limits of the geographic area within which they are authorized to operate. They are also a feature of phytosanitary controls on the country's roads. However, movements of persons into and out of Honduras are monitored and regulated by the Immigration and Foreign Nationals Directorate.

119. The immigration authorities keep up-to-date records of all persons entering or leaving the country for control purposes.

120. Under the Constitution of the Republic, the right of freedom of movement may be restricted in certain situations. Article 187 reads as follows: "The exercise of the rights established in articles 69, 71, 78, 81, 84, 93, 99 and 103 may be suspended in the event of invasion of the national territory, serious disturbance of the peace, an epidemic, or other general disaster, by the President of the Republic in agreement with the Council of Ministers, by means of a decree that shall contain: (1) the reasons justifying the suspension; (2) the guarantee or guarantees that are restricted; (3) the territory to be affected by the restriction; and (4) the duration of the restriction.

In addition, Congress shall be convened by the same decree in order that, within a period of thirty days, it may take cognizance of the decree and ratify, modify or reject it. In the event that Congress is in session, it shall take immediate cognizance of the decree. The restriction of guarantees shall not exceed a period of forty-five days for each time it is decreed. If before the expiration of the period set for the restriction the causes underlying the decree have disappeared, it shall cease to be effective, and in this case, every citizen shall have the right to urge its revision. Upon expiration of the period of forty-five days, the guarantees shall be restored automatically unless a new restriction has been decreed. Restriction of guarantees decreed shall in no way affect the functioning of State organisms, whose members shall always enjoy the immunities and privileges granted by the Law."

121. Between November 1997 and October 2003, the right of freedom of movement was restricted only once. That was in November 1998, following the devastating impact of Hurricane Mitch. On that occasion, a state of siege was decreed for a period of fifteen days, in accordance with the procedure laid down in the Constitution and the 1936 Law of the State of Siege. Once the fifteen-day period designated in the decree had elapsed, no new decree of suspension was issued.

122. Every person has the right to leave the country freely, provided he or she holds a travel document, i.e. a passport, and under the Immigration and Foreign Nationals Act, articles 67, 68 and 69, every Honduran citizen has the right to obtain a passport.

123. At the present time, there are several types of passport: diplomatic passports, official passports (issued only by the Ministry of Foreign Affairs) and regular passports, which are issued by the Immigration and Foreign Nationals Directorate, an arm of the Ministry of the Interior and Justice. In addition, emergency passports are issued to foreign nationals with refugee status, foreign nationals to whom asylum has been granted, stateless persons, or persons whose countries of origin have no accredited diplomatic or consular representation in Honduras. In cases that qualify under the applicable regulations, special permits, valid for a single journey, are issued to individuals or groups constituting national artistic, sporting or cultural delegations or excursions to other countries. Similar permits are issued to foreign nationals in special situations that qualify under the regulations.

124. The procedure followed by the authorities responsible for signing passports and deciding whether a passport application should be approved or denied is based on an evaluation of all the documents submitted by the applicant. This evaluation is more than a mere review, especially in cases involving applications for passports for minors, where the object is to protect the minor in question and ensure that both parents or the court-appointed guardians are allowed to exercise their lawful rights.

125. In recent years, very large numbers of regular Honduran passports have been issued, as may be seen from the year-over-year figures shown in the box below².

² See box N17.

XIII. Article 13

126. Under the Constitution of the Republic, foreign nationals have the same civil rights as Honduran citizens, with certain exceptions. Article 31 of the Constitution reads as follows: "Foreigners enjoy all of the same civil rights of Hondurans with the restrictions established by the laws for qualified reasons of public policy, security, national interest or convenience. Foreigners are also subject to the same ordinary and extraordinary taxes of a general character to which Hondurans are obligated, in accordance with the law." Under article 61, "The Constitution guarantees to all Hondurans and to foreigners residing in the country the right to the inviolability of life, and to individual safety, freedom, equality before the law, and property."

127. Under the Immigration and Foreign Nationals Act, persons who enter Honduras fall into two categories: residents and non-residents, depending on the activities in which they engage and the length of time they stay in the country. Persons in each category are subject to various restrictions on the type of activities in which they may engage (e.g. work, study, business and so on). In addition, persons in each category are subject to various procedures relating to travel into and out of the country. These do not involve any discrimination, legally or in practice, as regards the enjoyment of the rights guaranteed by the Constitution.

128. Article 89 of that same Act sets forth the circumstances in which foreign nationals may be expelled from the country. The Ministry of the Interior and Justice shall order the expulsion of a foreign national in the following cases: (1) where the person concerned has been convicted of a criminal offence, after he has served his sentence or been pardoned; (2) where the person concerned has engaged in unlawful activities or activities not authorized under the terms of his entry or residence permit; (3) where the person concerned has committed acts prejudicial to the health, economy or environment of Honduras, or acts prejudicial to international peace and good relations between Honduras and other friendly countries; (4) where the person concerned has taken part in a movement of any nature that uses or incites to violence to achieve its objectives, a mutiny, or a separatist meeting, or has in any way promoted or incited to national or international armed conflict, social instability, ungovernability, refusal to obey the law, or social or political agitation; (5) where the person concerned has previously been expelled from Honduras and has concealed the fact of his expulsion when entering the country; (6) where the person concerned has falsely used or pretended to hold an immigrant status different from the status attributed to him by the Honduran immigration authorities; (7) where the person concerned has fraudulently obtained residence or naturalization, or where his naturalization card has been withdrawn; and (8) where the person concerned has engaged in activities other than those in which he is authorized to engaged or has fraudulently practised a profession or performed a function.

129. Under article 90 of the Act, "Every foreign national who is denied entry to Honduras or deported or expelled through an international airport or at a border crossing point shall be excused from the payment of any charge, tax or administrative expenditure arising in connection with his departure from the country."

XIV. Article 14

130. Article 303 of the Constitution states, "The power to dispense justice emanates from the people and is administered free of charge on behalf of the State by independent magistrates and judges who are subject only to the Constitution and the law. The judicial power consists of a Supreme Court of Justice, the Courts of Appeal, trial courts and other tribunals established

by law. No judgement shall have more than two instances; the judge or magistrate who has exercised jurisdiction in one of them may not try the other, nor in cassation, on the same matter without incurring responsibility."

131. The Supreme Court of Justice is the country's highest court. It includes 15 justices who preside over the several chambers of the Court (Constitutional, Criminal, Labour, Administrative and Civil), three justices for each chamber. These justices hear essentially appeals for the quashing of decisions by lower courts. The Supreme Court also has five additional justices who hear cases relying on the constitutional remedies of *habeas corpus*, *amparo*, unconstitutionality and review.

132. The powers of the Supreme Court of Justice are as follows: (1) To organize and direct the judicial power; (2) To try cases involving charges against the highest public officials of the State, when the National Congress has declared that there are grounds for prosecution; (3) To try at second instance all cases that the Courts of Appeal have heard at first instance; (4) To try cases of extradition and such others as are to be judged in accordance with international law; (5) To try cases relying on the remedies of cassation, *amparo*, review and unconstitutionality in accordance with this Constitution and the law; (6) To authorize the right to practise the profession of notary to persons who have qualified as lawyers; (7) To try at first instance charges of malfeasance brought against magistrates of Courts of Appeal; (8) To appoint and dismiss magistrates and judges at the recommendation of the Judicial Council; (9) To publish the *Gaceta Judicial*; (10) To prepare the proposed budget of the judicial power and submit it to the National Congress; (11) To determine the division of the country into judicial districts; (12) To establish, abolish, merge or transfer trial courts, Courts of Appeal and other tribunals belonging to the judicial power; (13) To adopt its Statutes and such other regulations as may be necessary for the exercise of its functions; and (14) Such others as are conferred upon it by the Constitution and the law.

133. Courts of Appeal are collegial tribunals of second instance. There are 12 Courts of Appeal in all, located in various departments of the country, with competence to try at first instance claims and charges against trial judges seeking the enforcement of civil liability. At second instance, Courts of Appeal hear civil matters that have been tried at first instance by trial court judges, arbitrators *de jure* and military judges.

134. Trial courts and tribunals of first instance for criminal matters deal with prosecutions for offences under the new Code of Criminal Procedure, which came into force on 20 February 2002. They convict or acquit the defendant and ensure that the judgement is carried out. In civil matters, the Courts of the Peace hear cases involving claims for sums of less than 50 000 lempiras and cases in which the parties have gone before the court voluntarily. Magistrates' courts hear cases involving claims for any amount. They try these cases from beginning to end, from the submission of the claim to the execution of the judgement. Proceedings are in writing, with the exception of certain injunctions, which are given orally. Labour courts hear cases involving disputes over contracts of employment. Proceedings are oral. Courts with competence in administrative matters hear cases involving claims against the State of Honduras for compensation for damage and losses incurred in connection with legal issues involving individuals or acts involving public administration, including cases of unjustified dismissal of State employees. Family courts hear suits for divorce, petitions to enforce the payment of alimony by persons who have been ordered to do so, cases involving the custody of children, parental authority and other family-related matters, provided they do not involve criminal offences. Proceedings are in writing. Courts with competence for **children and adolescents** try

cases and see to the application of whatever measures may be deemed appropriate for children between the ages of 12 and 18 who have committed offences. Proceedings are invariably oral, with no intermediate parties. Courts with competence for matters relating to domestic violence hear cases involving aggression by one spouse against the other in contravention of the Domestic Violence Act. Proceedings are oral. Courts with competence for matters of tenancy hear cases arising from or relating to building rental contracts. Proceedings are in writing.

135. The jurisdiction of magistrates' courts in the country is determined on the basis of two factors: (a) the level of specialization of the courts in question, and (b) territorial distribution. At the present time there are 78 magistrates' courts, specializing in various matters, located in the major cities of Honduras, while other cities have sectional or mixed magistrates' courts that hear cases dealing with various matters or all matters.

136. National trial courts are a recently established feature of the judicial system in Honduras, having been in operation since 20 February 2002. These are collegial courts with three judges, whose rulings are based on majority or unanimous decisions. They are courts of first instance that hear cases orally and publicly once a magistrate's court has determined that there are grounds for referring a case to one of them. In such cases, accordingly, it is the national trial court that makes the definitive ruling. At the present time, Honduras has nine national trial courts with a total of 53 judges.

137. Executive Oversight and Security Measures Courts are a judicial innovation in Honduras. These courts have been in operation since 20 February 2002. They are competent to monitor the implementation of court judgements to ensure that convicted persons are not denied their constitutional rights while serving their sentences and that prison officials do not abuse their authority. These powers extend to accused persons who are being held in preventive detention. At the present time, Honduras has 11 Executive Oversight and Security Measures Courts, presided over by 11 Executive Magistrates.

138. Courts of the Peace are mandated to administer community justice and hence resolve social issues of lesser importance.

139. No person may be a justice of the Supreme Court of Justice unless he is a Honduran national by birth, a citizen in the full enjoyment and exercise of his rights, a qualified lawyer and member of the Bar Association and over 35 years of age, and has been a judge for five years, or has practised his profession for ten years. Justices of the Supreme Court are elected by the National Congress. A vote in favour by three quarters of all Members of the National Congress is required to elect a candidate, and there must be not fewer than three candidates for every vacancy. Candidates are elected from a list prepared by a nomination panel consisting of: (1) a representative from the Supreme Court of Justice, elected by a majority consisting of two thirds of all the Supreme Court justices; (2) a representative from the Bar Association, elected by the Assembly of the Association; (3) the National Human Rights Commissioner; (4) a representative from the Honduran Employers Council (COHEP), elected by the COHEP Assembly; (5) a representative from the ranks of professors with the country's Faculties of Law, recommended by the National Autonomous University of Honduras; (6) a representative elected by civil society organizations; and (7) a representative from the country's trade union organizations.

140. In accordance with the standard enunciated in the Constitution, the Code of Criminal Procedure provides that among the rights enjoyed by every person charged with an offence is the right to be assisted by a solicitor as soon as he is arrested or asked to make a statement. The solicitor may be designated by the arrested person himself or by his family. If he does not name a solicitor, a public defender appointed by the court will represent him, and if no public defender is available, the court will appoint an attorney for that purpose.

141. At the present time, criminal procedure in Honduras follows the adversarial system, which involves the separation of the functions of prosecution and judgement. The essential characteristics of that system are set forth in the Code of Criminal Procedure. They are as follows: (a) Pre-eminence of the prosecution in criminal procedure, conducted in accordance with the principles laid down in the Constitution of the Republic, international treaties to which Honduras is a party, and the Code of Criminal Procedure; (b) The adversary principle, in which the parties are guaranteed the right to introduce evidence at every stage in a trial. Furthermore, evidence that is introduced and admitted is presented at a public hearing, in the presence of the parties, who have the right to examine and challenge the other party's evidence, in a court with three presiding judges, who have a legal duty to ensure that the principles governing the trial (equality, adversary proceedings, and observance of the rights and guarantees both of the person on trial and of the victim) are duly applied; (c) The principle of orality: criminal trials are conducted orally and hearings are public (principle of openness to the public), meaning that the presentation of evidence and everything else that takes place in the course of a trial (statements by the accused, witnesses and experts, statements made by the parties and the decision or ruling of the court, all made orally) are known to the persons concerned and to society at large, the purpose being to ensure that the proceedings are governed by the principle of the presumption of innocence; under the law, every person is deemed to be innocent until he has been found guilty by a competent tribunal duly constituted according to law; (d) Free evaluation of the evidence; the judge is free to decide cases on the basis of his own conviction as arrived at in accordance with the rules of sound critical judgement, indicating the grounds for his decisions and rulings.

142. Under article 7 of the Code of Criminal Procedure, State agencies are expressly prohibited from intervening in trials, and in the event that a judge deems his independence to have been compromised, he is required so to inform the Supreme Court of Justice. Where the interference originates from that Court itself, one of its justices or some other court, a report to that effect shall be submitted to the Supreme Court of Justice meeting in plenary session by the Office of the Public Prosecutor of the Republic.

143. Criminal procedure in Honduras comprises three stages: (1) the preparatory stage, which includes the complaint, the preliminary investigation, the initiation of a prosecution and the initial hearing; (2) the intermediate stage, which includes the bringing of a formal charge, the plea and the opening of a trial; and (3) the pleadings or oral, public trial, which includes preparations for arguments in court, the presentation of evidence, and deliberation and the final decision.

144. Where a complaint is made against an individual, the matter is investigated by the competent body. Once the investigation has been completed, the Office of the Public Prosecutor may initiate a prosecution before the local magistrate's court, where the accused may be required to appear, if he is in custody; otherwise, the prosecutor may request the magistrate to order his arrest or to subpoena him, as the case may be. The accused is subsequently asked to make a statement, which he may do if he wishes, or, if he prefers, he may remain silent. The court then decides whether the accused should be kept in detention (for a maximum of six days) or released on bail. In either case, the magistrate sets a date for an initial hearing.

145. The prosecution, the private complainant if any, counsel for the accused, and sometimes the accused himself appear at the initial hearing. After hearing the parties and examining the evidence, the magistrate decides whether to issue a warrant for detention of the accused or whether to rule, provisionally or definitively, that the evidence does not justify detention. If he decides that detention is in order, he also decides whether the accused should be subjected to mandatory supervision.

146. After 60 days have elapsed, the magistrate, at the request of the Office of the Public Prosecutor, summons the accused to the preliminary hearing. At that hearing, formal charges are laid, the accused answers the charges, and the magistrate decides whether he should be arraigned for trial. If so, the case is turned over to a national trial court.

147. After completion of the preparatory stages, including a hearing for the purpose of submitting evidence, the national trial court will designate a date and time for an oral, public trial. On that occasion, the court will hear the prosecutor, counsel for the defence, and the defendant himself if he wishes to make a statement, and all the evidence gathered by both parties that has previously been admitted by the court will be exhibited. Once all this has been done, the court will consider the case and, after free evaluation of the evidence, will issue a ruling at the same hearing.

A. Access to courts of appeal

148. The principle of free access to the country's courts of justice is guaranteed under article 82 of the Constitution. This article is closely bound up with article 80, which guarantees the right of petition. In practice, access to the courts is effectively available at both trial and appellate levels.

B. Appeal procedure

149. **Civil cases.** In this legal area, the traditional approach is followed: a litigant who has lost his case in a lower court may challenge a decision, interlocutory judgement or definitive judgement before the competent appellate court. The remedies available include application for reconsideration, appeal, and an application for the quashing of the original decision. The procedure is different in each case:

Application for reconsideration. An application for reconsideration may be brought against any interlocutory decision or judgement made by a court of first instance, either immediately upon the issue of the decision or in writing the next business day. The court must decide at once whether the request is founded or not.

Appeal. An appeal may be brought from any definitive or interlocutory decision made by a court of first instance, or from any writ or judgement that does not order the normal substantiation of the trial.

Appeal from a definitive judgement: (a) An appeal from a definitive judgement must be entered before the court of first instance within three working days following notification of the judgement; (b) If the appeal is accepted by the court, the case is referred to the competent court of appeal, which is required to hear and rule on the appeal; (c) The parties, appellant and respondent, are summoned to appear before the higher court within three days, if the lower court is located in the same municipality as the higher court; otherwise, the time limit is extended by one day for every 20 kilometres of distance between them;

(d) When the appellant appears before the higher court, he is provided with copies of the court records for six days to enable him to submit his objections in writing; (e) The respondent is then provided with copies of the appellant's statement of objections and the court records for six days to enable him to answer the objections made by the appellant in the case. Both parties, in their written statements, may request permission to introduce new evidence; (f) When the objections have been answered, or all the evidence entered, the parties are provided with copies for a period of six days to enable them to present their final petitions; (g) When those petitions have been returned, the appellate court summons the parties to hear its decision, which must be delivered within ten days following the summons; (h) When the appellate court has issued its final judgement, unless the appellant states that he intends to enter an appeal to the Supreme Court of Justice for the quashing of the judgement, the appellate court returns all the documents relating to the case to the lower court with notification of its judgement for execution.

150. In addition to the appeal procedure, an appellant may petition a court for a special judgement (such as an executive judgement or a summary award of support). The appellant appears before the court and submits his reasons for requesting judgement. The respondent is allowed three days to reply, or a shorter time if evidence is produced, and formulate conclusions. The only form of appeal from a judgement by a national trial court is an application for the quashing of the judgement, but in the case of a judgement or decisions rendered by an examining magistrate (in a criminal case), an application for reconsideration or an appeal may be entered.

151. **Criminal cases.** In a criminal cases, a definitive judgement is rendered by a national trial court. These courts are competent to try criminal cases, and the only form of appeal from the court's decision is an application to the Supreme Court of Justice to have the judgement quashed, rather than an appeal as such.

152. Our judicial system includes a Judicial Council Act, but owing to the recent constitutional reforms relating to the judiciary, that Act is now obsolete. It is to be repealed and replaced by new legislation making provision for a revised Judicial Council, in line with the constitutional amendments.

153. Minimum guarantees relating to judicial procedure include the right of petition, the right to a defence, the right of equality, the right to effective legal remedies and due process, the principle of legality, the right of free access to the courts, and the availability of public defenders.

154. In accordance with the principle of openness to the public, the Code of Criminal Procedure provides that hearings of oral judicial proceedings shall be public, i.e. that they shall be held in the presence of the parties and members of the public, who have free access to hearings in courtrooms. In exceptional cases, the court may decide, either on its own initiative or at the request of one of the parties, that the hearing shall be held entirely or partly *in camera*. This may be done where (a) the case involves the honour, intimate personal or family matters or private life of the victim or one or more of the witnesses, (b) the life or physical integrity of any of the members of the court, the parties or other persons authorized to participate in the trial would otherwise be at risk; (c) an official or private secret matter warranting protection would otherwise come to light; (d) public order would otherwise be jeopardized, or (e) the witness is under 18 years of age.

155. However, there are some restrictions on public access to hearings: minors under 15 years of age must be accompanied by a responsible adult, the use of political party or trade union insignia is prohibited, persons who are inebriated or under the influence of narcotics and persons who appear to be mentally disturbed are not allowed in for the sake of order in the court, and only official security personnel on duty may bear arms in a courtroom.

156. The judgement and all rulings issued during the hearing are made orally.

157. Article 89 of the Constitution states, "Every person shall be deemed innocent until such time as he has been found guilty by a competent authority." Under article 2 of the Code of Criminal Procedure, "Every person charged with an offence shall be deemed to be innocent until such time as he has been found guilty by the competent court of law in accordance with the standards set by this Code. Pending such a finding, no authority may presume a person to be guilty or refer to him as such before third parties. Accordingly, the only information about the matter that may be made public is the nature of the charges against the person concerned. Failure to observe the above restrictions shall entail liability on the part of the persons responsible, and they shall be required to pay compensation to the victim for the wrong done to him." Similarly, article 399 of the Code of Criminal Procedure states, "Where the court considers that the evidence against the accused is insufficient to establish his guilt, it shall acquit him. Acquittal shall also be mandatory where there is reasonable doubt."

158. If the accused does not speak Spanish, he has the right to be assisted by an interpreter or translator (Code of Criminal Procedure, article 101, paragraph 11). This right applies regardless of the accused's detention status; it is available to all accused persons as that term is defined in article 101 of the Code of Criminal Procedure. Under article 125 of the Code, all judicial proceedings must take place in the Spanish language exclusively, except that a defendant who does not speak Spanish may be questioned in his own language, in which case the law stipulates that the services of an interpreter must be available.

159. Under article 60 of the Constitution, "... There are no privileged classes in Honduras. All Hondurans are equal before the law..."

160. The Constitution provides for the institution of public defenders, who are officials of the judiciary. Their mandate is to represent defendants in criminal cases who are unable to afford counsel.

161. The Bar Association of Honduras is headed by a Board of Directors that licenses duly qualified persons to practise the legal profession. It does not provide legal assistance free of charge to indigent persons.

162. Article 4 of the Constitution states, "The form of government is republican, democratic and representative. It is exercised by three powers: Legislative, Executive and Judicial, which are complementary, independent, and not subordinate to each other."

XV. Article 15

163. The Constitution (article 96) recognizes that no law has retroactive effect, except in criminal cases where the new law favours the accused person. None the less, at the present time there is a difference at law between persons whose trials began before the reform of the Code of Criminal Procedure and those whose trials have begun on 20 February 2002 or since that date.

The former are subject to the provisions of the Code of Criminal Procedure and the Transition Act, to the exclusion of measures aimed at removing a case from the judicial process such as are recognized under the new system; an example is the "criterion of timeliness, conciliation and conditional suspension of trial". The only exception is the abridged procedure, which is used in cases in this category that meet the requirements. On the other hand, a person whose trial began before 20 February 2002 is not allowed to choose between the new oral procedure and continuing with the old written procedure: the State requires him to be tried in accordance with the former system. This is clearly prejudicial to the accused because of the slowness of that procedure and because the procedural guarantees of openness to the public, immediacy and the like are not available. The Transition Act was drafted with a view to reducing the "judicial delay" resulting from the backlog of cases being dealt with under the Code of Criminal Procedure.

XVI. Article 16

164. Article 67 of the Constitution reads as follows: "The unborn shall be considered as born for all rights accorded within the limits established by law." Under article 51 of the Civil Code, "the legal existence of every person begins at birth..." Article 43 of the National Registry of Persons Act states, "Every person has the right to his individuality and to the given name or names and surnames belonging to him as inscribed in the Civil Register." Under article 29 of the Children and Adolescents Code, "Every child has a right to have a nationality and his personal identity, the right to possess a given name and surname, and the right to know who his parents are. These rights are inalienable." Article 30 states, "Pursuant to the preceding article, the father, mother or legal representatives of every newborn child shall inscribe the child in the National Registry of Persons, in accordance with the law. Failure to fulfil this duty shall be an offence punishable by law." Article 31 provides that "The National Registry of Persons shall take all appropriate measures to facilitate and guarantee the registration of births and other events relating to persons, and shall ensure that information is kept up to date."

XVII. Article 17

165. Under article 99 of the Constitution, the domicile is inviolable, and no entrance or search may be made without the consent of the occupant or an order from a competent authority. None the less, a private home may be searched, in an emergency situation, to prevent an offence from being committed or going unpunished, or to avoid serious harm to persons or property. Except in such emergency situations, no private home may be searched between the hours of 6 p.m. and 6 a.m., on pain of liability.

166. The procedure that must be followed to conduct a search is laid down in article 177 of the Code of Criminal Procedure. Prior authorization from a competent legal authority is required. Under article 212 of the Code, "A person's dwelling, home or place of residence may be searched only pursuant to an order in writing duly issued beforehand by a competent judicial authority."

167. The above provisions do not apply in cases of *flagrante delicto* or where immediate action is essential to prevent an offence from being committed, to prevent the escape of an offender, or the destruction, loss or concealment of evidence with a view to avoidance of the prosecution of offenders, and where it is not possible to obtain a court order in time. In such cases, the Office of the Public Prosecutor advises the competent judge immediately after the raid has taken place, stating the reasons why it was necessary. The judge will issue a decision confirming or

invalidating, in whole or in part, the grounds for the action, indicating the basis for his decision in either case. In all other situations, the provisions of article 99 of the Constitution apply. At the present time, with the introduction of the national security policy, an amended version of article 332 of the Criminal Code has been enacted. This legislation, commonly known as the "anti-gang Act", gives the law enforcement authorities what amounts to *carte blanche*. It is so vague that it allows the police to conduct indiscriminate raids at any time at the homes of persons who are suspected of being gang members. The Act does not specify clearly who may reasonably be suspected of being a gang member; the police tend to use the subjective criterion of tattoos on the skin of any young person.

168. Article 332 of the Criminal Code, as amended, reads in part as follows: "Leaders or heads of gangs or other groups of persons who associate for the deliberate purpose of committing offences shall be liable to a term of nine to twelve years' imprisonment and a fine of 10 000 to 200 000 lempiras. Other members of such gangs or other unlawful associations shall be liable to the same penalties as reduced by one third...."

169. The Domestic Violence Act also provides that a private home may be raided in a case of *flagrante delicto*.

170. Article 221 of the Code of Criminal Procedure lays down the procedure that must be observed for intercepting correspondence. This may be done only where it has been determined that the correspondents are involved in some unlawful activity that is under investigation, and a court order is required. In practice, the procedure as set forth in the Constitution and the Procedures Act is observed.

171. Body searches are authorized, under a warrant issued by a court, only where there are reasonable grounds for suspecting that a person has objects, markings or traces relating to an offence concealed in his clothing or personal belongings or stuck to his body. In emergency situations, where there is reason to fear the loss of evidence, body searches may be conducted by law enforcement officers without a warrant. However, that procedure is subject to subsequent review and validation by the judge who hears the case (Code of Criminal Procedure, articles 206 and 207).

172. Under article 76 of the Constitution, the right to honour, to personal privacy, to a family, and to one's dignity is guaranteed, while the Criminal Code provides that slander, calumny and defamation to the prejudice of a person's honour are criminal offences. Under article 33 of the Expression of Thought Act, "The right of defence makes it obligatory for the publication in which the accusation or criticism appeared to publish, free of charge, the reply of the person who deems himself to have been wronged by journalistic information, articles or comment of any kind."

173. Under article 155 of the Criminal Code, "Slander, or false accusation of an offence for which prosecution is mandatory, shall be punishable by three to six years' imprisonment. Where the slandered party so requests, the part of the judgement in which the slander is acknowledged shall be published in one of the country's leading daily newspapers at the convicted party's expense." Under article 156, "A person maliciously accused of slander shall not be liable to any penalty if he proves that the alleged criminal offence actually was committed. Where the wronged party so requests, the part of the judgement in which the malicious accusation is acknowledged shall be published in the *Official Gazette* and in a local newspaper, where such

exists." Article 157 states, "Every person who utters an expression or performs an action prejudicial to the honour, credit or reputation of another person shall be liable to two to five years' imprisonment." Under article 158, "Where a person has been charged with slander, evidence relating to the truth of the alleged criminal offence shall not be admissible, except where the complainant is a civil servant or public employee and the alleged offence involves his performance of his official duties. In that case, the accused shall be acquitted if he proves that the alleged offence actually was committed."

174. In practice, victims of slander may initiate prosecutions directly, and under articles 164 and 165 of the Criminal Code, the director, owner or manager of the publication or other medium of communication in which the slander, calumny or defamation was published may be required to publish a retraction, satisfactory explanation or court judgement within three days after having received it, or within such other period as the court may direct.

175. Failure to publish such retraction, satisfactory explanation or court judgement after having been ordered for a second time to do so within a similar period of time shall be punishable by a fine of 15 000 to 30 000 lempiras, without prejudice to the original requirement to publish the retraction or other matter.

176. Under article 345 of the Criminal Code, every person who by word or deed or in writing threatens, slanders, calumniates, insults or in any other way offends the dignity of a public authority in the performance of his duties is liable to two to four years' imprisonment. However, on 24 October 2003, the Office of the Public Prosecutor applied to the Supreme Court of Justice to have that article ruled unconstitutional on the grounds that it was inconsistent with freedom of thought and expression, to which every person had a right, and thereby violated the provisions of article 74 of the Constitution and the principles of freedom of expression formulated by the Inter-American Commission on Human Rights. As yet, the Supreme Court of Justice has not issued a decision on that application.

XVIII. Article 18

177. Under article 151 of the Constitution, "... Public education shall be secular and shall be based on fundamental principles of democracy. It shall instil and promote in all students a deep feeling of Honduran patriotism and shall be directly connected with the country's economic and social development process."

178. Article 74 states, "The right to freedom of thought and expression may not be restricted by indirect means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information." Under article 75, "The law which regulates the expression of thought, may establish prior censorship to protect the ethical and cultural values of the society, as well as the rights of persons, especially those of childhood, adolescence and youth." Article 77 provides that "The free exercise of all religions and cults is guaranteed without preeminence, provided they do not violate the law and public policy. Ministers of the various religions may not hold public office or engage in any form of political propaganda, invoking religious motives or, as a means to such end, thus taking advantage of the religious beliefs of people."

179. Both the Criminal Code and the Police and Social Coexistence Act include provisions for the punishment of any person who restricts or otherwise fails to respect the right of religious practice or belief.

180. The Police and Social Coexistence Act (Decree No. 226-2001 of 29 December 2001) empowers the police authorities to expel from any public place "any person who does not observe due decorum in ceremonies of religious worship" (article 145, paragraph 3), and empowers municipal Departments of Justice to fine "any person who posts a notice, invitation or statement derogatory to a particular religion and in favour of some other cult or church at the entrance to a temple, chapel, prayer hall or other place used for purposes of religious worship" (article 148, paragraph 10).

181. As regards discrimination, the Criminal Code provides that every person who discriminates against another person for reasons of sex, race, age, class, religion, party or political allegiance, disability, or other form of vulnerability from the standpoint of human dignity, shall be liable to three to five years' imprisonment and a fine of 30 000 to 50 000 lempiras.

182. Under article 199 of the Children and Adolescents Code, "Children in detention shall retain the following rights... (k) The right to profess the religion that they have freely chosen." Statistics indicate that the population of Honduras is 6 076 885, comprising 60.3% Catholics, 28.7% Protestants, 6.8% adherents of other religions, and 4.2% who do not know or refused to answer.

183. Generally speaking, a religion does not have to be recognized in order for its adherents to practise it, inasmuch as under the Constitution, the free exercise of all religions and cults is guaranteed and the State tolerates them all, provided (as the Constitution states) they do not violate the law and public order. However, if any church or religious organization or institution wishes to operate and be recognized as such, it must incorporate as a civil association and apply to the Ministry of the Interior and Justice for recognition of its legal personality.

184. The procedure for obtaining recognition of legal personality is as follows: (1) Submission of an application to the Ministry of the Interior and Justice; (2) Power of attorney in favour of a solicitor authorized to act on behalf of the applicant. The principal's signature must be notarized. The power of attorney must clearly identify the solicitor, indicating the address and telephone number of the office where he provides his professional services, and list the functions that he is authorized to perform. The power of attorney must be issued by the member of the board of directors expressly empowered for the purpose in accordance with the statutes of the association; (3) A certified true copy of the part of the minutes of the General Meeting containing the resolution by which the legal representative of the corporate entity is authorized to confer power of attorney upon a solicitor for the purpose of submitting an application for recognition to the Ministry of the Interior and Justice. The solicitor must be identified in the power of attorney; (4) A certified true copy of the incorporating or founding statute, indicating the names of the founding members; (5) Two certified true copies of the statutes of the corporate entity, indicating, at a minimum, the following information: (a) Chapter I: Constitution, designation, duration and place of domicile; (b) Chapter II: Objectives; (c) Chapter III: Membership: categories of members, including their respective rights and duties; (d) Chapter IV: Component bodies (including articles relating to the governing bodies: general assembly, board of directors, committees, etc., with a description of the functions of each). In the case of a partnership, the data provided must conform to the provisions of article 62 of the Municipalities Act, as amended

(Decree No 127-2000); (e) Chapter V: Assets; (f) Chapter VI: Dissolution and liquidation; (g) Chapter VII: General provisions; (6) Where the corporate entity is an association or foundation, the following information must also be included: intended projects, sources of funding, government bodies with which it will be dealing, curriculum vitae of the members of the board of directors or persons authorized to execute projects, and notarized photocopies of the identity cards of the members of the board of directors; (7) Proof of registration with the municipal administration of the organization's place of domicile, in the case of a partnership; (8) Where the applicant is a foundation, proof of assets, in cash or in kind, in the amount of 50 000 lempiras, and a diskette containing the statutes of the organization. (9) The authenticity of all signatures and photocopies of all documents must be certified separately.

185. Every religious association that wishes to obtain official recognition is required to follow the procedure outlined above. The authorities are concerned only with making sure that all the requirements have been met; if so, the legal personality of the association is recognized.

186. There are no specific regulations governing the use of places of worship. Nor are there any regulations governing the publication or distribution of religious printed materials, or any restrictions on such publication or distribution. Under article 72 of the Constitution, thought may be freely expressed through any means of dissemination, and that provision covers religious or sectarian materials.

187. Measures aimed at preventing and punishing offences against the free exercise of religion by all are laid down in Title IV of the Criminal Code, under the heading "Offences against freedom of religion, religious feeling and respect for the dead". Under article 210, "Every person who uses violence to compel another person to perform a religious act or prevent him from participating in a religious ceremony shall be liable to a term of imprisonment of between three months and one year." Article 211 states, "Every person who without just cause interrupts or prevents the celebration of a religious ceremony or function of any denomination that is lawful in Honduras shall be liable to the same penalty as is prescribed in the preceding article." Under article 212, "Every person who wilfully damages objects used for religious purposes or the symbols of any lawfully permitted religion, or publicly insults such a religion or its adherents on the grounds of their profession of the religion in question, shall be liable to a term of imprisonment of between three months and one year." Under article 213, "Every person who profanes a grave, place of burial or funeral home, or in any other way profanes a human body or human remains, shall be liable to a term of imprisonment of between six months and two years."

XIX. Article 19

188. Article 73 of the Constitution reads as follows: "Printing shops, radio broadcasting, television stations, and any other means of broadcast and dissemination of information, as well as their machinery and equipment, may not be seized or confiscated, nor may their work be closed down or interrupted by reason of an offence or misdemeanour relating to the dissemination of thoughts and ideas, without prejudice to the liabilities incurred by those reasons in accordance with the law. No enterprise for the dissemination of thought may receive subsidies from foreign governments or political parties. The law shall establish the corresponding penalty for violations of this provision. The control of newspapers, of radio and television newscasts, and the intellectual, political and administrative orientation thereof shall be exercised exclusively by Hondurans by birth."

189. Decree No 6, which contains the Expression of Thought Act, published in No. 16565 of the *Official Gazette* on 26 August 1958, regulates all matters relating to freedom of expression, print media, radio and television broadcasting, publishing, journalistic ethics, and the responsibilities of journalists.

190. Article 7 of the Freedom of Expression Act reads as follows: "Journalists and writers are free to report as they see fit statements made by any authority, official or civil servant, representative of an association, individual or corporate entity."

191. Restrictions on freedom of expression are found in article 8 of the same Act, under which every person who fails to respect personal privacy or morality while exercising that freedom through any of the media commits an indictable offence. A journalist is deemed to have failed to respect personal privacy if he refers in derogatory terms to the home life or social behaviour of an individual and thereby damages his reputation, interests or family relations.

192. Under article 8 of the Freedom of Expression Act, indictable offences in this area include "dedication of newspapers and related interests to purposes that are incompatible with the defence of national sovereignty, territorial integrity, and the democratic institutions of the Republic; defamation and insult in all forms; the publication of commercial advertising in the awareness that it is intended to mislead the public; gratuitous unsubstantiated attacks against national or foreign industrial or commercial firms solely with the intent to take revenge for grievances or to discredit persons and institutions; blackmail in any form; and obscene photographs, drawings, stories and jokes, and pornographic cartoons."

XX. Article 20

193. Article 6 of the Freedom of Expression Act provides that "It shall not be lawful to publish material that promotes or disseminates divisive doctrines tending to undermine the foundations of the State or the family, or tending to incite to, advocate or encourage the commission of offences against persons and property."

194. Honduras has no legislation expressly stipulating that propaganda for war and incitement to war are contrary to State policy and constitute indictable offences. However, offenders would be liable under the relevant parts of the above-mentioned articles of the Freedom of Expression Act.

XXI. Article 21

195. Freedom of association and assembly is guaranteed under articles 78 and 79 of the Constitution.

196. Article 78 reads as follows: "Freedom of association and assembly is guaranteed provided its exercise is not contrary to public policy or to good morals." Under article 79, "Everyone has a right of peaceful assembly, without arms, in a public demonstration or temporary assembly, in connection with their common interests of whatever nature, without the need of notice or special permission. Outdoor meetings and those of a political character may be subject to a regime of special permission, with the sole purpose of ensuring public order."

197. The Police and Social Coexistence Act, for its part, contains provisions aimed at ensuring that the exercise of that right is consistent with public order and good morals, as stated in the Constitution.

198. Under article 60 of the Act, "Every person may exercise his constitutional right of assembly and public demonstration by joining with other persons to march in public places for the purpose of publicizing ideas and interests of a political, religious, economic, social or any other lawful nature, without need for notice or special permission. However, such demonstrations shall be prohibited where it appears that they are likely to affect freedom of movement and the rights of other persons." The political aspect is covered by the Elections and Political Organizations Act, article 61 of which provides that "Every assembly or public march that gives rise to brawling or public disorder shall be dispersed by the police." Under article 62 of the Act, "It shall be unlawful to carry a weapon or any object that may cause personal injury or damage to property or the environment at any assembly, demonstration or march," while under article 63, "Every person who on the occasion of an assembly or march in a public place commits a breach of the law shall be arrested and turned over to the competent authority where appropriate."

199. It is not necessary to obtain prior permission or approval from the authorities in order to hold public meetings, to demonstrate in public or to hold public discussion of or express in public any opinions of any kind, except in the case of open-air gatherings, marches, demonstrations or meetings held by political organizations, or where such gatherings may affect other persons' freedom of movement.

200. Under article 75 of the Elections and Political Organizations Act, "Every person has the right to assemble with others peacefully, without arms, in a public demonstration or meeting with no restrictions other than those established by the law. For meetings held at the headquarters of political organizations, no notice or authorization of any kind is required." Under article 76, "Private meetings are not subject to the provisions of this Act." Article 77 stipulates that "Gatherings, marches, demonstrations and open-air meetings held by political organizations may not take place in the same municipality on the same day." The local electoral tribunal, or in its absence the National Tribunal of Elections, issues the permits within its jurisdiction, in strict rotation and in order of application. Applications for permits must be submitted in writing. The tribunal assigns a time and date for submission of the application, and the corresponding permit must be issued immediately to the applicant, while the representatives of other local political organizations must be informed that it has been issued, and the parties concerned are advised that this has been duly done. A similar procedure is followed in the case of public meetings held by political organizations for organizational purposes. The local electoral tribunal keeps a record of all permits issued in a register kept expressly for that purpose. No spaces are left between entries, and all applications are listed in order of submission, by time and date.

201. In connection with this article of the Act, we may recall the demonstration held by the Confederation of Indigenous Peoples' Organizations (COPINH) on 13 August 2002 to protest an increase in the price of coffee. A number of peasants were arrested in the course of the demonstration, and a complaint was lodged alleging the use of excessive force by security officers. That complaint is still under investigation by the Office of the Public Prosecutor.

XXII. Article 22

202. Both in its Constitution and in its labour law, the State of Honduras has declared that the lawful establishment of social organizations, such as trade unions and cooperatives, is in the public interest as a highly effective means of contributing to the country's well-being and economic development, the advancement of its popular culture, and the growth of democracy. The General Labour Inspectorate, an arm of the Ministry of Labour and Social Security, is responsible for keeping close watch on social organizations, solely for the purpose of making sure that they operate within the law. Organizations of this kind are under the protection of the State. The foregoing is a summary of the regular supervisory action undertaken by the State in this connection.

203. Under Honduran law, a trade union is defined as a permanent association of employees or self-employed persons, established exclusively for purposes of the study, advancement and protection of members' common economic and social interests.

204. Unions are divided into: (1) company unions, consisting of individuals practising various kinds of trades or performing various duties in different areas of specialization within a single firm, establishment or institution; (2) industry unions, consisting of individuals working for various firms within a particular industrial sector; (3) craft unions, consisting of individuals following the same trade, occupation or activity; and (4) mixed unions, consisting of workers in dissimilar or unrelated trades. A mixed union may be established only in a workplace where the numbers of workers following the same trade, occupation or activity are not sufficient for them to form a craft union, and it may function only for so long as that situation continues.

205. The right to freedom of association is protected in the broad sense that it is not lawful to interfere with the right to form a trade union. Every person who uses violence or threats to interfere in any way with the right freely to establish a union is liable to a fine of between 200 lempiras (US\$11.00) and 10 000 lempiras (US\$555.00).

206. Every person has the right to establish or join a trade union, subject to the following requirements:

- (a) Every union of workers must have not fewer than 30 members in order to become established or continue to function;
- (b) Only persons 16 years of age or older may be members of a union;
- (c) The founders or promoters of a trade union must prepare a charter of incorporation;
- (d) The union's statutes, designating an interim executive, including a president, a vice-president, a secretary, a treasurer and a comptroller, must be approved;
- (e) The interim president and secretary are responsible for taking all necessary measures to secure recognition of the union's legal personality.

207. A trade union is deemed to be formally constituted and in possession of legal personality as soon as it is registered with the Ministry of Labour and Social Security.

208. Under article 481 of the Labour Code, the interim executive is required to register the union and secure recognition of its legal personality. To that end, it must submit, either on its own behalf or through a duly designated legal representative, an application to the Ministry's Labour Directorate, attaching a following documents:

- (a) A certified true copy of the charter of incorporation, bearing the signatures of the founding members or persons empowered to sign on their behalf and the numbers of their respective identity cards;
- (b) A certified true copy of the minutes of the meeting at which the interim executive was elected, with the same requirements relating to signatures and ID cards as in the case of the preceding paragraph;
- (c) A certified true copy of the minutes of the meeting at which the statutes were approved;
- (d) A power of attorney, duly executed before a competent authority, authorizing a designated representative to apply for recognition of the union's legal personality, where the interim executive does not do so itself;
- (e) Two certified true copies of the charter of incorporation, issued by the interim secretary;
- (f) Two copies of the statutes of the union, issued by the interim secretary;
- (g) A list of the names of the members of the interim executive, in triplicate, giving the nationality, occupation or position, ID card number and home address of each member;
- (h) A complete list of the names of the members of the union, in triplicate, giving the nationality, sex and occupation or position of each member; and
- (i) An attestation by a qualified labour inspector certifying that there is no existing union (in the case of a company union) that might be deemed a parallel organization; identifying the founders as employers or workers in the industry or activity involved, or as professional members of the branch of the applicant union; indicating the seniority, if any, of the members of the interim executive in their respective trades; and including any other information that he deems relevant. In a municipality where no qualified labour inspector is available, the attestation must be issued by the mayor and authenticated by the nearest labour inspector.

The documents referred to in paragraphs (a) to (c) above may be submitted in a single set of minutes.

209. Article 482 of the Labour Code provides that once the application has been submitted, the Labour Directorate shall have a maximum of 15 days to review the accompanying documentation, examine the statutes, send any relevant comments to all parties concerned, and forward its report on the case to the Ministry of Labour and Social Security for information and action.

210. The Ministry of Labour and Social Security will then recognize the union's legal personality, unless the statutes are at variance with the Constitution, Honduran law or sound custom, or if they contravene specific provisions of the Labour Code.

211. Within 15 days following receipt of the application, the Ministry will issue a ruling either granting legal recognition to the new union or denying it. In the latter case, it must indicate the reasons of law or the provisions of the Labour Code that have prompted its decision (Labour Code, article 483).

212. The State of Honduras also applies the legal provisions of International Labour Organisation Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, commonly referred to as the Trade Union Freedom Convention, adopted on 9 July 1948 by the General Conference of the International Labour Organization (ILO) at its thirty-first session in San Francisco, California, United States of America. Honduras has ratified the Convention, and it is now part of the country's domestic law. The Government submitted a brief answering the ILO questionnaire in the matter and responding to the observations (relating to 2003) formulated by the ILO's Committee of Experts on the implementation of its Conventions and Recommendations. Every Member State that has acceded to an ILO Convention is required to report periodically on the measures it has taken to implement the Convention.

213. A worker who is elected to the executive of a trade union may not be dismissed from his employment from the time of his election to six months after the end of his term of office without a hearing before a labour tribunal (or, where no labour tribunal is available, a court of civil affairs) to determine whether there is just cause for the termination of his contract. The magistrate rules on the case at a summary hearing. This provision applies only to members of the central executive, in the case of unions organized into sections and subsections.

214. An employer who fails to observe the procedure outlined in the preceding paragraph is required to pay the union compensation equal to six months' wages for the worker concerned, without prejudice to the latter's rights under the law.

215. Where 30 workers have formally notified their employer in writing that they intend to form a union, and the Labour Directorate (or the district office of the Labour Affairs Department of the Office of the Public Prosecutor) has been advised that such notice has been given, the persons who signed the notice of intent to form a union are placed under the special protection of the State. This means that from the date of notification until the date at which the new union is informed that its legal personality has been recognized, none of those workers may be dismissed, transferred or demoted without just cause as certified beforehand by the competent authority.

216. The internal structure of a trade union is determined by its statutes, as prescribed under article 478, paragraph 8, of the Labour Code, which reads as follows: "The statutes shall state the number, titles, terms of office and duties of the members of the central executive, and of the members of local executives where applicable, and shall also specify how they are to be selected or elected, set forth the rules governing meetings, indicate causes for removal from office and specify the procedure for such removal ..."

217. A total of 467 trade unions are registered with the Department of Social Organizations, which is an arm of the Labour Directorate. This total is broken down as follows:

- (a) Company unions: 217

- (b) Industry unions: 140
- (c) Mixed unions: 8
- (d) Craft unions: 102

For a breakdown of unions by type of economic activity, see box No. 18 in the annexes.

218. Unionized workers account for approximately 8.6% of the labour force employed in the formal sector of the Honduran economy:

- (a) Right to freedom of association and to establish trade unions. Article 534 of the Labour Code reads as follows: "The right to freedom of association and the right to establish trade unions is enjoyed by all workers in all official services, with the exception of members of the National Army and police forces of all kinds..."
- (b) Right to bargain collectively. According to article 534, paragraph 4 of the Labour Code, "Requests may be submitted to management on behalf of all the members generally..." (the right to present a list of demands and enter into a collective agreement governing working conditions is still subject to restrictions, but workers do have the right to submit requests, the only difference being that the latter are subject to review by the Department of the National Budget).
- (c) Right to strike. Under articles 554 and 555, the right to strike is subject to restrictions in the case of public service unions, law enforcement personnel, overland, maritime and air transport firms, water distribution, electricity distribution and telecommunication systems; health care establishments of all kinds, such as hospitals and clinics; social assistance, charitable and welfare establishments, essential food production and supply firms; municipal sanitation systems; firms engaged in the extraction, refining, transport and distribution of petroleum and petroleum products, where the Government deems these to be intended for the country's normal fuel supply; any other activities affecting the security, health, education and economic and social life of the people, where the individual guarantees referred to in article 163 of the Constitution have been restricted, and scientific research on disease and the health of plants and animals.

219. Under our labour law, a strike is defined as a temporary, peaceful collective suspension of work undertaken in accordance with the established procedures by the employees of an establishment or firm for economic and work-related purposes which have been made known to the employer.

220. The objectives of a strike must be one or more of the following:

- (a) To achieve a balance among the various production factors, with harmonization of the rights of labour and those of capital;
- (b) To induce the employer to enter into or comply with the contract of employment and collective labour agreement; and
- (c) To demand the revision of the contract of employment or collective labour agreement, as the case may be, upon its expiry.

Under the Constitution, the State of Honduras guarantees and recognizes the right to strike.

221. Prerequisites for lawful strike action are as follows:

- (a) The objective(s) of the strike must be one or more of the three objectives referred to in the preceding paragraph;
- (b) The procedures of direct settlement, mediation, conciliation and arbitration must have been exhausted;
- (c) The action must be supported by at least two thirds of the persons working at the firm, workplace or business in question; and
- (d) All other requirements set forth in the Labour Code must have been met.

222. Despite the fact that the right to strike is guaranteed in the Constitution and recognized in national labour law, there are restrictions on strike action by public service employees. A public service, in this context, is defined as any organized activity that serves to meet the needs of society as a whole on a regular and ongoing basis under a separate legal regime, regardless of whether the activity in question is conducted directly or indirectly by the State or by private individuals.

223. In the case of public services and public service firms, the right to strike is subject to restrictions in the following cases:

- (a) Law enforcement personnel; workers employed in the extraction, refining, transport and distribution of petroleum and petroleum products, where the Government deems these to be intended for the country's normal fuel supply; and workers employed in any other activities which the Government deems likely to affect the security, health, education and economic and social life of the people. Disputes between employers and workers must be submitted to the Ministry of Labour and Social Security for examination and settlement, at the instance of either of the parties, before strike action may be taken.
- (b) Strike action is unlawful in the case of the activities of overland, maritime and air transport firms where a run, voyage or flight has not been completed.
- (c) Strike action is unlawful in the case of firms operating health care establishments of all kinds, such as hospitals and clinics, social assistance, charitable and welfare establishments, essential food production and supply activities, municipal sanitation systems, and water distribution, electricity distribution and telecommunication systems, unless sufficient numbers of workers remain on the job to ensure that services are not interrupted, with consequent serious and immediate harm to public health and safety or to the economy.
- (d) Strike action is also unlawful in wartime for workers employed in public services of any kind.

224. A service is defined as any organized activity that serves to meet the needs of society as a whole on a regular and ongoing basis under a separate legal regime, regardless of whether the

activity in question is conducted directly or indirectly by the State or by private individuals. The following activities, among others, are deemed to constitute public services: (1) all forms of law enforcement; (2) the operations of firms engaged in overland, maritime and air transport, water distribution, electricity distribution and telecommunications; (3) the work of health care establishments of all kinds, such as hospitals and clinics; (4) the work of social assistance, charitable and welfare establishments; (5) the work of essential food production and supply firms, where any branch of that sector is affected in its entirety; (6) the operations of all municipal sanitation systems; (7) activities relating to the extraction, refining, transport and distribution of petroleum and petroleum products, where the Government deems these to be intended for the country's normal fuel supply; (8) any other activities which the Government deems likely to affect the security, health, education and economic and social life of the people, where the individual guarantees referred to in article 163 of the Constitution have been restricted. In all such cases, the decision must be made by the President of the Republic after an enabling resolution has been adopted by the Council of Ministers; and (9) scientific research on disease and measures to promote the health of plants and animals.

225. In the event of any strike that has resulted in an interruption in public services, the Executive Power is automatically authorized to take over the management and administration of the affected entity for as long as may be necessary to avoid adverse consequences for the community. It will take all appropriate measures to restore the interrupted service and ensure that it is maintained. A special decree indicating the grounds for the measures adopted will be issued.

226. The work of a public-service firm that is not State-controlled, directly or indirectly, may be interrupted or paralysed only with the permission of the Government, or provided the firm in question gives the Government at least six months' advance notice so that appropriate action can be taken to ensure that service is maintained.

227. Collective disputes in the public service sector which it has not been possible to settle through direct bargaining or by means of conciliation must be submitted to binding arbitration.

228. A collective work stoppage may be declared unlawful by the Ministry of Labour and Social Security. The declaration is effective immediately, and may be challenged only before a labour tribunal. Once a work stoppage has been declared unlawful, the employer is free to dismiss the workers concerned.

229. Article 2 of the Labour Code provides for an exception to the general rule that the provisions of the Code relating to public order are obligatory. As the Government of Honduras has informed the ILO Committee of Experts, that exception applies to crop or livestock production operations employing not more than ten permanent workers. The great majority of such operations are family farms. The Government of Honduras is aware of the need to reform its labour law in that area. However, as we have stated on other occasions, the Committee of Experts knows that such reforms cannot be undertaken unilaterally by the Government. That is the reason why "modernization and reform of labour legislation" has been approved as a subject for consideration in the strategic agenda adopted by the tripartite discussion group known as the Socio-Economic Council (CES). The CES will examine the various aspects of the issue ranked in order of priority, depending on the urgency of the need for reform in the judgement of the various stakeholders; there is more at stake than freedom to form unions. However, we have reached agreement with the other stakeholders that the theme of labour reform shall be included in the strategic agenda of the CES.

230. Under our labour legislation, there may not be more than one company union within any firm, institution or establishment. Where for any reason two or more such unions have been established, the one with the largest number of members shall absorb the members of the other or others, without subjecting them to any more rigorous conditions of admission.

231. On this issue, the comments of the CES were communicated both to workers' confederations and to employers' associations, and all concerned agreed that it was undesirable at this time for there to be two or more social organizations seeking to promote the interests of their respective members within a single firm. However, we should like to point out that workers are free to join both a company union and an industry union or craft union at the same time if they wish.

232. The legislation sets the minimum number of workers required to form a union at 30. This is deemed to be a sufficient number to ensure that an organizational meeting can be held and an interim or definitive executive democratically elected, and to minimize the risk of the same members' being elected repeatedly to executive posts, i.e. to make it feasible for other members of the organization to hold those posts in their turn. That provision reflects the importance, from a legal standpoint, of setting minimal conditions and prerequisites to ensure that unions are genuinely representative of the workers. None the less, that part of the Labour Code may eventually be amended, along with others, as a result of the consultation process currently under way in the forum of the CES.

233. The former requirement that 90% of the members of a trade union must be Honduran citizens was repealed in 1979 pursuant to Decree No. 760. Today, a union may have any number of foreign nationals among its membership. Foreign nationals are still not allowed to be members of the executive of any union; however, the idea that the CES might formulate a reform whereby foreign workers could hold union executive posts has recently been floated, and the Government has taken note of the suggestion.

234. Under the Labour Code, members of the executive of any trade union or labour federation or confederation must be Honduran citizens (article 510, paragraph (a) and article 541, paragraph (a)), must be employed in the trade or occupation in question (article 510, paragraph (c) and article 541, paragraph (c)), and must be able to read and write (article 510, paragraph (d) and article 541, paragraph (d)). These requirements ensure that the members of the executive can perform their duties effectively on behalf of the other union members. Under the law, the executive represents the organization.

235. Under the Code, two thirds of the members of a union must vote in favour of strike action before a strike may lawfully be called (articles 495 and 563). This has been regarded as a limitation on the exercise of the right to strike. However, in the event that proposals for reforms to the Code should emerge from the tripartite consultation process, the State of Honduras is prepared to consider them.

236. Under article 537 of the Code, labour federations and confederations are not allowed to call strikes. Our labour law states expressly that the right to strike is the final stage in the process of resolving a collective conflict over economic issues, and such conflicts are the concern of the company or industry union directly involved. A federation or confederation is free to provide its affiliate unions with assistance and advice, of course, but the power to call a strike belongs exclusively to the members of the union at the firm directly involved in the conflict. The law takes the view that a strike called by a labour federation or confederation would necessarily

involve unions and firms that had nothing to do with the economic conflict as such, apart from the members' solidarity with their fellow unionists. Honduran labour law make no provision for strikes in the name of solidarity.

237. Under various other provisions of the Labour Code, the Ministry of Labour and Social Security has the authority to end labour disputes in oil production, refining, transport and distribution services (article 555, paragraph 2), Government permission or six months's advance notice is required for any interruption or work stoppage in public services that are directly or indirectly State-controlled (article 558), labour disputes in public services that are not essential in the strict sense of the term must be submitted to binding arbitration, and no strikes may be called while the arbitral award remains in force (two years) (article 554, paragraphs 2, 7, 820 and 826). All these provision are being reviewed in the context of the tripartite consultation process aimed at labour law reform, and any proposed amendments will be subject to subsequent discussion and approval. Labour Code, articles 460-479, 480, 481, 482, 483, 516, 517, 550, 551, 553, 554, 555, 556, 558, 559, 562, 563, 569, 570, 571, 591-663 and 820; Constitution of the Republic, article 128, paragraphs 13 and 14; ILO Conventions Nos. 29, 87 (1948) and 105; Executive Decree No. PCM-008-97 of 2 June 1997; and Decree No. 978 of 14 July 1980.

XXIII. Article 23

238. Article 111 of the Constitution reads as follows: "The family, marriage, motherhood and childhood are under the protection of the State."

239. Under article 2 of the Family Code, "It is the duty of the State to protect the family and institutions related to the family, and to guarantee the legal equality of the spouses and children *vis-à-vis* one another."

240. For purposes of the founding of a family, the law recognizes civil marriage and non-marital unions. The adoption of children is lawful, subject to the provisions of the Family Code (article 4).

241. Family courts shall be established, with exclusive jurisdiction to hear all matters relating to the Family Code (article 5).

242. The application, interpretation and regulation of the Family Code shall be guided by the aims of strengthening the family and maintaining its unity, the interests of children and minors, the equality of spouses as regards rights and duties, and the other fundamental principles of family rights. In cases for which no provision is made in this Code, the general principles of law and the standards established in duly approved international conventions or treaties, the provisions of the Civil Code, the Code of Civil Procedure, the National Registry of Persons Act and other laws that are directly relevant for purposes of the Family Code shall apply (article 6).

243. Under article 56 of the Children and Adolescents Code, "For all legal purposes, the family is an institution comprising biological or adoptive parents and related persons within the fourth degree of consanguinity and the second degree of affinity and having as its end the preservation, propagation and development of the human species in all spheres of life." Article 58 of the Code states, "The State shall promote the stability of families and the welfare of their members, and shall provide low-income families with special assistance services to enable them to meet their obligations arising from this Code, the Family Code and other applicable legislation."

244. The Family Code recognizes the existence of non-marital unions: articles 45, 46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 59 and 62.

245. Article 112 of the Constitution states, "The right of a man and a woman to contract marriage is recognized, as well as the legal equality of spouses." The Family Code contains various provisions relating to marriage. Article 11: "For purposes of this Code, the only recognized form of marriage is civil marriage, contracted in accordance with the requirements and formalities set forth herein, and based on the legal equality of both spouses." Article 13: "Every minister of religion who authorizes a religious marriage without having been shown a certificate attesting that the couple concerned have previously contracted a civil marriage shall incur criminal liability." Article 14: "Marriage is based on the equality of both spouses as regards rights and duties, and shall be contracted in accordance with the requirements and formalities set forth in this Code." Article 16: "The age of majority is twenty-one years. Only persons who have reached the age of majority possess the legal capacity to contract marriage at will. However, a man may contract marriage at the age of eighteen, and a woman at the age of sixteen, provided the persons concerned obtain permission to marry as prescribed in this Code. Where a marriage has been contracted between persons who have not reached the ages referred to above, the marriage shall automatically be deemed lawful none the less if the persons concerned have remained together for one month following the date at which the spouse who is a minor reaches the age of sixteen years, or if the woman conceives before having reached that age." Article 17: "Consent for a person under the age of majority to contract marriage shall be given by: (1) The father and mother jointly, or whichever of them exercises parental authority; (2) In the absence of the parents, either the maternal or the paternal grandparents, preferably those who live in the same household with the minor concerned; (3) The adoptive parent or parents, where the minor is adopted; (4) The guardian, where the minor is subject to wardship; or (5) The competent court, where the person or persons empowered to give their permission have refused to do so without just cause and where the minor concerned is eighteen or more years of age." Article 18: "Just cause for refusal on the part of the persons referred to in the preceding article to give their consent to the marriage of a minor may not be other than: (1) The existence of some legal incapacity or impediment; (2) A serious risk to the health of the minor from who consent is withheld or to the couple's prospective offspring; (3) Licentious habits, immoderate gambling, alcoholism or addiction to narcotics or other drugs on the part of the person whom the minor intends to marry; and (4) Insufficient means at the disposal of the persons wishing to marry, and inability on their part to acquire sufficient means." Article 19: "Persons who may not contract marriage are: (1) Every person who is not in full possession of his or her reason at the time of the intended marriage; and (2) Every person whose previous marriage or non-marital union has not been legally dissolved." Article 20: "Persons who may not marry each other are: (1) Relatives in the direct line of ascent or descent; (2) Siblings; (3) Other collateral relatives to the fourth degree of consanguinity; (4) Adoptive parents and their adopted children; (5) Guardians and their wards; and (6) Persons who have been convicted of having murdered their own or their intended partner's spouse or companion, or of having been the instigator or accomplice of the murder of such spouse or companion..." Article 21: "It is unlawful to perform a marriage: (1) Where one of the parties is a minor who has not secured the consent of the person whose consent is required under the law; (2) Where fewer than 300 days have elapsed since the date of dissolution of the former marriage or non-marital union or the date of annulment of the former marriage of the woman in the case, unless she has given birth within that period or unless one of the spouses has been physically separated from the other or absent during the said period..."; (3) Where the notices banns have not been published as required by law or where the prenuptial medical certificate has not been produced." Article 23: "Every marriage must be authorized by a mayor

of a municipality, the President of the Metropolitan Council of the Central District, or, in his absence, the councillor who is acting as his replacement. Notaries are qualified to perform marriages everywhere in the country." Article 25: "Every minor who wishes to contract marriage shall appear accompanied by the person whose consent is required under this Code, who upon being duly identified may give his or her consent then and there if he or she so chooses, in which case the marriage certificate shall state the fact. Consent may also be given in the form of a written document signed by the person consenting and duly notarized. In cases where authorization has been issued by a court, a certified copy of the judgement shall be produced. The parties shall also produce their birth certificates, or, where that is not possible, a certificate of age issued by a court." Article 27: "Every foreign national who wishes to contract marriage in Honduras shall make before the competent official or notary who is to authorize the marriage a declaration to the effect that he is unmarried, supported by the sworn testimony of two or more witnesses of full age and possessing full legal capacity who shall confirm his declaration. In addition, he shall produce a certified document issued by the relevant diplomatic or consular official or any competent authority of his own country attesting that under the applicable laws of that country, there is no impediment to the proposed marriage." Article 34: "Where marriage has been contracted in a foreign country by two Honduran nationals, or by a Honduran national and an alien, the marriage shall be recorded by the Civil Registrar for the place of birth of the persons concerned. In every such case, the Honduran national shall notify the nearest Honduran consul of the marriage, and the latter in turn shall inform the Ministry of Foreign Relations for purposes of the preceding paragraph." Artículo 40: "Marriage is established on the basis of the equality of both spouses in rights and duties." Article 41: "Spouses shall live together, show each other all due faithfulness, consideration and respect, and provide each other with mutual assistance and support. The requirement that spouses must live together shall not apply where to do so would be seriously prejudicial to either of them or to their children, or where under special circumstances such that the couple agree that advantage is likely to accrue to their mutual interests, one of them must reside temporarily away from their shared domicile." Article 42: "Both spouses are required to care for the family they have produced, and shall cooperate in the upbringing, education and guidance of their children, in accordance with the principles of morality and sound custom. Furthermore, the spouses shall cooperate in the management of the household in accordance with their respective skills and abilities, and both shall contribute to its maintenance in so far as their capabilities and economic capacities permit. However, where the contribution of one spouse consists exclusively of housekeeping and the care of children, the other spouse shall be exclusively responsible for supporting the family, without prejudice to his duty to cooperate in the matters of household management and child care." Article 43: "Both spouses have the right to engage in an occupation or hold gainful employment, and it is incumbent upon each of them to provide each the other with cooperation and assistance to that end, and also in the event that he or she should wish to pursue his or her education or further his or her knowledge, provided in all cases that they organize the life of the household in such a way that the said activities are consistent with their respective duties under this Code." Article 44: "The wife shall invariably have a preferential claim upon her husband's wages, salary or income to such an amount as is sufficient for her own support and the support of her minor children. Where it is the wife who defrays the family's expenses, in whole or in part, the husband shall have a similar claim."

246. Under article 113 of the Constitution, divorce is recognized as a means of dissolving the matrimonial bond. The issue is addressed in detail in the Family Code. The causes of the termination of marriage are set forth in article 227: (1) Death of one of the spouses; (2) Presumption of the death of one of the spouses, declared in accordance with the law; (3) Annulment of the marriage; and (4) A final judgement of divorce. The causes of annulment

of a marriage are set forth in article 228: (1) Where the marriage has been contracted by persons who do not possess the necessary capacity as stated in article 16, paragraph 2 of the Code, except as provided in paragraph 3 of the said article; (2) Where the marriage has been contracted in error, or where consent to it has been obtained by coercion or intimidation; and (3) Where marital relations are impossible because of total impotence.

247. Under article 229, a marriage contracted by persons referred to in articles 19 and 20 of the Code is absolutely invalid, except in the case referred to in the final paragraph of the latter article. Under article 230 of the Code, the right to petition for annulment in the cases referred to in paragraphs 1 and 2 of article 228 applies only to the affected spouse, within six months following the date of the marriage. In the case referred to in paragraph 3 of that article, only the affected spouse may petition for annulment, within thirty days following cessation of the cause for invalidity of consent to the marriage.

248. Under article 231 of the Family Code, a marriage that has been legally annulled shall in all cases produce the effects contemplated in the Code with respect to the children born in the marriage and with respect to a spouse who has acted in good faith.

249. Under article 233, where a married couple separate by mutual agreement, the petition for separation from bed and board shall expressly indicate the name of the spouse who is to have custody of the couple's children, the name of the spouse who is to assume responsibility for their support and the amount of that support, and the times when and conditions under which the spouse who does not have custody of the children may see them. Under article 234, where the petition is submitted by only one of the spouses, the other spouse shall be notified, and the two shall reach agreement upon the matters referred to in the preceding article within a period of time to be set by the court. In the event they fail to reach agreement, the court shall decide.

250. Article 235 states that where the spouses have not become reconciled after two years have elapsed following the date of their separation agreement, or the date of the settlement imposed by the court, as the case may be, either of them may petition for divorce on the grounds of separation from bed and board.

251. The grounds for divorce are set forth in article 238: (1) Open, public infidelity on the part of either spouse; (2) Physical abuse, severe injury and cruel treatment of one spouse and the children by the other spouse, making their life together intolerable; (3) Attempted murder of one spouse or of the children by the other spouse; (4) Open abandonment of one spouse without just cause, after more than two years with no communication from the other spouse; (5) Conduct on the part of one spouse likely to corrupt or pervert the other spouse or their children; (6) Habitual use of narcotics or other drugs by one of the spouses, where such use threatens to cause the ruin of the family or constitutes a source of conjugal discord; (7) Unjustified refusal on the part of one of the spouses to fulfil *vis-à-vis* the other spouse or *vis-à-vis* the children the duties of assistance, education and support incumbent upon him or her by law; and (8) Separation from bed and board for a period of two consecutive years.

252. Under article 240, an action for a contested divorce may not lawfully be brought later than one calendar year after the motivating cause has become known, except in the cases referred to in paragraphs 1, 2, 3 and 5 of article 238. In those cases, an action for divorce may be brought at any time, provided that the grounds on which the action is based still obtain.

253. Article 242 provides that the decree of divorce shall stipulate how much support shall be provided by each spouse for the support of the other and of the children, and what form that support is to take; if necessary, the decree shall also stipulate that community property shall be encumbered for the performance of those obligations. In addition, the decree shall determine parental authority and the custody of children.

254. The effects of divorce are set forth in article 252: (1) Dissolution of the marriage bond, leaving each spouse free to contract a new marriage; (2) Liquidation of assets; (3) Entitlement of the unoffending spouse and of the children to support; (4) Suspension or loss of parental authority, where applicable; and (5) Payment of support to the persons referred to in paragraphs 7 and 8 of article 211 of the Family Code by any person who relies on the provisions of those paragraphs.

255. Article 253 provides that when a petition for divorce is submitted, the competent court shall make a provisional ruling on the measures that are required for the protection of the right of the children, hearing the opinions of both spouses if necessary.

256. Lastly, article 255 of the Code provides that where the wife is the innocent party, she shall be entitled to receive alimony pending good behaviour, for such time as she does not remarry. Where the husband is the innocent party, he shall be entitled to receive alimony if he is unable to support himself by working, for such time as he does not remarry.

XXIV. Article 24

257. Article 119 of the Constitution of the Republic states, "The State has the duty to protect children. Children shall enjoy the protection afforded to them in international treaties which look after their rights. Child protection laws are matters of public policy, and the official establishments serving this purpose shall have the status of social welfare centres".

258. Honduras is a party to the Convention on the Rights of the Child, and pursuant to its obligations in that connection, it has enacted legislation making provision for the protection of children in line with the principles, objectives, purposes and goals of the Convention and other international instruments.

259. Under article 120 of the Constitution, "Physically or mentally handicapped minors, those with abnormal behaviour, orphans and abandoned children shall be subject to special legislation for their rehabilitation, supervision and protection as the case may be." Article 121 states, "Parents are under obligation to feed, assist, and educate their children during their minority, and beyond in those cases established by law. The State shall provide special protection for minors whose parents or guardians are unable to provide for their care and education. Under circumstances of equal qualifications, those needy parents or guardians shall be given preference in filling public positions."

260. Honduras has special courts to hear cases involving family and juvenile matters.

261. Article 123 of the Constitution, for its part, provides that "All children shall enjoy the benefits of social security and education. Every child shall have the right to grow and develop in good health, and accordingly special care shall be given during the prenatal period, as much for the child as for the mother, both being entitled to food, housing, education, recreation, exercise

and adequate medical services." Under article 124, "Every child must be protected against every form of abandonment, cruelty and exploitation. No child shall be the object of any type of bondage. No child shall work before reaching an adequate minimum age, nor shall he be permitted to dedicate himself to any occupation or employment that may be prejudicial to his health or education or serve as an impediment to his physical, mental or moral development. The use of minors by their parents or other persons for the purpose of begging is prohibited."

262. On 5 September 1996, the National Congress adopted Decree No. 73-96, bringing the Children and Adolescents Code officially into effect in the State of Honduras. The Code enshrines the rights of children and sets forth the measures that are to be applied in cases involving children or adolescents who break the law or who are socially at risk.

263. A child under the age of 12 may not be charged with an offence. Cases involving minors between the ages of 12 and 18 are governed by a special law, in accordance with the provision of article 23 of the Criminal Code.

264. The Children and Adolescents Code allows children between the ages of 14 and 16 to work with the consent of their parents or the Ministry of Labour. Under article 115 of the Code, "Children's work shall be appropriate in terms of their age, physical condition and intellectual and moral development. The Ministry of Labour and Social Security shall ensure that children are not subjected to economic exploitation and that they do not perform hazardous work or work that hinders their education or adversely affects their health or their physical or mental development." Article 187 of the Code provides that persons who have reached the age of 18 are deemed to be adults for purposes of their treatment in the event of arrest and detention.

265. Under article 128, paragraph 7 of the Constitution, "... Minors under sixteen years of age and those above that age who are subject to mandatory education by virtue of national legislation may not be employed in any kind of work. The labour authorities may authorize their employment when they deem it indispensable for their own support or for the support of their parents or brothers and sisters, provided that their working does not hinder their compliance with the requirements of mandatory education. For minors under seventeen years of age, the work period, which must be daytime, may not exceed six hours a day or thirty hours a week, for any kind of work."

266. The Honduran Children and Family Institute (IHNFA), as the institution responsible for administering children and family policy and enforcing children's rights, has two programmes aimed at the protection and welfare of children who are socially at risk and in a highly vulnerable situation.

267. The objectives of the Family Welfare Programme are to enhance the welfare situation of Honduran families and children, taking into account their rights to food, health, education, affection and security, to strengthen families, to improve living conditions for children and families, and to inform people of their rights for prevention purposes.

268. The Protection and Social Intervention Programme, for its part, seeks to ensure that children and adolescents who are socially at risk are dealt with in such a way as to provide them with opportunities for integral development.

269. The programme is delivered through its Family Solidarity and Foster Home subprogrammes for children who have been abandoned, mistreated, victims of domestic violence, exploited and the like.

270. The administration of property is an issue that is addressed in article 157 of the Children and Adolescents Code, which reads as follows: "Where the person responsible for administering a child's assets in his or her capacity as father, mother or guardian has thereby jeopardized the child's economic interests, the Office of the Public Prosecutor shall bring an action before the competent court to have the said person deprived of his or her responsibility as administrator of the child's assets or removed as the child's guardian, as the case may be, and to seek redress for the injury caused by his or her actions. Where it deems expedient to do so, the Office of the Public Prosecutor may ask the court to order the person concerned provisionally suspended from his or her position as administrator of the child's assets and to appoint another administrator, subject to the applicable requirements under the law, pending the hearing."

271. In the case of the administration of estates and inherited property, the above provisions are seldom applied, inasmuch as the beneficiaries, like their parents before them, are usually extremely poor. On occasion, however, it may happen that a child inherits property from a more or less distant relative, and for want of familiarity with the relevant laws on the part of the persons concerned, the laws are not applied. Again, a child's rights may be subject to abuse or violation as a result of inadequate information or fear, and the system of complaints is very unsatisfactory.

272. Under article 99 of the Family Code, "All children are equal before the law and are subject to the same rights and duties." Non-discrimination in the workplace is enforced by the Ministry of Labour and Social Security, which, under article 155 of the Children and Adolescents Code, is responsible for preventing the economic exploitation of children and ensuring that they do not perform hazardous work or work that hinders their education or adversely affects their health or their physical or mental development. Children who enter the labour force shall be entitled to the same wages, social benefits and other advantages which under the law and individual and collective contracts are enjoyed by workers over the age of 18. In addition, the wages of a child worker shall be proportional to the number of hours worked. Working girl children who become pregnant shall be entitled to special protection during pregnancy and while nursing (Children and Adolescents Code, article 116).

273. Oversight of the effective application of these rights is the responsibility of the Ministry of Labour and Social Security. The Ministry conducts monitoring operations at the premises of national and foreign-owned firms, and is empowered to apply administrative penalties, which may include fines ranging from 5 000 to 25 000 lempiras. A firm that reoffends in this respect is liable to fines of double the above-mentioned amounts, without prejudice to its civil and criminal liability (Children and Adolescents Code, article 128).

274. Under article 139 of the Code, "A child shall be deemed to be socially at risk where (a) he or she has been abandoned or is in a situation of danger; (b) he or she is not receiving adequate care to ensure that his or her basic needs are met; (c) his or her assets are being jeopardized by the persons who are administering them; (d) he or she has no legal representative; (e) he or she is being mistreated or corrupted; (f) he or she is in a situation such that his or her rights or integrity are imperilled; (g) he or she is addicted to habit-forming substances or is in danger of becoming so addicted."

275. The State of Honduras is a party to various treaties dealing with the rights of children, and as such is bound to implement them faithfully. This means that children who are socially at risk must be provided promptly and urgently with care to ensure that their fundamental needs are met, that they are not mistreated and that their dignity is respected, in accordance with the provisions of the Constitution and the various treaties that Honduras has ratified.

276. Various actions in this connection are undertaken in the context of the Protection and Social Intervention Programme. Some cases are referred to NGOs specializing in the field of children's welfare. The law provides clearly defined measures for dealing with young offenders to ensure that their rights are not violated during their trials, and a juvenile who has committed a number of offences may only be charged with one.

277. Various articles of the Children and Adolescents Code are noteworthy here. Article 11 reads as follows: "Children have a right to life, health, social security, dignity, personal freedom, freedom to express their opinions, nationality, identity, a name and self-image, education, culture, sports, recreation, free time, the environment and natural resources, a family, and the other benefits contemplated in the Convention on the Rights of the Child, this code, and other general or specific statutes." Under article 29, "Every child has a right to have a nationality and a personal identity, the right to possess a given name and surname, and the right to know who his parents are. These rights are inalienable." Article 30 states, "Pursuant to the preceding article, the father, mother or legal representatives of every newborn child shall inscribe the child in the National Registry of Persons, in accordance with the law. Failure to fulfil this duty shall be an offence punishable by law." Article 31 provides that "The National Registry of Persons shall take all appropriate measures to facilitate and guarantee the registration of births and other events relating to persons, and shall ensure that information is kept up to date."

278. The National Registry of Persons Act also contains a number of relevant provisions. Article 46, for example, reads as follows: "Children born in the country shall be inscribed in the Civil Register within thirty days following birth. Children born abroad to a father or mother who is Honduran by birth shall also be registered within thirty days before a diplomatic officer or, failing such an officer, before consular officials. Such children, if not registered abroad, may also be inscribed in the National Civil Register at the request of the party concerned." Under article 47, "Every birth shall be declared by the father or mother, or, failing either parent, by a relative living in the same household and having knowledge of the birth, or by the persons who attended the birth or who work in the social assistance institution responsible for the care of the newborn child. In all cases, the declarant shall produce the identity cards of the parents of the newborn child in question. The registration of the newborn child shall not be left in abeyance under any circumstances." Article 48 states, "In a private or State-run hospital, the doctor or nurse who attended the birth shall give the woman concerned a written attestation of birth on the form specified in the regulations made under this Act, for purposes of the child's subsequent registration." Article 49 reads as follows: "In villages and hamlets having no hospital, doctor or nurse, where the mother of the newborn child has not declared the birth, if it appears that she is unmarried, with none to share her household, and that she is lacking in economic resources, the municipal assistance service shall obtain details of the birth and take the necessary action to have the child inscribed in the Civil Register."

279. Under article 102 of the Family Code, "Where the birth of a child is inscribed in the Civil Register by only one of the parents, the resultant legal effects shall apply to both parents, where they have entered into a civil marriage or a legally recognized non-marital union."

280. Under article 23 of the Constitution, "The following are Hondurans by birth: (1) Those born within the national territory with the exception of the children of diplomatic agents; (2) Those born abroad of a Honduran father or mother by birth; (3) Those born on board Honduran vessels or aircraft of war, and those born on merchant vessels while they are in Honduran territorial waters; and (4) The infant of unknown parents found on the territory of Honduras." As a means of giving effect to these constitutional provisions guaranteeing the registration of all persons in the above-mentioned categories, the State of Honduras has enacted the National Registry of Persons Act (Decree No. 150-1982 of 17 November 1982), which contains various provisions relating to the registration of births.

XXV. Article 25

281. In the Constitution of the Republic of Honduras, under Title I (The State), Chapter I (The Organization of the State), we find the following statement (article 2): "Sovereignty corresponds to the people, from whom emanate all the powers of the State, which are exercised through representation." Under Title II (Nationality and Citizenship), Chapter I (Hondurans), article 22 provides that "Honduran nationality is acquired by birth or by naturalization." Article 36, under Chapter III in Title II, reads as follows: "All Hondurans over eighteen years of age are citizens." It follows that all Honduran citizens, whether born Honduran or naturalized, enjoy the rights set forth in article 37 of the Constitution (with some exceptions applicable to naturalized citizens), namely: " (1) to vote and be elected; (2) to be a candidate for public office; (3) to form political parties, and to join or renounce membership from them; and (4) those others recognized by this Constitution and the laws." Under Chapter II (Foreigners), we read in article 32, "Foreigners may not engage in political activities of national or international character in the country, under penalty of sanctions in accordance with the law." Article 44 of the Constitution provides that suffrage is a right and a public function.

282. Under Title I, Chapter II (Suffrage) of the Elections and Political Organizations Act, we read in article 6 that "Suffrage is a right and a public function of the citizen, which he exercises by means of free, egalitarian, direct, secret voting. The exercise of the right to vote is compulsory, subject to the limitations and conditions established by this Act."

283. Persons elected to public office are not directly accountable to the citizenry for their exercise of power, but they are accountable through the Superior Audit Office, an institution with an Organic Law that makes ample provision for the monitoring of public spending. The Organic Law of the SAO was recently amended with a view to optimizing the effort to combat the scourge of corruption, which continues to afflict Honduras, although substantial headway has been made against it, thanks not only to the Government's own efforts but also to the efforts of such private organizations as the National Anti-Corruption Council.

284. A citizen may lose his right to vote on legal or personal grounds. Under article 10 of the Elections and Political Organizations Act, "The right to vote may not be exercised by persons who: (a) have been deprived of their political rights pursuant to a final judgement by a court of law; (b) are under a warrant of committal for an offence punishable by a term of imprisonment of more than five years; (c) have been found guilty of a crime and sentenced to a term of imprisonment and are fugitives from justice; (d) are under a civil interdiction; and (e) are serving members of the armed forces of Honduras, State security or police forces, or are guards at correctional institutions."

285. A citizen may also be unable to exercise his right to vote where: (a) he is outside the country on the day of the elections; (b) he is confined to a public or private health-care institution because of illness; (c) he has not obtained or has lost his identity card.

286. In order to exercise their right to vote, every citizen must meet the following criteria: (a) his name must be on the National Electoral List; (b) he must possess and produce his identity card.

287. The exercise of the right to vote is free, secret, compulsory, universal and egalitarian. Voting by qualified citizens takes place at intervals determined by standards expressly provided in the Constitution and in the Elections and Political Organizations Act. The electoral system in use in Honduras is proportional representation by national, departmental and municipal quotients, by departmental and municipal remainders, and by simple majority in those cases specified by law. Five legally registered political parties took part in the general elections of 1997 and 2001, and the voter turnout was acceptable.

288. Permanent residents do not enjoy rights in the political context of the State of Honduras, and are barred from engaging in political activities of any kind while in the country (except as regards voting at their respective diplomatic delegations when their home countries allow their citizens to vote in elections while abroad). These rules are set forth in articles 31 and 32 of the Constitution. The bodies responsible for enforcing these prohibitions are the National Tribunal of Elections (TNE), which has now been replaced by the Supreme Electoral Tribunal, and the Immigration and Foreign Nationals Directorate.

289. The Civil Service system regulates employment and public service relations between the State and its servants, based on the principles of competence, efficiency and honesty. Personnel management features scientific methods rooted in the merit system. The State shall protect its servants within the public administration (Constitution, article 256). The law shall regulate the civil service and in particular conditions for entering the public administration; promotions and advancement based on merit and qualifications; job security, transfers, suspensions and guarantees; the duties of public servants and remedies against decisions that affect them (Constitution, article 257).

290. Decree No. 126-1967 and amendments thereto contain the Civil Service Act. Appointments to posts in the public administration are made in a context of equality for all citizens, given equal competence. Even so, a more consistent policy would be desirable in order to reinforce stability and professionalism among civil servants.

291. Under the Constitution, serving members of the armed forces and the National Civil Police, ministers of the various religious denominations and certain relatives of persons who at the time of elections hold specific public posts are not eligible for election for various reasons, including the possibility that the intentions of voters may be influenced by such factors as the respect and authority commanded by the persons concerned, religious faith, or relationship with the individuals in question.

292. Eligibility for elective office is subject to specific requirements under our legislation. A citizen who wishes to stand as a candidate for election as President of the Republic, for example, and to hold that office in the event he is elected, is required to (a) be Honduran by birth, (b) be over 30 years of age, (c) enjoy the rights of citizenship, and (d) be a lay person (Constitution, article 238, and Elections and Political Organizations Act, article 52).

293. Every candidate for election as a deputy in the National Congress of the Republic and the Central American Parliament is required to (a) be Honduran by birth, (b) be at least 21 years of age, (c) exercise the rights of citizenship, (d) be a lay person, and (e) have been born in the department for which he is standing for office or have resided therein for at least the five years prior to the scheduled election date (Constitution, article 198, and Elections and Political Organizations Act, article 54).

294. Every candidate for election as a member of a municipal corporation is required to (a) be Honduran by birth, (b) be at least 21 years of age, (c) be in full exercise of the rights of citizenship, (d) be a lay person, (e) be a native of the municipality for which he is standing for office or have resided therein for the previous five years (Elections and Political Organizations Act, article 56).

295. The following may not be elected President or Vice-President of the Republic:

(1) ministers and deputy ministers, magistrates of the Supreme Electoral Tribunal, magistrates and judges of the judiciary, presidents, vice-presidents, managers, deputy managers, directors, deputy directors and executive secretaries of decentralized and dispersed institutions; members of the Superior Audit Office; the Public Prosecutor and Deputy Public Prosecutor of the Republic; the Director and Assistant Directors of the National Registry of Persons; the Prosecutor and Deputy Prosecutor for the Environment, the Attorney-General and the Deputy Attorney-General of the Republic; the Superintendent of Concessions and the National Human Rights Commissioner, where they have held office during the year preceding the date of election of the President of the Republic. The President of the National Congress and the President of the Supreme Court of Justice may not be candidates for election as President of the Republic for the constitutional period following the period for which they were elected; (2) Commanders and general officers of the armed forces; (3) senior officers of the armed forces and police or State security forces; (4) servicemen on active duty and members of any other armed body who have been on duty during the twelve months preceding the date of the election; (5) Repealed; (6) the spouse and relatives within the fourth degree of consanguinity or the second degree of affinity of the President and Vice-President of the Republic who have held office in the year preceding the election; and (7) representatives or agents of firms that hold concessions from the State, firms that hold concessions from the State for the development of natural resources or contracts for services and public works that are financed with national funds and which for those reasons have outstanding accounts with the State (Constitution, article 240 as amended).

296. The following may not be elected as deputies or members of a municipal corporation:

(a) the President and Vice-Presidents of the Republic; (b) magistrates of the Supreme Court of Justice; (c) ministers and deputy ministers; (d) military commanders with national jurisdiction; (e) managers, directors or presidents of decentralized Government institutions; (f) servicemen on active duty and members of security forces or any other armed body; (g) other civil servants and public employees, except those in the fields of teaching and health care; (h) magistrates of the Supreme Electoral Tribunal; (i) the Public Prosecutor and the Deputy Public Prosecutor of the Republic; (j) members of the Superior Audit Office; (k) relatives within the fourth degree of consanguinity or the second degree of affinity of the above-mentioned persons, except in the case of subparagraphs (c), (e) and (f); with respect to candidates for election as members of a municipal corporation, the degrees of relationship that apply shall be the second degree of consanguinity and the first degree of affinity. Relatives within those degrees may not be members of the same municipal corporation; (l) commanders of military zones in specific areas (as candidates for departments located within their areas of jurisdiction); (m) holders of

concessions from their State or their agents; (n) delinquent debtors of the National Treasury (Constitution, article 199).

297. These disabilities shall affect persons holding any of the above-mentioned posts six months prior to the elections.

298. Our legislation makes no provision for the removal from office of persons holding elected posts, such as the of President of the Republic, Deputies with seats in the National Congress and the Central American Parliament or members of a municipal corporation, except where the person concerned has been ruled unfit for office pursuant to a final civil interdict, after due process with a formal finding of grounds for prosecution or impeachment, as the case may be.

299. Accountability to citizens for the exercise of public power is expressly required only of municipalities, which are responsible under the Municipalities Act for reporting on the way they use the powers conferred on them by the Constitution. Article 114 of the Act reads as follows: "Every municipal corporation shall be required to reply immediately in open session to questions concerning its management from persons in attendance. Questions concerning matters of individual interest shall be answered within fifteen days."

300. The Regulations made under the Municipalities Act treat the matter in greater detail. Under Article 19, paragraph 7 of the Regulations, "... Every municipal corporation shall be required to reply immediately to questions concerning its management or matters of general interest asked by persons in attendance, except where the question calls for an answer that is technical in nature, in which case it shall be made public within the next fifteen days. The same length of time shall be allowed in the case of questions concerning matters of individual interest. In this context, the expression 'matters of general interest' means matters that concern the community as a whole, and the expression 'matters of individual interest' means matters that concern a single resident or a specific group of residents."

301. Responsibility for enforcing these consultation mechanisms lies with the Departmental Governor, to whom complaints about public employees may be submitted. Departmental Governors represent the executive branch of Government in their respective jurisdictions, and may be appointed and removed from office at the discretion of the latter (Municipalities Regulations, article 5 and article 7, paragraph 4). Funds to cover the operating expenditures of regional administrative machinery are part of the allocation for the Ministry of the Interior and Justice in the General Budget of Revenue and Expenditure of the Republic (Municipalities Regulations, article 11).

302. The recently adopted Territorial Organization Act (Decree No. 180-2003) includes provisions aimed at promoting citizen engagement. In particular, article 35, paragraph 2 of the Act establishes social controlling agencies as a mechanism for the "political control of and restraint on governmental action in the management of matters of public interest." Under article 35, "Citizen engagement shall be encouraged as a fundamental component of territorial organization, in the following context: ... (2) To strengthen the process of political control of and restraint on governmental action in the management of matters of public interest, for which purpose the inhabitants of municipalities may establish social controlling agencies to ensure that this principle is given practical application ..." However, as the Act has been adopted only recently, this mechanism has not yet been made operational.

303. In addition to the new Territorial Organization Act just discussed, article 25 of the Municipalities Act makes provision under paragraphs 9 and 10 respectively for the power to convene public consultative assemblies and the power to organize plebiscites to reach decisions on matters of great importance. The prerequisites and procedures associated with the implementation of these two consultation processes are set forth in articles 16-19 of the Municipalities Regulations.

304. Concerning the holding of a plebiscite, article 16 of the above-mentioned Regulations states, "The municipal corporation may, by a two-thirds vote of its members, decide to hold a plebiscite ... of all the inhabitants of the municipality in order to reach a decision on a matter which in the corporation's judgement is of great importance. The outcome of the plebiscite... shall be binding and shall be made public."

305. Matters that may be the subject of a community consultation in the form of a plebiscite are dealt with in article 17, which reads as follows: "For purposes of the organization of a plebiscite, matters of great importance shall be deemed to include (a) matters expressly designated as such by law in these Regulations; (b) matters with a direct bearing on the existence and autonomy of the municipality, the safeguarding of its essential natural resources and the protection and upgrading of the ecosystem and the environment; the setting of rates and levies or substantial changes thereto, the execution of large-scale projects, and the approval of long-term programmes and commitments."

306. The matter of open council meetings is addressed in article 19 of the Regulations. Under the terms of that article, "Open consultation meetings between the residents of a municipality and/or representatives of legally constituted local organizations on the one hand and the municipal government authorities on the other constitute a direct communication channel which is essential for administrative effectiveness and responsiveness to the wishes of the population, and serve as an constant expression of the popular will ..."

307. In practice, open council meetings are commonly held in most of the country's 298 municipalities. Under the Municipalities Regulations, they must be held at least five times in the course of a year (article 19, paragraph 1), or as often as necessary in the case of consultation meetings with representatives of legally constituted local organizations, depending on the state of communication between the Municipalities and such organizations (article 19, paragraph 2).

308. A number of plebiscites have actually been held in recent years, in most cases to determine whether the sale of alcoholic beverages should be prohibited in the municipality concerned.

309. As regards the exercise of political rights guaranteed by the Constitution and the protection of that exercise by the State, it may be said that there are no obstacles—at any rate no formal obstacles—to the discussion of issues or public dialogue with representatives.

310. The State of Honduras is currently facing a complaint concerning an alleged violation of political rights. The complaint was laid before the Inter-American Commission on Human Rights by Mr. Nasry Javier Ictech Guifarro on 4 April 2003 after he had been denied the right to stand as an independent candidate for the post of mayor of the Central District, and hence the right to be elected through the free expression of the will of the voters. On 9 November [2000], Mr. Ictech Guifarro formally applied to the National Tribunal of Elections to have his candidacy officially registered. The Tribunal decided by a majority vote to decline to register it on the grounds that the would-be candidate had not met the legal requirements set forth in article 49 of the Elections

and Political Organizations Act. Mr. Ictech Guifarro applied for a reconsideration of the Tribunal's decision, but his application was denied for cause. Exercising the rights available to him under the law, he then brought an *amparo* action before the Supreme Court of Justice of Honduras on 13 September 2001. The Supreme Court agreed to hear the case, thereby suspending the adverse decision of the National Tribunal of Elections, but subsequently dismissed it as unfounded. In accordance with the country's domestic legislation, both the Tribunal and the Supreme Court based their decisions on the principle of legality enshrined in articles 321 and 322 of the Constitution.

XXVI. Article 26

311. Article 60 of the Constitution states, "All men are born free and equal in rights. There are no privileged classes in Honduras. All Hondurans are equal before the law. All forms of discrimination on account of sex, race, class, or any other reason prejudicial to human dignity shall be punishable. The law shall establish the crimes and penalties for violators of this provision."

312. A special law has been enacted for the purpose of creating and expanding scope for participation by Honduran women (Decree No. 34-2000, Equal Opportunity for Women Act).

XXVII. Article 27

313. Honduras is characterized by a rich ethnic and cultural diversity in various parts of the country. Recent censuses have shown a total of 830 662 people belonging to nine aboriginal and Black peoples who are culturally distinct from the rest of the population and now account for 13.18% of all Hondurans (see the box in part I of this report).

314. In 1993, the country's aboriginal people accounted for 5.9% of the total population.

315. In terms of their cultural origins, the aboriginal and Black peoples of Honduras may be assigned to several groups: Mesoamerican (Mayas-Chortí and Lencas); non-Mesoamerican or Circumcaribbean (Tolupan, Pech and Tawacas); Afro-Caribbean (Garifunas and English-speaking Black communities) and peoples of mixed origin (Misquitos).

316. The State has adopted a series of measures aimed at preserving the ethnic, religious, cultural and linguistic identities of these groups, in accordance with the provisions of the Constitution and various other statutes, such as the Agrarian Reform Act, the General Environment Act, the Cultural Heritage Protection Act, the Forests Act (as amended), and others.

317. The 1982 Constitution introduced a number of innovations with respect to the place occupied by aboriginal peoples in our society. Noteworthy among these are the legal recognition of aboriginal communities, the right of every community to determine and maintain its own form of government for dealing with its internal affairs, the right to occupy, use and benefit from the lands that have traditionally been theirs, and participation in decision-making concerning matters that affect their rights and interests directly or indirectly.

318. The most important of the measures that have been adopted spring from the Constitution. Under article 172, "All the anthropological, archaeological, historical and artistic wealth of

Honduras forms part of the cultural heritage of the nation. The law shall establish the norms that will serve as the basis for its preservation, restoration, maintenance and restitution, as the case may be. It is the duty of all Hondurans to safeguard their heritage and prevent its unlawful removal. All sites of natural beauty, monuments and reserved zones shall be under the protection of the State." Article 173 states, "The State shall preserve and promote all native cultures as well as authentic expressions of national folklore, popular art and handicrafts," while article 346 provides that "It is the duty of the State to adopt measures to protect the rights and interests of the indigenous communities in the country, especially the lands and forests in which they are settled."

319. As regards economic and political measures, a number of studies have shown that all the aboriginal peoples of Honduras are now included in the market economy, owing largely to the construction of roads, schools and churches, migration processes, and the fact that an economy of self-sufficiency is no longer feasible, in some cases because not enough agricultural land is available, the small size of holdings, and the demands of the modern life of which these people are now a part, with the various regulations and codes that that entails.

320. Different ethnic groups are characterized by different cultivation, production and consumption patterns. It seems likely that market demand does not account for all production, including in some cases craft items and art. Maize is grown for home consumption, with surplus amounts sold in the open market. Beans and squash are grown as well as maize; these are the three main crops in western Honduras.

321. Another significant initiative in the matter of recognition of the rights of the country's aboriginal and Black peoples has been Honduras' ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and other important international instruments dealing with the fundamental rights of those peoples.

322. An important measure aimed at the protection of the aboriginal peoples of Honduras was the establishment of the office of the Special Prosecutor for Ethnic Groups and the Cultural Heritage. This is a specialized unit within the Office of the Public Prosecutor that is mandated primarily to prosecute every person who commits an act prejudicial to the interests, individual or collective, of the aboriginal and Black peoples of Honduras. It thus acts to enforce the recognized rights of the members of this distinctive sector of the country's society.
