

FROM PAPER TO PRACTICE

An analysis of the juvenile justice system in Honduras

Rachel Harvey

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** See Annex 1 for list of participants in the NGO consultation on Juvenile Justice and Annex 2 for the list of organisations, agencies and individuals that met with the author for the purposes of this study.*

SUMMARY OF THE ANALYSIS

This paper analyses the laws, policies and practice in Honduras for dealing with children in conflict with the law in light of International Minimum Juvenile Justice Standards and Norms.

After significant reforms, the juvenile justice system in Honduras seems to uphold these standards. Criminal justice legislation, which has been adopted in the last 10 years to remedy the deficiencies of the old system, largely embraces fundamental human rights and bestows upon children who are in conflict with the law rights that are specific to them.

However, when we look beyond the legislation to practice, we find a system that does not consistently uphold the rights that are enshrined in domestic law let alone international minimum juvenile justice standards and norms. Instead we find a system that is hampered and sometimes crippled by a lack of resources, resulting in violations of children's rights. A lack of political will to address the shortcomings of the juvenile justice system compounds the situation.

The focus of the Maduro Government has been the fight against crime, and in particular, the fight against gangs. Four years of a zero tolerance approach has succeeded in reducing the incidents of some types of crimes, however the root causes of offending have been largely neglected. Where efforts have been made to develop prevention, rehabilitation and reintegration programmes, there has been a preoccupation by the State, as well as the NGO sector, with gangs.

Such an approach has left limited provision for young offenders, many of whom are locked up for long periods in inhuman conditions without adequate programmes of rehabilitation. Coupled with an absence of reintegration programmes, these young people are highly vulnerable to reoffending on release. While communities may be persuaded to feel safer due to the zero tolerance campaign, the reality is that, at best, the problem of delinquency is simply being delayed and contained for a short number of years.

The failure of successive governments to transfer not only international law, but also the standards enshrined in domestic legislation from paper to practice is a grave disservice to both the young people caught in the criminal justice system and to the communities that the State is aiming to protect from crime. The State must act, as a matter of urgency, to address the shortcomings of the juvenile justice system and provide adequate prevention, rehabilitation and reintegration programmes not only to implement children's rights but to impact upon delinquency in the long term.

FORWARD:
Save the Children – UK
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Honduras is an eminently young country where poverty and social exclusion still reign. The National Statistics Institute projects that the population in Honduras will reach 7,191,303 in 2005 and that 3,680,472 (52.2%) will be under 19 years old.¹ 66% of the population under the age of 15 were estimated to be living below the poverty line in 1999.²

This combination of youth and poverty means that the State's public policies dealing with young people and children are of strategic importance to the nation's present and its future. Honduras's development possibilities will depend on effective State action in this arena in the short term. Integrated public policies designed to ensure the protection and development of Honduran children and young people based on a commitment to their best interests are essential.

In recent years, increasing levels of social violence and crime have exacerbated the precarious economic situation endured by the majority of the Honduran population. Security has become a major concern for all Hondurans, and this study is an attempt to contribute to the search for effective and lasting solutions to this problem. The study is designed to contribute to the development of an efficient and effective system of juvenile justice that punishes criminal acts in accordance with their seriousness, but that does so within a well-established legal framework that ensures respect for human rights.

It must be said that children and young people are far from exclusively responsible for the situation of social violence and crime in Honduras, as public perception and opinion often appear to suggest. This perception ignores other key factors, such as corruption, drug trafficking and other types of organized crime. As one study showed, only 16 per cent of 5,000 people caught in the act of committing crimes during 1998 were under-aged.³

While children and young people cannot be blamed for all of the social violence and crime affecting Honduras, there is no denying that young people both contribute to the problem and are frequent victims of it. One of the principal causes of young people resorting to illegal activities and

¹ Secretary of State in the Presidential Office, Republic of Honduras, *Calendario Anual 2005* (National Statistical Institute).

² Government of Honduras, *Estrategia para la Reducción de la Pobreza* (2001).

³ Botero, M.L., *Los Adolescentes No Son la Causa de la Inseguridad Ciudadana. Estudio Exploratorio* (UNICEF, IHNFA, Ministerio Publico, Serie Niñez y Juventud, Tegucigalpa, Honduras, 1999).

participating in youth gangs is precisely the lack of opportunities and of access to education, health, employment and even recreation. The challenges faced by the State and the society at large include the elaboration and execution of public policies that effectively deal with the fundamental issues of health, education and housing as well as the implementation of a juvenile justice system that contemplates fundamental legal rights and guarantees and includes measures that effectively address prevention, rehabilitation and reinsertion of youths into society.

Save the Children – United Kingdom and Casa Alianza offer this study, *"From Paper to Practice: An Analysis of the Juvenile Justice System in Honduras"*, conducted by Rachel Harvey of the Children's Legal Centre of the University of Essex, United Kingdom, as a contribution to meeting the challenge of creating an effective system of juvenile justice in Honduras.

Through rigorous analysis based on extensive field research Ms. Harvey shows that the legislative framework for Honduras's juvenile justice system has merit. It is in formal compliance with minimum international standards and norms dealing with juvenile justice, and it provides the framework for an effective juvenile justice system. The challenge arises from implementation of this system, because actual practice bears little resemblance to what is written on paper. Implementation requires addressing the lack of effective institutional structures with the necessary technical and economic resources as well as integration of the juvenile justice system into a set of public policies for children and youth that will allow Honduras to overcome the lack of opportunities that can and do contribute to juvenile delinquency. This study includes recommendations for addressing these challenges.

We are completely convinced that in order to face this challenge the system of juvenile justice in Honduras must be developed and implemented within a social and legal context intimately linked to the principles and precepts of the legal framework laid down in the various international instruments that contemplate the rights and guarantees that should guide a just, timely and humane legal process. There is a body of evidence that demonstrates that juvenile justice systems which emphasize the components of prevention, rehabilitation and social reinsertion contained in the different international instruments are much more effective and efficient both in terms of reducing juvenile crime and in terms of the implied economic costs to the State.

It is the sincere desire of Save the Children – United Kingdom and Casa Alianza – Honduras that these recommendations be received by decision makers as a contribution to the construction of an effective juvenile justice system that will strengthen citizen security and represent an important step toward building a democratic and just society characterized by a culture of peace and non-violence in which every individual has an opportunity to realize his or her human potential.

Jennifer Vaughan

José Manuel Cappellin

Tegucigalpa, April 2005

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CHAPTER 1 HONDURAS FOR CHILDREN: Life and the Law

Honduras has a very young and a very poor population. The 2003 Statistical Yearbook recorded that 48.4% of the 6.5 million population were under the age of 18 years⁴, the majority of whom live below the poverty line. Honduras is the second poorest country in Central America after Nicaragua and was placed 115 out of 177 in the 2004 UNDP Human Development Report. It is estimated that 63.9% of the population live in poverty and 45% in extreme poverty, with rural areas being worst affected.⁵

The poverty of Honduras was exacerbated by Hurricane Mitch in 1998, which devastated parts of the country rendering many people homeless and destroying people's livelihoods. A fall in worldwide coffee prices, a key Honduran export, and a worldwide recession further impacted the economy.

The late 90s and 2000s have witnessed large scale migration of people in search of work from rural areas to the cities causing rapid urbanization, which has been accompanied by disintegration of the family unit, overcrowding, urban marginalisation, poverty and rising crime⁶.

Child labour has risen in recent years. According to the results of a study in May 2004⁷, out of a total of 707,720 adolescents aged between 14 and 17 years, 393,180 solely study while 314,540 do not study at all (44.5% of the total age range) and out of those 161,218 do not study or work⁸. Many of those that work find jobs in the markets or are sent to scavenge in the large rubbish dumps. Many other young people are caught up in the commercial sex trade and are trafficked abroad⁹.

UNICEF estimate that approximately 400 children live on the streets with a further 1,800 children working on the streets and returning to their homes at

⁴ Secretary of State for the Presidencial Office, Republic of Honduras, *Statistical Yearbook 2003* (Sistema Estadístico Nacional SEN, Instituto Nacional de Estadística).

⁵ UNICEF, *Annual Report 2003* (UNICEF, Honduras, 2003).

⁶ Asociación Cristiana de Jóvenes de Honduras and Save the Children – UK, *Las Maras en Honduras: Investigación sobre Pandillas y Violencia Juvenil* (Frinsa Impresos, Tegucigalpa, 2002), p. 327.

⁷ 'Encuesta Múltiple de Hogares'.

⁸ Andino Mencia, T., "La Democracia, Los Jóvenes y Las Maras" *El Heraldo* 5th January 2005.

⁹ An investigation carried out in 14 cities in the country by Casa Alianza Honduras yielded as a result that on average 8,000-10,000 children and young people are victims of commercial sexual exploitation of different kinds in nightclubs, massage parlours and other places that are strongly linked with networks of organized crime which seek and traffic children and young people to Guatemala, Mexico and the USA (Casa Alianza Honduras, *La Niñez y La Adolescencia en Honduras ante la Indiferencia y la Intolerancia: El Informe* (Casa Alianza Honduras, October 2003), p. 4).

night in the two main cities (Tegucigalpa and San Pedro Sula)¹⁰, while Casa Alianza Honduras estimate that the number of children is closer to 7,500.¹¹

This backdrop of poverty and social exclusion has to be borne in mind when analysing the system for children in conflict with the law.

The International Legal Context

Honduras has ratified five out of the six major international human rights treaties¹², as well as the *American Convention on Human Rights* 1969 (ACHR)¹³. Honduras has a monist system meaning that "[I]nternational treaties between Honduras and other States become part of the internal law as soon as they come into force"¹⁴, giving them the same validity as domestic law.¹⁵ The *Constitution of the Republic Of Honduras* 1982 specifically provides that children shall enjoy the protection foreseen in international agreements that ensure their rights.¹⁶ Further, Article 18 of the *Constitution* states that in the case of conflict between a treaty or convention and Honduran law, the former will prevail.

Most pertinent to ensuring the protection of children's rights in terms of juvenile justice is the *UN Convention on the Rights of the Child (CRC)*¹⁷ - specifically Articles 37, 39 and 40 - which Honduras ratified on 10th August 1990¹⁸, and the supporting juvenile justice guidelines, which supplement, expand and fill in the detail of the *CRC*. There are three main supporting juvenile justice documents: *The UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules 1985)*¹⁹; *The UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs)*²⁰; *The UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)*²¹.

¹⁰ UNICEF, *Annual Report*, op.cit.

¹¹ <<http://www.casa-alianza.org>>.

¹² Honduras has neither signed nor ratified the *Convention on the Elimination of Racial Discrimination (CERD)* 1966.

¹³ 8th September 1977.

¹⁴ Article 16, *Constitution* of the Republic of Honduras 1982 Decree No. 131 of 11th January 1982. Before ratification or accession by the Executive Power, the National Congress must approve all international treaties.

¹⁵ State Report to the Committee on the Rights of the Child, CRC/C/65/Add.2, 20 February 1998, para 79.

¹⁶ Article 119. Article 15 of the *Constitution* also makes the country subject to international legal rulings.

¹⁷ Adopted by the General Assembly of the United Nations, GA res 44/25, 20th November 1989.

¹⁸ Having been adopted by Decree No. 75-90 of 31st May 1990. The instrument was ratified by the National Congress on 24th July 1990 and published in *La Gaceta* on 10th October of the same year.

¹⁹ UN GA Res 40/33 1985, Annex 2. The *Beijing Rules* provide guidelines on how juveniles should be treated while part of the justice system addressing issues such as privacy, special training for the police and due process guarantees. In addition, the Rules set out guidelines for the diversion of juveniles from the formal justice system.

²⁰ UN GA Res 45/113 1990, Annex 4. The *JDLs* provide detailed minimum standards for the care and treatment of juveniles deprived of their liberty.

²¹ UN GA Res 45/112 1990, Annex 3. The *Riyadh Guidelines* set standards aimed at preventing juvenile delinquency. Fundamental principles include: that the prevention of juvenile delinquency is an essential part of crime prevention in society; that prevention rather than

The more recent *Vienna Guidelines for Action on Children in the Criminal Justice System*²² are also now considered, by the Committee on the Rights of the Child²³, to form part of the international juvenile justice standards, which States are obligated to uphold.

The *CRC* is the umbrella under which these documents exist, even though the *Beijing Rules* pre-date and provide the basis for the *CRC* juvenile justice provisions. Although the guidelines are soft law and are not directly binding on Honduras "together they constitute a comprehensive set of universal standards and set out desirable practices to be pursued by the world community"²⁴, against which the Committee on the Rights of the Child evaluates the juvenile justice legislation, policy and practices of States.

In accordance with these standards, the primary goal of a juvenile justice system must be the rehabilitation and reintegration of the child, taking into account their inherent special needs and vulnerability²⁵. Further, in developing and implementing a juvenile justice system, other relevant international instruments and standards must be upheld, which, although are not child specific, contain fundamental human rights principles in relation to justice that have achieved almost universal acceptance.²⁶

Domestic Legislation

punishment is beneficial for society and the child; that communities can play an important role in preventing juvenile delinquency; and that communities and government agencies can work together to prevent delinquency by engaging children in socially useful activities and providing education for a variety of needs with a view to facilitating the successful socialization and integration of all children and young persons.

²² ECOSOC resolution 1997/30 on the Administration of Juvenile Justice.

²³ The monitoring body of the *CRC*.

²⁴ *United Nations Manual on Juvenile Justice*, published by the Crime Prevention and Criminal Justice Division, presented pursuant to General Assembly Resolution 45/112 (A/RES/45/112, 14 December 1990).

²⁵ In May 2002 the UN General Assembly (during its Special Session on Children) approved a Plan of Action that calls for States to: "Promote the establishment of prevention, support and caring services as well as justice systems specifically applicable to children, taking into account the principles of restorative justice and full safeguard children's rights and provide specially trained staff that promote children's reintegration in society" (Article 44(7), A World Fit for Children). In implementing the provisions of the *CRC*, four overarching principles of the Convention must be upheld: the best interests of the child shall be the primary consideration (Article 3); children shall not be the subject of discrimination (Article 2); the right to survival and development (Article 6); and the right for children to express their views and have those views taken into account in all decisions affecting them (Article 12).

²⁶ *Universal Declaration of Human Rights (UDHR)* (1948) and the *International Covenant for Civil and Political Rights (ICCPR)* (1966), ratified by Honduras 4th January 1999. Other important international standards include: *Standard Minimum Rules for the Treatment of Prisoners*, ECOSOC Res 663 C (XXIV) of 31st July 1957, amended by ECOSOC Res 2076 (LXII) of 13th May 1977; *Body of Principles for the Protection of All Persons under any form of Detention of Imprisonment* GA Res 43/173 of 9th December 1988; *Code of Conduct for Law Enforcement Officials* GA Res 34/169 of 17th December 1979; the *Declaration of Basic Principles on the Independence of the Judiciary* ECOSOC Res 1989/60; *United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)* 1990 GA Res 45/110; and adopted at the Eighth UN Congress on the Prevention and Treatment of Offenders, Havana, Cuba, 27th August – 7th September 1990 - *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* and *Guidelines on the Role of Prosecutors*.

The main instrument governing the treatment and protection of children in Honduras is the *Children and Adolescents' Code*²⁷, which was adopted in 1996. This law was developed through a participatory process with NGOs and sought to harmonize domestic legislation with the *UN Convention on the Rights of the Child*. The Code largely replaced the previous approach to children based on the 'model of irregular situation', which treats children as the object of protection, with the 'doctrine of integral protection', which provides that children are the subject of rights.

DEFINITION OF A CHILD²⁸

Under the Code, children are understood to be all boys and girls under the age of 18 years²⁹, which follows the definition of a child as enshrined in Article 1 *CRC*.

Further, under the *Constitution of the Republic of Honduras* 1982, Hondurans do not become citizens until they reach 18 years³⁰.

Article 1 of the Code separates childhood into 2 categories – infancy is defined as being from birth to 12 years for boys and 14 years for girls, and adolescence is from 12 years (in the case of boys) or 14 years (in the case of girls) up until 18 years. The Code also classes 18-21-year-olds as minor adults. In case of doubt over the age of the child it shall be presumed that he has not reached 18, until it can be proved otherwise.

IHNFA

Established in 1997³¹ to replace the Nation Council for Social Welfare (Junta Nacional de Bienestar Social), the Honduran Institute of Childhood and the Family (Instituto Hondureño de la Niñez y la Familia - IHNFA) is the main State agency dealing with children's issues. However, IHNFA sits autonomously outside the Ministerial structure.

The purpose of IHNFA is to inform government policy, and coordinate and direct activities for the integral protection and care of children. However, during the 6 years following its inception, IHNFA was plagued by problems, which led to the Institute being 'intervened' in August 2003 in order to restructure the organisation. Although the intervention was only supposed to last for three months, the intervention has been extended to October 2005³².

²⁷ Decree No. 73-96 of 5th September 1996, published in *La Gaceta* No. 28053 on the same date. (*Código de la Niñez y la Adolescencia*.)

²⁸ For the purposes of this study, all references to children, young people, minors and juveniles apply to those under the age of 18 years in line with the *CRC* unless specifically stated otherwise.

²⁹ Article 1.

³⁰ Article 36.

³¹ *Law of the Honduran Institute of Childhood and the Family*, Decree No. 199-97 (*La Ley del Instituto Hondureño de la Niñez y la Familia*).

³² It is estimated that staff costs take up 80% of the annual IHNFA budget, leaving little resources to spend directly on programmes and institutions. The restructuring process, which is looking to reduce personnel expenditure and increase collaboration with the NGO and civil sector, has caused resentment among the staff at IHNFA, who staged a strike during June and July 2004 to demonstrate their disquiet. The labour union of IHNFA staff wields a strong political influence.

One of the main aims of the intervention is to re-establish IHNFA as a coordinating and directing organisation, working closely with NGOs and civil society to provide a wide range of services and programmes for children and young people. It is also planned that there will be a more comprehensive accreditation and monitoring process for NGOs that work with children.³³ However, IHNFA's budget needs to be greatly enhanced if these structural changes are going to have a wide reaching effect.

³³ Information about the restructuring from a meeting with Maria Lolis Salas, Director of the Intervention Commission in IHNFA, 20th July 2004.

CHAPTER 2 CHILDREN IN CONFLICT WITH THE LAW – Structure, Processes and Procedures

Overview of Juvenile Offending

Crime has risen significantly in the past six years in Honduras – while in 1998 an average of 94 crimes were reported to the police each day, this figure had risen to 211 by 2002³⁴ with property crimes tripling between 1998 and 2000.³⁵ The homicide rate greatly exceeds the world average – 45.7 per 100,000 as compared to the 5 per 100,000 average³⁶. The vast majority of offending occurs in the two biggest cities in Honduras – Tegucigalpa (the capital) and San Pedro Sula³⁷.

The increase in criminality has been attributed to poverty. However, this suggests that only the poor commit crimes, whereas there has also been a significant increase in white-collar crime and activities of organized criminal gangs (e.g. the drugs trade), whose members usually come from the middle and upper classes.³⁸

More under-18s are involved in criminal activity than 10 years ago, raising legitimate concerns for the State and the general public. However, contrary to public opinion, the posturing of politicians, and media reports the rate of juvenile offending in comparison to offending by adults remains relatively low, especially considering that under-18s make up more than 50% of the population. Between January 1996 and May 1999 only 5.5% of the 42,000 denunciations made were against young people. In addition, only 16% of the 5,000 people caught in the act of committing a crime (in fraganti) in 1998 were under 18 years.³⁹

The majority of crimes committed by children are against property, such as robbery and theft, followed by offences such as murder, sexual crimes, and

³⁴ Caldera, H., *El Crimen en Honduras 1994-2003* (General Directorate of Police Education, Advanced Institute of Police Education, Tegucigalpa, Honduras, December 2003, 2. ed.), p. 25.

³⁵ *ibid.*, p. 26.

³⁶ Andino Mencia, T., *¿Realmente es Efectivo el Art.332 o "Ley Antimaras" para Acabar con la Violencia y la Delincuencia?* (Tegucigalpa, Honduras, 21st February 2005, quoting Dr. Mauricio Gaborit of the University of Central America (UCA) of El Salvador. However, according to a study in 2000, Honduras is not the bloodiest country in the region - El Salvador and Guatemala exceed this figure recording 82.4 and 76.9 homicides per 100,000 inhabitants respectively (Moser, C., Winton, A., *Violence in the Central American Region: Towards and Integrated Framework for Violence Reduction* (Overseas Development Unit, 2002)).

³⁷ From January to April 2004 1000 of the 1255 denunciations made were for crimes committed in these two cities (Technical Unit for Penal Reform, Honduras).

³⁸ National Commission for Human Rights of Honduras, *Diagnostico de la Criminalidad en Honduras* (Tegucigalpa, Honduras, C.A. Julio 2003).

³⁹ Botero, M.L., *Los Adolescentes No Son la Causa de la Inseguridad Ciudadana. Estudio Exploratorio* (UNICEF, IHNFA, Ministerio Publico, Serie Niñez y Juventud, Tegucigalpa, Honduras, 1999).

then crimes against security, specifically the crime of illicit association for being a member of a gang.⁴⁰

Gang activity is a huge concern for the Honduran Government, the police and the public, which have identified gangs as the major cause of insecurity, violence and crime. Membership has been cited as high as 36,000⁴¹, many of whom are under the age of 18⁴². Young people, including gang members, are also targeted for recruitment by organized criminal gangs⁴³.

A Separate Criminal Justice System for Juveniles?

The *Convention on the Rights of the Child* demands a separate system of

"the rehabilitation of offenders should be the primary objective, not the third, following the protection of society and the punishment of the child in the interest of society..."⁴⁴

justice for under-18s, which includes the establishment of laws, procedures, authorities and institutions specifically applicable to children⁴⁵. Further, unlike adult penal systems, which often focus on the punishment of the offenders and the protection of society, the rehabilitation and reintegration of

the child must be the primary objective for the juvenile justice system.⁴⁶

EVOLUTION OF JUVENILE JUSTICE IN HONDURAS

A separate system for children existed, at least in part, in Honduras well before its ratification of the *UN Convention on the Rights of the Child* and the subsequent adoption of the *Children and Adolescents' Code*.

As far back as 1906, it was recognised that children should not necessarily be deemed to be criminally responsible for their actions⁴⁷ and that the Courts

⁴⁰ Public Ministry of Honduras, *Annual Report of Work 2003* (Gold Print, 2003), pg 92. Statistics from 1996-2001 recorded that 22.9% of cases were robbery and theft, and 10% were murders. In September 1996 until May 2002, 12,230 cases against juvenile offenders were instigated. (*Análisis Cuantitativo de la Justicia Penal Juvenil en Honduras: Informe Ejecutivo*, Tegucigalpa MDC Mayo del 2002, Corte Suprema de Justicia, Escuela Judicial – UNICEF 2001)

⁴¹ UNICEF, *Annual Report* op.cit.

⁴² The issue of gangs is discussed in detail below.

⁴³ Andino Mencia, T., *Why we work on the issue of gangs and their prevention in Central America - Programme for the Prevention of Youth Gangs* (Save the Children UK – CARICA, updated October 2003).

⁴⁴ Mongolia Summary Records, *CRC/C/SR.266*, 12th March 1996, para 38.

⁴⁵ Article 40(3). The *American Convention on Human Rights (ACHR)* 1969 also provides that there shall be a separate system for juveniles: "Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors." (Article 5(5).)

⁴⁶ Article 40(1) *CRC*.

⁴⁷ The *Criminal Code 1906* provided that children under the age of 10 were not criminally responsible for their actions. A child aged 10-15 would only be deemed to be criminally responsible if he had acted with discernment, a judgement that would be made by the Court (Article 7). (*Código Penal 1906*.)

should impose reduced sentences on under 21 year olds⁴⁸. The idea of dealing with children in separate tribunals from adults has been in place since 1962, with the adoption of the *Law regarding the Jurisdiction of Minors*⁴⁹. This law created Children's Judges, who had for the competency to deal with children who were alleged to have committed crimes and faults between the ages of 10 and 18⁵⁰ and for cases that are now referred to as 'social risk'⁵¹. However, ultimately this role was carried out by ordinary judges and special courts for children were not actually established until 1970, with the adoption of the *La of the Jurisdiction of Minors*.⁵²

More recently, the *Constitution* enshrined the principle that children should be dealt with differently from adults⁵³. Subsequently, the *Children and Adolescents' Code*, adopted in 1996, set out a separate system of laws, dispositions and institutions for children in conflict with the law, and introduced the oral trial and adversarial proceedings, replacing the old investigatory proceedings⁵⁴.

Although the *Children and Adolescents' Code* outlines specific procedures, sentences and rights applicable to children, the system of juvenile justice is also governed by the laws that equally apply to adults – the *Criminal Code (1983)*⁵⁵, which details crimes and faults, the *Criminal Procedure Code (1999)*⁵⁶, which provides guarantees during the criminal process, and the *Constitution*, which enshrines fundamental rights.

AGE OF CRIMINAL RESPONSIBILITY

⁴⁸ Article 73, *Criminal Code 1906*. Under 21-year-olds were also exempt from the death penalty (Article 83(b)).

⁴⁹ Decree No. 84, 1962, published in *La Gaceta* No. 17725 of 14th July 1962. (*Ley sobre Jurisdicción de Menores*.)

⁵⁰ The *Ley sobre Jurisdicción de Menores* also provided that all children aged 10-18 years were criminally responsible for their actions (Article 6).

⁵¹ The law also introduced the model of irregular situation. One of the failings of this model was that it did not provide for different treatment for children who had committed a crime and those that were in a situation of social risk (Guillen de Martínez, D. I., "Antecedentes Históricos del Derecho de La Niñez" in Dubón Villena, M.G., et al., *Manual de Derecho de la Niñez y la Adolescencia, Honduras* (Supreme Court of Justice, Cooperación Española, General Council of Judicial Power, 2000), p. 32).

⁵² Decree No. 92, 1970, published in *La Gaceta* No. 20,006 of 21st February 1970. (*Ley de Jurisdicción de Menores*.) This law established two Children's Courts, one in Tegucigalpa and one in San Pedro Sula with jurisdiction in the 'departments' of Francisco Morazon and Cortes. In the rest of the departments the ordinary Judges (Jueces de las letras seccionales y departamentales) were endowed with the competency to deal with these cases. Information on the evolution of legislation regarding juvenile justice taken from: Guillen de Martínez, D. I., *Historia y Aplicación del Derecho de la Niñez en Honduras* (Litografía López, La Ceiba, Atlántida, May 2004) and Guillen de Martínez, D. I., "Antecedentes Históricos del Derecho de La Niñez", *op.cit.*

⁵³ Articles 120 and 122.

⁵⁴ Prior to 1996, the system of juvenile justice was investigatory and written, without the judicial due process guarantees that were introduced by the *Children and Adolescents' Code*. For a more detailed evaluation of this system, see "Botero, M.L., *Los Adolescentes No Son la Causa de la Inseguridad Ciudadana. Estudio Exploratorio* (UNICEF, IHNFA, Ministerio Publico, Serie Niñez y Juventud, Tegucigalpa, Honduras, 1999).

⁵⁵ Decree No. 144-83 (*El Código Penal*).

⁵⁶ Decree No. 9-99-E (*El Código de Procedimientos Penales*).

A child below the age of 12 years is deemed incapable of infringing the criminal law in Honduras⁵⁷. Between the ages of 12 and 18 children are held to be criminally responsible but are dealt with under a justice system that is distinct from adults, with children acquiring full penal responsibility at 18 years⁵⁸.

The international juvenile justice framework does not specify the at which the age of criminal responsibility should be set by States. The *Convention on the Rights of the Child* only imposes an obligation on States to establish a "minimum age below which children shall be presumed not to have the capacity to infringe the penal law"⁵⁹. The *Beijing Rules* give further guidance, stating "the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity"⁶⁰

The Committee on the Rights of the Child has not voiced any criticism of Honduras in its examination of the last two State reports for its age of criminal responsibility.⁶¹

However, the important factor is not the age of criminal responsibility but what actually happens to a child who commits a criminal act above and below that age.

Judicial Institutions

POLICE

Until the late 90s, the police were under the control of the military. However, in 1998 the police became a civilian force, governed by the Fundamental Law of the National Police⁶².

Sitting under the Ministry of Security (which was established in 1999), the police force is divided into 5 sections⁶³:

- 1) The General Directorate of Criminal Investigation (DGIC)
- 2) The General Directorate of Special Service of Investigation
- 3) The General Directorate of Preventive Police
- 4) General Directorate of Special Preventive Services
- 5) The General Directorate of Police Education

Investigative Police

This section of the police is responsible for investigating offences and collecting evidence⁶⁴. Although the DGIC sits under the Ministry of Security,

⁵⁷ Article 180, *Children and Adolescents' Code*, Article 23, *Criminal Code*. Children under the age of criminal responsibility who commit a criminal act can be made the subject of special protection and rehabilitation measures (Article 180(3), *Children and Adolescents' Code*).

⁵⁸ Article 23(1) *Criminal Code*.

⁵⁹ Article 40(3)(a).

⁶⁰ Rule 4.1.

⁶¹ *CRC/C/15/Add.24* 1994, *CRC/C/15/Add.105* 1999.

⁶² Decree No.156-98 (*La Ley Orgánica de la Policía Nacional*).

⁶³ Article 11.

⁶⁴ They also have power to make arrests either with a judicial warrant or while a crime is being committed (Article 32, *Fundamental Law of the National Police*).

it actually operates under the technical guidance of the Public Ministry, which is responsible for public prosecutions, in the investigative process.⁶⁵

The DGIC does not have a presence throughout the country. In places where they do not have a presence, the Preventive Police are permitted to carry out investigation but must inform the nearest DGIC office. However, the Preventive Police do not have the human, technical or logistic capacity to carry out effective investigations.

Preventive Police

Unlike the DGIC, the Preventive Police have national coverage. The role of the Preventive Police, who are uniformed and armed, is to protect and guarantee the free exercise of the rights and freedoms of citizens, to prevent and combat crime and to maintain public order.⁶⁶ The Preventive Police also have a specific duty to protect and control child and adolescent law-breakers.⁶⁷

In practical terms, as they patrol the streets, this is the section of the police that is most likely to come across children in the process of committing crime, street children and other cases of children in situations of social risk.

A new initiative under Preventive Police is the establishment of community police. There are three pilot areas in Tegucigalpa where community police are currently operating. These police work in the community to combat crime. Their presence aims to build up good relationships between the community and the police, to increase public trust and establish security in those areas. They are not involved directly in operations. Instead they pass on relevant information to the Preventive Police and the DGIC.

Special Preventive Services

This directorate is responsible for the security, administration and custody of the penal establishments, and the security of detention centres accommodating juvenile offenders (under-18s).⁶⁸

Compliance with international standards

Police are the first contact that juveniles have with the justice system and, consequently, it is essential that officers should consequently act in an informed and appropriate manner.⁶⁹ The *Beijing Rules* recognise the importance of specially trained police to deal with juveniles.⁷⁰ In addition, Rule 12.1 recommends that in large cities special police units should be established, as urbanization is known to be linked with an increase in youth offending. "*Specialised police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument...but more generally for improving the prevention and control of juvenile crime and handling juvenile offenders.*"⁷¹

⁶⁵ Article 30 *Fundamental Law of the National Police*.

⁶⁶ Article 37 *Fundamental Law of the National Police*.

⁶⁷ Article 39(19) *Fundamental Law of the National Police*.

⁶⁸ Article 52 *Fundamental Law of the National Police*.

⁶⁹ Rule 12.1 *Beijing Rules*, Commentary.

⁷⁰ Rule 12.1.

⁷¹ Rule 12.1 *Beijing Rules*, Commentary.

A positive development is the inclusion of a module on human rights in the police training course. NGOs have also been working with the police to provide training and develop materials on specific issues, such as sexual exploitation⁷². However, there is a lack of specialist units that deal with child criminals and child victims in both the Preventive Police and the DGIC⁷³. In Tegucigalpa, the police initiated a training programme for police officers who would deal specifically with children, but they found that the police officers quickly became involved in other police work because there was an insufficient volume of children's cases. Therefore, this specialisation was discontinued.⁷⁴

SPECIAL PROSECUTOR FOR CHILDREN AND THE DISABLED⁷⁵

Governed by the Law of the Public Ministry⁷⁶, the Public Ministry is responsible for investigation and prosecution of crimes. The Ministry is independent of the Government and reports directly to the National Congress, which appoints the Minister every five years. The last election for the post was held in 2004. The budget is also assigned directly by Congress. This is different from the other Ministries, which are controlled and financed by the Government.

The Prosecutor's Office is divided into different departments, each of which deals with specific crimes (e.g. the Prosecutor of Common Crimes and the Prosecutor for Human Rights).

The Special Prosecutor for Children and the Disabled was created in 1994. The Special Prosecutor is responsible for: children who have been victims of crimes such as rape, murder and sexual abuse; child perpetrators of crimes; and children at social risk.

The existence of a separate prosecutor's office for children abides by the notion under the *CRC* to have separate judicial institutions. However, in practice there are not enough prosecutors' offices to provide coverage to all

⁷² Jose Javier Acevedo, CIPRODEH, meeting 28th June 2004.

⁷³ The Interinstitutional Commission for Penal Justice has proposed that the DGIC should have specialist agents to deal with children's issues. Mildred Dubón, Technical Unit for Penal Reform (Unidad Técnica de Reforma del Poder Judicial), meeting 23rd July 2004. The Interinstitutional Commission for Penal Justice was established by the Supreme Court and is made up of the different organs responsible for justice. There are national and regional commissions that work together to address shortcomings in the judicial system. Their work covers a wide range of issues. For example, the Commission is currently developing a witness protection programme, looking at the lack of logistical support, which is hampering the work of all the judicial institutions, and monitoring the conditions in the closed detention centres for children.

⁷⁴ Sub Commissioner Francisco Murillo Lopez, Preventive Police, meeting 22nd July 2004. A pilot scheme is being run in Atlántida under which two policemen are assigned to deal with sexual abuse and exploitation of children. In its Annual Report in 1993, the Public Ministry of Honduras, mentions a special unit for children in the DGIC but that the Ministry of Security does not assign enough resources to enable the Unit to operate effectively (*op.cit.*, p. 95). Interestingly, this Unit was not mentioned by any of those interviewed for this study, leading to the conclusion that its impact on the juvenile justice system is minimal.

⁷⁵ Unless otherwise stated, the information on the Prosecutor for Children is from Nora Urbina, Children's Prosecutor, Tegucigalpa, meeting 28th June 2004 and Ramon Ovidio Navarro, Public Minister, Director General of the Prosecutor's Office, meeting 6th July 2004.

⁷⁶ Decree No. 228-93, 1993 (*La Ley de Ministerio Publico*).

of Honduras and where an office does function, there are inadequate staff and resources to handle the volume of children's cases. In the office in Tegucigalpa there are two social workers and one psychologist to deal with hundreds of cases not just of child perpetrators, but also social risk cases and crimes perpetrated against children⁷⁷. The Prosecutor's Office also complains about a lack of logistical support, especially vehicles, which limits their ability to respond quickly to emergency cases of children at risk. However, general financial constraints prevent the Ministry from addressing these deficiencies.⁷⁸

PUBLIC DEFENCE⁷⁹

The Public Defenders Office sits under the Supreme Court. The service provides free legal advice to adults and children in criminal cases where they are unable to afford a private lawyer. However, as there is no determination of the means to pay, anyone who turns up to an office of the Public Defenders will be provided with legal assistance.

There are 234 defenders serving the whole country operating under four regional coordinators, who are responsible for defending criminal cases of children and adults. In the big cities the defenders are on duty 24 hours a day and in the rural areas they are on call 24 hours a day. There are defenders assigned to work on children's cases in Tegucigalpa and San Pedro Sula but not in the smaller cities and rural areas⁸⁰.

Public defenders are based in some of the larger police stations, but most of the time they need to be called out. Due to a lack of resources children do not always get legal help and are interviewed without a lawyer present. Although the evidence obtained during this interview can be challenged as illegal and can be ruled out, normally this does not happen. The Public Defenders also have a duty to visit children while they are held in pre trial detention.

The Public Defence Office is lobbying to be independent of the Supreme Court in the same way as the Public Ministry. The main thrust of their argument is that they have been prevented from expanding in the areas that they believe merit more attention, because they are unable to make any decisions which have a budgetary implication without first securing approval from the Supreme Court e.g. they would like to hire psychologists, psychiatrists, forensic scientists and more social workers for the cases involving children but all staff appointments are made by the Supreme Court.

This proposal is supported by NGOs and judicial institutions alike.⁸¹ Such independence would address the criticism that the Public Defenders lack

⁷⁷ The lack of personnel was also highlighted in the 2003 Annual Report of the Public Ministry, *op.cit.*, p. 92.

⁷⁸ In the summer of 2004, the Prosecutor's Office announced that it was in financial crisis ("Fiscalia urge de 30 millones" *El Heraldo* 5th July 2004, "Anuncian cierre de fiscalias por falta de presupuesto" *La Tribuna* 19th July 2004). While the National Congress did eventually provide the funds to avert the Prosecutor's financial crisis, they were not adequate to address all the problems facing the institution.

⁷⁹ The Public Defenders office was set up with international funding in 1989 as a pilot project.

⁸⁰ Mildred Dubón, Technical Unit for Penal Reform, meeting 23rd July 2004.

⁸¹ Herman Mendes, Children's Judge, Court of Comayagüela, meeting 1st July 2004.

transparency and independence from the Judiciary, and that they often act in the interests of expediency rather than in the interests of their clients.

Despite the present shortcomings of the service, the provision of legal assistance to children, when they are detained and in order to prepare and present their case fulfils fundamental due process guarantees.⁸²

Integrated centres

A new development is the establishment of integrated centres, in which the prosecutor, the investigator, the public defender and a forensic scientist operates. The idea is to have a one stop shop to which police can bring suspects. There are three such Centres - the first one was established in Tegucigalpa in 2002. There are now two others in La Ceiba and San Pedro Sula. Where these Centres exist, the police can take the child straight there to be processed.

In the Centro Integrado in La Ceiba there is a cell in which children can be held. However, it is reportedly unhygienic and not appropriate for children. In addition, early in 2004, the Children's Judge in La Ceiba discovered that children were being held with adults. The practice ended when she sent the police a letter threatening to impose a fine if the practice did not stop.⁸³

COURT SYSTEM

Building on Article 122 of the *Constitution*, which provided that the law shall establish special tribunals that would deal with matters relating to children and the family, Article 277 of the *Children's Code* established that Children's Courts would be the competent authority to deal with under-18s in conflict with the law, as well as child protection matters.

There are 10 Children's Courts in Honduras and 14 Children's Judges.⁸⁴ However, they do not serve all parts of the country. Where there is no Children's Judge to hear the case, the Juez de las Letras has the competency to deal with the matter. This lack of coverage means that children living in rural areas do not benefit from their cases being heard by specialist Judges.

The Children's Judges are selected by the President of the Supreme Court for their aptitude and/or experience with children, however, the Children's Code only specifies minimal attributes needed to be selected as a Children's Judge⁸⁵.

The existence of Children's Judges and Courts fulfils Article 40 *CRC*, which encourages the establishment of specialized judicial institutions for children and Article 37(b)(iii) *CRC*, which provides that matters should be dealt with

⁸² Articles 37(d) and 40(2)(b)(ii) *CRC*, Rule 7.1, 15.1 *Beijing Rules*, Article 14 *International Covenant for Civil and Political Rights (ICCPR)*, Articles 10 and 11 *Universal Declaration of Human Rights (UDHR)*. Article 14(3)(d) *ICCPR* states that this assistance should be provided free of charge, if the accused cannot afford to pay.

⁸³ Irasema Guillen de Martinez, Children's Judge, La Ceiba, meeting 13th July 2004.

⁸⁴ Technical Unit for Penal Reform.

⁸⁵ Article 279.

by a competent, independent and impartial body or judicial authority. Although some training has been given by international and UN agencies to Children's Judges this should be extended to all Judges who have competency to deal with children's cases.⁸⁶

IHNFA'S ROLE

IHNFA is a key institution in the administration of juvenile justice. It is in charge of the closed institutions for children, as well as creating, sustaining and administering alternatives to deprivation of liberty both pre and post trial⁸⁷, and running a re-education and reintegration programme, for which there are 6 regional coordinators.

However, in practice, there is a lack of definition of the role of IHNFA and a lack of coordination and communication between IHNFA and the rest of the judicial system.⁸⁸ IHNFA's mandate should allow for a holistic approach to the needs of children in conflict with the law and at social risk. However, IHNFA suffers from a huge shortfall in resources and a lack of staff to be able to fulfil its role effectively. These deficiencies are discussed in more detail below.

The Legal Process

ARREST AND DETENTION

Articles 208-218 of the *Children's Code* sets out the process of arrest for children.⁸⁹ However, the arrest must also be in conformity with the principles, rights and procedures contained in the *Constitution* of the Republic of Honduras and other applicable laws.⁹⁰

The police can either arrest the child following a written warrant of the judge, which they must present the young person on arrest, or they can make an arrest at the moment of the crime being committed ('in fraganti')⁹¹. The vast number of arrests are made 'infraganti'. For example, in 2003, 582 children were arrested for being in the process of committing a crime, in comparison to 52 children, who were arrested under a judicial warrant⁹².

The police can also pick up children under the age of 12 years but only in order to return them to their parents or legal representatives.⁹³

Use of force to make an arrest

⁸⁶ Recommendation supported by NGO Consultation on Juvenile Justice, facilitated by Save the Children-UK, Casa Alianza, Children's Legal Centre, 15th February 2005, Tegucigalpa, Honduras.

⁸⁷ Article 6 *Law of the Honduran Institute of Childhood and the Family*, Decree No. 199-97.

⁸⁸ Fermine Lainez, Supervisor of Re-education IHNFA, San Pedro Sula, meeting 10th July 2004.

⁸⁹ Article 175 *Criminal Procedure Code* Decree No. 9-99E sets out the procedure for arrest in general.

⁹⁰ Article 208 *Children and Adolescents' Code*

⁹¹ Article 209 *Children and Adolescents' Code*. "Infraganti" is considered to be not more than 24 hours after the commission of the crime.

⁹² However, 159 orders for arrest were issued (Public Ministry, *Annual Report 2003 op.cit.*, p. 98).

⁹³ Article 208 *Children and Adolescents' Code*.

The *Children's Code* provides those carrying out an arrest must only use the minimum force that is necessary⁹⁴. This is backed up by Article 22(4)(a) of the *Fundamental Law of the Police* that obligates the police to avoid abuse, arbitrariness or use of excessive force. The police shall not handcuff, tie up or secure a child using other means except in cases where an immediate danger of flight exists or where the child might cause harm to themselves or other persons. Using excessive force shall be punished with dismissal of those responsible⁹⁵. The police are permitted to use arms to make an arrest, but the aim must be to incapacitate the suspect rather than to kill.⁹⁶ The police have a duty to inform their superiors and obtain medical services where a child has been injured during arrest⁹⁷.

Procedure on arrest

In accordance with Article 213 c-g of the *Children's Code*, a child shall:

- c) be informed, with the as much clarity as possible (con la claridad possible), when arrested, of the reasons for his arrest and his rights⁹⁸. Interestingly, the *Constitution* provides that when a person is arrested they must be informed with *total clarity* (toda claridad) about the reasons for their arrest and their rights⁹⁹, rather than just with the clarity that is possible;
- d) be permitted to communicate their arrest, immediately, to their parents or legal guardians or their relatives. If, for whatever reason, the child cannot communicate his arrest to his parents or legal guardians then such communication will be made on his behalf.¹⁰⁰ The *Constitution* and the *Fundamental Law of the National Police*, however, allow a detainee to contact whomsoever he chooses.¹⁰¹ An adult's choice is not restricted to parents, guardians and relatives. The restriction applied to children fails to take into account the reality of their situation. Many children who are arrested are street children and may have no family or may not wish have contact with their relatives. Some of them may also be involved in NGO programmes, especially in the case of ex gang members. Therefore, it would be appropriate if the child legally had the right to contact organisations, which may be helping them.
- e) be placed without delay before a competent authority and the Public Ministry must be informed¹⁰². Article 209 states that if for whatever reason the child cannot be placed before the competent authority, he shall be taken to a public centre for children. Where the police violate this article it will be judged as an abuse of authority and sanctioned as

⁹⁴ Article 208 *Children and Adolescents' Code*.

⁹⁵ Article 211 *Children and Adolescents' Code*.

⁹⁶ Article 214 *Children and Adolescents' Code*.

⁹⁷ *ibid*.

⁹⁸ This fulfils Article 7(4) *American Convention on Human Rights*.

⁹⁹ Article 84, *Constitution*. The *Fundamental Law of the National Police* states that the police have the duty to inform the detainee about his rights and his arrest with the most clarity (*con la mayor claridad*) (Article 22(3)(ch)).

¹⁰⁰ Article 215, *Children and Adolescents' Code*.

¹⁰¹ Article 84 *Constitution*, A22(3)(ch) *Fundamental Law of the National Police*.

¹⁰² This is in accordance with Article 7(5) & (6) *American Convention on Human Rights* and Article 37(d) *CRC*.

- such. In order for the Public Ministry to fulfil its functions with regards the child and so that the rights of children are ensured, the police should bring the child before the competent authority in the first few hours of detention¹⁰³;
- f) have his dignity, and his physical, psychological and moral integrity respected; and
 - g) be able to denounce, directly or through his parents or legal guardians, or in general through third persons, abuses or arbitrariness that he has been subjected to by state agents or public employees or agents of the police. If when the child comes before the competent authority he shows signs of physical harm or mental or emotional disturbances then he shall be sent to obtain appropriate treatment, without delay. The situation shall be investigated and action taken against those responsible¹⁰⁴. The police have a duty to let family members know immediately if a person has been injured or died as a result of a detention or a police operation¹⁰⁵.

In addition to the obligations under the *Children's Code*, the police must also uphold the Fundamental Law of the National Police, which provides that while under their custody, the police have the duty to look after and protect the mental and physical health of the detainees and respect their honour and dignity.¹⁰⁶

Police Practice

Although it seems that the correct procedure is usually followed when children are interviewed, and children are brought before the Prosecutors and the Courts swiftly in accordance with international standards,¹⁰⁷ other rights and guarantees are not strictly upheld. Sometimes, information about rights and reasons for arrest are not provided to the child, their family are not always informed of their child's arrest and the children are not always transferred appropriately.¹⁰⁸

Further, the State policy of zero tolerance against juvenile delinquency and gang activity has given rise to raids and large-scale arrests, which in turn seems to have led to maltreatment of children by police. Despite human rights training of police and the claims by many of those interviewed that physical abuse of children by police officers has dropped, there is anecdotal evidence that there continue to be occurrences of young people, especially gang members, being physically injured and assaulted on arrest.¹⁰⁹ The

¹⁰³ Martínez Serrano, A., and Pérez, E. C., "El Niño y El Adolescente Infractor", in Dubón Villena, M.G., et al., *op.cit.*, p. 145.

¹⁰⁴ Article 212 *Children and Adolescents' Code*.

¹⁰⁵ Article 22(3)(e) *Fundamental law of the National Police*.

¹⁰⁶ Article 22(3)(c).

¹⁰⁷ Article 37(d) *CRC*, Rule 10(2) *Beijing Rules*. "[I]n criminal cases any person arrested or detained has to be brought promptly before a judge or other officer authorized by law to exercise judicial power... delays must not exceed a few days" (Human Rights Committee, General Comment 8, 1982 HRI/GEN/1/Rev.5 p. 117).

¹⁰⁸ Martínez Serrano, A., and Pérez, E. C., "El Niño y El Adolescente Infractor", *op.cit.*, p. 144.

¹⁰⁹ Anecdotal reports of ill treatment of children on arrest were provided by Casa Alianza Honduras, Gustavo Zelaya, meeting 22nd June 2004; Hugo Majea Tabora, Director El Carmen visit 12th July 2004; and Ricardo Torres, Assessor and Coordinator, Paz y Justicia, meeting 13th July 2004.

Police in Tegucigalpa commented that one of the reasons for injuries occurring during arrest is that when the young people struggle or try to get away the police officers over react. To combat this, the Police have been sending more officers to make the arrests so that the young person can be controlled from the start rather than having to be restrained during any scuffles.

The occurrence of maltreatment on arrest or in detention violates Article 37(a) and Article 19 (the right to be protected against all physical violence) of the *CRC*. The State has a clear duty to take all action to prevent this abuse by state agents and to discipline or prosecute those suspected of inflicting any harm.¹¹⁰

As well as being liable to prosecution under criminal law for abuses that amount to a crime under the *Criminal Code*, the Police can also be subjected to internal disciplinary investigations and procedures.¹¹¹ The instigation of a criminal action does not prevent a corresponding internal investigation¹¹².

Chapter VI of the Fundamental Law of National Police deals with faults committed by the police and the corresponding sanctions, which range from a verbal warning to dismissal. Serious faults include abuse of authority or maltreatment of persons, although they may not amount to a crime¹¹³. As a precautionary measure the police officer shall be suspended immediately until the investigation has been carried out.¹¹⁴

The Internal Affairs Unit, which sits under the Ministry of Security, is responsible for carrying out internal investigations. However, this Unit is weak and its findings are rarely followed up by the police or the Prosecutor's Office.¹¹⁵

The creation of the Special Prosecutor for Human Rights has led to more scrutiny of police actions. However, prosecutions for maltreatment by members of the police force are infrequent, even where there are allegations of murder¹¹⁶. Cases of extrajudicial killings are dealt with in detail below.

INVESTIGATION

The procedure for investigation and trial is laid out in Chapter 4 of the *Children and Adolescents' Code*. An investigation of crimes committed by a

¹¹⁰ According to the *Code of Conduct for Law Enforcement Officers* (General Assembly Resolution 34/169) the State party should take all necessary and effective steps to prevent incidents of ill-treatment from occurring.

¹¹¹ Article 22 *Fundamental Law of the Police* provides that in fulfilling their functions members of the Police shall act in accordance with the *Constitution of the Republic of Honduras*, and with the International Treaties and Conventions to which Honduras is a State Party and the laws and regulations in force.

¹¹² Article 88 *Fundamental Law of the National Police*.

¹¹³ Article 85(7) *Fundamental Law of the National Police*.

¹¹⁴ Article 86 *Fundamental Law of the National Police*.

¹¹⁵ Maria Luiza Borjas, ex head of the Internal Affairs Unit, meeting 23rd June 2004

¹¹⁶ The Special Prosecutor for Human Rights argues that their work is hampered by the lack of a special investigations unit for human rights, apathy of the DGIC, the code of silence among state agents, the lack of cooperation among the general public, and the lack of training among the judicial institutions on human rights (Public Ministry, *Annual Report 2003 op.cit.* p. 87).

child is begun officially¹¹⁷ (by the DGIC, Public Ministry, Preventive Police and similar institutions) or by denunciation, charge¹¹⁸ or accusation.¹¹⁹ A crime can be reported to the Public Ministry or a competent court, where no Public Ministry functions.¹²⁰

The Public Ministry has the responsibility of proving the child's age at the beginning of the investigation, and of informing the child and his parents or legal representatives that the investigation has begun, what he has been charged with and that he can exercise the right to a defence.¹²¹

On the basis of the investigation (carried out by the DGIC), the Public Ministry will present to the Judge:

- a request for the discontinuation of the proceedings;
- a request for the provisional suspension of the process; or
- an accusation against the child.¹²²

The Judge then makes the decision as to whether to accept the request of the Prosecutor or to order the case to be returned to the Prosecutor's Office.

Investigation in practice

The quality of the investigations was criticised by many of those interviewed including Prosecutors and Judges. Prosecutors for Children complained about the lack of DGIC personnel assigned to their cases and the lack of specialism of those dealing with children's cases. The 2003 Annual Report of the Prosecutors Office stated that without doubt the most serious problems in the justice process are poor investigations and inefficiency on the part of the DGIC¹²³. However, the report points out that this is due to a lack of logistical support such as vehicles, computers and other equipment put at the disposal of officers working in this area.¹²⁴

In June and July 2004, the press reported that the DGIC was in a financial crisis that was paralyzing more than half of their investigations.¹²⁵ Despite receiving emergency funds to avert the threatened suspension of investigations, the DGIC still suffers from a lack of adequate funding.

¹¹⁷ The investigation can be started in response to information that has come to their attention by such informal means as the radio, the newspapers or a telephone call (Botero, M.L., *op.cit.*, p. 67).

¹¹⁸ The investigation is instigated by the Children's Judge on a complaint by the victim or the victim's representative.

¹¹⁹ Article 232.

¹²⁰ Article 233.

¹²¹ Article 234.

¹²² Article 235. The Prosecutor can also ask for the case to be submitted to discretionary measures – Conciliation, Judgement of Opportunity and Remission are discussed below.

¹²³ *op.cit.*, p. 92.

¹²⁴ For example, there is only one DGIC officer assigned to the one Children's Prosecutor based in La Ceiba (Nelly Vallejo, Children's Prosecutor, La Ceiba, meeting 13th July 2004). Judges also complained that DGIC officers and Preventive Police often did not turn up as witnesses to the trial. This was also highlighted by the Public Ministry in its 2003 Annual Report (*op.cit.*, p. 93).

¹²⁵ "Paralizada 60% de investigaciones", *op.cit.*, and "Paralizada la DGIC por falta de gasolina", *op.cit.*

The Public Ministry itself also reported a financial crisis in July 2004, with the Minister, Olvido Navarro, threatening to close the Prosecutor's Office due to a lack of funds.¹²⁶ However, the Government were not as quick to respond to their financial difficulties as to the problems faced by DGIC.¹²⁷

It is unsurprising, therefore, that in the midst of these financial crises, children's cases are not being adequately dealt with.

PRECAUTIONARY MEASURES

The following precautionary measures can be requested by the Prosecution in order to guarantee a child's presence during the investigation and trial process¹²⁸:

- a) Guidance and socio-family support
- b) Imposition of rules of conduct
- c) Obligatory residence
- d) Assisted liberty
- e) Semi-liberty
- f) Detention.¹²⁹

The measures can be imposed at the beginning of or during the investigation or at the preparatory hearing. Deprivation of liberty can also be used where there is a chance that the child will obstruct the investigation.¹³⁰

The investigation cannot exceed 30 days from when the precautionary measure is pronounced. However, the Public Ministry can petition for a further 30 days if necessary.¹³¹ Where there is no precautionary measure imposed it seems that there is no time limit for the investigation.¹³²

According to the Children's Code the precautionary measures can only be imposed exceptionally, through a judicial resolution and for only as long as necessary. The measure must be proportionate to the crime and appropriate to the circumstance in which the child finds himself. The Public Ministry can request the measure to be altered, suspended and terminated at any time¹³³ but this modification should be to the benefit of the child¹³⁴.

¹²⁶ "Fiscalia urge de 30 millones" *El Heraldo* 5th July 2004., "Anuncian cierre de fiscalias por falta de presupuesto" *La Tribuna* 19th July 2004.

¹²⁷ "No hay dinero para el Ministerio Publico" *El Heraldo* 20th July 2004.

¹²⁸ Article 206. "[In practice] the Judge shall always adopt whatever precautionary measures that the Public Ministry petitions for" (Dubón Villena, M.G., Guillen Sánchez, D. I., and Meléndez Velázquez, S., *Criterios, Conclusiones y Pautas Comunes de Actuación con Relación al Código de la Niñez y la Adolescencia de Honduras* (Imprenta y Serigrafía Godoy, Tegucigalpa, Honduras 2000), p. 13).

¹²⁹ These measures are explained in detail below in the discussion on dispositions. It has been argued that measures of guidance and social-familial support are not suitable as precautionary measures (Dubón Villena, M.G., Guillen Sánchez, D. I., and Meléndez Velázquez, S., *op.cit.*, p. 14).

¹³⁰ Article 198 *Children and Adolescents' Code*.

¹³¹ Article 237 *Children and Adolescents' Code*.

¹³² Martínez Serrano, A., and Pérez, E. C., *op.cit.*, p. 149.

¹³³ Article 230 *Children and Adolescents' Code*.

¹³⁴ Martínez Serrano, A., and Pérez, E. C., *op.cit.*, p. 193.

Use of pre-trial detention

International standards are clear that detention pending trial shall only be used as a measure of last resort and for the shortest period of time.¹³⁵ Wherever possible, alternatives to deprivation of liberty such as supervision and placement in a family or educational setting shall be used.¹³⁶ "When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention."¹³⁷

Although the *Children and Adolescents' Code* provides for alternatives to detention, there is often a fear of flight, especially in the case of street children, who have no fixed address and therefore they are almost always detained pre trial. Gang members arrested for illicit association are also often held during the investigation.

In addition, in practice, the alternatives provided for in the Children's Code are not very effective because IHNFA does not have the capacity to supervise the implementation of the measures, resulting in many cases of children running away and/or not turning up for the trial. Therefore, there is an over reliance by the Prosecutors and the Judges on detention.¹³⁸ Out of 550 precautionary measures imposed in 2003, 322 involved deprivation of liberty, 119 were for assisted liberty, 71 measures imposed rules of conduct and 38 involved the imposition of one of the other measures.¹³⁹ Out of the 335 measures imposed from January – April 2004, 197 were for deprivation of liberty.¹⁴⁰

This has led to a situation where more than 50% of the detainees in the two closed detention centres for boys have not been sentenced¹⁴¹. This situation is even more critical in the adult prisons where approximately 76% of inmates are awaiting trial.¹⁴²

Further, inefficiencies in the DGIC often result in the investigation not being completed within the 30-day limit and the Prosecutor having to ask for a 30-day extension.¹⁴³ According to the 2003 statistics of the Prosecutor's Office, the DGIC failed to complete the investigation in the 30-day period in 928 cases leading to an extension of the period for investigation in 360 cases and

¹³⁵ Article 37(b) *CRC* and Rule 13.1 *Beijing Rules*.

¹³⁶ Rule 13 *Beijing Rules*.

¹³⁷ Rule 17 *JDLs*.

¹³⁸ Nelly Vallejo, Children's Prosecutor, La Ceiba, meeting 13th July 2004. The absence of alternative measures being available in reality was highlighted in the 1999 UNICEF study (Botero, M.L. *op.cit.*) and by Martínez Serrano and Pérez (*op.cit.*).

¹³⁹ Public Ministry, *Annual Report of Work 2003*, pg 99.

¹⁴⁰ Source - Technical Unit for Penal Reform, Public Ministry.

¹⁴¹ Statistics for each of the detention centres are given below in Chapter 3 – Throwing Away the Key: Juvenile Detention Centres in Honduras.

¹⁴² "El desafío de la democratización de la justicia y del fortalecimiento de la rendición de cuentas" in UNDP, *Segundo Informe sobre Desarrollo Humano en Centroamérica y Panama 2003* (Editorama S.A., 2004) and "Las peores cárceles de Centroamérica" *El Tiempo* 27th May 2004.

¹⁴³ Public Ministry, *Annual Report 2003, op.cit.*, p. 93. Procedures often have to be suspended in cases both where children are perpetrators and victims, including in the trial stage, because the police have failed to apprehend the accused.

provisional suspension in 597 cases.¹⁴⁴ While the statistics do not indicate what percentage of these cases involved deprivation of liberty, a 60 day period in detention is excessively long, especially when considering that it is imposed because of an ineffectual investigation by the DGIC rather than because the specific circumstances of the child warrants this measure.

Consequently, children's rights are being violated because of the inefficiencies of the institutions responsible for investigation and the implementation of alternatives to deprivation of liberty.

DIVERSION FROM THE FORMAL TRIAL PROCESS

Article 219 of the *Children's Code* provides processes by which a child can avoid facing a trial.¹⁴⁵

During the investigation or at the conclusion of the investigation, a Judge can be asked to submit a case to:

- Conciliation
- Judgement of Opportunity
- Remission

Conciliation, which can be requested by interested parties (e.g. the defence lawyer) as well as the Prosecutor, can be started at any stage of the process prior to the opening of the trial and can be applied to all cases that do not involve violence against the person¹⁴⁶, and where the juvenile and the victim have given their consent. The Judge must approve the process.¹⁴⁷ Conciliation is a voluntary act that does not recognise the child as being responsible for the crime. Conciliation will not take place if it would harm the interests of the child in anyway.

All the parties are summoned to take part in the conciliation, in which the Judge acts as the mediator. The agreement that comes out of the discussions, in which both the victim and the child have the opportunity to speak, details the terms of the reparation, which can include economic obligations or obligations to do or not do something. This agreement has judicial force. The Prosecutor's Office can reject the victim's request that no condition is imposed on the juvenile. The child can also reject the agreement, in which case the trial will be opened.¹⁴⁸

If the child does not fulfil the terms of the agreement, the trial can be opened again.¹⁴⁹ However, if the child only fails to fulfil his economic obligations, the trial will not be reopened. In order to enforce economic sanctions the victim can take a civil case, although the victim is unlikely to pursue this option because of the expense and the time the process takes.

¹⁴⁴ Public Ministry, *Annual Report 2003*, *op.cit.*, p. 98.

¹⁴⁵ These processes also available for adults.

¹⁴⁶ Article 220 *Children and Adolescents' Code*.

¹⁴⁷ Guillen de Martínez, D. I., *op.cit.*, p. 99.

¹⁴⁸ An agreement to send the case to trial could also be the result of a process of conciliation (Article 220).

¹⁴⁹ Article 223.

The **judgment of opportunity**, by which a child can be let go without punishment¹⁵⁰, can only be solicited by the Prosecution to the Judge and only where the child demonstrates good behaviour and the victim has just compensation. In addition, for the case to be eligible for this measure, the responsibility of the child in the criminal act has to be minimal, the child has to have done something to limit the effects of the crime, the child has to have been gravely affected by the act, and the crime cannot have produced a significant social impact. The judgment of opportunity can only be applied if, in accordance with the *Criminal Code*, the maximum term of imprisonment for that offence would not exceed five years. Unlike with conciliation, the victim does not need to consent to the judgment of opportunity.¹⁵¹

Conciliation and the Judgement of Opportunity can be asked for during the investigation and during the preparatory hearing, even though this is not expressly stated in the code.¹⁵²

Remission is provided for in Article 225 of the *Children and Adolescents' Code*. In addition to the Prosecutor, the child's legal representatives and the victim, as with conciliation, can request this process.¹⁵³ Under this procedure the Judge can decide that the child has to take part in community programmes if he, his parents or his legal representatives consent to it. A child can only give his consent if he is of a certain maturity, and this consent can be contested by his legal representatives. Consent to the programme does not indicate an admission of guilt by the child.

Remission cannot be applied where the sanction for the crime exceeds two years. Due to the reform of the *Criminal Code*, there are few crimes for which the maximum sentence is less than 2 years and so this process is rarely applied to children.¹⁵⁴

The *Children's Code* does not specify when Remission can be requested. However, it is suggested that as with the Judgement of Opportunity and Conciliation, Remission can be requested from the start of the process against the child up to the opening of the oral trial.¹⁵⁵ There are no measures that can be taken if the child does not fulfil the terms of the Remission.

Diversiónary measures in practice

The existence of these measures fulfils the State's obligation under the *CRC* to provide measures for dealing with children without resorting to judicial proceedings, whenever appropriate and desirable.¹⁵⁶ However, while the *Beijing Rules* foresee prosecutors and the police being able to apply and approve diversionary measures¹⁵⁷, only the Judiciary has this authority in Honduras. However, NGOs were sceptical as to the appropriateness of providing the police with this power.

¹⁵⁰ Further, the child cannot at a later date be tried for this crime.

¹⁵¹ Article 224.

¹⁵² Guillen de Martínez, D. I., *op.cit.*, p. 98.

¹⁵³ *ibid.*, p. 100.

¹⁵⁴ Mejía, R. P., and Dávila, K. R., "Los Operados Jurídicos" p. 288, in Dubón Villena, M.G., et al., *op.cit.*

¹⁵⁵ Martínez Serrano, A., and Pérez, E. C., *op.cit.*, p.166.

¹⁵⁶ Article 40(3)(b) *CRC*.

¹⁵⁷ Rule 11.2.

In practice these procedures are not used that frequently because there are not that many crimes that attract less than a five year prison term under the *Criminal Code*, let alone the two year sanction required for remission to apply.¹⁵⁸

Diversionary measures must provide human rights and legal safeguards¹⁵⁹. Consent to these procedures is seen as vital by the *Beijing Rules*¹⁶⁰ and is required by the *Children and Adolescents' Code*. However, the *Beijing Rules* also points out that consent shall not be left unchallengeable "since it might be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured into consenting to diversion programmes"¹⁶¹. The processes outlined above seem to respect these safeguards.

NEGOTIATED SENTENCES

Although not contained explicitly in the *Children and Adolescents' Code*, there are also two procedures by which a child (and an adult) can avoid a full trial by agreeing to a negotiated sentence. These procedures can be applied by virtue of Article 287 of the *Children's Code*, which allows processes established by the *Criminal Code*, the *Criminal Procedure Code* and the *Family Code* to be utilised.

Abbreviated Process

The abbreviated process, provided for in Article 403 of the *Criminal Procedure Code*, allows for the Prosecution to ask for an abbreviated procedure in the preliminary hearing or in whatever other moment (including during the investigation) before the formal opening of the trial. The process allows a sentence to be handed down without a trial. The sentence is usually reduced by a ¼ or a 1/3. The defence has to have fully informed the accused about the meaning of the process and the accused has to unconditionally admit his/her participation in the act and agree to the abbreviated process. The Prosecutor can only ask for this process if the confession has been verified, that the accused is not trying to replace the charge with a less serious one, and the accused is not trying to take the place of the person who actually committed the crime.

Strict Agreement

Strict agreement provides a last chance for the juvenile (and an adult) to agree to a negotiated sentence right at the start of the trial before the proof is presented. According to Article 322 of the *Criminal Procedure Code*, before the presentation of proof the prosecution and the defence, with the

¹⁵⁸ Nelly Vallejo, Children's Prosecutor, La Ceiba, meeting 13th July 2004. In 2003, 119 cases were referred to conciliation, there were 34 cases of remission, and 144 judgments of opportunity. Public Ministry, *Annual Report 2003*, *op.cit.*, p. 98. From January to April 2004 – 105 conciliations, 20 remissions 45 judgments of opportunity (Technical Unit for Penal Reform, Public Ministry).

¹⁵⁹ Article 40(3)(b) *CRC*.

¹⁶⁰ Rule 11.3.

¹⁶¹ Rule 11.3 Commentary.

agreement of the accused (and in the case of the child, his representatives), can ask the Court for a sentence that they have negotiated. The sentence cannot be less severe than the minimum foreseen in the *Criminal Code*. The Children's Judge can reject the agreement if a child has not admitted the act and/or has not been made fully aware of the consequences of this agreement,¹⁶² and if the proposed sentence basically exempts the accused from penal responsibility. In 2003, 16 cases were subjected to an abbreviated process and 26 to strict agreement.¹⁶³

While conciliation, judgment of opportunity and remission are explicitly provided for in the *Children and Adolescents' Code* with corresponding safeguards, the measures of abbreviated process and strict agreement, which are contained in the *Criminal Procedure Code* are not. Therefore, there are no explicit safeguards in place for these processes when applied to children. Having said this, Article 181 of the *Children's Code* provides that the rights of children shall be respected in all procedures to which they are subjected. Further, Prosecutors, the Public Defence and Judges are convinced that the procedures that they applied ensured that children were fully aware of the procedure and the consequences of agreement.¹⁶⁴ There is also a feeling that the processes are secure and satisfactory for all parties that are involved.¹⁶⁵

However, not all the NGOs were equally convinced that the children are always aware of what is going on¹⁶⁶. While, of course, measures like these, which have improved the efficiency, expediency and cost effectiveness of the justice system and have allowed more time to be spent on more serious cases, are important¹⁶⁷, there is a danger that such procedures are applied with the efficiency of the judicial system as the primary aim rather than the best interests of the child, as demanded by Article 3 *CRC*. There is particular concern that the Public Defenders, overwhelmed with cases, may seek the most efficient conclusion to the case.

PREPARATORY HEARING

Within 24 hours of the conclusion of the investigation, the trial will be opened, with the knowledge of the parties involved. The Judge then schedules a day and a time for the preparatory hearing.¹⁶⁸ Although the parties to the case are summoned to the hearing, their non attendance does not invalidate the proceedings.

The purpose of this hearing is:

- for the Prosecution to confirm, modify or withdraw the charges;
- to resolve questions of competency;
- to determine which persons must attend the trial; and

¹⁶² Herman Mendes, Children's Judge, Court of Comayagüela, meeting 1st July 2004.

¹⁶³ Public Ministry of Honduras, *Annual Report 2003, op.cit.*, p. 99. From January to April 2004 there were 46 cases concluded with strict agreement, and 11 abbreviated processes (Technical Unit for Penal Reform, Public Ministry).

¹⁶⁴ Herman Mendes, Children's Judge, Court of Comayagüela, meeting 1st July 2004; Nora Urbina, Children's Prosecutor, meeting 28th June 2004; Paulina Perez de Licon, Director of Public Defence, meeting 1st July 2004.

¹⁶⁵ Portillo Mejia, R., and Dávila, K. R., "Los Operados Jurídicos" pg 288, in Dubón Villena, M.G., et al., *op.cit.*

¹⁶⁶ e.g. Casa Alianza, meeting 22nd June 2004

¹⁶⁷ Portillo Mejia, R. P., and Dávila, K. R., *op.cit.*, p. 288, in Dubón Villena, M.G., et al., *op.cit.*

¹⁶⁸ Article 240 *Children and Adolescent's Code*.

- to offer the proof that will be presented in the trial

The date of the trial will also be set between 5 and 10 days from the date of the preparatory hearing and the child will be informed. If the child is being held in detention, the institution will also be informed of the date and time of the trial.

TRIAL PROCEEDINGS

The trial is an adversarial oral process. The *Children's Code* introduced the oral trial to Honduras and was only later applied to adult trials with implementation of the *Criminal Procedure Code* in 2002.

The Judge will begin the trial by informing the child about the significance and importance of the hearing and will order the reading of the charges.¹⁶⁹ The Judge has an obligation to explain the charges to the child in a clear and simple manner, advising him that he can abstain from testifying but that the trial will continue regardless.¹⁷⁰

The child can then be interrogated by the Prosecutor, the accuser and the defence. During this interrogation the child can consult his defence lawyer at any time.¹⁷¹ Witnesses will then be called to be cross examined by the prosecution and the defence.¹⁷² The Judge can also ask questions after the two sides have completed their questioning.¹⁷³ The Judge has the discretion to arrange for the removal of the child from the court room if a subject comes up that could cause psychological damage or another kind of damage to the child.¹⁷⁴

After all the evidence is presented the two sides will sum up. Finally, the Judge will ask the child if he wishes to make a last statement.¹⁷⁵ The Judge will then either absolve the child and with immediate effect suspend any precautionary measures, or will declare the child responsible and will impose a sanction.¹⁷⁶

DUE PROCESS GUARANTEES

In all proceedings involving juveniles, they have the right to basic procedural safeguards, which represent elements of a fair and just trial.¹⁷⁷

Presumption of innocence

¹⁶⁹ Article 242 *Children and Adolescents' Code*.

¹⁷⁰ Article 243 *Children and Adolescents' Code*.

¹⁷¹ *ibid.*

¹⁷² Article 247 *Children and Adolescents' Code*.

¹⁷³ Martínez Serrano, A., and Pérez, E. C., pg 176, in Dubón Villena, M.G., et al., *op.cit.*

¹⁷⁴ Article 242 *Children and Adolescents' Code*.

¹⁷⁵ Article 251 *Children and Adolescents' Code*.

¹⁷⁶ Article 253 *Children and Adolescents' Code*. While a Judge will often be able to pronounce the sentence at the conclusion of the trial, he may require a period of reflection to consider his decision. The *Children's Code* does not provide a time limit before which the Judge must pronounce his the sentence, however it would seem that this period must be short e.g. the following day (Martínez Serrano, A., and Pérez, E. C., *op.cit.* pg 182).

¹⁷⁷ Due process guarantees are contained in the *CRC, International Covenant on Civil and Political Rights (ICCPR)*, *American Convention on Human Rights (ACHR)*, and *Universal Declaration of Human Rights (UDHR)*.

Under the *CRC*, every child that is accused of having infringed the law has a right to be presumed innocent until proven guilty by law¹⁷⁸. The presumption of innocence is enshrined in Article 182 of the *Children's Code* and Article 89 of the *Constitution* and seems to be upheld in practice.

Right to legal representation

A fundamental due process guarantee is the right to have legal representation and other appropriate assistance in the preparation and presentation a case in court.¹⁷⁹ The ICCPR (of which Honduras is a State party) goes further, providing that the accused has the right to be provided with free legal representation if he/she cannot afford to pay.¹⁸⁰

The right to a defence is enshrined in the *Constitution* under Article 82. The *Children and Adolescents' Code* not only provides that a child has the right to representation from the start of the investigation¹⁸¹ but that a child suspected of committing a crime shall be assisted by a defender, who can be named by the child's parents or legal guardians, by the Judge or by IHNFA¹⁸². The child cannot waive this right and their trial cannot progress without the presence of private or public legal representation

As detailed above, free legal representation is provided by the State through the Public Defenders to all children (and adults) prosecuted for committing crimes.

Although, in practice, the frequency of representation is high¹⁸³ there is a question mark over the independence of the Public Defenders from the judiciary and consequently whether they always act with the best interests of their clients as the primary aim rather than the expediency of the process, due to being overwhelmed by cases.

Attendance and participation of parents

The *Beijing Rules* recognise that the presence of parents or legal guardians is important in a trial of a juvenile in order to provide emotional and psychological assistance, and may be made compulsory if the State decides it is in the child's best interests¹⁸⁴. They should also be able to actively participate in the proceedings.¹⁸⁵ However, it is also recognised that the presence of the child's parents or guardians may be detrimental and in such cases they can be excluded.¹⁸⁶

¹⁷⁸ Article 40(2)(b)(i). Also see Article 8(2) *ACHR*.

¹⁷⁹ Article 40(2)(b)(ii) *CRC*, Rules 7.1 & 15.1 *Beijing Rules*, Article 14 *ICCPR*, Articles 10 and 11 *UDHR*, Article 8(2)(e) *ACHR*.

¹⁸⁰ Article 14(3)(d) *ICCPR* states that this assistance should be provided free of charge if the accused cannot afford to pay.

¹⁸¹ Article 226 *Children and Adolescents' Code*.

¹⁸² Article 229 *Children and Adolescents' Code*. The right to immediate professional legal assistance is also enshrined in Article 182, *Children and Adolescents' Code*.

¹⁸³ 96% of cases processed were attended by Public Defenders. This is especially high considering that some children do have access to private representation (*Análisis Cuantitativo de la Justicia Penal Juvenil en Honduras: Informe Ejecutivo, op.cit.*, Indicator 8).

¹⁸⁴ Rule 15 *Beijing Rules*, Commentary. Article 40(2)(b)(iii) *CRC* also provides that the hearing should take place in the presence of the child's parents or legal guardians.

¹⁸⁵ Rule 15.2 *Beijing Rules*.

¹⁸⁶ Rule 15.2 *Beijing Rules*.

According to Article 227 of the Children's Code, parents or legal guardians can intervene in all stages of the process but there is no obligation for them to attend the hearing.¹⁸⁷ However, the Judge can exclude them from the court room if it is proved that their participation is prejudicial to the child. If the parents or legal guardians are absent or their whereabouts are unknown, the Judge is obligated to try to find them, with the assistance of IHNFA. However, their absence will not hold up the proceedings once they have begun.¹⁸⁸

In practice parents do not often attend the trial.¹⁸⁹ It was estimated by one Children's Judge that parents attend in approximately 30% of the cases.¹⁹⁰

Participation of the child

Under Article 12 *CRC*, children have the right to participate in all decisions affecting them, and in particular the child has a right to be heard in judicial proceedings. This right would be meaningless unless there was a corresponding duty to ensure that, as stated by the *Beijing Rules*, the proceedings are conducted "*in an atmosphere of understanding, which ... allow the juvenile to participate therein and to express herself or himself freely*"¹⁹¹.

Chapter IV of the *Children's Code* provides detailed guidance on participation of the child in the legal proceedings. Article 226 states that all children shall participate in the process, depending on their level of maturity. Children have the right to be represented and heard from the start of the investigation and are able to consult their defence lawyer at any time.

They are also given an opportunity at the end of the proceedings to make a final statement before the sentence is pronounced. However, "*in practice most young people do not know what to say*" in this final statement¹⁹².

The culture of Honduras does not encourage children to express their opinions in in such an intimidating arena and the Judges do not always have the corresponding skills or training to involve children in meaningful way.¹⁹³

Right to remain silent

International standards provide that the accused shall not be compelled to give testimony or confess his guilt.¹⁹⁴ The Children's Code enshrines this right, stating that the child will be advised by the Judge at the beginning of the trial that he does not have to testify.¹⁹⁵ It is unclear how often a child exercises this right and whether a child's decision not to testify has a

¹⁸⁷ In the absence of parents or legal guardians, the persons who have permanent or temporary care of the child shall attend the trial.

¹⁸⁸ Article 228 *Children and Adolescents' Code*.

¹⁸⁹ Paulina Perez de Licona, Director of Public Defence, meeting 1st July 2004.

¹⁹⁰ Irasema Guillén de Martínez, Children's Judge, La Ceiba, meeting 13th July 2004.

¹⁹¹ Rule 14.2.

¹⁹² Guillen de Martínez, D. I., *op.cit.*, p. 115.

¹⁹³ Martha Savillón, Casa Alianza, meeting 17th June 2004.

¹⁹⁴ Article 40(2)(b)(iv) *CRC*, Article 11 *UDHR*, Article 14(2) *ICCPR*, Article 8(2)(g) *ACHR*.

¹⁹⁵ Article 243.

detrimental effect on his case because the Judge draws inferences from his silence.

Right to cross examine witnesses

The *Children's Code*¹⁹⁶ allows witnesses to be called by the defence as well as the Prosecutor and the accuser, in accordance with the *CRC*¹⁹⁷.

Right to privacy

Children have the right to have their privacy protected under the *CRC*¹⁹⁸ in order to avoid harm being caused to him¹⁹⁹. Also information must not be published which might lead to the identification of the minor.²⁰⁰

This right is protected in the Honduran process, which ensures that documents are confidential and the trial process itself is closed, unlike adult trials, which are public. Article 32 of the *Children's Code* provides that a fine will be imposed on media that publish the child's name, photo or any personal data that could identify him, whether he is the perpetrator or the victim. In general, the media refrain from publishing identifying information about children in conflict with the law, which was not the case five years ago when the media would sometimes publish the names and photographs of children and mention the places where they lived²⁰¹.

Right to have the matter determined expeditiously

Avoiding unnecessary delay is seen as vital in juvenile proceedings²⁰² to ensure that the juvenile "*can relate the procedure and the disposition to the offence both intellectually and psychologically*"²⁰³.

Although the inefficiency of the investigatory process holds up proceedings against juveniles, and therefore causes unnecessary delays, the trial process is generally efficient. The time from the preparatory hearing to the trial is between and 5-10 days and the Judges endeavour to pronounce the sentence on the day of the trial or on the following working day and this happens in most courts in the country.²⁰⁴

However, the trials of children being held pre-trial in the detention centres can be delayed unnecessarily due to a lack of logistical support to transport them to the trial²⁰⁵. The three detention centres where children are placed for cautionary measures are located in the two main cities. However, cases of

¹⁹⁶ Article 247.

¹⁹⁷ Article 40(2)(b)(iv).

¹⁹⁸ Article 40(2)(b)(iv) *CRC*.

¹⁹⁹ Rule 8.1 *Beijing Rules*.

²⁰⁰ Rule 8.2 *Beijing Rules*.

²⁰¹ Botero, M.L., *op.cit.*, p.26 and Cervantes, P., *Síntesis de Pre-Diagnostico: Tratamiento de la Niñez Infractora en los Medios Comunicación* (Taken from the Pre-diagnostic prepared by AAP, Tegucigalpa, MDC, Honduras, February 1998). See chapter 7 'Fear and Loathing in Honduras: The role of public perception in the formulation of State policy on juvenile justice' for further discussion on media coverage of juvenile crime and juvenile cases.

²⁰² Article 40(2)(b)(iii) *CRC*, Rule 20 *Beijing Rules*.

²⁰³ Rule 20.1, *Beijing Rules*, Commentary.

²⁰⁴ Guillen de Martínez, D. I., *op.cit.*, p.116.

²⁰⁵ This lack of transportation also hampers the Courts sending a child back to the detention centres when they have been given a custodial sentence.

children must be heard in the area in which they committed the crime and this sometimes entails transporting children over long distances.²⁰⁶ These difficulties lead to trials being delayed by days, week and sometimes even longer.²⁰⁷

The situation is so problematic that Judges in rural areas have been known to take children home with them because of the impossibility of transporting them to the detention centres.²⁰⁸

There are differing accounts as to who exactly is responsible for transporting children to the trial and back to the detention centres, if necessary, to begin their sentence. IHNFA²⁰⁹, the centres themselves²¹⁰ and the Courts or Judges²¹¹ have all been identified as being responsible for arranging transportation.²¹²

The Children's Prosecutor in Tegucigalpa lamented the lack of coordination between IHNFA, the Courts and the Prosecutor's Office in bringing the child to attend to the trial,²¹³ while the Children's Judge in La Ceiba pointed to the absence of a specific budget for transportation of children.²¹⁴ Whatever the reason for the transport problems, the delays caused by logistical failings violate children's rights.

Where children have to travel long distances they must stay often stay overnight which gives rise to the problem of accommodating them. In La Ceiba, the children stay at the police station, although they are only kept in the cells if they are considered to be dangerous.²¹⁵ This does not serve the best interests of the child and a separate place should be assigned where children can stay the day before their trial.²¹⁶

Right to appeal

Article 256 of the *Children's Code* states that a child has a right to challenge the decision of the Court by 'reposicion' or appeal.

'Reposicion' is a request to the Judge to amend or correct the decision. Recourse to 'reposicion' has to be lodged within three days of the decision of the Court, and will then be resolved in the following three days by the Judge

²⁰⁶ Paulina Perez de Licon, Director of Public Defence, meeting 1st July 2004.

²⁰⁷ Hugo Majea Tabora, Director of El Carmen, San Pedro Sula, visit 12th July 2004.

²⁰⁸ Herman Mendes, Children's Judge, Court of Comayagüela, meeting 1st July 2004.

²⁰⁹ Hugo Majea Tabora, Director of El Carmen, San Pedro Sula, visit 12th July 2004

²¹⁰ Irasema Guillén de Martinez, Children's Judge, La Ceiba, meeting 13th July 2004.

²¹¹ Jorge Diaz, Director of Jalteva, visit 22nd July 2004.

²¹² The Children's Judge in La Ceiba said that although she is responsible for sending the child back to the detention centre following a trial or the imposition of a precautionary measure, the police or the centre itself has the obligation of transporting the child to the court to attend the trial (Irasema Guillén de Martinez, Children's Judge, La Ceiba, meeting 13th July 2004). The detention centres have also been criticised for not having the children ready when the transportation comes to pick them up to take them to the trial (Nora Urbina, Children's Prosecutor, meeting 28th June 2004).

²¹³ Nora Urbina, Children's Prosecutor, meeting 28th June 2004.

²¹⁴ Irasema Guillén de Martinez, Children's Judge, La Ceiba, meeting 13th July 2004.

²¹⁵ Martha Elena Trochez, Regional Director IHNFA, La Ceiba, meeting 13th July 2004.

²¹⁶ Irasema Guillén de Martinez, Children's Judge, La Ceiba, meeting 13th July 2004.

who made the original decision. Such a review can also be lodged during the trial and will, in this case, be resolved orally during the hearing²¹⁷.

If the request for 'reposicion' is rejected by the Judge, there is a right to appeal the sentence to a higher tribunal under Article 258 *Children's Code*. This appeal has to be lodged at the trial or in writing within 3 days. However, the sanction applied for a 'fault' cannot be appealed unless there has been a violation of the rights of the child.²¹⁸ The appeal is not heard by the Children's Court but by an appeals tribunal which has the same procedures for children as for adults.

Article 40(2)(b)(v) *CRC* provides that a child has the right to have the decision reviewed by a higher competent, independent and impartial authority or judicial body. Clearly recourse to 'reposicion' does not fulfil this right as the Judge who reviews the judgement, has made the original decision. However, the child still retains the right to appeal the decision to a higher tribunal.

In reality very few cases are appealed²¹⁹ - in 2003, 72 'reposiciones' and 17 appeals were lodged.²²⁰ Public defenders are usually happy with the sentence pronounced by the Court and the child rarely appreciates or knows that they have a right to appeal and what this involves.²²¹

Dispositions

The crimes for which a person can be punished are contained in the *Criminal Code*, which also sets out the maximum sentences that can be applied. However, although children are liable for the same 'infracciones' (crimes) and 'faltas' (very minor crimes) as adults, distinct dispositions are laid out in Article 188 of the Children's Code.

The following dispositions are available for children are who have broken the law:

- a) Guidance and family-social support;
- b) Reprimand/ warning;
- c) Imposition of rules of conduct²²²;
- d) Social service in the community²²³;
- e) Requirement to repair the damage committed;

²¹⁷ Article 257 *Children's Code*.

²¹⁸ Article 203 *Children's Code*.

²¹⁹ Nora Urbina, Children's Prosecutor, meeting 28th June 2004, and Paulina Perez de Licon, Director of Public Defence, meeting 1st July 2004.

²²⁰ Public Ministry, *Annual Report 2003, op.cit.*, p. 99.

²²¹ Gustavo Zelaya, Casa Alianza Honduras, meeting 22nd June 2004.

²²² Imposition of rules of conduct can include, among others, having to attend an educational institution or work place, having to remain in areas specified by the Judge, participating in specified programmes, abstaining from taking intoxicating substances and staying away from their victims and from people who exert a negative influence on them. The Judges can request collaboration of NGOs, community and religious groups, among others, to provide these programmes.

²²³ Social service in the community cannot exceed six months in each case and shall be completed at times that do not interfere with their school or work and do not put them at risk or offend against their dignity.

- f) Regular residence in a fixed place;
- g) Assisted liberty²²⁴;
- h) Semi-liberty²²⁵;
- i) Internment²²⁶.

Each of the dispositions is described in detail in Articles 190-198.

For less serious crimes (faults), the judge can impose²²⁷:

- a) a verbal or written warning/reprimand;
- b) the imposition of rules of conduct lasting no longer than 30 days;
- c) an obligation to repair the damage.

All these measures can be suspended, revoked or substituted for others and applied concurrently, consecutively or alternatively.²²⁸ Although there are maximum sentences for certain measures, such as eight years for deprivation of liberty, unlike the *Criminal Procedure Code* there are no suggested sentences for each crime. The Judge alone determines the measure, the form it will take and its duration.²²⁹ This is concerning as there are no time limits on the measures provided for the sanction of guidance and family social support, rules of conduct²³⁰, or residence at a fixed address in the *Children's Code*. However, it has been stated that where the *Children's Code* does not specify a maximum duration, the sentence shall not exceed more than eight years – the maximum sentence for deprivation of liberty.²³¹

Under the *Constitution* the imposition of the death penalty is prohibited as well as life imprisonment,²³² which is in conformity with Article 37(a) *CRC*.

On paper, these measures partially fulfil the requirements imposed on a State under Article 40(4) *CRC* to provide a "*variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care ... to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances*

²²⁴ Assisted liberty consists of allowing the child to remain at liberty but with an obligation to attend educative programmes, monitored in specific centres and under the care of specified persons, who must be assisted by specialists. This measure can be imposed for a maximum of 12 months.

²²⁵ Where semi-liberty is imposed, the child is accommodated in one of the detention centres but takes part in activities outside the centre as prescribed by the courts (e.g. attending school, vocational training). The maximum period of semi-liberty is one year.

²²⁶ Detention in a centre cannot exceed eight years (Article 198 *Children and Adolescents' Code*). Proceedings cannot be taken against a child if more than five years have elapsed since he is alleged to have committed the crime or 60 days in the case of a 'fault' (Article 204 *Children and Adolescents' Code*).

²²⁷ Article 203 *Children and Adolescents' Code*.

²²⁸ Article 189.

²²⁹ Article 246 *Children and Adolescents' Code*.

²³⁰ Although there is no maximum time limit for rules of conduct, the Judge must state when the sanction will finish when he pronounces the sentence.

²³¹ Dubón, Villena, M.G., Guillen Sánchez, D. I., and Meléndez Velázquez, S., *op.cit.*, p. 9.

²³² Articles 66 and 97 respectively. According to the Constitution, the longest period of deprivation of liberty permitted is 20 years for one offence or 30 years for various offences together.

and the offence” and include many of the sanctions suggested by the *Beijing Rules*²³³.

However, in reality the full range of dispositions is not and cannot be used, largely because of the inability of IHNFA to supervise and implement these alternative measures. This failing in the system is discussed in more detail below.

DETERMINING THE SENTENCE

The guiding principles laid down by the *Beijing Rules*, regarding adjudication and dispositions²³⁴ provide that the reaction must always be proportionate to the circumstances of the offence and also to the circumstances and the needs of the juvenile, as well as the needs of society.²³⁵

To ensure that the Judge is fully aware of these circumstances and needs, Rule 16 *Beijing Rules* provides that before a final decision is made about the sentence “*the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated*”. ‘Social inquiry reports’ or pre-sentence reports are seen as indispensable for Judges making a decision about the sentence to impose and should include information about the juvenile, such as social and family background, school career and educational experiences.²³⁶ In order to prepare these reports the State should ensure that there are adequate social services.²³⁷

Honduran law reflects the principle of proportionality - the *Criminal Code* provides that any punishment shall only be imposed when necessary and in proportion to the seriousness of the offence²³⁸. This principle is expanded for children. According to Article 89 *Criminal Code*, the measures which are imposed on children must be proportionate to the crime and must also bear in mind any aggravating, mitigating and extenuating circumstances, as well as the needs of the children and society.

Under Article 254 *Children’s Code*, the Judge is obliged to bear in mind the conditions of life of the child and the circumstances of the crime in deciding upon the sentence. However, unlike the *Beijing Rules* the *Children’s Code* does not go as far as to specify that the well being of the juvenile shall be the guiding factor for this decision.²³⁹

It has been argued that in order for Judges to be aware of the conditions of life for the child and the circumstances of the crime, technical teams should be established to carry out social inquiry reports about the child to assist the Court in making their sentencing decision, although the *Children’s Code* does

²³³ Rule 18.1. The international standards governing non-custodial measures are outlined in the *United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)* 1990, GA res. 45/110 of 14 December 1990.

²³⁴ Rule 17.

²³⁵ Rule 17.1(a).

²³⁶ Rule 16 *Beijing Rules*, Commentary.

²³⁷ Rule 16 *Beijing Rules*, Commentary.

²³⁸ Article 2-D *Criminal Code*.

²³⁹ Rule 17.1(d).

not make reference to these teams or the obligatory nature of such reports²⁴⁰. Some, but not all Children's Courts and Judges are already assisted by social workers and/or psychologists²⁴¹. However, it has been noted that reports are more likely to be made in cases of social risk than in relations to children who have committed a crime²⁴².

Under Article 248 *Children's Code* specialists can be called to testify under oath about the life circumstances of the child and about other circumstances that could have influenced the act he is alleged to have committed. The defence, the prosecution and the Judge, as well if he so chooses, can interrogate these experts. However, their participation is not an obligatory part of the trial.²⁴³ IHNFA in San Pedro Sula lamented the fact that Judges rarely asked for their opinion on the child, or information on the child although they had worked most closely with them and their families²⁴⁴.

The Prosecutors and the Public Defenders are able to request a sentence, a request that the Judge does not have to follow. However, the Judge cannot impose a more severe measure than has been requested by the Prosecutor.²⁴⁵

DEPRIVATION OF LIBERTY

The *Children's Code* provides that placement in a detention centre shall only be for the time necessary to rehabilitate the child, and for a maximum of eight years²⁴⁶. This measure can only be imposed in exceptional circumstances:

- a) Because the crime committed produced damage to the person's life or consisted of threats of serious violence against other persons
- b) Because it is a repeat offence or the offending behaviour is persistent
- c) Because the child has expressly, repeatedly or unjustifiably rejected the fulfilment of other measures or sanctions imposed by a competent authority
- d) Because there exists a danger of flight or obstruction of the investigation.

The existence of this criteria goes some way to fulfilling the obligation of the State under Article 37(b) *CRC* to ensure that deprivation of liberty shall be used only as a measure of last resort, a standard reiterated in the supporting juvenile justice instruments²⁴⁷. Avoiding institutionalisation of children is a

²⁴⁰ Gisbert Jorda, T., "Los Técnicos" p. 320, in Dubón Villena, M.G., et al., *op.cit.* Gisbert Jorda details the functions that such a team should have, its characteristics and the nature of its intervention, as well as what the content of the reports should be (see pp 320-330). Such reports would also allow the Judge to act in the best interests of the child.

²⁴¹ e.g. Irasema Guillen de Martinez, Children's Judge, La Ceiba, meeting 13th July 2004.

²⁴² Casa Alianza Honduras, Gustavo Zelaya, meeting 22nd June 2004.

²⁴³ Martínez Serrano, A., y Pérez, E. C., "El Niño y El Adolescente Infractor", in Dubón Villena, M.G., et al., *op.cit.*, p. 177.

²⁴⁴ Fermine Lainez, Supervisor of Re-education, IHNFA, and Lydia Dolmor, Chief of Re-education, IHNFA, meeting 12th July 2004

²⁴⁵ Herman Mendes, Children's Judge, Court of Comayagüela, meeting 1st July 2004. The Public Ministry and the child's legal representatives can also request the suspension of less serious measures if it is believed that the child will not re-offend (Cervantes, P., *op.cit.*, p.12).

²⁴⁶ Article 189.

²⁴⁷ Rule 2 *United Nations Rules for the Protection of Children Deprived of their Liberty (JDLs)*. The preamble of the *JDLs* states "juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights". Further, Rule 19.1 of the *Beijing Rules*

fundamental principle of international juvenile justice standards. It is recognised that institutional settings can have adverse influences on a child that *"cannot be outbalanced by treatment efforts"*²⁴⁸.

The Committee has stated that the phrase 'as a last resort' in Article 37 of the Convention has often been misunderstood as referring to children guilty of serious crimes; in fact, it means that prison can be resorted to only if there was no other way of giving the child the protection it needs²⁴⁹. Further, according to the *Beijing Rules* *"deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in community other serious offences AND²⁵⁰ unless there is no other appropriate response"*.²⁵¹

However, the phrase 'no other appropriate response' does not refer to an absence of another appropriate response because of insufficient resources being made available for alternative measures but to the fact that other measures would not be suitable or beneficial to the child²⁵². The State does not only have an obligation to legislate for alternatives to deprivation of liberty but has an obligation to ensure that these dispositions are available and effective²⁵³.

The judicial institutions admit that there is an over reliance and over use of detention as a sanction due to the absence of effective alternatives due to the lack of staff and resources of IHNFA, the body that creates, implements and monitors these alternatives²⁵⁴. According to a study by the Supreme Court of Justice²⁵⁵, only 31.25% of children going through the judicial process were given a term in a detention centre. However, this figure is a

states: *"The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period"*.

²⁴⁸ Commentary Rule 19 *Beijing Rules* - *"Moreover, the negative effects, not only of loss of liberty but also separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development."*

²⁴⁹ CRC/C/SR.323, Nigeria, Summary Records, 1/10/96, para 56. Further, Resolution 4 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders states: *"A juvenile offender should not be incarcerated unless there is no other appropriate response"* (A/CONF.87/14/Rev.1, 1980).

²⁵⁰ Capitalisation added.

²⁵¹ Rule 17.1(c).

²⁵² It must be noted that this view was not shared by everyone interviewed – e.g. Paulina Perez de Licona, Director of Public Defence, felt that there was no limitation on the measures that could be applied (meeting, 1st July 2004). However, the National Commission on Human Rights commented there are children in detention who do not need to be locked up and that many children are there for non violent offences (National Commission on Human Rights, meeting 15th July 2004).

²⁵³ Article 40(4) *CRC*.

²⁵⁴ This problem seems to be particularly pronounced in La Ceiba. The Children's Judge in La Ceiba commented that she rarely uses the measure of assisted liberty or mandatory residence because she does not believe that IHNFA has the capacity to enforce this measure (Irasema Guillen de Martinez, Children's Judge, La Ceiba, meeting 13th July 2004). The Regional Director of IHNFA acknowledged that the lack of resources prevented them from being able to run and supervise these alternatives (IHNFA La Ceiba, Martha Elena Trochez, Regional Director, IHNFA, La Ceiba, meeting 13th July 2004) and the Prosecutor for Children in Tegucigalpa also criticised the lack of alternatives available (Nelly Vallejo, Children's Prosecutor, La Ceiba, meeting 13th July 2004).

²⁵⁵ *Análisis Cuantitativo de la Justicia Penal Juvenil en Honduras, op.cit.*

percentage of the total of all children charged with a crime, who go through any stage of the trial process e.g. where a case is dropped or children benefit from the processes of conciliation, judgement of opportunity and remission. In fact, out of the 157 children sentenced in 2003, 59% were given a custodial sentence. However, making an objective assessment on the suitability of the sentences imposed by the Courts is hampered by the lack of any useful statistics on the crime, the corresponding sentence and the age of the child.

There were mixed reactions of the staff and directors of the institutions²⁵⁶ as to whether the children that they were accommodating needed to be in the detention centres. The director of El Carmen believed that some of the children did not need to be locked up²⁵⁷, while the Director of Renaciendo and Jalteva had faith in the courts as to the suitability of the placement.

²⁵⁶ Eric García, Director of Renaciendo, visit 20th July 2004, Rosa Maradaga, Director of Sagrada Corazón de Maria Cándida, visit 20th July 2004, Hugo Majea Tabora, Director, El Carmen, visit 12th July 2004, and Jorge Díaz, Director Jalteva, visit 22nd July 2004.

²⁵⁷ At Renaciendo there are cases of minor theft, e.g. theft of a bag of bread, or a pair of boots (Julio Sanchez, Social Counsellor at Renaciendo, IHNFA, meeting 8th July 2004).

CHAPTER 3 THROWING AWAY THE KEY Juvenile Detention Centres in Honduras

There are only four institutions in Honduras that accommodate children who have been sentenced by the Courts or who are subject to precautionary measures while under investigation.²⁵⁸ IHNFA is responsible for running and funding these centres.²⁵⁹

Three of the institutions are closed detention centres with armed guards on duty 24 hours a day - Renaciendo, located outside Tegucigalpa city, and El Carmen, in San Pedro Sula, for boys and Sagrada Corazón de Maria, situated next to Renaciendo, for girls.

Located in the countryside in the County (Departamento) of Francisco Marazon, Jalteva has an open regime and minimal security. The centre not only accommodates boys that have been convicted of committing a crime but also boys that the Courts have decided are at social risk²⁶⁰. The other two boys' detention centres can also ask the Judge to make referrals to Jalteva if staff believe that a child would respond well to its regime. Renaciendo²⁶¹, in particular, is informally seen as a screening institution for Jalteva.

The reliance on closed detention centres is contrary to international standards, which state that open detention centres are preferable to closed facilities²⁶² and should be given priority.²⁶³ Centres should also be decentralized to enable children and families to maintain contact²⁶⁴. However, the centres are located in the two main cities in Honduras, huge distances from where a number of the detainees live and generally isolated from the communities in contravention of Rule 30 *UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLS)*²⁶⁵.

At the time of visiting the institutions in July 2004, the centres accommodated approximately 400 children:

²⁵⁸ Unless otherwise stated all information on the institutions is taken from on site visits and meetings with the directors of the institutions: Eric Garcia, Director of Renaciendo, visit 20th July 2004, Rosa Maradaga, Director of Sagrada Corazón de Maria Candida, visit 20th July 2004, Hugo Majea Tabora, Director, El Carmen, visit 12th July 2004, and Jorge Diaz, Director Jalteva, visit 22nd July 2004.

²⁵⁹ Article 5(6) *Law of the Honduran Institute of Childhood and the Family*.

²⁶⁰ The law and practice relating to children at social risk is discussed in detail in Chapter 4.

²⁶¹ Renaciendo is considered to have the strictest regime of the four centres.

²⁶² Rule 30 *JDLS*.

²⁶³ Rule 19, Commentary, *Beijing Rules*.

²⁶⁴ Rule 30 *JDLS*.

²⁶⁵ Rule 30 *JDLS* recommends the establishment of small scale detention facilities that are "integrated into the social, economic and cultural environment of the community".

INSTITUTION	NON GANG MEMBERS	GANG MEMBERS	CHILDREN AT SOCIAL RISK	TOTAL
RENACIENDO	200	22 ²⁶⁶	0	222
EL CARMEN	61	20	0	81
JALTEVA ²⁶⁷	30 approx	0	40 approx	66
SAGRADA CORAZON DE MARIA	25	5	0	30
TOTAL	316 approx	47	40 approx	399 approx

According to international standards the essential aim of depriving someone of their liberty is to reform their behaviour²⁶⁸ rather than to punish them. To enable individualized treatment to be provided, in order to achieve this aim, detention centres should only hold small numbers of children.²⁶⁹ Clearly the two closed facilities for boys hold too many children to enable individual work to be undertaken, especially considering the low staff-child ratio²⁷⁰.

Treatment and Conditions in the Detention Centres

The international framework on juvenile justice provides a very detailed set of standards, which are applicable to children who are deprived of their liberty. Article 37(c) of the *Convention on the Rights of the Child* states "[e]very child deprived of liberty shall be treated with humanity and respect for inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age."²⁷¹ The *UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs)*, which apply to all children in a "public or private custodial setting, from which a person is not permitted to leave at will, by order of any judicial, administrative or other public authority"²⁷², detail the treatment that juveniles should enjoy and the

²⁶⁶ 13 Mara Salvatrucha members and seven 18 gang members

²⁶⁷ Although the Director of Jalteva was able to give the total number of children at the centre, he was unable to provide exact figures of the number of children referred for reasons of social risk and those that had been convicted of committing a crime.

²⁶⁸ e.g. Article 5(6) *American Convention on Human Rights*.

²⁶⁹ Rule 30 *JDLs*.

²⁷⁰ Staffing levels at the institutions are discussed below.

²⁷¹ "All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person" (Article 5(2) *ACHR*). Rule 28 of the *JDLs* states "[t]he detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations".

²⁷² Rule 11(b) *JDLs*.

conditions of their detention. These standards are backed up²⁷³ by the *Standard Minimum Rules for the Treatment of Prisoners*.²⁷⁴

Reflecting a number of these international standards, the *Children's Code* sets out the rights of children when they are detained. Under Article 199 children have the right to:

- a) fulfil the measure that has been imposed in special centres and never be placed in prisons;
- b) be kept informed about the regime to which they will be subjected and the disciplinary measures that shall be applicable to them;
- c) effective, regular and private legal advice
- d) continue to receive their educative development or professional training. The corresponding certificates shall not make reference to the child's detention or the centre;
- e) carry out recreational and fun activities;
- f) receive appropriate information about their rights and about the complaints procedures;
- g) be object of legal transfers;
- h) be separated from other children who could have a bad influence on their conduct and over 18-year-olds;
- i) live in appropriate conditions of hygiene in an appropriate physical environment;
- j) wear normal clothes of a good condition that are not distinctive in their condition, by the fact they are a uniform or because of emblems, monograms or other distinguishing characteristics;
- k) to manifest their religion that they freely chose;
- l) receive medical attention and the specialized treatment that they require;
- m) receive visits from the family and communicate with them in a regular way;
- n) maintain contact with the community in order to socially reintegrate;
- o) receive appropriate treatment from the authorities responsible for their custody, to endeavour to avoid the use of force or the employment in whatever class of arms in fulfilment of their tasks. Collective sanctions shall not be applied nor demands for them to act as agents to maintain order or discipline;
- p) reintegrate gradually and progressively to social normality and be informed about the steps foreseen for this reintegration;
- q) be able to rely on appeals that guarantee these rights.

In order to protect children while they are detained, the *CRC* demands that institutions accommodating children shall be governed by national standards, which address staffing, health and safety.²⁷⁵ The absence of such written

²⁷³ "Efforts shall be made to implement the relevant principles laid down in the *Standards Minimum Rules for the Treatment of Prisoners* to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality" (Rule 27.2, *Beijing Rules*).

²⁷⁴ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by United Nations Economic and Social Council resolution 663 C (XXIV) of 31 July 1957; and amended – new rule 95 added – by Economic and Social Council resolution 2076 (LXII) of 13 May 1977.

²⁷⁵ Article 3(3), *CRC*.

standards would be a violation of the Convention. Directors and staff gave differing accounts of the existence of standards. It seems that standards do indeed exist and have existed since the time of the Junta Nacional de Bienestar but are implemented and disseminated to staff to varying degrees in the different institutions.

Despite these written standards, the Prosecutor for Children, the Public Defenders²⁷⁶ and NGOs expressed their continuing dissatisfaction with the conditions in the centres, the lack of resources and the absence of adequate rehabilitation and reintegration programmes.

MIXING CONVICTED AND UNCONVICTED JUVENILES

There are no separate institutions for children who under investigation or awaiting trial in Honduras. Unconvicted juveniles must therefore be held with other juveniles in one of the four detention centres.

Due to the over use of deprivation of liberty as a precautionary measure, the majority of children in the closed detention centres have not been sentenced. In July 2004, 110 out of the 200 non-gang members accommodated in Renaciendo, 70 out of the 81 detainees in El Carmen, and 11 out of 30 girls at Sagrada Corazon de Maria, were there under precautionary measures. Jalteva very rarely holds children during investigation - they have only had two such cases in the last two years.

Renaciendo: Since September 2003²⁷⁷, convicted and non-convicted non-gang members have been accommodated in two separate buildings on the site in Renaciendo. However, apart from this separation at night, there is no discernable difference in their treatment and the two groups mix together during the day. The members of Mara Salvatrucha and 18 are held separately from the rest of the detainees and from each other in two different buildings, slightly away from the other buildings, but there is no segregation of convicted and non-convicted gang members. The gangs use the facilities at the Centre at different times from the rest of the detainees and at different times from each other.

El Carmen: There is no separation of convicted and non-convicted detainees as the institution does not have adequate inhabitable buildings to enable segregation. The main concern of the administration is to keep the two gangs separated from each other, as well as from the other children. Detainees are therefore held in separate buildings on the site and each group uses the facilities in the centre at different times. This leads to children being locked in their cells for long periods of the day waiting for their turn to use either the sports facilities or the washing facilities.

Sagrada Corazon de Maria: Convicted and non-convicted girls sleep in separate rooms but during the day they all mix together and are subject to the same regime. Gang members also mix with non-gang members.

²⁷⁶ Nora Urbina, Children's Prosecutor, meeting 28th June 2004, and Paulina Perez de Licon, Director of Public Defence, meeting 1st July 2004.

²⁷⁷ Julio Sanchez, Social Counsellor at Renaciendo, IHNFA, meeting 8th July 2004.

Jalteva: Although boys who are there for social risk reasons and those who are there because they have committed a crime are housed separately on the site, the two groups mix during the day for recreation, vocational activities and at meal times. However, the centre runs two separate rehabilitation programmes. The Director stated that the children have to be mixed because there are not enough personnel to enable two completely separate programmes to be run. Although convicted children are placed in Jalteva because they have been deemed suitable for rehabilitation and a less strict regime, and are therefore less likely to have a negative influence on other children, children who have been convicted of serious offences (including murder) have been referred from Renaciendo for good behaviour.

Such mixing has arisen, in part, from the priority given by the administrations to the separation of gang members from the rest of the inmate population for reasons of safety over the separation of convicted and unconvicted juveniles. However, non-separation is also due to a lack of facilities (including habitable buildings on the sites), resources and staff.

The practice of holding convicted and non convicted children together in these ways not only contravenes the *Constitution* and the *Children and Adolescents' Code*²⁷⁸ but also violates fundamental international standards, which provide that "accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons"²⁷⁹. Untried juveniles do not benefit from different treatment from convicted juveniles in these institutions (for example they are restricted in how often they see their families), which also offends against their rights to be presumed innocent and treated as such²⁸⁰. The principle of being innocent until proven guilty is also enshrined in Article 89 of the *Constitution*.

The continued mixing of untried and convicted juveniles, a practice which the Committee on the Rights of the Child has stated it deplores²⁸¹, must be addressed as a matter of urgency especially considering that the population of these centres will continue to rise as a consequence of the State's current crackdown on juvenile crime.

DETAINING CHILDREN WITH ADULTS

International standards are clear that children must be separated from adults when deprived of their liberty²⁸².

²⁷⁸ Article 84 and Article 199(g) respectively. The *Children and Adolescents' Code* provides that children shall be separated from other children that could negatively influence their conduct.

²⁷⁹ Article 10(2)(a) *ICCPR*. This practice also violates the *Standard Minimum Rules for Prisoners* which provide "Untried prisoners shall be kept separate from convicted prisoners" (Rule 8(b)) and the *ACHR* which states "Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons" (Article 5(4)).

²⁸⁰ Rule 17 *JDLs*.

²⁸¹ CRC/C/15/Add.21, Jordan, Concluding Observations, 25/04/94, Para 16.

²⁸² Article 37(c) *CRC*, Rule 13.4 *Beijing Rules*, Article 10(2)(b) *ICCPR*, Rule 8(d) *Standard Minimum Rules on the Treatment of Prisoners*, Article 5(5) *ACHR*.

Despite domestic laws reflecting these standards²⁸³, up until the late 90s and early 2000s children were regularly detained in adult prisons following an administrative policy pursuant to a ruling of the Supreme Court in 1995²⁸⁴. In 1999, Human Rights Watch listed Honduras among those countries where children were being detained with adults in abusive conditions,²⁸⁵ in which children were often subjected to physical and sexual abuse by other prisoners, torture and even death.²⁸⁶

This practice was challenged before the Inter-American Commission on Human Rights by the Centre for Justice and International Law (CEJIL) and Casa Alianza.²⁸⁷ The petitioners alleged that street children were being incarcerated alongside adult prisoners in the prison just outside Tegucigalpa, and abused by those adult prisoners both physically and sexually. The Inter-American Commission condemned this practice not only for incarcerating children with adults but also for incarcerating children for living or working on the street rather than for having committed any crime. The Commission recommended the immediate transfer of the children to detention centres appropriate to their status as a minor.

Since this ruling, there has been a concerted effort by the State to ensure that children are not detained with adults in detention centres and while held at police stations. However, anecdotal evidence suggests that this separation is not always observed, especially in police stations outside the main cities, which have not been provided with sufficient resources to be able to implement this segregation.²⁸⁸

PHYSICAL CONDITIONS AND SANITATION

All the Directors complained about the physical conditions of their buildings and a lack of resources to improve them. El Carmen and Renaciendo are in particularly bad condition. They both suffer from sewage leaks, with one of the accommodation units in El Carmen suffering from water permanently on the floor. Many of the buildings do not give adequate protection against the elements and nearly all of the buildings where the children sleep in all the centres lack mosquito nets.

²⁸³ The *Constitution* prohibits the placement of a person under the age of 18 years in a jail (Article 122). Article 199(g) of the *Children and Adolescents' Code* also demands the separation of under-18s from over 18s.

²⁸⁴ *Banc* 16th January 1995. The practice continued even though the Supreme Court revoked the decision in 1st January 1996.

²⁸⁵ Human Rights Watch, *HRW World Report 1999: Children's Rights-Juvenile Justice* <www.hrw.org/worldreport1999/children/child3.html>, p. 4.

²⁸⁶ Information taken at Gutman, W. E., *Juvenile Justice in Honduras: Chaos, corruption and impunity* (1997). <www.oneworld.org/news/reports/jun97_gutman.html>.

²⁸⁷ *Minors in Detention v. Honduras*, Case 11.491, Report N° 41/99, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 573 (1998).

²⁸⁸ For example, during visits of representatives of the National Commission for Human Rights to the main police station in Roatan (Bay Islands), it was found that children were being detained with adults. When they are separated from the men they are placed with the women in an even smaller cell. The police themselves have made a complaint to the central authorities that the limited facilities do not allow them to separate children from adults. (Maria del Carmen Garcia, National Commission for Human Rights, Regional Office, La Ceiba, meeting 13th July 2004).

The Director of El Carmen said they were in need the most basic equipment. He stated that the centre used to be a good quality institution but, due to a lack of investment, the buildings and facilities have deteriorated to the dire state they are now in.

Sanitation at the two closed detention centres for boys is especially poor and requires urgent attention. Although, the sanitation has improved recently at El Carmen – the boys used to have to go to the toilet in bags because there were no toilets in the accommodation blocks – the toilets that have been installed have no doors and are not maintained properly leading to unsanitary conditions. The boys at Renaciendo complained that although they are told to clean their dormitories and bathrooms, they are not provided with any cleaning products unless they pay for them out of their own pocket. The toilet facilities in general are unsanitary and offer no privacy. In one of the accommodation blocks a toilet that had been ripped had not been replaced.

Unfortunately, due to a lack of resources, unless the detainees provide it themselves, the inmates are rarely given toilet paper, soap, detergent, toothpaste and toothbrushes – the things needed to maintain a decent level of hygiene. This lack of materials is particularly concerning bearing in mind that three of the girls detained in Sagrada Corazon de Maria have their babies with them.

The failure to meet the most basic standards for institutional care violates international rules. According to the guidelines for physical environment and accommodation for juvenile facilities outlined in Rule 31 of the *JDLs*, "*juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity*". In particular, Rule 34 of the *JDLs* states, "*sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner*".²⁸⁹

The increasing number of children being placed in detention and the consequent overcrowding are exacerbating the already poor conditions. The conditions will continue to deteriorate unless the State commits adequate resources to address the decaying infrastructures of these institutions and meet their growing needs.

FOOD AND NUTRITION

The management of funds for feeding the children varies between institutions. At El Carmen the food is purchased and delivered via IHNFA, but in Renaciendo the administration is in charge of its own budget for food.

The Director of El Carmen complained about a lack of food (there is a budget of 7000 lempira per week for 81 children, which works out at 12.35 lempira per child per day – approximately GBP£0.41p and US\$0.69) and showed the food stocks in the kitchens which, considering the need to feed 81 children, were very low. However, the Director of Renaciendo maintained that the food

²⁸⁹ Principle 15 *Standard Minimum Rules for the Treatment of Prisoners* provides that prisoners shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

his institution provided was sufficient, even though he has less lempira per head per day to spend (35,000-40,000 lempira per 15 days – approximately 12 lempira per child day). The boys disagreed, complaining about a lack of food, a situation verified by one of the members of staff.²⁹⁰

Jalteva does not suffer from the same shortages, as the children benefit from the products that are grown on the site, which supplements the food provided through its budget.

Limited provisions of food are in violation of Rule 37 *JDLs*, which states "*Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health... Clean drinking water should be available to every juvenile at any time*". While malnutrition exists in Honduras and access to sufficient nutrition is limited for a large percentage of the population, where the State takes responsibility for the care of children, they are under a duty to provide sufficient nutrition to maintain the health of those children. Claiming that the children are no worse off than much of the population is not a justification for failure to provide sufficient food.

SLEEPING ARRANGEMENTS

Rule 33 *JDLs* states: "*Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be cleaned when issued, kept in good order and changed often enough to ensure cleanliness*".²⁹¹

²⁹⁰ Julio Sanchez, Social Counsellor at Renaciendo, IHNFA, meeting 8th July 2004. However, it must be acknowledged that during the visit the lunch served to the children was balanced and seemed adequate.

²⁹¹ Also see Principle 19 *Standard Minimum Rules for the Treatment of Prisoners* "*Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure cleanliness*".

Standards vary in the four institutions. In Jalteva the children sleep on their own beds in spacious dormitories, and in the girls detention centre, there are single or shared rooms with sufficient beds. However, in Renaciendo, the young people are packed together in overcrowded rooms in triple 'bunk beds' or sleep on mattresses on the floor²⁹².

El Carmen does not have enough mattresses for all the detainees and the Director complained about a lack of bedding. The Director of Sagrada Corazon de Maria also complained of a lack of bedding especially with regards the babies that are there with their mothers.

KEEPING OF PERSONAL POSSESSIONS

In all the detention facilities the detainees are able to keep personal possessions. In Jalteva they make lockers in the carpentry class, which are used by the detainees. This is in conformity with Rule 35 *JDLs*, which states "*the possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile*".

CLOTHING

The *JDLs* provide that "[t]o the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating"²⁹³.

Children do not wear uniforms at the detention centres. While many of the children have adequate clothing, other children, especially those placed for reasons of social risk at Jalteva and those children who do not have families or whose families live far away, often only have the clothes they arrive in. Many of the children do not have shoes or are unable to replace their shoes when they outgrow them. Unfortunately, the budgets of the centres do not cover the purchase of clothes and so the centres must rely on outside donations directly made to the Centre or through IHNFA and the generosity of staff.

DISCIPLINE

The Directors of the centres stated that there are standards that govern imposition of disciplinary measures. The existence of such written standards is in accordance with Rule 68 of the *JDLs*. Disciplinary sanctions that can be imposed include making the children clean the bathrooms, making them run around the fields and preventing them from participating in sporting activities.

Corporal punishment

The Committee on the Rights of the Child has consistently said that use of corporal punishment in institutions is incompatible with Article 19²⁹⁴ and

²⁹² In 2004, GOAL made a donation of mattresses to Renaciendo in 2004 to try to address the problem of children sleeping on the floor.

²⁹³ Rule 36.

²⁹⁴ States have a duty to protect children from all forms of physical violence.

Article 37(a)CRC.²⁹⁵ All of the UN minimum standards and norms prohibit corporal punishment.²⁹⁶ The Committee has said that such disciplinary sanctions should be prohibited in legislation and supported by the possibility of punishment for offenders.²⁹⁷

According to the Directors of the institutions, corporal punishment is not used. Further, there were no reports or complaints of systematic corporal punishment being used in the centres from NGOs or the children in the institutions.

Solitary confinement

Although not viewed as solitary confinement by the Directors, this measure is used as a means of discipline by the staff at Jalteva and Sagrada Corazan de Maria²⁹⁸. The Directors reported locking children in rooms away from the other detainees as means of calming the child down. In Jalteva the children can be placed in a storeroom in each of the accommodation blocks. It has light and windows but is dirty and not an appropriate environment in which to place a child.

This practice violates rule 67 JDLs - "*All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including ... placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned*".

Denial of contact

El Carmen and Jalteva²⁹⁹ both deny children contact with their families as a disciplinary measure. Such a measure is in clear violation of Rule 67 JDLs which states that "*denial of contact with family members should be prohibited for any person*" and the imposition of this measure as a punishment should be ended immediately.

MENTAL AND PHYSICAL HEALTH

Medical facilities

²⁹⁵ "No child shall be subject to torture or other cruel, inhuman or degrading treatment or punishment." As well as violating the CRC, in its General Comment on Article 7 of the ICCPR, the Human Rights Committee (the instrument's monitoring body) stated that corporal punishment, including its use for educative or disciplinary measures, violates Article 7, which prohibits cruel and inhuman or degrading treatment or punishment (General Comment No.7: Torture or cruel, inhuman or degrading treatment or punishment (Article 7), 30th May 2005). Further, the Human Rights Commission in its 2001 resolution on torture and other cruel, inhuman or degrading treatment or punishment reminded Governments that, as well as being inhuman and degrading, the corporal punishment of children could amount to torture (ECN.4/RES/2001/62, para 5).

²⁹⁶ Rule 17.3 *Beijing Rules*, Rule 67 JDLs, para 21(h) & 54 *Riyadh Guidelines*.

²⁹⁷ Report on the twenty-fifth session, September/October 2000, CRC/C/100, State Violence Against Children (September 2000), para. 688.8.

²⁹⁸ Sagrada Corazon de Maria has a 'manual' on discipline. When the girls first arrive they are told of the disciplinary structure.

²⁹⁹ It is unclear whether this measure is used in Renaciendo. Although the Director said that it is not imposed, one of his social guidance counsellors stated the contrary was true (Julio Sanchez, Social Counsellor at Renaciendo, IHNFA, meeting 8th July 2004).

Both the *Standard Minimum Rules on the Treatment of Prisoners*³⁰⁰ and the *JDLs*³⁰¹ lay down detailed standards for access to medical facilities for detention centres. Juveniles have the right to access medical treatment, psychiatric services and dental treatment and preferably to receive these services in the community in which the detention centre is located in order to encourage reintegration. However, every institution should be able to provide immediate access to medical facilities and equipment in emergencies and have staff who are trained to deal with medical emergencies.³⁰²

The provision of medical treatment in the centres varies hugely from institution to institution. For example, while Renaciendo has a medical centre, a doctor, a nurse and a visiting dentist, El Carmen has no medical staff at all. To compound this situation, centres often lack any transportation to take children to receive treatment³⁰³. This is of particular concern as many of the children who arrive at the centres have medical and psychiatric problems. Many are malnourished from living on the streets, are suffering from skin diseases and STDs and are addicted to drugs. The institutions reported that cases of HIV/AIDS are rare. However, the institutions do not have facilities to test or treat infected children.

In all the detention centres, staff tend to check the children for signs of abuse when they arrive to ensure that they have not suffered any maltreatment at the hands of the police³⁰⁴. Although there has been a reported drop of such cases, staff at El Carmen, in particular, reported that they were still seeing cases of children who had injuries that they attributed to the police.

While carrying out a medical examination of the child when they arrive is in accordance with the *JDLs*, a physician should carry the examination out rather than just a member of staff.³⁰⁵

Drug addiction

The *JDLs* provide that "[t]he medical services provided to juveniles should seek to detect and should treat any... substance abuse... that may hinder the integration of the juvenile into society"³⁰⁶. Specifically, "[j]uvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles"³⁰⁷.

³⁰⁰ Rules 22-26.

³⁰¹ Rule 49-55 *JDLs*.

³⁰² Rule 51 *JDLs*.

³⁰³ The Director of El Carmen recalled having to walk one child, who had TB, to a local hospital to receive treatment. Jalteva is assisted by Medicines Sans Frontiers in taking groups of the children to the capital for dental treatment once a week.

³⁰⁴ Article 263 *Children and Adolescents' Code* states that children shall be examined immediately on their arrival to the centres by a doctor to check their mental and physical conditions and to determine whether they have been subjected to maltreatment.

³⁰⁵ Rule 50 *JDLs*.

³⁰⁶ Rule 51 *JDLs*.

³⁰⁷ Rule 54 *JDLs*.

None of the centres have adequate services to deal with drug addiction – detoxification facilities, special programmes or counselling – although many of the children coming into the centres are addicted to drugs, mainly cocaine and resistol (glue). A lot of the children referred to Jalteva for being at social risk are detained for taking drugs. In Renaciendo, the guidance counsellors do try to address drug addiction on an ad hoc basis, but this is not a substitute for a developed programme of drug rehabilitation run by qualified personnel.

Mental health, self harm and suicide

The *JDLs* recognise that juveniles may be suffering from mental health issues which may be exacerbated by being deprived of their liberty. Rule 52 therefore provides that any concerns about the mental health of the child or concerns that continued detention has or will injuriously affect the physical or mental health of the child, should be reported immediately to the director.

Again there were varying accounts of the extent of the problem of self-harm and suicide. The institutions reported that such cases were rare. However, staff at Renaciendo reported that all sharp implements including metal knives and forks had been removed not only to prevent violence, but also to prevent self-harming and suicide. They had also removed shaving equipment (razors) and objects made of glass.

However, apart from in Sagrada Corazon de Maria, which provides a psychologist who runs group therapy and works with the families of the detainees³⁰⁸, the institutions do not provide any mental health services. It is therefore likely that many cases of mental health issues requiring treatment are therefore overlooked by staff at the other institutions and left untreated.

The lack of medical and psychological assistance in these institutions, which often accommodate drug addicts and violent young offenders, is a very serious gap in the care and rehabilitation that is offered to young people.³⁰⁹

CONTACT WITH FAMILY

Parents, legal guardians or relatives should be informed of the admission, transfer and release of the child without delay.³¹⁰ However, parents are not always informed of the fact that their child has been arrested or has been placed in one of the institutions. According to GOAL³¹¹, during their visit to Renaciendo, they met one detainee whose parents had not been informed that he was there, prompting the NGO representative to phone the child's parents on his mobile phone. This is not unusual. Sometimes parents turn up at Renaciendo with a photo of a child that they may not have seen for six months to find out if they have ended up there.³¹²

³⁰⁸ Renaciendo have not yet replaced the psychiatrist that was murdered last year.

³⁰⁹ Rule 26 *Beijing Rules*, Commentary.

³¹⁰ Rule 22 *JDLs*.

³¹¹ Jorge Valladeres, Programme Manager, GOAL, meeting 18th June 2004.

³¹² Julio Sanchez, Guidance Counsellor at Renaciendo, IHNFA, meeting 8th July 2004.

Children have the right to receive visits from their families and communicate with them regularly³¹³. This is in conformity with Article 37(c) *CRC* which provides that "... every child deprived of liberty... shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances". The *JDLs* specify that children should receive regular visits, once a week, and not less than once a month.³¹⁴

Although family members are permitted to visit the children once a week, it is acknowledged that, as many of the children's parents and families live far away from the centres due to their centralization³¹⁵, visiting is difficult because of distance and cost.

The strict rota of visiting hours in the two closed boys detention centre³¹⁶, compounds this situation. This visiting system is implemented to make life easier for those running the centre rather than having in mind the best interests of the child or placing weight on the fact that families have to work and/or travel long distances and may not be able to visit on the days specified.

Recognising the negative effect that a lack of contact with their families has on children, the Director of Jalteva encourages families to visit whenever they can and provides accommodation next to the Centre so that families can stay for a number of days.

Apart from Jalteva, the institutions rarely allow the child to visit their homes and families outside the institutions, even when their sentence is coming to an end, contrary to Rule 59 *JDLs*.

Under the *JDLs*³¹⁷ juveniles have the right to communicate by telephone at least twice a week with whoever they chose. However, the lack of facilities prevents children exercising their right. El Carmen does not even have a phone on the premises.

The exceptional circumstances referred to Article 37(c) *CRC*, which would justify children not being allowed to maintain contact with their families, do not include the State's failure to ensure that children have access to means of communication and are close enough to their parents that they can reasonably be expected to visit. Instead they refer to situations where preventing contact is in the child's best interests.³¹⁸

³¹³ Article 199(m) *Children and Adolescents' Code*.

³¹⁴ Rule 60.

³¹⁵ Centralization of institutions violates Rule 30 *JDLs*.

³¹⁶ In order to keep families of the different gangs apart, relatives of the two gangs and non gang members have only one specified day a week that they can visit.

³¹⁷ Rule 61.

³¹⁸ Hodgkin R., and Newell, P., *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF, 2002, 2. ed.), p. 554.

CONTACT WITH THE COMMUNITY

The detention centres are closed and the juveniles have very limited contact with the outside world³¹⁹ contrary to Article 199(n) of the *Children's Code*, and international standards which recognise that such contact is very important for the reintegration of children into society.³²⁰

Specifically, Rule 59 of the *JDLs* states that *"Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and human treatment ... and to receive special permission to leave the detention facility for educational, vocational or other important reasons..."*.

Active steps should be taken to foster open contacts between the juveniles and the local community³²¹. In particular, education should take place in the local schools wherever possible³²² and *"juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities"*³²³.

EDUCATION

The quality of education varies in the different institutions but is of a generally poor standard, understaffed and under resourced. Jalteva has the most developed education programme and has a very well stocked library due to the generosity of a previous Director of the centre and donations of national and international organisations³²⁴.

The right to education enshrined in Article 28 *CRC* continues to apply to children when they are deprived of their liberty. Specifically, *"[e]very juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible³²⁵ and, in any case, by qualified teachers through programmes integrated with the education system of the*

³¹⁹ Apart from in Jalteva, where children occasionally to carry out work in the community (e.g. children at Jalteva have been paid to make bricks and to construct a wall for a local school), children accommodated in the other institutions do not appear to have the opportunity to interact with the local community.

³²⁰ Rule 8 of the *JDLs* states, *"The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juvenile and the local community"*.

³²¹ Rule 8 *JDLs*.

³²² Rule 38 *JDLs*.

³²³ Rule 45 *JDLs*.

³²⁴ Jalteva is the only institution to comply with Rule 41 *JDLs* to provide access to a library.

³²⁵ The Director of El Carmen complained that it is difficult to fulfil the sentences of the Judges, especially in terms of semi liberty where the children are supposed to attend education outside the school, because there is no transport. In addition, the guidance counsellors do not feel safe enough to accompany the children outside of the detention centre, as in the past staff have been attacked by the children.

country so that, after release, juveniles may continue their education without difficulty”³²⁶.

The lack of equipment in the detention centres has to be viewed in the context of the facilities for education available in the country as a whole. Although the educational facilities are poor, it has to be remembered that the education system as a whole, especially in the rural areas, suffers from a shortage of teachers and a lack of equipment and resources.

VOCATIONAL TRAINING

Rule 42 *JDLs* provides that “[e]very juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment”.

The institutions provide some access to vocational training. Jalteva has the best opportunities for training offering carpentry, metal work, and brick making, as well as agricultural training. Rencaciendo runs workshops for hammock making, handicrafts, sewing, computers, and a barbers shop, while Sagrada Corazon de Maria has classes in computing, beauty, sewing, cooking and handicrafts. However the equipment is limited in all the institutions and the gang members in Renaciendo are not permitted to take part in any of the training that uses equipment considered potentially dangerous in the wrong hands. El Carmen offers no vocational training at all.

RECREATION

Although each institution has physical recreation timetabled into each day’s activities, in the two closed detention centres for boys, children are prevented from engaging in as much exercise in the open air as the *JDLs*³²⁷ and the *Standard Minimum Rules for Prisoners*³²⁸ demand³²⁹. In Renaciendo there is a two-hour slot for recreation each day but due to the need to keep gang members separated from each other and the rest of the detainees, they have to be let out in turn in their groups. Therefore, the children have less than one hour of outside activity each day. El Carmen has the same policy but, in addition, on visiting days children are not let out at all to prevent contact between gang members and the families of other gang members. Consequently, children are not let out for exercise two days a week.

If the weather is bad, then children can be kept locked up all day in El Carmen. Not only does El Carmen lack sufficient outdoor space but also there are no indoor activities to keep the children occupied. Consequently, boredom is a huge problem. The boys in both El Carmen and Renaciendo complained that they had nothing to do all day. Such conditions are not conducive to rehabilitation.

³²⁶ Rule 38 *JDLs*.

³²⁷ Rule 47.

³²⁸ The *Standard Minimum Rules for the Treatment of Prisoners* specifies that every prisoner shall have at least one hour of suitable exercise in the open air daily if the weather permits (Rule 21(1)). Further “[y]oung prisoners... shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided” (Rule 21(2)).

³²⁹ In Jalteva, however, there is the space and time to engage in volleyball, football and basketball and there is also a music room.

STAFFING OF THE INSTITUTIONS

Research has shown that the presence of female staff provides a level of protection for the children from physical violence and paedophile activity in residential institutions. Therefore, it is positive that the institutions employ men and women to work with children³³⁰. The majority of the staff at Sagrada Corazon de Maria are female in keeping with the *Beijing Rules* 26.4 and 22.2, which state that "young female offenders placed in an institution deserve special attention as to their personal needs and problems..." therefore, "juvenile justice personnel shall reflect... [a] fair representation of women and minorities in juvenile justice agencies".

However, there is a shortage of staff (psychiatrists, psychologists, doctors, nurses, social workers and teachers) at the institutions. This shortage is particularly serious at El Carmen. There are only two or three guidance counsellors on duty during each shift to deal with 81 children. Without sufficient staffing, the role of workers is limited to controlling the children rather than carrying out any effective rehabilitation work with them.

The lack of staff is compounded by an absence of specialist training on working with children who have committed crimes and those who are gang members. The *JDLs* recognise that there is a need for qualified and specialist staff, but that the authorities should also offer in-service training to improve the knowledge of their staff. Rule 85 specifically recommends that personnel receive training on child psychology, child welfare and international standards and norms of human rights and the rights of the child. Although Article 265 *Children and Adolescents' Code* states that staff at the centres shall be made aware of the *CRC*, no such training takes place in practice.

³³⁰ It must be noted that all the guards are male.

Guards

Although the staff at the Centres do not wear uniform, armed uniformed guards from the Social Preventive Services Police are on duty in the two closed centres for boys. However, these guards remain outside the dormitory areas at night.

Assigning armed personnel to the centres is contrary to Rule 65 of the *JDLs* which provides that "*the carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained*". However, the Directors emphasised that the presence of guards, who are sometimes called upon to intervene in violent outbursts, is necessary to control the centre populations³³¹³³².

Despite the presence of armed guards, children frequently escape from the centres, especially from El Carmen. In one recent break out from El Carmen, four young people managed to obtain a saw and escape during the night.

MECHANISMS FOR MONITORING, COMPLAINTS AND REVIEW OF PLACEMENT

Review of the sentence imposed on the child

According to Article 25 of the *Convention on the Rights of the Child*, "*State Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.*"

The *Children and Adolescents' Code* states that placements of juveniles in these detention centres must be reviewed by the Judge who imposed the sentence every six months, at which time the Judge can vary the order³³³. In practice, periodic reviews are carried out.

For these periodic reviews, the social workers and guidance counsellors at the centres produce reports on the child's progress and behaviour and can include recommendations for the Judge. However, the IHNFA staff in San Pedro Sula complained that the Judges do not adequately take their opinions into account.³³⁴

Monitoring and complaints mechanisms

The *JDLs* recognise that institutions should be independently monitored. "*Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to*

³³¹ For example, at Renaciendo in September 2004 during family visiting hours a gang member threw a homemade grenade at the other gang members' building. In a subsequent search a handgun was discovered in one of the dormitories. The lax security, which enabled this attack to take place, violates the State's duty to protect children from all forms of physical violence (Article 19 *CRC*).

³³² Jalteva uses armed watchmen but the Director stated that the role of the guards is to protect the farmland rather than to control the boys.

³³³ Article 198.

³³⁴ In fact, only the Children's Judge in Tela was praised for consulting IHNFA staff in San Pedro Sula before handing down a sentence (Lydia Dolmor, Chief of Reeducation IHNFA, San Pedro Sula, meeting 12th July 2004).

*conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function.*³³⁵ Monitoring serves to protect the rights of children in the institutions and ensure that standards are being met. However, in practice there is no systematic monitoring of the conditions of the institutions and the treatment the children are receiving.

According to international standards, children should have the right to complain to the Director of the detention facility³³⁶, and have an unfettered right to make a complaint to a central authority, judicial authority or other appropriate authorities about the conditions in the centre or his/her treatment³³⁷ The *JDLs* also encourage the establishment of an independent office, such as an ombudsman, to receive and investigate complaints from children deprived of their liberty.³³⁸

There seems to be internal mechanisms of complaints in all the centres. The children can complain at first instance to the guidance counsellor, and then to the Director if the issue remains unresolved.

A lawyer (from IHNFA), who can deal with complaints of the children, visits Renaciendo and Jalteva twice a week. Jalteva has a directing council, which can hear complaints against staff. Children can also make complaints to the Public Defenders, Judges, the Prosecutor's Office and the National Commission on Human Rights who visit the institutions with varying frequency.

However, these mechanisms are not an adequate substitute for an independent body that primarily looks after the interests of children, with whom detainees can build up a relationship of trust. The continuing violation of children's rights in the Centres is testament to this. In addition to the establishment of an ombudsman, regular visits by NGOs that are mandated to record complaints and represent children's interests would contribute to raising standards and better protecting the rights children.

REHABILITATING YOUNG OFFENDERS

The primary purpose of deprivation of liberty must be the rehabilitation and reintegration of the child³³⁹ rather than punishment or the protection of society. In order to achieve this aim "*[j]uveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development*"³⁴⁰.

³³⁵ Rule 72 *JDLs*.

³³⁶ Rule 75 *JDLs*.

³³⁷ Rule 76 *JDLs*.

³³⁸ Rule 77 *JDLs*.

³³⁹ "*The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society*" (Rule 26.1 *Beijing Rules*).

³⁴⁰ Rule 26.2 *Beijing Rules*.

Staff at the centres reported varying degrees of effectiveness of their rehabilitation programmes, but in general there seems to be a lack of methodology applied to the rehabilitation of children and a lack of a holistic approach to addressing their needs.³⁴¹ The Director of El Carmen lamented his centre's inability to effectively work with the children and said that while he believed many of the boys could be 'saved', the conditions and lack of resources made this an incredibly difficult task, especially considering that serious offenders have to be kept with non serious offenders. However, the Director of Renaciendo stated that he believes that his detention centre provides effective rehabilitation for most of the children, although there are some children that he believes cannot be rehabilitated.

It is difficult to measure the effectiveness of the institutions' programmes as there are no re-offending statistics. None of the NGOs that were consulted believed that the two closed centres for boys carried out effective rehabilitation work. This was backed up by staff who work at the institutions.³⁴²

Working with gangs in the centres

The reform of Article 332 of the *Criminal Code*³⁴³ has led to an increase in the number of gang members being held in the detention centres. This in turn has caused increasing difficulties in maintaining security and order in the institutions as staff have found gang members more difficult to control.

Due to problems and fears of violence among the gangs, between gang members and non-gang members, and towards staff, the two main institutions for boys separates the gangs from each other and from the rest of the detainees³⁴⁴. This separation does not completely eliminate the violence, as the gang members sometimes fight between themselves for leadership, but it has significantly reduced the level of violence.³⁴⁵

However, violence against staff is a problem not only inside the centres, but also outside. In recent years, three staff members who worked for Renaciendo have been killed outside the facility including the psychiatrist, who was murdered last year. It is suspected that the 18 gang was responsible for his death.³⁴⁶

These difficulties have posed a serious obstacle to rehabilitating the young detainees. Staff are very reluctant to work with the gangs.³⁴⁷ Personnel that are assigned encounter problems in engaging with the gang members, who do not readily accept outsiders. Newly assigned personnel sometimes put themselves in danger or damage existing relationships between staff and

³⁴¹ Fermine Lainez, Supervisor of Re-education IHNFA, San Pedro Sula, meeting 10th July 2004.

³⁴² Julio Sanchez, Guidance Counsellor at Renaciendo, IHNFA, meeting 8th July 2004.

³⁴³ The impact of the reform of Article 332 *Criminal Code* is discussed in detail in Chapter 5.

³⁴⁴ Renaciendo made this separation two years ago following two separate killings between gang members of 18 and Mara Salvatrucha (Julio Sanchez, Guidance Counsellor at Renaciendo, IHNFA, meeting 8th July 2004).

³⁴⁵ Julio Sanchez, Guidance Counsellor at Renaciendo, IHNFA, meeting 8th July 2004.

³⁴⁶ Julio Sanchez, *ibid*.

³⁴⁷ Julio Sanchez, *ibid*.

inmates because they approach the young men in a counterproductive manner.³⁴⁸

Despite these acknowledged problems and lack of experience among staff, standardised methods have not been developed for working with gangs and there is limited specialist training.³⁴⁹ Generally staff use a method of trial and error which is clearly not the best way of working for either the staff or the young people they are experimenting with. The fact that staff report that gang members return time and again to the centres highlights the failure of these institutions to work effectively with these children and assist them in leaving the gangs. However, the fault lies more with the State than with the institutions themselves. While the population of gang members has risen since the reform of Article 332, there has been no corresponding increase in resources (personnel or financial) provided to the centres to enhance their programmes and the care that they offer.

The lack of facilities and treatment programmes is also a disincentive for the children to leave the gangs³⁵⁰. For example, none of the centres have been provided with or provided access to tattoo removal facilities. This severely hampers a child's chances of reintegration and indeed survival when they are released³⁵¹.

REINTEGRATION

Release

The institutions are unable to release a child without a written judicial order. Some of the centres send a reminder to the Judge three months before a child's due release date, so that the papers are delivered on time. However, sometimes their release is delayed because IHNFA does not have the transport to deliver the relevant documents to the centres.³⁵² IHNFA must obtain an agreement from the child's parents or relatives to take responsibility for his care before he is released. If none of his relatives will agree to take care of him, a judicial order can be obtained so that he can stay at the institution or be transferred to a children's home. Children are also sometimes permitted to stay at the centres beyond their release date in order to finish their education.

Children at Jalteva can be released for day or weekend visits to their family when they are nearing the end of the sentence, a practice that does not exist in the other centres. This slow integration used at Jalteva is very useful in helping with a child's reintegration.

³⁴⁸ Julio Sanchez, *ibid*.

³⁴⁹ Lydia Dolmor, Chief of Re-education IHNFA, San Pedro Sula, meeting 12th July 2004. The Director of El Carmen said that about four years ago staff received training on how to deal with gangs but the lack of resources does not allow them to employ the methodology that they learned.

³⁵⁰ In El Carmen the gang members can indicate to staff that they want to leave the gang. If the staff believe that they are serious the young people are simply moved to the building accommodating non-gang members. There is no follow up work with them and no specialist treatment.

³⁵¹ The problems of reintegration for ex gang members is discussed in detail in Chapter 5.

³⁵² Director of El Carmen.

18-year-olds

According to Article 187 *Children's Code*, when a detainee at one of the centres turns 18, the Judge is obliged to review the case and decide whether to extend or alter the measures. The Judge can decide to send the child to an adult institution (granja penal). Whatever measure is applied, including where the child is sent to the adult prison, the Children's Judge will remain responsible for the case until that person has completed his/her sentence, and IHNFA will still have an obligation to monitor the sentence. Occasionally the Judge will allow the 18-year-old to remain at the detention centre in order to complete his/her education.

There is no readily available statistical data on the measures imposed on children once they reach 18 years. 18-year-old should only be transferred to adult institution where absolutely necessary and preferably 18-21-year-olds should be kept separate from older inmates to avoid exposing them to negative influences and to avoid undoing any of the positive rehabilitation work that has been carried out at the detention centres.

Early release

As rehabilitation should be the primary aim of depriving a child of their liberty, opportunities need to be in place to allow for early release (before the end of the sentence set by the Courts) when it is determined that the child has made satisfactory progress towards their rehabilitation³⁵³.

Under the *Children's Code*, the Judge that imposed the original sentence on the child has an obligation to review the case of the child every six months to determine whether this sentence should be varied³⁵⁴. The Judge can order the child's release and impose other measures, which are outlined in Article 189 *Children's Code*. The Judge bases the decision on whether to simply release the child or to impose a conditional release on a report from IHNFA, who has an obligation to visit the child's home and place of work or study in order to prepare this report. The detention centre and the Prosecutor can also send an independent report to the Judge to recommend early release.

Post-institutional care

Without adequate support being given to the child following institutionalization, there is a high risk that any rehabilitative gains that have been made during the child's placement in the centres will be lost.³⁵⁵ International standards recommend that authorities provide a diverse range of facilities and services that can provide guidance and support "to assist juveniles in re-establishing themselves in society"³⁵⁶, including "half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society".³⁵⁷ "These services should ensure, to the extent

³⁵³ Rule 2 *JDLs*.

³⁵⁴ Article 198 *Children and Adolescents' Code*. Detention can be replaced with other measures outlined in the *Children and Adolescents' Code* (Article 189).

³⁵⁵ *United Nations Manual on Juvenile Justice, op.cit.*, p. 45.

³⁵⁶ Rule 80 *JDLs*.

³⁵⁷ Rule 29.1 *Beijing Rules*. Also see Rule 79 *JDLs*.

*possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release.*³⁵⁸ The authorities also have an obligation to lessen prejudice against such juveniles in order to facilitate reintegration into society.³⁵⁹

Support and supervision following release from one of the four institutions is one of the most limited and flawed part of the juvenile justice system. IHNFA is in charge of post-institutional care and has six regional coordinators running their education and reintegration programme. Staff should remain involved in the child's case for six months. However, the Institute lacks adequate resources (personnel and financial) to run effective programmes and therefore support children to reintegrate into society.³⁶⁰ There are no family support programmes, halfway homes, State run educational and vocational programmes or financial support.

The severe shortcomings of State support for children leaving institutions is compounded by a shortage of community and NGO reintegration programmes and assistance. While programmes with ex gang members are increasing, activities with ordinary child criminals in general remain very limited³⁶¹.

The absence of any sustained follow up by either the State or civil society puts these vulnerable children at a high risk of falling back into their old lifestyle and re-offending. The lack of State programmes also violates Article 199(o) *Children's Code*, which provides the children have the right "to be reintegrated gradually and progressively to normal society and to be informed about the steps foreseen for the said reintegration".

However, there are no available statistics on re-offending, which can be used to highlight to shortcomings of both the rehabilitation and reintegration activities of the authorities. There only exists anecdotal evidence of the directors and staff of institutions, who recall that they see a large proportion of the children back time and time again, suggesting that the regime in the centres and the limited post institutional support do little to prevent re-offending.³⁶²

³⁵⁸ Rule 80 *JDLs*.

³⁵⁹ *ibid*.

³⁶⁰ Currently, in San Pedro Sula, there are two members of staff dealing with 60 cases relating to alternatives and reintegration, who do not have the logistics (i.e. transportation) to support their activities (Fermine Lainez, Supervisor of Re-education IHNFA, San Pedro Sula, meeting 10th July 2004). IHNFA in La Ceiba does not have the resources to run its reintegration programme. They only have one psychologist and one social worker to cover the whole region. The most that staff can do is make a report to the Judge on whether a child is following the measures that have been imposed (IHNFA La Ceiba, Martha Elena Trochez, Regional Director, meeting 13th July 2004). Staff at Renaciendo reported that there used to be an IHNFA follow up programme for children when they left the institution but this had to close due to a lack of resources (Julio Sanchez, Guidance Counsellor at Renaciendo, IHNFA, meeting 8th July 2004).

³⁶¹ NGOs Casa Alianza Hondruas and Nuestros Pequeños Hermanos run programmes for children in conflict with the law and churches sometimes provide support.

³⁶² It is estimated that 40-50% of the children at Renaciendo return (Julio Sanchez, Guidance Counsellor at Renaciendo, IHNFA, meeting 8th July 2004). Re-offending tends to be most common among those charged with robbery who are from the towns and cities, while children from rural areas are less likely to be seen back in the centres.

In summary, Honduras currently has a system that locks up many children who do not need to be detained, mixes young people who have committed more serious crimes than with non-serious offenders, provides detainees with limited rehabilitation and then releases them back into communities with little or no support to ensure successful reintegration. This situation is highly lamentable both in terms of addressing the needs of these young people and reducing crime in the long term.

NGO AND DONOR ASSISTANCE

All the centres benefit from NGO, church and donor assistance³⁶³. However, this assistance does not plug the large gaps that exist due to under funding of these institutions by the State.

In discussions on whether NGOs could take a more active role in the rehabilitation and reintegration of detainees, some IHNFA staff expressed scepticism about the ability of NGOs engage in this kind of work. However, NGOs could, and should be permitted to provide the valuable link between the child's time in the institutions and life back in their communities. NGOs should be permitted to work with children while they are serving their sentence, work with their families to prepare them for the child's release, and provide a support mechanism that the child could trust when they are released. This initiative would, of course, require donor agencies to provide funding. However, lamentably, juvenile justice projects (outside initiatives with gang members) have so far attracted little funding from donors or interest from NGOs.

³⁶³ Churches provide spiritual guidance at the centres and have donated toiletries and clothes. NGOs provide some classes and medical assistance and donations of basic equipment (e.g. GOAL donated mattresses to Renaciendo in 2004 because many of the children were sleeping on the floor). Donors have provided money to renovate buildings (e.g. at El Carmen donors have assisted with fixing the lighting, building a water tank and renovating a wing of one of the accommodation blocks) and financial assistance for vocational workshops (e.g. at Sagrada Corazon de Maria).

CHAPTER 4 DEALING WITH CHILDREN AT SOCIAL RISK

The Children's Judges (or Jueces de las letras) have the competency to deal with children of any age who are deemed to be at social risk as defined in Article 139 of the *Children's Code*³⁶⁴. In fact, the majority of the cases that come before the Children's Courts are cases of social risk rather than children in conflict with the law.³⁶⁵

Cases of maltreatment, neglect, abandonment and sexual abuse, committed by a family member or by someone they know, are common³⁶⁶. Many children also appear before the Courts because they are found to be addicted to or taking drugs.

However, children are also deemed to be in a situation of danger under Article 139(a) *Children and Adolescents' Code* if they exhibit serious behavioural problems or difficulties with social integration³⁶⁷, which include truancy from school, running away, belonging to a gang, and persistent disobedience to their family.³⁶⁸ Where children are judged to be in such a situation danger or addicted to drugs, Judges can order the placement a child in a temporary welfare institution, a private welfare institution and in Jhalteva.

IHNFA manages very few children's homes itself³⁶⁹. Most children without parental care are placed in institutions run by NGOs, charities and church bodies. However, in practice these children's homes are largely unregulated and there is no systematic monitoring of the standards implemented in these institutions. This failing is recognised by the Intervener in IHNFA, who aims to implement a stricter registering and monitoring system for these homes.

IHNFA runs four centres for children at social risk, which accommodate approximately 350 children. These institutions are supposed to act as

³⁶⁴ A child is deemed to be at social risk when: he is found in a state of abandonment or danger; he is lacking sufficient attention to satisfy his basic needs; his inheritance is found to be threatened by those who are administrating it; he is lacking legal guardianship; he is the object of maltreatment or corruption; he is found in a special situation that offends against his rights or his integrity; and he is addicted to substances that produce a dependency or he is at risk of addiction.

³⁶⁵ In 2003, nearly 75% of the judgements given by Children's Judges were in relation to social risk cases (Electronic Centre of Judicial Documentation and Information, Supreme Court of Justice).

³⁶⁶ Public Ministry, *Annual Report 2003, op.cit.*, p. 92.

³⁶⁷ Article 141(e) *Children and Adolescents' Code*.

³⁶⁸ Guillen de Martínez, D. I., *op.cit.*

³⁶⁹ Information regarding IHNFA's institutions, Maria Lolis Salas, Director de IHNFA, meeting 20th July 2004. In addition to the temporary centres for social risk cases and the four centres of detention discussed above, IHNFA runs 55 centres which care for a further 4,500 children. These centres include 35 day care centres for children aged 0-6 years. IHNFA also runs community development centres.

temporary centres where children can be cared for in an emergency, during which time their needs can be assessed. However, the institutions are overcrowded and poorly maintained, and rather than being kept at these temporary placement centres for short periods of time, children usually spend many months there and often return a number of times.³⁷⁰ The intervener in IHNFA stated that one of her aims is to ensure that the centres for children at social risk are truly temporary centres and units of diagnosis that identify the child's needs and a suitable placement.

Under international law, the State has a responsibility to provide special protection and assistance to children who are without parental care³⁷¹. Article 20 of the *CRC* outlines a hierarchy of options that the State has in providing this special protection and assistance to child victims. The last resort that should be used is institutionalisation. When this option is the particular course of action chosen by the State, the *CRC* plainly states that the institution must be 'appropriate'.³⁷²

The Committee has frequently criticised the use of any form of detention for children who have committed no crime but are simply beyond parental control³⁷³, especially in cases where such detention could take place among convicted offenders. The placement of social risk cases in Jalteva with convicted juveniles is clearly inappropriate.

It is vitally important that the State develops adequate measures to deal with children at social risk, especially considering that these are the children that frequently become offenders as they get older.

³⁷⁰ Visit to Las Casitas, Tegucigalpa, 8th July 2004. In Colonia 21 de Octubre, in Tegucigalpa, there is a small home for adolescent boys housing approximately 40 children. Boys at social risk, or those who have committed minor crimes are accommodated there on a temporary basis. Unfortunately, the institution is overcrowded and poorly equipped (Julio Sanchez, Social Counsellor at Renaciendo, IHNFA, meeting 8th July 2004). This institution also has to accommodate disabled children as well, but they do not have adequate levels of staffing to provide the children with the care that they require.

³⁷¹ Article 20 *CRC*. "A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State."

³⁷² In addition, Article 39 *CRC* provides "State Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child".

³⁷³ *CRC/C/15/Add.61*, Nigeria, Concluding Observations, 30/10/96, para. 21.

CHAPTER 5 GANGS The Impact on the Juvenile Justice System

The issue of young people in gangs dominates the debate on youth offending, often negatively influencing changes to law and practice. Therefore, although children's involvement in gangs is not the primary focus of this analysis, and has been examined in detail in other studies³⁷⁴, its recent impact on young people in the juvenile justice system cannot be overlooked.

Overview

The 1990s saw a huge rise in the number of gang members in Honduras (and Central America) and violent activity due to a combination of rising poverty, rural-urban migration, rapid urbanization,³⁷⁵ deportations of young men from US who were involved in gangs there, demobilisation of many young people from the army, and easy access to the large number of illegal arms in circulation.

There are two main gangs in Honduras - Mara Salvatrucha (MS)³⁷⁶ and 18 - which are also the most prevalent groups operating in Central America. There are various estimates regarding the number of gang members in Honduras. However, 30,000³⁷⁷ is a frequently cited figure that has been exploited by the Government to introduce draconian crime fighting measures. NGOs, gang members themselves and the head of the development of the National Programme for the Prevention, Rehabilitation and Reintegration of young people in maras and pandillas believe the number is lower, especially since the amendment to Article 332 *Criminal Code*, which has allowed gang members to be rounded up and placed in detention.

There are diverse reasons why children and young people decide to join the gangs: the search for identity; companionship; hedonism; for feelings of power; to obtain protection and support by being part of a group that other

³⁷⁴ The phenomenon of gangs has been extensively investigated and examined. See, for example: Asociación Cristiana de Jóvenes de Honduras and Save the Children - UK, *Las Maras en Honduras: Investigación sobre Pandillas y Violencia Juvenil* (Frinsa Impresos, Tegucigalpa, 2002).

³⁷⁵ 49% of gang members' parents were first generation migrants from the countryside to the cities (Asociación Cristiana de Jóvenes de Honduras and Save the Children - UK, *op.cit.*, p. 219).

³⁷⁶ Also known as Mara-13.

³⁷⁷ It is estimated that there are 489 gangs at the national level which consist of 21,850 men and 8,010 women. The only area in which gangs do not operate is Gracias a Dios (Caldera, H., *El Crimen en Honduras 1994-2003* (General Directorate of Police Education, Advanced Institute of Police Education, Tegucigalpa, Honduras, December 2003, 2. ed.), p. 28). In its annual report of 2003, the National Commission on Human Rights estimated that there were 35,000 gang members in Honduras.

people fear; to obtain access to drugs; to make money easily³⁷⁸; the lack of other opportunities; being both out of education and without a job³⁷⁹; and as a substitute for an often disintegrating family unit.

Whatever their motivation, the draw to join the gangs is powerful for under-18s. In a study carried out by the National Interinstitutional Programme to Work on the Theme of Maras³⁸⁰, it was found that 77% of gang members joined before they were 15 years old and 97.8% of the total number of gang members joined between the ages of 12 and 25. 12-17 year olds made up 64.6% of the total number of gang members, with 18-45 year olds making up the rest.³⁸¹ Although it is predominantly boys that join gangs, girls also take part and are sometimes involved in the more extreme forms of violence. Gang life is violent and under-18s are known to commit serious crimes, including murder.³⁸² However, the violence of the MS gang spills out onto the civilian population more frequently than with gang (pandilla) 18.

The line between organized crime and juvenile gangs has become increasingly blurred recently. Frequently juvenile gangs are being recruited by criminal organizations to carry out illicit activities such as trafficking in drugs and arms.³⁸³ It seems that this new role has led to a change in demographics of the gangs with the age of gang members rising and their activities becoming less visible than they were before.³⁸⁴

State Response

The Maduro administration came into power in 2002 promising Zero Tolerance and a war against delinquency³⁸⁵. Unsurprisingly the efforts of the Maduro Government to combat gangs have been characterised by an overemphasis on control³⁸⁶. While it is accepted that the State has a responsibility to protect the lives and well being of the population, the action taken against gangs so far has largely overlooked prevention, rehabilitation and reintegration and has therefore failed to provide a long-term solution.

³⁷⁸ Asociación Cristiana de Jóvenes de Honduras and Save the Children – UK, *op.cit.*, pp. 327-328.

³⁷⁹ Andino Mencia, T., “La Democracia, Los Jovenes y Las Maras” *op.cit.* Of the 315,540 14-17-year-olds who do not study, 161,218 do not work either. “*This enormous quantity of children that do not study or work is the breeding ground for young gang members*”.

³⁸⁰ 2000-2001, cited by Asociación Cristiana de Jóvenes de Honduras and Save the Children – UK, *op.cit.*, p. 327.

³⁸¹ *ibid.* p. 327. In 2003, Unicef reported that there were 36,000 gang members. The reported stated that in San Pedro Sula, 80% were under the age of 18 while in Tegucigalpa 45% were under 18. UNICEF, *Annual Report 2003* (UNICEF, Honduras, 2003).

³⁸² The initiation into Mara Salvatrucha is reputed to involve murder.

³⁸³ Luis Pineda Batres, Secretary General, Ministry of Security, meeting 29th June 2004

³⁸⁴ Andino Mencia, T., *El Sistema de Justicia Juvenil y Las ‘Maras’: ¿Qué Hacer?* (Save the Children – UK, February 2003) and also see Bardeles, E., y Castro, M., *Diagnostica Situacional de las Maras y las Pandillas en los municipios de la Zona Metropolitana del Valle de Sula* (2003).

³⁸⁵ The losing candidate, Rafael Pineda Ponce, had also proposed draconian measures to address gang violence.

³⁸⁶ The campaign of the Government against gangs has been dubbed the Blue Freedom (‘Libertad Azul’).

LEGISLATIVE REFORMS

Reform of Article 332 of the *Criminal Code*

The July 2003 reform of Article 332³⁸⁷, which addresses the crime of illicit association, was introduced as part of the Government's fight against the gangs. The police had felt that the original Article was too weak for them to use in order to arrest known gang members, without the existence of proof of another crime. Although in reality the amendments did not bestow any further power on the police to arrest gang members, they provided an endorsement from the State to carry out mass detentions.

The reform also increased the minimum and maximum sentence for gang leaders from 3-6 years to 9-12 years, although in reality the punishment imposed is from 20 to 30 years. The fine for the leaders, which is additional to the deprivation of liberty, was changed so that the minimum fine was lowered from 100,000 lempira to 10,000 lempira, but the maximum stayed the same at 200,000 lempira. Other gang members receive a one third reduction on these sanctions.

All sectors welcomed the decriminalisation of founder members of gangs. This change was made so as not to catch those leaders who had since renounced their former gang and had gone through a programme of rehabilitation. However, overall the reform of Article 332 was met with dismay by NGOs. The wording of the Article seems to allow the police to arrest persons who are part of a gang whose members are involved in criminal activity even if those arrested have no link with the crime other than that they are in the same gang. Consequently, arrests under Article 332 can be made without a judicial order as a gang member is always in the act of committing a crime. The NGO community argues that this law, therefore, effectively makes association, a right contained in the *Constitution*, Articles 78 and 79, unlawful. It also offends against the presumption of innocence³⁸⁸ (Article 89 *Constitution*) and proportionality (Article 2-D *Criminal Code*).³⁸⁹

Similar laws enacted in El Salvador to address the problems of gangs, were declared un*Constitutional* by the Supreme Court. These reforms were also severely criticised by the Committee on the Rights of the Child for violating children's rights.³⁹⁰ However, in 2003 the Constitutional Chamber of

³⁸⁷ The reform came into force in August 2003.

³⁸⁸ Article 89 *Constitution*.

³⁸⁹ As well as the prohibition of arbitrary detention (Article 92 *Constitution*), the principle of equality before the law (Article 60 *Constitution*), *nullum crimen sine lege* (Article 2-D *Constitution*) and the prohibition of the arbitrary imposition of a sanction (Article 2-C *riminal Code*) (Save the Children UK, presentation 2004).

³⁹⁰ The Committee urged the Salvadorian Government to abrogate the second Anti-Gang Law and to apply the Juvenile Offenders Act as the only legal instrument in the area of juvenile justice. The Committee also expressed its deep concern about the "measures taken under the so-called Tough Hand Plan (*Plan Mano Dura*), adopted in July 2003, and the Anti-Gang Laws, in force since October 2003, including the second Anti-Gang Law (*Ley para el combate de la actividades delincuenciales de grupos o asociaciones ilícitas especiales*) of 1 April 2004, [which] are in breach of the Convention", the fact that large numbers of children had been arrested, about the lack of social and educational policies to the problems of gang involvement and regarding crime among adolescents. The Committee recommended that the State adopt comprehensive strategies that address root causes of violence and crime among adolescents, including policies of social inclusion, measures to improve access to education, employment

Honduras rejected an application for the chamber to make a declaration on whether the Article is *unconstitutional*.³⁹¹

Reform of Article 332 in practice

Following the reform of Article 332, police operations were characterised by mass arrests³⁹², operations which did not always respect arrest procedures or the rights of those detained, leading to the Prosecutor's Office and the Judges to release many of those arrested.³⁹³

In 2004, these campaigns became more targeted, focusing on gang leaders. It is claimed that arrests less frequently violate rights and procedures now, although it is acknowledged that abuses continue. This is in part because the police have begun to appreciate that Judges and Prosecutors will not proceed with cases where there have been obvious violations of rights and procedures and where there is insufficient evidence.³⁹⁴

Under-18s make up approximately 30% of all arrests that have been made under Article 332 since its reform³⁹⁵. From 14th August 2003 to 15th January 2004, 386 under-18s were arrested by the police under Article 332 and 237 were arrested from 1st January to 31st May 2004.³⁹⁶ While the Government insists that the arrests are legitimate and that the children are suspected of committing a crime in addition to violation of Article 332 (e.g. possession of arms and drugs)³⁹⁷, NGOs claim that many children have been picked up simply for having tattoos associated with gang membership³⁹⁸. Further, the National Commission on Human Rights has found that there has been abuse of Article 332 by the police against children and young people.³⁹⁹

and recreational facilities, and reintegration for juveniles (Committee on the Rights of the Child, Concluding Observations, El Salvador 1994, *CRC/C/15/Add. 232*, para 67 and 68).

³⁹¹ See National Commission for Human Rights of Honduras, *Annual Report 2003*.

³⁹² It was reported that more than 200 people were arrested under Article 332 in the second month after the reform came into force ('Seminario taller centroamericano sobre iniciativas gubernamentales para la represión de pandillas. Informe de Honduras' *Revista Centroamericana: Justicia, Penal y Sociedad*, 2004, Vol. 18 (57)).

³⁹³ Ramon Romero, Presidential Assessor, meeting 9th July 2004. It was reported that many of these arrests were made in violation of Articles 212-214 of the *Criminal Procedure Code*, which provide that the police cannot enter peoples' homes both before 6.00am or after 6.00pm and also without a written judicial warrant. Consequently, these arrests were also carried out in violation of Article 99 of the *Constitution* which guarantees the inviolability of the home.

³⁹⁴ *ibid.*

³⁹⁵ Source – Public Ministry, Judicial Power and the Secretary of Security. Published in *El Heraldo* (27th May 2004). Figures showed that from 15th August 2003 up until 31st April 2004, over 1500 people had been detained under Article 332.

³⁹⁶ *ibid.* Interestingly, between January 1996 and May 1999 there were only 74 denunciations (complaints lodged with the police or prosecutors by a member of the public) against under-18 gang members and the majority of these were for robbery and theft (Botero, M.L., *op.cit.*, p. 37).

³⁹⁷ Luis Pineda Batres, Secretary General, Ministry of Security, meeting 29th June 2004

³⁹⁸ There is a large amount of anecdotal evidence that police have been picking up children and young people simply for having tattoos. Many of these stories are from ex gang members who are taken into custody despite having identification cards that state that they are part of rehabilitation programmes (Jovel Miranda, Coordinator Generación X meeting 10th July 2004, Ondina Murillo, Director, Ricardo Torres, Consultant and Coordinator, Paz y Justicia meeting 13th July 2004, Atsmania Pineda Platero, Director, Xibalba meeting 8th July 2004).

³⁹⁹ Maria del Carmen Garcia, National Commission for Human Rights, Regional Office, La Ceiba, meeting 13th July 2004.

Fewer children are prosecuted or eventually found guilty than are arrested as it has proved difficult to find enough evidence to take the case to court and to make a finding of guilt⁴⁰⁰. The Children's Prosecutor insists that there has to be at least two other pieces of evidence against the child (in addition to tattoos) before a case will be referred to Court.⁴⁰¹ Of the children whose cases are referred to the Children's Courts, the majority have been placed in detention during the investigation.⁴⁰²

As discussed above, the increased presence of gang members in the detention centres has placed a strain on already stretched resources, which in turn has had an adverse impact on the care offered to all children in these institutions.

Law for the Prevention, Rehabilitation and Social Reintegration of Gang Members 2001⁴⁰³

The *Law for the Prevention, Rehabilitation and Social Reintegration of Gang Members* was adopted under President Flores in 2001. The law was his Government's response to the problems of gang violence. However, the development of the National Programme for prevention, rehabilitation and social reintegration of young people in gangs⁴⁰⁴, as demanded by Article 2 of the law, only began in April 2004.

Headed up by Guillermo Jimenez, a team of three people, under the auspices of the Presidential Programme, are in charge of shaping the programme until its inception in January 2005.

The National Programme

The law applies to all current gang members and those who are at risk of joining gangs voluntarily or involuntarily⁴⁰⁵. While the law does not limit the application of the programme to a specific age range, it has been decided that the primary focus will be on 12-27-year-olds.

It is planned that the programme will establish five units:

⁴⁰⁰ For example, out of the 237 children that were arrested from 1st January to 31st May, 183 were referred to the Courts by the Prosecutor's Office (Source – Public Ministry, Judicial Power and the Secretary of Security).

⁴⁰¹ In June 2003, it was held by the Sentencing Court (Tribunal de Sentencia) that tattoos cannot alone amount to sufficient proof that a person is a member of a gang ("Los tatuajes no constituyen pruebas para condenar a jóvenes" *El Tiempo* 2nd June 2004).

⁴⁰² For example, between 1st January 2004 to 31st May 2004, out of the 183 children appearing before the Children's Courts under Article 332, 131 (71.5%) were placed in one of the centres of detention and 38 received other precautionary measures (14 were either freed or sent to be tried in the adult courts because they were found to be 18 or over). Between 14th August 2003 and 31st May 2004, 50.6% of adults appearing before the courts were remanded in custody (Source – Public Ministry, Judicial Power and the Secretary of Security).

⁴⁰³ Decree No. 141-2001 (*La Ley Para La Prevención, Rehabilitación y Reinserción Social de Personas Integrantes de Pandillas o Maras*).

⁴⁰⁴ *Programa Nacional de Prevención, Rehabilitación y Reinserción Social de Jóvenes en Pandillas y Maras*. Unless otherwise stated the information about the development and plans for the programme was obtained from Guillermo Jiménez, Executive Secretary of the Programme for prevention, rehabilitation and social reintegration of young people gangs, meeting 8th July 2004, and the Proposal for Rehabilitation and Reintegration of Persons in Gangs (2004).

⁴⁰⁵ Article 3.

- i. Prevention Unit - one of the major projects is *Vida Saludable* (healthy life), which aims to reach children in secondary school and teachers, parents and communities to prevent them from joining gangs;
- ii. The Rehabilitation Unit will develop rehabilitation programmes, focusing on forms of rehabilitation that avoid institutionalisation;
- iii. The Reintegration Unit will work with businesses, schools, police and communities to make reintegration easier for ex gang members and to work with their families in order to prepare them for the release of the rehabilitated ex gang member to reduce the chance of rejection;
- iv. The Volunteer Unit will tap into support on an international and domestic level. According to Article 19 of the Law, it is mandatory for universities to have programmes of volunteer work. Guidance is going to be drawn up as to which students from which subjects will be obliged to participate - e.g. subjects such as teaching, sociology, psychology, journalism, sports, and agriculture courses may be useful to the programme; and
- v. The fifth Unit will be responsible for developing new projects and securing funding because the programme will have to rely heavily on non-State funds.

These Units will have a coordinating rather than an implementing function, and will provide complimentary financial support to rehabilitation and reintegration programmes. It is proposed that the NGOs, religious and humanitarian agencies will run the projects and provide the services. The schools programme is the only programme that the Programme plans to run directly.

In an ever increasingly punitive climate, this initiative to address the causes of people joining gangs rather than simply punishing their involvement has to be welcome as well as the intention to involve communities in rehabilitation and reintegration programmes.

However, there is mixed opinion about the programme from the NGO sector, with scepticism being a common denominator, especially regarding whether the State will provide sufficient core funding to enable the programme to work effectively. There is a real concern that the current political climate will have a detrimental effect on the development and funding of this programme, especially with the forthcoming elections and the imminent change of leadership. However, there is also a sense that this programme is better than nothing and therefore needs to be supported⁴⁰⁶.

Impact on under-18s

This law does not include a child specific focus and those developing the programme have in turn focused their efforts on adults rather than children. In order to design the programme, research has been undertaken regarding the nature of gangs, their structure, the reasons for joining and the

⁴⁰⁶ NGO Consultation on Juvenile Justice, facilitated by Save the Children-UK, Casa Alianza Honduras and Children's Legal Centre, 15th February 2005, Tegucigalpa, Honduras.

difficulties associated with leaving. However, as of July 2004, little attention had been paid to the specific needs of children.

It seems that while there are plans to develop specific programmes for children⁴⁰⁷, at the moment the rehabilitation and reintegration needs of children have been clumped together with those of adults. There are no plans to establish a separate Programme Unit for under-18s nor any plans for the appointment of a specialist who could provide expert input to the different units on developing programmes for children. The only specific programme for under-18s is the schools prevention initiative. It is disappointing that although the programme is aimed at 12-27 year olds, under-18s are a secondary focus, despite forming a very large percentage of the target group. Under-18s, and especially under-14s, require very different rehabilitation and support from that required by adults and this must be addressed. For example, while relocation may be feasible and appropriate for a 21-year-old, it would be much more difficult and less desirable to relocate a 14-year-old. In addition, the focus for the younger teenagers should be getting them back into education rather than vocational training.

Without targeted and tailored programmes to meet the distinct needs of children the benefits of these initiatives will be very limited for under-18s.

EFFECTIVENESS OF STATE ACTION

The Maduro Government claims that its initiatives have led to a significant drop in gang activities, criminality and violence - many gang leaders and members are now languishing in jail and the reform to Article 332 acts as an effective deterrent to many of the gang members still at large⁴⁰⁸. There is also improved security in many communities⁴⁰⁹. Homicides fell from 3829 in 2003 to 3123 in 2004 and although extrajudicial deaths of under-23-year-olds have risen significantly in the last 7 years, last year the figure fell by 29% compared to the figures for 2003 (557 to 395)⁴¹⁰.

While some NGOs agree that State action has been effective in terms of reducing levels of violence, other NGOs argue that violence and insecurity has risen and abuses against young people have increased⁴¹¹. Although the number of murders has fallen, there has been a wave of massacres targeting many 'civilians'. The bus massacre on 23rd December 2004 in Chamelecón, Cortés, left 28 people dead. The massacre seemed motivated by the desire of one of the gangs to voice their displeasure at draconian crime fighting

⁴⁰⁷ Ramon Romero, Presidential Assessor, meeting 9th July 2004.

⁴⁰⁸ However, State initiatives have had little impact on organized crime and white-collar crime.

⁴⁰⁹ However, the efforts of Bishop Emiliani (Foundation United for Life) to negotiate agreements with Mara Salvatrucha and Gang 18 in San Pedro Sula have also contributed significantly to a drop in violence and criminal activities in that area.

⁴¹⁰ Andino Mencia, T., *¿Realmente es Efectivo el Art.332 o "Ley Antimaras" para Acabar con la Violencia y la Delincuencia?*, *op.cit.* However, despite the fall in extrajudicial killings in 2004, January and February 2005 saw a wave of killings of children and young people - the violent deaths of 71 under 23-year-olds were recorded before the end of February (Casa Alianza Honduras, February 2005).

⁴¹¹ NGO Consultation on Juvenile Justice, *op.cit*

measures including the call for the reintroduction of the death penalty.⁴¹² Further, organized criminal gangs (who are behind a lot of the violence) have suffered little interruption to their activities due to the initiatives of the State.

Ironically, although State initiatives aimed to make communities safer, a recent poll by CID-GALLUP found that there is a perception that crime and violence is increasing. (Feelings of insecurity were certainly affected by the Christmas massacre) Further, although one year ago, the majority of those polled said that their principle concern was unemployment, now crime is the main preoccupation.⁴¹³

Regardless of whether there has been any impact on crime and security, there has been a heavy corresponding cost in terms of rights and the long-term fight against gangs and criminal activity.

Attempts to reintegrate former gang members have also been severely hampered by the campaign of zero tolerance that has encouraged communities to reject these young people. Enrolling in schools and educational institutions is difficult and finding employment can prove to be impossible if the young person has tattoos⁴¹⁴, severely impacting his ability to support himself. Further, the ex gang member continues to be harassed by the police (and sometimes vigilante groups), despite often carrying identification to show that they are part of or have been through a rehabilitation programme.⁴¹⁵ This does not provide an incentive for gang members to leave, especially when considering that this decision often puts the young person's life in danger - leaving a gang not only deprives him of protection from his enemies but also makes enemies of his own gang, which often punish those who leave with death. In addition, staying out of trouble with the law is more difficult where the ex gang member is not able to build a new life for himself.

The prejudice of society, formed not only from witnessing the impact of gangs on their communities, but also from State propaganda, cannot be easily or quickly overcome. For the National Programme for the prevention, rehabilitation and reintegration of gangs to be successful, efforts must be made to combat public perception of gang members.

⁴¹² Andino Mencia, T., *¿Realmente es Efectivo el Art.332 o "Ley Antimaras" para Acabar con la Violencia y la Delincuencia?*, *op.cit.*

⁴¹³ "Cid-Gallup: Honduras sigue por el rumbo equivocado" *La Prensa* 4th February 2005.

⁴¹⁴ Andino Mencia, T., "La Democracia, Los Jóvenes y Las Maras" *El Herald* 5th January 2005.

⁴¹⁵ NGOs complain that they are losing a lot of time and wasting a lot of energy arranging the release young people who have been wrongly arrested while attending their rehabilitation and reintegration programmes (NGO Consultation on Juvenile Justice, *op.cit.*).

CHAPTER 6 ZERO TOLERANCE Abuses of Children in Conflict with the Law

There are no statistics or estimates available on the number of children that suffer maltreatment at the hands of the law enforcement bodies. There only exists anecdotal from NGOs, hospital staff, detention centre staff and children themselves that abuse still exists, especially against suspected gang members. However, murders of children and young people have been well documented over the last eight years.

Extrajudicial Killing of Children

There is an alarmingly high rate of violent child deaths in Honduras. From 1998 to September 2001, well over 2000 murders of persons under the age of 30 were recorded, out of which 574 were of children aged 12-18-years-old⁴¹⁶. In 54.9% of the cases the perpetrators of the crime have not been identified. However, out of those perpetrators known to the police, 22.7% were ordinary people and 14.1% were gang members. Law enforcement officials made up 4.2% of the perpetrators⁴¹⁷.

Some of the killings have been attributed to campaigns of social cleansing carried out by vigilante groups, prompted by a lack of faith in the ability of the police and the judiciary to effectively address the violence and criminal offending of young people, by death squads and other private forces that cooperate with or are tolerated by the Government⁴¹⁸. In September 2004, there was a spate of collective killings that had the characteristics of executions, including torture, decapitation and planning, leading investigators to believe that death squads are being directed and paid to carry out these murders. However, the investigators have so far been unable to identify the person or group orchestrating these recent killings.⁴¹⁹

Although often reported in the press, deaths of young people have not been met by the widespread public outrage that they deserve. Many see the deaths as a result of the violent lifestyle that these young people lead, as the perception is that the majority of young people dying are gang members. However, a study by the National Commission for Human Rights into violent deaths of young people between 1998 and December 2001 found that out of

⁴¹⁶ Comisión Permanente Para la Protección de la Integridad Física y Moral de la Niñez, 2002. Also see Casa Alianza Honduras, *La Niñez y La Adolescencia en Honduras ante la Indiferencia y la Intolerancia: El Informe* (Casa Alianza Honduras, October 2003).

⁴¹⁷ 2.4% were from the Preventive Police and 1.8% were from the DGIC (Permanent Commission for the Protection of the Physical and Moral Integrity of Childhood, 2002).

⁴¹⁸ *Civil and Political Rights, including the question of disappearances and summary executions: Extrajudicial, summary or arbitrary executions* Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2002/36 (E/CN.4/2003/3/Add.2, 14 June 2002).

⁴¹⁹ "Escuadrones de exterminio estarían ejecutando jóvenes" *El Heraldo* 21st September 2004.

all the victims, only 34% of them had belonged to a gang⁴²⁰. In addition, many of the young people being killed who had an association to a gang, had gone through or were going through the process of rehabilitation having taken the decision to leave the gang.

Investigation and Prosecution of Maltreatment and Killings

Protecting the right to life involves positive and negative obligations of the State. The State itself must refrain from arbitrarily taking life (negative obligation). The State also has a positive obligation to ensure that existing laws and procedures act as an effective deterrent to murder, that, regardless of the status of the perpetrator, those suspected of unlawfully killing another person are brought to trial and that they receive an appropriate sentence if found guilty.⁴²¹ However, Honduras has been heavily criticised by international and national organisations, including the National Commission for Human Rights⁴²², for the failure to ensure that the perpetrators of these murders are identified, prosecuted and appropriately sentenced. Honduras has also failed to amend its *Criminal Code* to make extrajudicial, arbitrary or summary executions a separate and distinct crime.

INTERNAL AFFAIRS UNIT⁴²³

The Internal Affairs Unit sits under the Ministry of Security and is responsible for investigating crimes and issues of conduct and negligence regarding the police. In June 2002, the Unit was directed to undertake an investigation of the murders in San Pedro Sula, where there had been the greatest number of extrajudicial deaths. The resulting report implicated a number of policemen. However, the only action taken was to replace the head of the Internal Affairs Unit.

NGOs believe that this Unit is ineffectual, under funded and that its position under the Ministry of Security prevents it from adequately carrying out its function of investigating police misconduct, allowing impunity to prevail.

SPECIAL UNIT FOR THE INVESTIGATION OF CHILD DEATHS⁴²⁴⁴²⁵

⁴²⁰ National Commission for Human Rights of Honduras, *Muertes violentas de jóvenes en Honduras: una realidad que exige respuestas* (Tegucigalpa, December 2001), p. 49.

⁴²¹ For example "State Parties recognize that every child has the inherent right to life" (Article 6(1) ACHR); "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." (Article 4(1) ACHR). The same positive and negative obligations exist in ensuring that no-one is subjected to torture, or to cruel, inhuman or degrading treatment (Article 5(2) ACHR).

⁴²² see National Commission for Human Rights of Honduras, *op.cit.*.

⁴²³ Unless otherwise stated the information about the Internal Affairs Unit was obtained during a meeting with Maria Luiza Borjas, Police Commissioner and ex head of the Internal Affairs Unit, 23rd June 2004.

⁴²⁴ Unidad Especial de Investigación de Muerte de Menores.

⁴²⁵ Unless otherwise specified the information on the Unit was obtained during a meeting with Ricardo Diaz, Supervisor General, Special Unit for the Investigation of Child Deaths, DGIC, meeting 23rd June 2004.

The Permanent Commission for the protection of the physical and moral integrity of childhood was set up in May 2002 by the President⁴²⁶ in response to the recommendations the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions⁴²⁷ and the numerous complaints by international and national organisations about the extrajudicial killings of children. The new body commissioned a report, which verified that in the preceding five years 574 under-18s had been murdered. Following this report the Commission set up the Special Unit for the Investigation of Child Deaths in September 2002 to investigate violent deaths of children that occurred from 1998 up to and including current cases.

The Unit sits under the Ministry of Security and until June 2003 was under the control of the police. However, in order to make the Unit more neutral and transparent, it was restructured in June 2003 and is now coordinated by a civil chief with experience of investigation, who selected new staff. It was at this point that the Unit began working with NGOs, primarily Casa Alianza Honduras, who provided the Unit with a list of cases that were representative of the unsolved murders they had recorded.

33 staff currently work for the Unit, including 18 investigators, who cover the whole country. Therefore, in order to facilitate more expedient investigation, there are two regional offices one in the south east and one in the north west, in addition to the central office in Tegucigalpa.

The Unit investigates old cases and new cases that the police pass on to them. The Unit can also request cases from the police. The Unit is mandated to investigate deaths of persons under the age of 21⁴²⁸, which involve one or more of the following characteristics: it is a homicide with a characteristic of an execution; the body shows a bullet wound to the head; the bodies are found outside the city; the corpses have signs of mutilation; or the children and young people have not been identified. The Unit will also investigate group killings where the victims are over 21 as long as one of the victims is under the age of 21 years.⁴²⁹

At the conclusion of the investigation, the Unit presents a report to the Prosecutor's Office, and if appropriate, an accusation. The Prosecutor will then decide whether there is enough evidence and whether to send the case to Court. The Unit and the Prosecutor's Office have together developed requirements for evidence that help to ensure that cases are not rejected for inadequate or insufficient proof.

⁴²⁶ Executive Directive PCM-006-2002.

⁴²⁷ *Civil and Political Rights, including the question of disappearances and summary executions: Extrajudicial, summary or arbitrary executions* Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2002/36 (E/CN.4/2003/3/Add.2, 14 June 2002).

⁴²⁸ Permanent Commission for the Protection of the Physical and Moral Integrity of Childhood, *Comisión para la Protección de la Integridad Física y Moral de la Niñez: Antecedentes, Logros, Retos* (June 2004).

⁴²⁹ 40 cases involved children under 18 (this includes cases where other victims in the group were over 18), 29 cases involved persons 18 years and over and in sixes, no age was specified (Special Investigation Unit into the Death of Minors (Honduras) *Cases sent to the National Prosecutor's Office* (May 2004)).

COMBATING IMPUNITY?

The Unit has had partial success but it is still seen by many as underperforming and therefore not really addressing the widespread impunity that exists. Underperformance is partly down to a lack of funding – the Unit has an annual budget of 7 million lempira, approximately £210,000 – and a lack of staff.

However, the head of the Unit, Ricardo Diaz, pointed out that the Unit has been successful in making the investigation process more transparent and better publicised. The prosecution rate has also increased significantly since he took over in June 2003. The Unit has sent 75 cases (involving 116 victims) to the Prosecutors Office out of the 384 cases they were working on from July 2003-May 2004⁴³⁰. 14 (19%) of these cases implicate state agents – such prosecutions were not being pursued prior to the establishment of the Unit.

However, the majority of prosecutions have been initiated against gang members (58%) even though gang members are not thought to make up the majority of the perpetrators of murders overall. As of June 2004, 41 of the people implicated in these 75 cases had been detained, two had been sentenced and one had received cautionary measures (pre-trial measures).⁴³¹

NGOs are not complimentary of the work of the Unit⁴³². One criticism is the small number of cases that the Unit is dealing with. However, Mr. Diaz argues that the figure of over 2000 murders documented by Casa Alianza Honduras is not a reflection of the number of cases that falls under the competency of the Unit. The NGO figure includes young people up to the age of 23, whereas the Unit only looks at cases where the victims are under the age of 21 years. He also argues that some of these deaths were accidental or suicides. He believes that only 600 of these 2000 cases warrant investigation by his Unit. Mr. Diaz also pointed to the inherent difficulty of investigating crimes that occurred a number of years ago and the fear that prevents many of the witnesses from coming forward and cooperating – a witness protection programme is being developed but is not yet in place. In addition, often the children who could act as witnesses were high on drugs and therefore are not able to provide credible testimony.

The National Commission on Human Rights is also critical of the slow progress of the Unit and the lack of resources provided to allow the Unit to effectively carry out its role.⁴³³ It is suggested that the Unit should be an independent technical unit reporting directly to Congress.⁴³⁴ Mr. Diaz agrees

⁴³⁰ *ibid.*

⁴³¹ Special Investigation Unit into the Deaths of Minors (Honduras), *Report on the Progress of Investigations* (June 2004). By February 2005, the Unit had secured seven sentences (NGO Consultation on Juvenile Justice, *op.cit.*).

⁴³² NGO Consultation on Juvenile Justice, *op.cit.*

⁴³³ Dr. Ramón Custodio López, Commissioner; Andres Perez, Technical Adviser to the Commissioner; and Amanda Mejia-Cañadas, Coordinator, Special Programme for Children and Human Rights, National Commission for Human Rights, meeting 15th July 2004.

⁴³⁴ Ernesto Bardales Director – Jóvenes Hondureños Adelante, Junto Avancemos (Jha-Ja), meeting 10th July 2004.

that the Unit would work more effectively if the budget was doubled and he had 20 additional personnel. The funding seems unlikely to come from the Government and more likely to come from foreign donors.

Unfortunately, the existence of the Unit has not proved to be a deterrent and the murders of young people have continued unabated. From February 2003 to September 2004 nearly 700 more children and youths had been murdered in the country, prompting Amnesty International to re-launch its campaign to demand that the Maduro Government take immediate action to combat the extrajudicial killings of children and youth in Honduras.⁴³⁵

Lamentably, the action decided upon by the State has been to announce the sudden closure of the Unit from April 2005 rather than to adequately finance its work.⁴³⁶ Despite its shortcomings, the Unit was at least contributing to combating the prevailing impunity. The absence of any body dedicated to investigating extrajudicial killings of children and young people is a serious gap in the justice system and once again demonstrates the Government's indifference to the fate of marginalised youth.

Role of the National Commission for Human Rights in Protecting and Promoting Children's Rights in the Juvenile Justice System⁴³⁷

The Commission was set up in 1992 to promote respect for human rights. The office began as part of the executive branch but then became a separate constitutional office⁴³⁸. The core budget is provided by Congress, while additional funds are secured from international agencies.

In order to address human rights violations, the Commission is mandated to receive denunciations and can investigate cases, and where appropriate pass the file onto the Prosecutor's Office. To provide easier access to their complaints mechanism, the Commission has set up a 24 hour hot line.

⁴³⁵ Amnesty International, *Honduras: Dos años después siguen matando a niños* (Press Release, AMR 37/008/2004, News Service No. 213, 6th September 2004). Also see AI report published in 2003 on extrajudicial killings, Amnesty International, *Cero Tolerancia ... a la impunidad: Ejecuciones Extrajudiciales de niños y jóvenes desde 1998* (AMR 37/001/2003/s, February, 2003). Casa Alianza reported that in August 2004 27 girls, boys and young people were murdered in Honduras. 41% of those killed were children under the age of 18, the other 59% young people aged 18-23 years old. 48% of these cases occurred in San Pedro Sula (*La Prensa*, 4th September 2004).

⁴³⁶ Andino Mencia, T., *¿Realmente es Efectivo el Art.332 o "Ley Antimaras" para Acabar con la Violencia y la Delincuencia?* *op.cit.*

⁴³⁷ Unless otherwise stated information was obtained during a meeting with Dr. Ramón Custodio López, Commissioner; Andres Perez, Technical Adviser to the Commissioner; and Amanda Mejia-Cañadas, Coordinator, Special Programme for Children and Human Rights, National Commission for Human Rights, 15th July 2004.

⁴³⁸ Fundamental Law of the National Commission for Human Rights, 6th March 1996 (*Ley Orgánica del CONADEH*).

The body is also mandated to produce thematic reports and reports on specific events⁴³⁹. However, the organs which are the subject of these reports do not have a legal obligation to respond to or act according to the Commission's recommendations.

The Commission works on different themes including children and has established a Special Programme for Children and Adolescents, which is currently focusing on abuse and sexual exploitation. It has also established a working group on children and violence, which among other issues is looking at juvenile offenders, conditions in detention, Article 332, and prevention and rehabilitation. However, the impact that this will have on ensuring that the system for children in conflict with the law upholds children's rights is unclear.

The Commission has actively campaigned on the issue of extrajudicial killings of, publishing its report on the issue in 2002. Recently the Commission based in La Ceiba worked with the Prosecutor's Office on Human Rights to investigate the alleged murder of a street child by a policeman because he had stolen a chain from the policeman's colleague.⁴⁴⁰ The Commission has also campaigned on reform of the justice system publishing a study on criminality in Honduras in 2003.⁴⁴¹

The UN has long held the belief that independent national human rights institutions are one of the keys to promoting and protecting human rights and fundamental freedoms, and to developing and enhancing public awareness of those rights.⁴⁴²

In its General Comment⁴⁴³, the Committee on the Rights of the Child stated that the obligation of States, under Article 4 *CRC*, to "*undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention*" includes the establishment of independent national human rights institutions to promote and monitor the implementation of the *CRC*. The Committee, drawing on the Paris Principles⁴⁴⁴, which detail the functions and responsibilities that should be included in the mandates of all national human rights institutions, clearly sets out the functions with which such a body for children should be endowed.

⁴³⁹ National Commission for Human Rights of Honduras, *Informe especial y recomendaciones sobre la matanza ocurrida el 5 de abril del 2003 en la Granja Penal "El Porvenir"*, Atlántida, 2003.

⁴⁴⁰ Maria del Carmen Garcia, National Commission for Human Rights, Regional Office, La Ceiba, meeting 13th July 2004.

⁴⁴¹ National Commission for Human Rights, *Diagnostico de la Criminalidad en Honduras* (Tegucigalpa, Honduras, C.A. Julio 2003).

⁴⁴² *Principles relating to the status and functioning of national institutions for the promotion and protection of human rights*, General Assembly Resolution 48/134 of 20 December 1993, A/RES/48/134, preamble.

⁴⁴³ *The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child*, General Comment 2 (2002) CRC/GC/2002/2, 15/11/02

⁴⁴⁴ *Principles relating to the status and functioning of national institutions for protection and promotion of human rights*, *op.cit.*

The Committee is explicit that protecting and promoting children's rights, as contained in the *CRC*, should be the main function of such a post and that legislation should set out specific functions, powers and duties directly linked to the *CRC* and its Optional Protocols. Although the National Commission has focused on some themes relating to children, the need to focus on such a wide range of human rights issues has meant that children's rights have not received adequate attention. The situation for children in Honduras demands a body set up specifically to promote and protect their rights which is adequately funded and endowed with sufficient powers to carry out the mandate foreseen by the Committee on the Rights of the Child. One of its main tasks should be to counter the negative image of youth that prevails in Honduras, which has enabled the rights of children to be undermined in the youth justice system.

CHAPTER 7 FEAR AND LOATHING IN HONDURAS The Role of Public Perception in the Formulation of State Policy on Juvenile Justice

The interaction between the State, the media and the public plays a hugely important role in shaping policy on crime. The rhetoric used by politicians and the media as well as the tone, frequency and type of coverage can be deliberately emotive and highly influential in forming public perception. A small rise in youth crime can be portrayed as the disintegration of the moral fabric of society, sending panic through the population. The media subsequently reflect the ensuing call from the public for tough new measures in the face of what seems to be rising crime and insecurity, and the State responds to satisfy public demands. After all, promises of quick fix crime control measures are more likely to secure votes than long term prevention and rehabilitation programmes, the fruits of which may not be seen within the political party's term in office.

This three-way interaction is evident in Honduras, where crime is high on the political agenda. In the late 90s and early 2000s it seemed as though gang violence was spiralling out of control and communities felt as though they were under siege. Media coverage of violent crime was incessant.

There is a very active media in Honduras, with four main national newspapers, 43 national, local and regional TV stations and 300 radio stations⁴⁴⁵ and sensationalist journalism is popular. Coverage of crime was, and still is, often accompanied by graphic pictures of the victims and photographs of tattooed youths who were identified as perpetrators, rather than as suspects, prior to any finding of guilt. In violation of Article 8 *CRC* and Articles 32, 33 and 34 *Children's Code*, the identities of under-18s were often exposed by the media⁴⁴⁶, a practice that occurs less frequently now.

Against this backdrop, President Maduro won the election in 2001 partly by promising a policy of zero tolerance (*Manos Duras*), with the aim of cutting gang activity, violence and crime and re-establishing security⁴⁴⁷.

⁴⁴⁵ Manuel Torres, Coordinator, Audio Visuales, y Análisis de la Prensa, meeting 6th July 2004.

⁴⁴⁶ In a study carried out in 1998 on media reporting of under-18 offending, it was found that the names of the alleged perpetrators were mentioned in 58% of stories that appeared in newspapers and 70% stated the area in which the child lived. 60% of the stories were accompanied by photos that showed the face of the suspect, with only 38% of these photos using techniques to mask the child's identity. However, TV coverage only gave the name of the child in 11% of stories (Cervantes, P., *op.cit.*).

⁴⁴⁷ Maduro brought his personal tragedy to the fight – his son had been murdered by members of an organized criminal gang. In January 2002, he said *"I have been elected to fight predominantly against insecurity, to fight against murder, against kidnap and robbery; to fight head on and without rest in order to defeat the delinquent who today feels immune from prosecution. You can be sure that we will achieve it ... Nothing, and nobody will move me from the unshakeable intention of transforming Honduras into a safe place for the life, honour and property of every person"* (President Maduro, 27th January 2002).

Political opponents have largely supported Maduro's stance on crime and consequently constructive debate on justice has been limited with little objection being voiced to the State's crime fighting policies other than by the NGO sector. Further, public perception of crime and insecurity has led to the majority backing tough policies regardless of the cost in terms of rights and due process, giving the Government a free hand to implement draconian measures of social control over the last four years.

Years of such policies and media coverage has etched in the public's mind a highly negative image of youth and under-18s. Gangs, violence and youth are inextricably linked for the population⁴⁴⁸ and therefore young people are seen as responsible for the insecurity in the country⁴⁴⁹. Consequently there is wide public indifference to the extrajudicial killings of young people and even a sense that they are deserving of this fate, especially as people erroneously believe that the majority of murders are the result of gang violence.

In an attempt highlight the public's misconception about juvenile offending, in 1999 Unicef published a report entitled "Adolescentes no son la causa de la inseguridad ciudadana" ("Adolescents are not the cause of the insecure citizen"). This report found that although under-18s were actually responsible for a very small percentage of crime – 5.5% - and that the majority of these were non-violent property crimes, the percentage of coverage given to under-18 offending was much higher consequently skewing public perception⁴⁵⁰. Unfortunately, the public has not altered its perception in the last five years and the fight against youth crime has intensified.

A punitive mentality has led to proposals by politicians to reintroduce the death penalty⁴⁵¹ (at a time when other States are removing this sanction from their statute books), life imprisonment⁴⁵², to introduce life imprisonment in isolation⁴⁵³, as well as to renounce international human rights treaties for the sake of the administration of justice.⁴⁵⁴ Proposals specifically targeted at under-18s have included amending Article 198 *Children's Code* to increase the maximum sentence for deprivation of liberty for under-18s, lowering the age of criminal responsibility below 12 and lowering the age of full penal responsibility to 16 from 18, which would allow the Courts to send children to adults institutions. The lowering of the age for children from 18 to 16 is motivated by the argument that most of the gang

⁴⁴⁸ Bussi, R., and Becker, D., *Manual de Incidencia Política para Jóvenes* (Foro Nacional de Juventud de Honduras, 2001), p. 14.

⁴⁴⁹ *ibid.*, p. 11 and Botero, M.L., *op.cit.*, p. 22.

⁴⁵⁰ pp. 22-26.

⁴⁵¹ This proposal was made by Porfirio Lobo Sosa, head of the National Congress and Presidential Candidate for the 2005 election.

⁴⁵² Debate in August 2004, started by the head of the National Congress who recommended the introduction of the death penalty. However, the reintroduction of the death penalty would be a direct violation of Article 4(3) *ACHR*, which prohibits the re-establishment of this sanction.

⁴⁵³ "Oscar Álvarez: Ni a la pena de muerte le temen delincuentes" *La Tribuna* 23rd August 2004.

⁴⁵⁴ "It seems to me that in aspects of the administration of justice we would have to renounce a series of agreements, conventions and treaties that Honduras signed on human rights, which will take many years to be eliminated" (*ibid.*).

members are under 18 and this change is needed so as to better control these children. However, these propositions have not found support among the judicial institutions⁴⁵⁵. Also dealing with 16-18-year-olds as adults has been frequently criticised by the Committee on the Rights of the Child.⁴⁵⁶

The events in Honduras, including these draconian proposals, bear out the Committee's concerns, voiced in 1995, that "...the increasing trend for juvenile justice to become the subject of social and emotional pressure ... create[s] opportunities to undermine respect for the best interests of the child"⁴⁵⁷.

Combating Public Perception

ROLE OF GOVERNMENT AND POLITICIANS

It is recognised that introducing and implementing legislation and policies that respect children's rights is most difficult in the area of criminal justice. However, the obstacle posed by public opinion is not an excuse for the continued violation of children's rights in the juvenile justice system.

Rather than pandering to a misinformed public, the Government has a duty to challenge misconceptions and promote children's rights.⁴⁵⁸ Politicians must take the lead in providing a more balanced approach to discussions on juvenile offending. Responsible dissemination of crime statistics and court figures can also contribute to the public's understanding of the juvenile justice system and a change in public opinion, increasing confidence in the system as a whole.

It is unfortunate that the achievement of Honduras in adopting the *Children and Adolescents' Code*, which embraces children's rights for children in conflict with the law, has been undermined to some extent by State policy on juvenile offending. Unfortunately, there is no political will in Honduras to publicly promote more holistic crime policies that focus on prevention and rehabilitation and no signs that this will change in the near future.

ROLE OF THE MEDIA

In many countries around the world, as in Honduras, the press are quick to demonise youth and report negative stories, while being less likely to consider a story about a positive contribution that a child has made to the community as news worthy. Inevitably, this paints an unfair image of youth. International standards on juvenile justice recognise the positive and negative impact that the mass media can have, recommending that "*The mass media should be encouraged to portray the positive contribution of*

⁴⁵⁵ Herman Mendes, Children's Judge, Comayagüela, meeting 1st July 2004.

⁴⁵⁶ e.g. Barbados, Concluding Observations, CRC/C/15/Add.103, 24th August 1999, para.29 and Morocco, Concluding Observations, CRC/C/15/Add.60, 30th October 1996, para 16. Also see Defence for Children International, *Juvenile Justice – 'the Unwanted Child' of State Responsibilities – An analysis and commentary on issues of Juvenile Justice in the Concluding Observations of the UN Committee on the Rights of the Child 1993-2000* (2000).

⁴⁵⁷ Report on the tenth session, October/November 1995, CRC/C/46, para. 220.

⁴⁵⁸ As a general principle, States have a positive obligation to disseminate information on children's rights to the general public (Article 42 CRC).

*young persons to society*⁴⁵⁹. Further, the media should ensure that the privacy of children is protected at all stages of the proceedings by refraining from publishing information that would lead to his/her identification. Naming and picturing young suspects has a considerable impact on media frenzy and public interest in relation to individual cases, and provides the offender with a reduced chance of rehabilitation in the community. Media should also "[a]void demonising children and seek balanced reporting so that children are not portrayed only as perpetrators of crime".⁴⁶⁰

Although the media in Honduras does include some positive stories about children and young people and highlights violations of their rights in areas outside the criminal justice system, there is still an overemphasis on their wrong doing in society. Reporters, editors and producers need to make efforts to expand their sources, provide context for crime news, increase enterprising and investigative journalism, balance stories about crime and youth with stories about youth generally, conduct and discuss content audits of their own news, and examine the story selection process, adjusting it if necessary to achieve more balance and proportionality⁴⁶¹.

It is of course difficult to persuade the populist media to take a more responsible approach to reporting.⁴⁶² The NGO community has a critical role to play in feeding the press with a more positive image of youth and in attempting to balance news coverage.

⁴⁵⁹ Guideline 41, *Riyadh Guidelines*.

⁴⁶⁰ paras 60 and 61 (*United Nations Manual on Juvenile Justice, op.cit.*).

⁴⁶¹ Adapted from Hamilton, C., and Harvey, R., "Role of Public Opinion in the Implementation of International Juvenile Justice Standards" *The International Journal of Children's Rights* 2003 (Vol. 11: 369-390), pg 383.

⁴⁶² However, there are newspapers, which have already taken a more balanced approach to reporting juvenile crime. In America, some sections of the media are taking a fresh look at crime reporting, focussing on the backgrounds of the perpetrators and the victims and exploring reasons for the crimes, rather than simply dissecting the event that took place (Shepherd, R., "How the Media Misrepresents Juvenile Policies", *Criminal Justice* Winter 1998, (Vol. 12, 37)).

CONCLUSION

Legislation governing the treatment of children in conflict with the law largely embraces international juvenile justice standards and norms, establishing separate laws, procedures and institutions that are specific to children, as demanded by the *CRC*. However, it is lamentable that nearly ten years after the introduction of the *Children and Adolescents' Code*, children are being dealt by a system that frequently fails to uphold their rights in practice.

All aspects of the criminal justice framework, from prevention, through the investigation and trial process, to rehabilitation and reintegration, are hampered and sometimes crippled by a shortage of resources. Violations of children's rights, not only by the police, but by all law enforcement bodies (including the closed detention facilities) are rarely investigated and remain largely unpunished, allowing impunity to prevail throughout the juvenile justice system. A lack of political will to address its shortcomings compounds the situation.

In fact, recent State policy on crime under the Maduro government, which has focused on combating gangs and organized crime, has worsened the situation for children in conflict with the law in terms of their rights. Although four years of a zero tolerance approach has succeeded in reducing the incidents of some types of crimes, these policies have done little to address the root causes of crime and therefore impact offending in the long term. This approach is unlikely to alter with a change of President, as candidates have expressed similar, if not more draconian, views.

Where efforts have been made to develop prevention, rehabilitation and reintegration programmes, there has been a preoccupation by the State, as well as the NGO sector and funders, with gangs.

Such an approach has left limited provision for young offenders, many of whom are locked up for long periods in inhuman conditions without adequate programmes of rehabilitation. Coupled with an absence of reintegration programmes, these young people are highly vulnerable to reoffending on release. While communities may be persuaded to feel safer due to the zero tolerance campaign, the reality is that the problem of delinquency is simply being delayed and contained for a short number of years.

The failure of successive governments to transfer not only international law, but also the standards enshrined in domestic legislation from paper to practice is a grave disservice to both the young people caught in the criminal justice system and to the communities that the State is aiming to protect from crime. The State must act, as a matter of urgency, to address the shortcomings of the juvenile justice system and provide adequate prevention, rehabilitation and reintegration programmes not only to

implement children's rights, but also to impact upon crime and delinquency in the long term.

RECOMMENDATIONS: From Paper to Practice

The following recommendations bring together the criticisms, observations and suggestions of State agencies, judicial agencies, NGOs and civil society and the conclusions of the NGO consultation on Juvenile Justice held on 15th February 2005 in Tegucigalpa.⁴⁶³

Implementing Children's Rights

The current system for children in conflict with the law does not universally uphold national and international juvenile justice standards.

- **The State must act to implement national laws and standards which protect the rights and welfare of children in conflict with the law.**
- **The State must review law, policy and practice to ensure that it upholds the *UN Convention on the Rights of the Children* and the supporting international minimum juvenile justice standards and norms.**

Law Enforcement Bodies

GENERAL

Adequate resources

Inadequate human and financial resources are allocated to all judicial agencies (e.g. Prosecutor's Office, Public Defence, DGIC). Sections dealing with children's cases in particular suffer from under funding, which directly results in violations of the rights of children who are being processed by the criminal justice system.

- **The State must allocate adequate resources to judicial agencies.**

Of course, this is a simplistic recommendation, especially when bearing in mind the various financial crises that bodies such as the Public Ministry and the DGIC suffered in 2004. However, the fact remains that these bodies are overwhelmed and cannot improve their performance significantly without an increase in overall resources and an adequate allocation of funds to process children's cases.

Improving logistical support

The shortage of transportation and funds for fuel causes inefficiency and delays in the justice system, leading to violations of children's rights.

⁴⁶³ NGO participants are listed in Annex 1.

- **Immediate action needs to be taken to address the lack of logistical support in the justice system.**
- **In particular, there needs to be clarity about which body is responsible for transporting children to and from the closed detention centres during the trial process and a clear budgetary allocation for this task, in order to avoid unnecessary delays.**

Specialists in the judicial system

Although children's specialists exist in the juvenile justice system, they generally operate in the larger cities.

- **All children, regardless of where they live, should benefit from being dealt with by professionals trained in children's rights and welfare.**
- **Where it is not practical to assign children's specialist (e.g. Children's Judges), adequate training should be delivered to judicial personnel.**

POLICE

Children are highly vulnerable to maltreatment and abuse of their rights when in the hands of the police.

Trained and specialist police officers

- **Adequate training on dealing with children and young people and children's rights must be provided to all officers.**
- **Special units should be established within police stations staffed by officers who are specifically trained and experienced to deal with cases involving children and young people (who may be perpetrators, victims or witnesses).⁴⁶⁴**
- **Where it is not practical to establish such units, there should be officers (both in the Preventive Police and the DGIC) on duty or on call 24 hours a day who are trained to deal with children and young people. This is equally important in the cities, where the police deal with larger numbers of juvenile cases, as in the smaller towns and rural areas where cases are less frequent.**

Transferring children from police stations

- **Children must be transferred as quickly as possible to the hands of the judicial authorities both in the cities and in rural communities.**

Avoiding abuses on arrest

- **Sufficient numbers of officers must be deployed when undertaking arrest operations in order to avoid situations where the police feel the need to use excessive force to restrain young people.**

⁴⁶⁴ The establishment of special units within police stations for children was attempted in a few areas but then abandoned due to a lack of cases for those units to deal with. However, in addition to being exclusively assigned to deal with children's cases, these units/officers should take on a wider role of prevention working with schools and community schemes.

Ex gang members

Ex gang members remain liable to harassment, maltreatment and arbitrary arrest, which acts as a disincentive for young people to leave the gangs.

- **In order to encourage young people to leave the gangs, initiatives should be explored which protect ex gang members from police harassment.**

Efforts have been made by organisations to negotiate with the police in order to reduce the level of harassment suffered by ex-gang members with whom they work following the reform to Article 332.

Participants in some programmes and ex participants have been issued with identity cards that, in theory, can be shown to the police by a young person when he is stopped or arrested in order to 'prove' that he is not a member of one of the gangs. It is expected that release is automatic unless that person is suspected of having committed another crime - it must be acknowledged that some of these young people will offend again (or have committed serious crimes while gang members⁴⁶⁵) and must be dealt with accordingly by the police.

However, this initiative is not respected by police officers or police forces in all areas and ex-gang members are often arrested and held for questioning when they have not committed any crime. NGO workers then have to expend valuable time and energy arranging for the release of the young people, who should never have been picked up in the first place.

- **The introduction of a standardised system of ID cards for ex gang members to avoid arbitrary arrests and detentions should be explored.**

In addition to the police being directed by their superiors not to arrest young people under Article 332 if they are 'card carriers', unless they are suspected of committing another offence, the police must be able to trust the documentation that they are being shown. It would be useful if organisations offering rehabilitation and reintegration services country wide collaborated with each other and the police to produce standardised ID cards, which would be instantly recognisable to police forces in all parts of the country. This collaboration could be coordinated by the National Programme for prevention, rehabilitation and social reintegration of young people in gangs.

The introduction of such a scheme is certainly not problem free. It may be difficult to prevent fraudulent production and use of the cards. The authorities and NGOs need to explore how cards that are hard to copy can be produced in a way that is not prohibitively expensive.

⁴⁶⁵ The issue of having an amnesty for minor and/or serious crimes committed while the young person was a member of a gang is a pressing issue that must be debated. A realistic balance has to be struck between encouraging young people to leave their gang and ensuring that victims of crimes obtain justice.

NGOs have also expressed a fear that the introduction of ID cards would lead to discriminatory registration of ex gang members and make it easier for police to arrest young people. This could be avoided by ensuring that the police did not have access to the register, which would be maintained by an external body.

Contacting representatives

The *Children's Code* does not give young people the right to contact whoever they want when they are arrested. Family members, who they have a right to contact, are not always the most important people – children may be living on the streets or in hostels or be participating in an NGO or community rehabilitation/reintegration programme.

- **It is important that when children are arrested they are entitled to contact representatives from the organisations that are providing them with assistance, if they so wish.**

The organisation's representative will not only be able to provide assistance to the young person but, in the case of ex gang members, can also verify that they are, or have been, participants in a rehabilitation/reintegration programme.

Combating impunity

The impact of any initiatives to reduce police maltreatment of children and young people will be limited unless the impunity that currently prevails is challenged.

- **The State and the police authorities must combat the impunity that exists both with regards extrajudicial killings and also abuse and maltreatment.**

The Internal Affairs Unit is weak and ineffectual and does nothing to deter wrong doing among the police force. The closure the Special Unit for the Investigation of Child Deaths leaves a serious gap in providing justice to the victims of police abuse.

- **There must be a police complaints mechanism which is independent, transparent, accessible, adequately resourced, and which pursues disciplinary action where misconduct is found.**
- **Where maltreatment is more serious, external criminal prosecutions need to be instigated in addition to the internal investigation.**

Separation of adults and children

International standards are clear that children must be separated from adults when detained.

- **Although the majority of police stations manage to keep detained children and adults separated, facilities also need to be provided in rural and less populated areas to ensure that the**

police are able to separate under-18s from adults (e.g. in Roatan).

CHILDREN'S PROSECUTORS

Staffing the offices of the Children's Prosecutor

The regional and central offices of the Children's Prosecutor are overwhelmed by the number of cases that they have to deal with.

- **The Children's Prosecutor requires adequate levels of staffing, including social workers and psychologists, so that cases of juvenile offending and social risk can be dealt with effectively and efficiently.**

Increased staffing would enable complete assessments to be produced about the young person and his family and consequently decisions could be made that are truly in the best interests of the child.

Role of the DGIC

The ineffectiveness of the DGIC leads to direct violations of children's rights in terms of the extended periods that the young person must wait in pre-trial detention.

- **Cases involving children must be made a priority to ensure that they are dealt with as expediently as possible.**
- **In order to speed up cases, increased numbers of DGIC officers must be assigned to work with the Children's Prosecutors.**
- **These DGIC officers need to be trained in how to deal with child victims and child offenders**

PUBLIC DEFENCE

Separating the Public Defenders Office

The position of the Public Defence under the Supreme Court hampers their ability to allocate resources in the most effective way (e.g. to employ specialists) and impacts on their independence. Consequently, defence lawyers do not always work in the best interests of their clients but prioritise the interests and efficiency of the justice system.

- **Judicial institutions and NGOs generally agree that the Public Defence would function more effectively for its clients if it was separated from the Supreme Court.**

Dealing effectively with children and young people

The Public Defence does not always effectively deal with the cases of children and young people.

- **Trained, specialist public defenders should be assigned to deal specifically with children's cases.**
- **Preferably teams should be established within the Public Defence Office that include specialist public defenders, psychologists and social workers to work on children's cases.**

- **The children’s public defenders should be on call 24 hours a day, so that children can be represented without delay in the police stations.**

The creation of such units/specialism will only be effective if adequately resourced and staffed. Understaffing and underresourcing will lead to overwhelmed personnel and an ineffective service.

Fulfilling legal duties

- **Public defenders must fulfil their legal duties in visiting their clients who are held in the detention centres.**

CHILDREN’S COURTS AND JUDGES

Children and young people do not benefit from specialist Children’s Judges hearing their cases in all parts of the country. However, in areas where few children’s cases arise, it is accepted that assigning specialist Children’s Judges would not be cost effective and training would be more appropriate.

- **All judges with the competency to handle children’s cases should be adequately and appropriately trained.**

IHNFA

Recognising the failings of IHNFA, the State has already acted to intervene in the organisation instigating a welcome period of review and restructuring.

Resource allocation

IHNFA’s juvenile justice and child protection programmes are crippled by a lack of funding and personnel. IHNFA has an essential role to play in prevention, rehabilitation and reintegration and needs to be given the resources to fulfil its mandate.

- **The budget allocated to the agency must reflect the wide ranging work for which IHNFA is responsible.**
- **There should be an increase in the proportion of staff working directly with children and their families to deliver services.⁴⁶⁶**

Enhanced role for IHNFA

- **IHNFA should be central to elaborating laws, policies and standards for children at social risk and children in conflict with the law.**
- **IHNFA should actively coordinate the activities of NGOs and civil society (without undermining or hampering the work) and should act as a referral body for children to appropriate community programmes.**

Transportation

The work of IHNFA, in particular in terms of reintegration work, is hampered by a shortage of functioning vehicles and a lack of funds to purchase fuel.

⁴⁶⁶ As of May 2004, 485 out of 968 employees were working directly with children.

- **Projects can only be effective if they are backed by the logistical support that permits them to run.**

Improving Institutional Care

Staff at the closed juvenile detention centres work in incredibly difficult conditions, with little support from the State.

BUILDINGS AND EQUIPMENT

The detention centres have been allowed to decay over the past decade with little money being provided for maintenance. The buildings are now in a state of disrepair and significant funds are required to bring them up to an adequate standard.

- **The conditions in the detention centres urgently need to be improved.**
- **In particular, the problems outlined in the report on the conditions of bathrooms and sewage, as well as the absence of basic toiletries, need to be addressed.**
- **There must be sufficient mattresses and bedding for all children and young people accommodated in the centres.**
- **The complaints about the lack of food, especially in El Carmen, must be investigated as soon as possible.**

While some funds have been provided by international organisations and donors, these have not been sufficient to address the many structural problems in the centres and the lack of basic furniture and equipment.

DECENTRALIZATION

- **In the long term the State needs to establish smaller, decentralized units to allow children to be rehabilitated in or at least near their own communities and their families.**

The existence of centralized institutions may save the State money in the short term, but it does not serve the best interests of the child or the communities to which they return, as often children fail to reintegrate fully and consequently reoffend.

FAMILY CONTACT

It is important that children and young people maintain contact with their families throughout their sentence in order to increase their chances of reintegration when they are released.

- **The institutions must stop using the denial of family visits as a disciplinary sanction.**

Having such strict restrictions on visiting times, which prevent some families visiting the children at all, may allow the centre to be managed more effectively but is not in the best interests of the child.

- **The institutions should introduce more flexible visiting hours to take into consideration the long distances some families must travel and their work commitments.**

Even with political will and allocation of sufficient resources, the establishment of decentralized units will take time. In the meantime, the institutions must find a better balance between upholding the rights of children to maintain regular contact with their families, and ensuring the security of the centre by keeping families of rival gang members apart.

SEPARATION OF CONVICTED AND UNCONVICTED DETAINEES

Holding convicted and unconvicted juveniles together is a violation of international standards.

- **Honduras must take urgent steps to separate convicted and unsentenced juveniles being held in the juvenile detention centres.**
- **This separation must include gang members, who should not be subjected to diminished protection of their rights just by virtue of being accused of crimes under Article 332 of the *Criminal Code*.**
- **The State must provide increased resources to renovate facilities in order to allow this physical separation to take place.**

It is recognised that conditions in the centres make separation incredibly difficult. There is currently neither the capacity in terms of inhabitable buildings on the detention centre sites nor adequate staffing levels to monitor the different units. If the practice of separating gang members continued there would need to be six separate accommodation blocks in each institution in order to separate convicted and unsentenced gang members (pandilla 18 and Mara Salvatrucha) and non gang members.

STAFFING

Staff shortages means that effective rehabilitation cannot be carried out and the few personnel that are on duty can engage in little except 'crowd control'.

- **All institutions need to have sufficient levels of staffing.**
- **El Carmen in particular urgently needs guidance counsellors and personnel who can provide education and vocational training.**

If children cannot be rehabilitated in the centres (which must be the primary aim of depriving a child of their liberty), the institutions turn into mere holding centres, which can only postpone, rather than address the young person's offending behaviour.

MONITORING OF THE CENTRES

Monitoring of the detention centres is sporadic. There is no single body responsible for ensuring that standards are maintained and treatment of children abide by national and international standards.

- **A system of unfettered and independent monitoring, which is adequately funded to undertake this role, must be established to highlight the situations where standards and facilities fall below acceptable standards.**
- **Accountability for violations of children’s rights in the institutions must be established.**

COMPLAINTS MECHANISM

- **Children should also have access to an external complaints mechanism.**

Both roles (monitoring and complaints) could be taken on by a Children’s Commission/Children’s Ombudsman for Human Rights (discussed below)

The proposal for an independent monitoring body for the detention centre has not only been made by the NGO community, but also by IHNFA, which recommended either the establishment of a new body that would oversee the custodial institutions for children (un Cuerpo de Custodia de Centros de Menores) or to contract out the monitoring responsibility so that other interested bodies could take on this role.

Prevention

*"The prevention of juvenile delinquency is an essential part of crime prevention in society."*⁴⁶⁷ Prevention is also the most cost-effective segment of crime control and investment should reflect this reality. However, funds have been disproportionately allocated to fighting crime rather than tackling its root causes.

The Riyadh Guidelines detail the steps to be taken by the Government in preventing youth offending.

A HOLISTIC APPROACH TO CRIME PREVENTION

Prevention of crime requires a holistic approach to the issue of offending.

- **Addressing the causes of youth offending is essential to preventing crime in the long term.**
- **State agencies need to provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse, prevention and treatment.**⁴⁶⁸
- **The State must strengthen child protection and child welfare systems.**

Supporting the family unit

⁴⁶⁷ Guideline 1, *Riyadh Guidelines*.

⁴⁶⁸ Guideline 45, *Riyadh Guidelines*.

The Riyadh Guidelines recognise the vital role that the family plays in preventing young people offending.

- **The child protection and welfare system must attempt to keep a child with his family or extended family.**
- **Adequate support must be provided to families at risk of breakdown.**
- **If this is impossible or not in the child's best interests, an alternative placement should be found, preferably in a family setting (e.g. fostering or adoption). Institutionalisation of children must be avoided wherever possible.**

Violence within the family is a significant but largely untackled problem in Honduran society.

- **There need to be programmes and campaigns set up to combat violence in the family.**

ROLE OF NGOS AND CIVIL SOCIETY

NGOs and civil society already play a vital role in the provision of prevention services.

- ***"Community-based services and programmes should be developed for the prevention of juvenile delinquency."*⁴⁶⁹**
- **These programmes should respond the special needs, problems, interests and concerns of young persons.**
- **These initiatives should be given financial and other support by the State.**

RESEARCH

- **Prevention programmes should be developed based on national and international research and evaluations of existing national programmes.**

WORKING WITH SCHOOLS

Children and young people are more likely to commit crime and become involved with gangs when they are not attending school. Early intervention when children fail to attend school, in order to get them back into education, is a crucial part of the prevention framework.

- **Stronger links need to be established between the police, the schools, IHNFA and community and NGO (prevention) schemes, which can work with children, young people and their families.**
- **Family work is essential in preventing offending and reoffending and should be undertaken by State and non-state agencies.**
- **There should be a designated point of contact in the schools, the police and the community schemes to facilitate easy communication and appropriate referrals.**

⁴⁶⁹ Guideline 6, *Riyadh Guidelines*.

➤ **Schools need to keep accurate records on attendance.**

The liaison role in the preventive police could be taken on by special juvenile units or specialist children's officers, if they were established in the police force.

These networks should in no way seek to criminalise or stigmatise children and young people but should be seen as a service that aims to address their needs and the needs of their families and get them back to school.

Strengthening Alternatives

International instruments recommend the use of alternatives to both placing children in closed detention centres and to processing children through the formal criminal justice system. While domestic legislation allows diversion to community alternatives, there are huge gaps in the provision of appropriate programmes of supervision, rehabilitation and reintegration, outside those focusing on gangs⁴⁷⁰, not only by the State but also by civil society. This leads to a situation where children are either given community sentences that fail to meet their needs and prevent re-offending or judges send children to the closed detention centres, having little faith in the alternatives on offer. The over reliance on deprivation of liberty is in violation of national and international standards.

However, while some NGOs and community schemes are in a position to plug the gap in running diversion/alternatives schemes within the framework of existing activities, there is a reluctance to directly and explicitly engage in juvenile justice work. This lack of enthusiasm is compounded by the fact that juvenile justice projects consistently fail to attract adequate resources from donor agencies.

NGO PROVISION OF ALTERNATIVES

- **It is vital for the juvenile justice system that the gap in community and NGO programmes run for children in conflict with the law is plugged.**
- **NGOs need to recognise their capacity to take on this type of work.**
- **While further training may be required on how to work intensively with children and their families specifically to address offending behaviour, there are local NGOs and community initiatives, which have experience of working with children at risk of offending (e.g. street children and children at social risk) that could run diversion/alternatives schemes within the framework of their existing activities.**
- **NGOs providing these schemes and programmes need to be proactive in publicising their work to the judicial agencies.**

⁴⁷⁰ The situation in relation to gangs is different. The provision of programmes for children who have been involved in gangs has grown over recent years and has attracted international funding. See Annex 3 for an overview of NGO activities in Honduras.

IHNFA

- **IHNFA must utilise the skills and experience of NGOs and civil society to provide community alternatives to deprivation of liberty.**
- **Explicit State support for the initiatives would also assist the NGOs in securing international funding.**
- **IHNFA should compile a register of relevant programmes and disseminate them to the judiciary, prosecutors and the public defence to encourage referrals to be made.**

ROLE OF LAW ENFORCEMENT BODIES

Such alternatives and initiatives will have limited impact on the juvenile justice system if children and young people are not referred.

- **Prosecutor's Office and Public Defenders need to be aware of the availability of these schemes to advocate that the defendant is referred if appropriate.**
- **Judges must be made aware of the availability of these programmes and be encouraged to make referrals.**

IHNFA struggles to monitor pre-trial and sentencing alternatives to deprivation of liberty.

- **NGOs have suggested that judges with the specific competency to monitor the implementation of socio-educative measures should be created.**

Tackling Substance Addiction

Substance abuse among young people is a huge problem which needs to be tackled alongside other rehabilitation measures. However, there is a chronic shortage of units dealing with addiction among children and young people inside and outside the detention centres - community detoxication schemes tend to only offer services to adults.

ESTABLISHING DETOXICATION UNITS

- **Detoxication units/services need to be established as a matter of urgency within all the closed detention centres accommodating under-18s.**
- **Detoxication units also need to be made available for under-18s in local communities.**

Reintegration Services

Although IHNFA has a duty to provide support and services to children both in the detention centres and back in the communities in order to assist them reintegrate, in practice this support is either inadequate or not provided at all. This gap in services leaves children and young people highly vulnerable to reoffending and undermines any successful integration work that has been carried out in the detention centres.

Work is rarely carried out with the child's family – often once a family member has been identified to take responsibility for the child, they are usually left to get on with it. This is a recipe for disaster considering that parents and family members do not always have that much contact with the young person while he is serving his sentence.⁴⁷¹

⁴⁷¹ Projects working with ex gang members, such as Generación X, have already recognised the importance of engaging with the family in order to achieve successful reintegration.

Although NGO, religious and community projects are emerging that seek to provide support services to ex gang members, at present there are few services provided to non gang members when they leave the closed institutions.

MAKING LINKS BETWEEN THE DETENTION CENTRE AND THE COMMUNITY

- **A bridge should be established between the detention centres and the child's community (a role foreseen for, but not fulfilled by IHNFA) in cooperation with the administrations of the institutions.**

However, although the majority of detainees are from the Tegucigalpa and San Pedro Sula (where the detention centres are located), a significant number of children come from outside the cities.

- **A country wide network of NGO and community reintegration schemes should be established.**

NGOs based in the cities could carry out initial work with the child while they are in the detention centre and make a case referral to an NGO/community scheme operating in the area that the child comes from. The corresponding NGO/community scheme could carry out groundwork with family and make at least one visit to the child while he is serving his sentence. This NGO could then provide ongoing support to both the child and the family once he is released.

Working with Gangs

Children and young people are not the focus of the National Programme and their specific needs risk getting lost in general programming and initiatives.

- **The National Programme must to recognise the specific needs of under-18s in planning prevention, rehabilitation and reintegration initiatives.**
- **The National Programme needs to employ a dedicated team member to direct the programmes relating to children and young people.**

Collaboration and Coordination Between the State and NGOs and Civil Society

COORDINATION OF STATE PROGRAMMES

The lack of coordination among State programmes means that the programmes that do exist for children in conflict with the law are not having the impact that they should.

- **The State needs to improve coordination between their own programmes which include activities of the:**
 - **Police;**

- **National Commission for Human Rights ;**
- **President’s Office;**
- **Office of the Vice President;**
- **The Programme for the Prevention, Rehabilitation and Reintegration of people in gangs;**
- **Programmes of the First Lady; and**
- **IHNFA.**

One of these organs should take on the coordinating responsibility for ensuring that programmes compliment each other.

COLLABORATION WITH THE NON-STATE SECTOR

The State is unable, on its own, to provide all the services that are required to provide a system of juvenile justice that adequately addresses prevention, rehabilitation and reintegration of children and young people.⁴⁷²

- **The State must recognise the important role that NGOs and civil society can play in the system for children in conflict with the law.**
 - **The State must explore the possibilities of using the skills and activities offered by community and NGO programmes to provide services to children in conflict with the law.**
 - **IHNFA and the judicial agencies must work actively with NGOs and community initiatives in order to ensure a wide provision of services for children are available and utilised.**
 - **Local community programmes need to be utilised to ensure better country coverage of programmes.**
 - **A comprehensive scoping study of the activities of NGOs and civil society working in this field should be undertaken. Subsequently a network of NGOs and community programmes, which can offer prevention, rehabilitation and reintegration services, should be established. Information on this network should be disseminated among the State and non-state sector and judicial institutions.**
-
- **However, the State must not absolve itself of responsibility for funding and delivering programmes by placing responsibility solely on the non-state sector.**

Role of NGOs and Civil Society

NGOs and civil society are crucial to the implementation of children’s rights in the juvenile justice system. However, while there are some excellent children’s organisations in Honduras, few of them work with children in conflict with the law and the majority of organisations are located in the Tegucigalpa and San Pedro Sula.

⁴⁷² The recognition by the National Programme for the Prevention, Rehabilitation and Reintegration of young people in gangs that services can be delivered by NGOs and civil society is a welcome approach, if it is adequately supported by the State.

Although there are NGO coalitions and networks that touch upon juvenile justice issues, there is no dedicated network advocating for the rights of children caught in the justice system. There is a reluctance among organisations to get involved in this issues as there is a fear of being seen to support the actions of juvenile delinquents and gangs (although the issue of gangs is beginning to receive increased support in terms of advocacy, prompted by the reform of Article 332).

- **It is vital that NGOs and civil society engage with the issue of juvenile justice.**
- **The non-state sector needs to work in coordination with each other to advocate for rights for children in conflict with the law, as well as to provide the widest possible provision of services.**

Donor Agencies – Funding for Juvenile Justice

Juvenile justice is historically an area of children’s rights and child protection that does not attract sufficient funding from donors worldwide and the situation in Honduras is no different. The limited funding that has been made available for juvenile justice has tended to focus on projects dealing with the issue of gangs. While, of course, it is vital that projects working with children involved in gangs receive funding, these projects should compliment juvenile justice projects rather than replacing them.

Neglecting this area with the law leaves a large gap in the child protection system – it is often when child protection systems have failed that the juvenile justice system comes into play. Juvenile justice reforms and programmes compliment other areas of child protection such as deinstitutionalisation, which is currently attracting a huge amount of international attention and funding worldwide.

The planned withdrawal of large agencies such as Save the Children UK and GOAL and funders such as DFID will certainly impact negatively on an already limited network of NGOs that deal with juvenile justice.

- **Donor agencies must recognise that strengthening the system for children in conflict with the law is vital for the strengthening of the child protection system as a whole.**
- **Funding streams must be made available to NGOs and civil society to enable them to engage in programming for all aspects of juvenile justice.**

Statistics – Collection and Collation

In 1999, the Committee on the Rights of the Child, in its concluding observations on the Honduras State report, expressed its concern regarding the lack of disaggregated data on all areas covered by the Convention and recommended that the State reviewed and updated its data collection systems.⁴⁷³

⁴⁷³ Para 14 Honduras, Concluding Observations, *CRC/C/15/Add.105*, 24th August 1999.

However, the collection and collation of juvenile justice statistics carried out by the State and NGOs is still generally poor. Although information is stored by IHNFA, which has an ineffectual statistics centre, and different judicial agencies, this data is not collated. Consequently, it is difficult to ascertain a true picture of juvenile offending and the success and failure of State action, especially in relation to different dispositions and pre-trial diversion initiatives.

For example, there is no statistical information that shows the age, crime and corresponding sanction imposed and whether this child has reoffended.⁴⁷⁴ Data on reoffending, in particular, was impossible to obtain, with examples of reoffending emerging from anecdotal accounts given by judges and directors of detention centres who come across the same children time and again.

➤ **In developing juvenile justice policies, it is essential that accurate data exists and that research is carried out on the root causes of and trends in offending⁴⁷⁵, so that responses to offending can be developed that are effective.**

Simply reacting to a rise in juvenile crime and violence by locking more young people up is not an adequate response and will not benefit the young people or society in the long term.

The *Beijing Rules* provide that "[e]fforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration"⁴⁷⁶.

➤ **A 'reformed' IHNFA should act as the central data collection and collation point for juvenile justice statistics. The agency should have the authority to demand relevant statistics from the judiciary, the institutions and the police. This data should then be used to inform juvenile justice policy development and reforms.**

RECORDING VIOLATIONS OF CHILDREN'S RIGHTS IN THE JUVENILE JUSTICE SYSTEM

Apart from statistics on killings of children and young people, data, which could demonstrate the extent to which children's rights are being violated in the criminal justice system, is not collected in a systematic manner and remains largely anecdotal.

➤ **There needs to be a coordinated effort by NGOs to document such violations, especially in terms of children being picked up**

⁴⁷⁴ Mildred Dubón, Technical Unit for Penal Reform, meeting 23rd July 2004.

⁴⁷⁵ Rule 30, *Beijing Rules*.

⁴⁷⁶ Rule 30.3 *Beijing Rules*. "The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts" (Rule 30.4 *Beijing Rules*).

by the police⁴⁷⁷, maltreatment by police, children being held with adults, the experiences of children during the investigation and trial process, and their treatment in institutions.

Such information could then be used to lobby for change and to focus attention and resources on the most problematic areas.

An Ombudsman for Children

While the National Commission for Human Rights covers the issue of children, this is not a substitute for a body dedicated to children's rights and children's issues.

- **A Children's Rights Commissioner/Ombudsman should be established to promote and protect the rights of children and young people in Honduras, including those in conflict with the law.**

In the current climate, it is vital that there is an independent statutory body that is able to provide a voice at the national level for the promotion and protection of the rights of children. This office must be adequately funded and endowed with sufficient powers to carry out the mandate foreseen by the Committee on the Rights of the Child⁴⁷⁸. One of its main tasks should be to counter the negative image of youth that prevails in Honduras, which has enabled the rights of children to be undermined in the youth justice system.

Such an institution is even more vital with the closing of the Special Unit for the Investigation of Violent Child Deaths.

Combating Public Perception

The negative interplay between the media, the politicians and the general public has been discussed in detail in the analysis.

ROLE OF THE MEDIA

- **The media must take a more responsible approach to reporting youth crime and juvenile delinquency.**
- **Negative stories should be balanced by positive images of young people contributing to society.**
- **The ban on publishing identifying information about suspected and convicted young offenders must be strictly enforced by the authorities.**

⁴⁷⁷ CPTRT are planning to carry out a study of one area to monitor the frequency with which children aged 12-15 are picked up by the police and how often they are held with adults (Alba Majeer, Director, CPTRT – Centro de Prevención, Tratamiento y Rehabilitación de las Víctimas de la Tortura y sus Familias, meeting 5th July 2004.

⁴⁷⁸ General Comment No. 2 (2002), *The role of independent national human rights institutions in the promotion and protection of the rights of the child*, 15/11/2002. CRC/GC/2002/2.

- **Honduran NGOs have called on the media to take a more responsible approach to broadcasting and publishing violent images both in the news and for popular entertainment.**

ROLE OF POLITICIANS

- **Politicians must desist from exploiting the negative image of youth for political gain.**
- **Politicians must engage in constructive debate about reforms to the juvenile justice system.**

ROLE OF NGOS

- **NGOs must be proactive in feeding the media positive stories about and images of youth.**

Annex 1 **Participants in the NGO Consultation on Juvenile Justice**

Organisations that took part in the NGO consultation on Juvenile Justice, facilitated by Save the Children-UK, Casa Alianza, Children's Legal Centre, 15th February 2005, Tegucigalpa, Honduras:

- Alternativas y Oportunidades
- Asociación Cristiana Jóvenes (ACJ)
- Casa Alianza
- CIPRODEH
- COFADEH
- COIPRODEN
- GOAL
- Movimiento Juvenil Cristian
- Paz y Justicia (written answers to consultation questions)
- Save the Children-UK
- Xibalba

Annex 2

Participants in the Research for the Analysis

With thanks to the following NGOs, civil society, individuals, State bodies, Government representatives for taking the time to meet to discuss the juvenile justice system:

NGOs

- Alternativas y Oportunidades
- Asociación Cristiana Jóvenes (ACJ)
- Audio Visuales, y Análisis de la Prensa
- Casa Alianza Honduras
- Casa Alianza UK
- CIRPODEH
- COFADEH
- COFAMA
- COIPRODEN
- COMPARTIR
- CPTRT
- Foundation for Life
- Generación X
- GOAL
- OFALAN
- Paz y Justicia
- Proyecto Victoria
- Save the Children-UK
- Xibalaba

State agencies

- Children's Judge, Comayagüela, Herman Méndez
- Children's Judge, La Ceiba, Irasema Guillen Sánchez Martínez
- Children's Prosecutor, Tegucigalpa, Nora Urbina
- Children's Prosecutor, La Ceiba, Nelly Vallejo
- Honduran Fund of Social Investment (FHIS), Jorge Mahomar, Consultant on problems relating to street children
- IHNFA - Maria Lolis Salas, Director (and intervener) of IHNFA, Julio Sanchez, Guidance Counsellor, Tegucigalpa Fermine Lainez, Supervisor of Re-education, San Pedro Sula, Lydia Dolmor , Chief of Re-education, San Pedro Sula, Martha Elena Trochez, Regional Director, IHNFA La Ceiba
- Inter-institutional Commission on Penal Reform, Mildred Dubón (Children's Judge)
- Ministry of Governance and Justice, Miguel Calix, Assessor of Human Rights
- Ministry of Security, Luis Pinera Batres, Secretary General
- National Commission for Human Rights , Tegucigalpa
- National Commission for Human Rights , La Ceiba, Regional Office

- Police - Mario Perdomo, Police Commissioner, Directorate of Police Training; Sub Commissioner Francisco Murillo López, Preventive Police, Tegucigalpa; Preventive Police in Roatan
- Public Defence, Paulina Prez de Licana, Director
- Public Ministry, Minister Ramon Ovidio Navarro, Director General of Prosecutions
- Special Investigation Unit into the Deaths of Minors, Ricardo Díaz, Supervisor General
- Technical Unit for Penal Reform, Mildred Dubón

Presidential Programmes:

- Guillermo Jiménez, Executive Secretary of the Programme for prevention, rehabilitation and social reintegration of gangs
- Hilda Caldera, Consultant on the Programme for prevention, rehabilitation and social reintegration of gangs
- Ramon Romero, Presidential Consultant

State Institutions

- El Carmen
- Jalteva
- Las Casitas
- Sagrada Corazon
- Renaciendo

Other

- Maria Luiza Borjas, ex Head of the Unit for Internal Affairs
- UNICEF
- USAID

Annex 3

NGO and Donor Activities

Although this section does not cover all the activities of donors, NGOs and civil society, it does seek to give an overview of the main ongoing activities relating to children in conflict with the law.

The majority of activities in which NGOs and civil society are engaged relate to children at social risk and therefore prevention and/or gangs. Few organisations work directly on the issue of children in conflict with the law, although their activities do impact positively on preventing children engaging in crime.

Alternativas y Oportunidades

Activities: prevention

Area or work: Tegucigalpa, Comayagüela, Francisco Morazan

Website: <http://www.ayoenhonduras.unlugar.com/>

Alternativas y Oportunidades do not work directly on juvenile justice issues but focus on children at social risk. They are working with approximately 1,200 children and young people.

Children can be referred to their programmes by Judges and NGOs. The organisation runs a number of programmes that are aimed at preventing child labour and getting children back into school. The main target group is market families in Tegucigalpa and Comayagüela and encouraging these parents to allow their children to attend school.

Other projects include: Health education, school support, young person's club, awareness raising in the media, Mum and Dad's school, and providing psychological assistance.

Asociación Cristian Jóvenes (ACJ)⁴⁷⁹

Activities: prevention, policy work, changing public opinion

Area or work: Ocotepeque, Santa Rosa de Copan, Puerto Cortes, San Pedro Sula, Choluteca, Taulabe, Comayagua, Tegucigalpa, Márcala and Juticalpa

Email: acj.honduras@cybertel.hn

Ycare, which is a subsidiary of the international YMCA programme, provides funds to the Asociación Cristian Jóvenes for the citizenship programmes.

The organisation works with 2,010 young people between the ages of 15 and 27 and approximately 200 children aged between 7 and 14 years. It has two

⁴⁷⁹ Information obtained during a meeting with Jorge Baca, Programme Coordinator of Citizenship Training and Marco Perez, Director, Asociación Cristian Jóvenes, 15th July 2004.

central activities – training and lobbying. This has generated the National Young Forum ('Forum Nacional de la Juventud'). The ACJ runs citizenship programmes computer classes and also has initiatives to prepare young people for work and find them jobs. The organisation also runs HIV/AIDS programmes.

While the ACJ does not have any programmes directly related to juvenile justice, the organisation does campaign on relevant issues, such as the amendment to Article 332 *Criminal Code*.

British Embassy - Guatemala

Activities: donor

Email: embassy@intelnett.com

The British Embassy in Guatemala is responsible for funding programmes in Honduras as they do not have an Embassy in Honduras.

The British Embassy has provided equipment such as computers, printers, radios and cameras to the special unit which is responsible for investigating the murders of street children.

Mr. Alvarez, Minister for Security, visited the UK in 2004 to look at police training, including scientific investigations of crime scenes and community policing. There are plans to provide training for 75 offices that emphasises protection for children in conflict with the law.⁴⁸⁰

The Embassy also provided funding for the research, production and dissemination of this analysis of the Honduran juvenile justice system.

Casa Alianza Honduras

Activities: campaigning, lobbying, changing public opinion, legal assistance, residential centres, research, rehabilitation and reintegration – street children

Area or work: Tegucigalpa, San Pedro Sula, rural locations and national for campaigning

Website: www.casa-alianza.org/honduras.html

The regional organisation began its programmes in Honduras in 1987. It runs non-residential and residential projects, which include a crisis centre, group homes and transitional homes. The organisation also runs a rural-based drug rehabilitation centre, a family reintegration programmes and a Legal Aid Office for street children.

⁴⁸⁰ Foreign and Commonwealth Office UK, *Human Rights: Annual Report 2004* (Foreign and Commonwealth Office UK, 2004), p. 245.

The organisation has campaigned extensively on the issues of maltreatment and extrajudicial killings of children and young people, initiating cases of violations of children's rights before the Inter-American system of human rights.

Centro de Prevención, Tratamiento y Rehabilitación de las víctimas de la tortura y sus familias (CPTRT)

Activities: prevention, campaigning, legal assistance, research

Area or work: national

Website: www.cptrt.org

Centro de Prevención, Tratamiento y Rehabilitación de las Víctimas de la Tortura y sus Familias was established in 1995 to help the survivors of torture and their families. The organisation now runs programmes to assist the inmates of the penitentiaries and the families of the prisoners and have been promoting a humanistic approach to working with inmates in the prisons.

The organisation also has a 4 year prevention programme – Emotions, Values and Attitudes Education Programme for the Prevention of Violence, which is aimed at children aged 11-13 living in communities in Comayagua who are at risk of joining the gangs. In this programme they are working with approximately 140 children, their teachers and parents. They have also formed a Committee for Prevention of Violence which seeks to promote non violent conflict resolution.

CPTRT carried out a major study in 2001 to determine the level of violence in society by monitoring patients in the emergency room of one hospital during one month. They found that 24.2% of the cases of violence were committed against children.

CIPRODEH

Activities: policy work, changing public opinion, training

Area or work: national

Website: www.ciprodeh.org.hn

CIPRODEH works on human rights issues concerning adults and children. Currently the organisation is working on an access to justice programme. They have developed training materials for the police on human rights, and specifically on children's rights, and on how to deal with sexual abuse and sexual exploitation cases. CIPRODEH are also carrying out training of trainers in the police force.

The organisation works on the issue of sexual abuse in the north of the country and , in particular, supports Municipal Defenders for Children. The defenders are volunteers, nominated by citizens and appointed by the municipality, who identify cases of abuse and report these to the DGIC so that an investigation can be carried out.

COIPRODEN

Activities: prevention, rehabilitation, reintegration, policy work, changing public opinion

Area or work: Francisco Morazán, San Pedro Sula, Cortes, Choluteca and national through its network

Website: www.coiproden.org

COIPRODEN is a network of 29 human rights organisations. The organisation advocates for the rights of children and youth in Honduras.

COIPRODEN works on 3 main areas: implementation of a strategy of children's participation; development of institutions and organisations that work with children; and 'defending' children who are victims of rights abuses.

Colectivo por la Vida, la Paz y la Justicia

Activities: campaigning, policy work, changing public opinion

Area or work: national

This collective is made of NGOs and youth led organisations, such as the National Forum for Youth. However, the collective does not exclusively work on children's issues. Its aims are to: promote and defend the human rights of children and young adults; influence and promote change and practice of government and state agents; promote participation of young people; document and denounce arbitrary deaths of young people; and press for investigations into the fires at the jails (El Povernir and San Pedro Sula) at the jails where the fires took place supporting family organisations of the victims.

Comité de Familiares de Detenidos-Desaparecidos - COFADEH

Activities: prevention, lobbying, campaigning, changing public opinion

Area of work: Francisco Morazán, El Paraíso, Choluteca, Olancho, La Paz

Website: www.cofadeh.org/

COFADEH does not work exclusively on behalf of children. However, its areas of work include issues that affect children and young people e.g. the reform of Article 332, extrajudicial execution and abuse by law enforcement bodies.

Compartir⁴⁸¹

Activities: prevention

⁴⁸¹ Information obtained during a meeting with Jose Antonio Andino, Compartir, Programme Manager, 21st July 2004.

Area or work: Tegucigalpa - Villa Nueva, Los Pinos and Nueva Suyapa

Website: www.compartir.hn

Although not specifically working on juvenile justice issues, the activities of Compartir, which works with street children and children at social risk, contribute to preventing children becoming involved in criminal behaviour and joining the gangs. They run four non residential centres in poor neighbourhoods catering for approximately 100 children aged 7 to 15 years, providing education, community work and health services for 6-7 hours every day. The children attend the programmes for an average of six months during which time staff work with the child's family in an attempt to reintegrate them. The organisation provides non-formal education and attempts to place the child back in school.

Fondo Hondureño de Inversión Social - FHIS⁴⁸²

Activities: donor

Website: www.fhis.hn

Established in 1990, the Honduran Fund for Social Investment (el Fondo Hondureño de Inversión Social) is a State organisation that distributes funds for addressing all kinds of social problems. Funds are distributed to the municipalities, which have been identified as the 80 most deprived areas. The municipalities then fund specific projects, some of which address problems such as street children and children who are at social risk.

Foundation United for Life⁴⁸³

Activities: prevention, rehabilitation, reintegration, advocacy, campaigning, policy work, changing public opinion - gangs

Area or work: San Pedro Sula

Bishop Emiliani's runs the Foundation United for Life, which works with young men aged 14/16-24 in San Pedro Sula who are gang members or ex gang members providing them with support. He wants to create a small transition centre for members of both gangs in order to rehabilitate and reintegrate them for 40 people.

He also wants to establish a residential centre for 400 young people who will be provided with vocational training for two years. The second phase of this project would be to open an industrial park which would exclusively employ ex gang members. The leaders of groups in the centres would be ex gang members who have received training.

⁴⁸² Information obtained during a meeting with Jorge Mahomar, Consultant on Street Children, FHIS, 19th July 2004.

⁴⁸³ Information obtained during a meeting with Bishop Emiliani, Foundation United for Life, 12th July 2004.

Bishop Emiliani also facilitates dialogue between the gangs and the Government and the police in order to promote a no violence policy and an agreement that allows gang members, who are not committing crimes, to work and move freely in the city. The organisation also tries to combat negative public opinion of ex and current gang members.

Generación X

Activities: reintegration, prevention, lobbying, advocacy, changing public opinion - gangs

Area or work: San Pedro Sula

Set up in March 2003, with the assistance of Jha-Ja, Generación X supports ex gang members aged 15/17-24 years and assists them in reintegrating into society. Acceptance into Generación X is based on the person demonstrating a willingness to change their lifestyle. The organisation seeks to provide a support network for the young person in the form of peer group support and family support. There is a strong emphasis on working with the young person's family.

Generación X also carries out lobbying in order to promote a change of image of ex gang members and the attitude of society to young men with tattoos.

When the organisation first began its work, it attempted to find employment for ex gang members but because of the prevailing attitude of much of society this proved a very difficult task. Therefore, they are now establishing cooperatives, which carry out jobs such as painting and cutting grass.

Generación X also carries out prevention works by visiting schools and giving presentations on ways of avoiding joining the gangs. However, while the organisation does work with under-18s, the focus is on young men over the age of 18.

GOAL

Activities: prevention, rehabilitation and reintegration for children at social risk

Area or work: Tegucigalpa (colonia San Martín) and 16 marginalised communities in the city, Gracias a Dios and La Paz

Website: www.goal.ie/atwork/honduras.shtml

GOAL is an international non-governmental organisation, which undertakes programmes in countries during humanitarian crises. GOAL started running programmes in 2000 following Hurricane Mitch.

Among other activities, GOAL supports local NGOs and community organisations (e.g. Compartir, Alternativas y Oportunidades, y Gaviota) to deliver programmes to assist children at social risk. One of its major programmes targets children 'working' in the city rubbish dumps. The programme provides health education, basic education, food and an alternative to scavenging at the sites.

GOAL also provided beds to Renaciendo in 2004 to address the shortage in the detention centre which had led to children sleeping on the floor.

Jha-Ja – Jóvenes Hondureños Adelante, Junto Avancemos⁴⁸⁴

Activities: prevention, reintegration, lobbying, advocacy, changing public opinion - gangs

Area or work: San Pedro Sula, national

Email: jhajahn@yahoo.com

Established in 1999, Jha-Ja was the first organisation to have the specific mission of working with gangs, and was granted juridical personality in 2002. Their work is aimed at the 12-25 age range but they believe that they must extend this age range up to 30. The organisation is working on developing models of prevention and reintegration. Jha-Ja is also proposing to develop a network to implement methods of holistic work which integrate prevention and the treatment of young people.

The ultimate goal of the organisation is to hand the Jha-Ja programmes over to young people to manage and implement themselves.

Movimiento Juvenil Cristiano

Activities: prevention, rehabilitation, reintegration

Area or work: Tegucigalpa, San Pedro Sula, Choluteca, Ceiba, Progreso, Tela, Comayagua, Olancho, Trujillo

The organisation runs a Mercy Centre, which provides Christian education, hygiene education, services in accordance with age and medical attention, to the 250 children who attend.

The movement also provides sport clubs in the cities and a programme to construct artisan workshops. In the rural areas, organisation provides agricultural programmes.

Paz y Justicia⁴⁸⁵

Activities: prevention, rehabilitation and reintegration, and conflict resolution - gangs

Area or work: La Ceiba, the North

Email: ricardotorres@psinet.hn

Based in La Ceiba, Paz y Justicia is a church based organisation which works to promote non violent forms of conflict resolution. The organisation also works with gangs and ex gang members providing them with constructive activities, guidance and support, in addition to assistance in rehabilitating and reintegrating into society. In order to overcome the problem of ex-gang members finding jobs, the organisation helps groups of young men set up

⁴⁸⁴ Information obtained during a meeting with Ernesto Bardales Director/facilitador– Jovenes Hondurenos Adelante, Junto Avancemos (Jha-Ja), 10th July 2004.

⁴⁸⁵ Information obtained during a meeting with Ondina Murillo, Director, and Ricardo Torres, Assessor and Coordinator, 13th July 2004.

their own businesses and also runs one of the only projects in the country that gives ex gang members access to tattoo removal services – ex gang members find that it is easier to obtain employment if they remove any visible tattoos.

PRAF (Programa de Asignación Familia – The Family Allowance Programme)

Activities: donor

Website: <http://www.casapresidencial.hn>

Among other activities, this government agency provides funds to NGOs and civil society running programmes for poor and marginalised groups, including children at social risk. Grants have been made to organisations such as Xibalba and Proyecto Victoria.

Proyecto Victoria⁴⁸⁶

Activities: rehabilitation and reintegration - gangs

Area or work: San Pedro Sula, Tegucigalpa

Email: victoria@sdnhon.org.hn

Proyecto Victoria runs rehabilitation programmes for boys and young men aged 12-21 years who have expressed a wish to leave their gang. The main institution is located about 45 minutes from the capital and is currently working with approximately 60 young people. There are two smaller units, one in San Pedro Sula and one in Colonia Kennedy in Tegucigalpa.

Under-18s can be referred to Proyecto Victoria by IHNFA or the Courts and Proyecto Victoria can make a request that the child be referred to them. If the child fails to progress at the Centre or wants to leave before they have completed their programme they will be sent to Renaciendo.

The State supports the project and provides 40,000 Lempira a month (the National Congress provides part of this sum and the President's Office provides the other part). However the centre needs 200,000 lempira per month to function effectively. Parents are encouraged to pay, and an economic evaluation is carried out to determine their ability to contribute to their child's upkeep. If they have no funds, then treatment can be given for free. PRAF pays for one teacher at the Centre.

Under 18s usually stay at the Centre for between six and nine months. There is a heavy emphasis on the involvement of the family, who are required to attend family therapy. If they do not attend these sessions then they are not allowed to visit their children. The family are also prepared for the child's return before the release date and the child is slowly reintegrated into the family through weekend visits. Once the child has left the centre there are meetings twice a week in Tegucigalpa which support his reintegration.

⁴⁸⁶ Information about Proyecto Victoria obtained during a meeting with Reverend Mario Fumero, 9th July 2004.

Proyecto Victoria also provides rehabilitated youngsters with identification cards, which they can show to the police if they get stopped or detained.

The standards, conditions and programmes provided in Proyecto Victoria are far superior than any of the centres run by IHNFA and the chances of successful rehabilitation and reintegration are far higher. However, a matter of concern is that under 18s are held together with over 18s. Although, the groups are separated at night, there is interaction during the day. This does not abide by the international standards, outlined in this report, that call for a strict separation of adults and children. Proyecto Victoria wishes to expand its intake of under-18s and such mixing of adults and children needs to be carefully considered.

Save the Children UK

Activities: research, lobbying, prevention, training law enforcement officials

Area or work: national

Website: www.savethechildren.org.uk

Although other Save the Children Alliance members work in Honduras, Save the Children UK is the only member in Honduras working on juvenile justice.

The organisation has lobbied on gangs, including on the reform of Article 332, and through its partners, supports project initiatives that deal with young people in gangs and juvenile justice. Specifically, SCFUK has supported Jha-Ja in capacity building, and supported the Colectivo por La Vida, la Paz y la Justicia in their campaigning efforts (e.g. regarding the implementation of the Law on the Prevention, Rehabilitation and Social Reintegration of Persons in Gangs).

Save the Children has also initiated activities with journalists to promote a more positive image of youth.

UNICEF

Activities: research, lobbying, prevention, training law enforcement officials

Area or work: national

Website: www.unicef.un.hn/

UNICEF have been examining the current legal framework for juvenile justice in order to inform its programme on juvenile justice for the coming programme cycle. The idea is to use the study to influence the Government in reforming the juvenile justice system. It is hoped that the resources allocated for juvenile justice will be substantial. However, experience in other countries has shown that even where UNICEF select juvenile justice as one of

its areas of focus for its child protection programmes, the budget is greatly inferior to other programme areas.

UNICEF has been involved in training personnel in judicial institutions. UNICEF is also working with State bodies to prepare the third periodic report to the Committee on the Rights of the Child which is overdue by over two years.

UNICEF have also been working on a unified information system of statistical collection and collation but have encountered difficulties as the different institutions wish to keep their own systems.

XIBALBA⁴⁸⁷

Activities: lobbying, changing public opinion, prevention, rehabilitation, training young people – gangs and non-gang members

Area or work: Tegucigalpa

Xibalba work with children and young people aged 12-24 years in 672 neighbourhoods. They provide rehabilitation programmes for young people at social risk and those coming out of gangs. The centres that they run offer programmes such as computing, sewing and mechanics among other classes. PRAF (Programme of Family Allocation - Programa de Asignación Familia) provide 200 lempira to 583 students that are attending the classes.

In cases where the children and young people have been in gangs, the organisation provides them identification cards that they can present if they get stopped or detained by the police. Some ex gang members have become instructors themselves in the centres.

Xibalba are also working with current gang members, the Pony gang in particular, who are located in Comayagua. The organisation is running an eight month programme which involves transporting the gang members to one of the centres to provide training in electrics and mechanics. Usually, the centres provide four months of training to the ex gang members and then assist them with finding a job. However, the Director is thinking about starting up a small business for this group.

Children can also carry out their community sentence, that has been imposed by the Courts, with Xibalba. For example, some of the members of the Pony gang are digging ditches as a means of reparation to the community.

Xibalba is seen as a pilot to demonstrate the value of combining prevention, teaching and rehabilitation.

⁴⁸⁷ Information obtained during a meeting with Atsmania Pineda Platero, Director of Xibalba, 8th July 2004. The Director stated that, at that point, they had 2082 students.

Annex 4

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