



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Consideration of reports submitted by States  
parties under article 29, paragraph 1, of the  
Convention**

**Reports of States parties due in 2012**

**Honduras<sup>\*</sup>, <sup>\*\*</sup>**

[Date received: 17 March 2016]

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\* The present document is being issued without formal editing.

\*\* The annexes to the present report are available for consultation from the Committee secretariat. They may also be accessed from the web page of the Committee.

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## Contents

	<i>Page</i>
I. Introduction .....	3
II. Substantive articles of the International Convention for the Protection of All Persons from Enforced Disappearance .....	3
Article 1 .....	3
Article 2 .....	5
Article 3 .....	6
Article 4 .....	8
Article 5 .....	9
Article 6 .....	9
Article 7 .....	12
Article 8 .....	14
Article 9 .....	16
Article 10 .....	16
Article 11 .....	17
Article 12 .....	18
Article 13 .....	22
Article 14 .....	24
Article 15 .....	25
Article 16 .....	25
Article 17 .....	28
Article 18 .....	31
Article 19 .....	31
Article 20 .....	33
Article 21 .....	34
Article 22 .....	35
Article 23 .....	36
Article 24 .....	38
Article 25 .....	40
Conclusions and commitments .....	41

Annexes (available separately in electronic form)

## I. Introduction

1. This initial report was prepared on the basis of consultations and information meetings with State bodies and civil society organizations working in the field of human rights. As part of the work that went into preparing the report, four seminars were held in July, August, September, October and November 2015. A large number of stakeholders were convoked, and a working group was then set up. Work began on 31 July with a training workshop on the content of the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter “the Convention”), the role of the Committee on Enforced Disappearances (hereinafter “the Committee”) and the obligations of States parties under the Convention. Written questionnaires and consultations were then circulated. On 27 August 2015, a follow-up workshop was held to assess the quantity and quality of the information received from the contributing institutions and organizations. On 27 October, a meeting was held to present the draft report to the members of the working group; on 5 November 2015, the working group approved the final version of the report. During those two workshops, the participants had the opportunity to carefully review the report.

2. The United Nations Development Programme (UNDP) office in Honduras provided technical assistance and funding for the preparation of the report. However, the content of the report is the sole responsibility of the Government of Honduras; the support provided by NGOs and UNDP does not constitute an endorsement on their part of the facts and views reported herein.

3. The information requested by the Committee on issues relating to the general legal framework under which enforced disappearances are prohibited in Honduras is set out in detail in the section of the report devoted to the substantive articles of the Convention in order to avoid any overlap or repetition in this introductory section.

4. The report describes actions and activities undertaken during the period from 23 December 2010 — the date when the Convention entered into force for Honduras — to 31 October 2015. However, reference is also made to earlier laws, treaties, regulations and manuals, provided that they were in force during the reporting period.

## II. Substantive articles of the International Convention for the Protection of All Persons from Enforced Disappearance

### Article 1: Non-derogability of the prohibition of enforced disappearance

5. The Constitution, which has been in force since 1982,<sup>1</sup> includes a number of provisions that, although not specifically related to enforced disappearance, recognize a number of rights and guarantees that are directly related to the issue. They include the following articles:

Article 65. The right to life is inviolable.

Article 68. Everyone has the right to respect for his or her physical, psychological and moral integrity.

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<sup>1</sup> Constitution of the Republic. Decree No. 131 of the National Constituent Assembly, 11 January 1982. Published in *La Gaceta* No. 23,612 on 20 January 1982. The full text of the Constitution is annexed to the report.

No one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Persons deprived of their liberty shall be treated with the respect due to the inherent dignity of the human person.

Article 85. No one may be detained or imprisoned in places other than those designated by law.

6. The Constitution further provides that the State recognizes the right to habeas corpus or personal appearance and that the substantive content of these rights and guarantees must be respected by the authorities. The relevant circumstances are set out in the following terms:

Article 182 (1) Habeas corpus or personal appearance:

(a) When a person has been unlawfully arrested, detained or in any way impeded from enjoying his or her individual liberty; or

(b) When, during lawful detention or imprisonment, the detainee or prisoner is subjected to abuse, torture, ill-treatment, illegal extortion or any form of coercion, restriction or inconvenience which is not necessary for his or her personal safety or to maintain prison order.

Article 64. Laws, government orders or provisions of any other kind regulating the exercise of the declarations, rights and guarantees established by this Constitution shall not be applied if they diminish, restrict or distort those declarations, rights and guarantees in any way.

7. Like many other constitutions, the Constitution of Honduras includes in two of its articles a framework for suspending or restricting rights in specific situations:

Article 187. The exercise of the rights established in articles 69, 71, 72, 78, 81, 84, 93, 99 and 103 may be suspended in the event of an invasion of the national territory, serious disturbance of the peace, an epidemic or any other general disaster ...

8. The suspension of those rights, which may be ordered by the executive branch, must be approved, modified or rejected by the legislature within 30 days.

9. The authority of the President and the Council of Ministers to suspend constitutional rights is restricted in two further ways. First, only the rights expressly set out in article 187 may be suspended or restricted, which means that all other rights and guarantees remain in effect, including all those referred to in the preceding paragraph. Secondly, restrictions on rights must be viewed within the framework of the commitments made by Honduras vis-à-vis the international community.

10. The commitment to fulfil the State's international obligations and the automatically enforceable nature of treaties under Honduran law are set out in the Constitution:

Article 15. Honduras endorses the principles and practices of international law that promote human solidarity, respect for the self-determination of peoples, non-intervention and the consolidation of universal peace and democracy.

Honduras proclaims as absolute the validity and mandatory enforcement of international arbitral and judicial rulings.

Article 16. ... International treaties concluded between Honduras and other States form part of domestic law once they have entered into force.

11. On the basis of these provisions, the Inter-American Convention on Forced Disappearance of Persons, which entered into force for Honduras in 2005,<sup>2</sup> is of key importance. The Convention, which is in line with the advisory opinion of the Inter-American Court of Human Rights on habeas corpus in emergency situations,<sup>3</sup> provides:

Article X. In no case may exceptional circumstances such as the state of war, the threat of war, internal political instability or any other public emergency be invoked to justify the forced disappearance of persons. In such cases, the right to expeditious and effective judicial procedures and recourse shall be retained as a means of determining the whereabouts or state of health of a person who has been deprived of freedom, or of identifying the official who ordered or carried out such deprivation of liberty.

12. Lastly, in addition to these safeguards, the Office of the National Commissioner for Human Rights, which is a national institution with the characteristics of both an ombudsman's office and a national human rights commission and with responsibility for guaranteeing the rights and freedoms set out in the Constitution and in the treaties signed by Honduras, has free access to all civilian and military establishments, including places of detention. Article 17 of the Organic Act on the Office clearly states:<sup>4</sup>

In no circumstances, including states of emergency or siege, may the work of the Office of the National Commissioner for Human Rights or the right of citizens to seek protection therefrom be suspended.

## Article 2: Definition of enforced disappearance

13. In April 2012, the Criminal Code was amended to include a definition of enforced disappearance as a specific offence. This amendment introduced article 333-A in title XI, chapter IV, which deals with offences committed by public officials in violation of constitutional rights.<sup>5</sup> That legislation was introduced in order to bring Honduran law into line with the commitments made by Honduras upon its adoption of the Inter-American Convention on Forced Disappearance of Persons and the International Convention for the Protection of All Persons from Enforced Disappearance. The article reads as follows:

Article 333-A. A person commits the offence of enforced disappearance and shall be punished with a term of imprisonment of from 15 to 20 years and a fine of from 25 to 50 times the minimum wage if he or she, acting with the authorization, support or acquiescence of one or more public officials or employees, deprives a person or persons of their liberty, in whatever way, thereby limiting or denying their recourse to the applicable constitutional and procedural guarantees, provided that the following conditions are met:

<sup>2</sup> Inter-American Convention on Forced Disappearance of Persons, adopted by Decree No. 110-96 of the National Congress; the corresponding instrument of ratification was deposited with the Organization of American States on 11 July 2005.

<sup>3</sup> Inter-American Court of Human Rights. Habeas Corpus in Emergency Situations (arts. 27 (2), 25 (1) and 7 (6) of the American Convention on Human Rights): Advisory Opinion OC-8/87 of 30 January 1987.

<sup>4</sup> Organic Act on the Office of the National Commissioner for Human Rights. Decree No. 153-95, adopted by the National Congress on 24 October 1995. Published in *La Gaceta* No. 27,811 on 21 November 1995.

<sup>5</sup> Decree No. 49-2012 of 17 April introducing into the Criminal Code the offence of enforced disappearance. Published in *La Gaceta* No. 32,873 on 16 July 2012. The current Honduran Criminal Code has been in force since 1985.

- (1) There is an absence of information and a refusal to acknowledge that deprivation of liberty; and
- (2) There is concealment or denial of the whereabouts of the detained person or persons.

When the offence is committed by public officials or employees, the penalty shall be increased by one third.

14. As can be seen, article 333-A defines enforced disappearance by incorporating the three constitutive elements of article 2 of the Convention: (i) any form of deprivation of liberty by agents of the State (public officials or employees) or by persons acting with the authorization, support or acquiescence of the State; (ii) the refusal to acknowledge the deprivation of liberty; and (iii) the placement of the disappeared persons outside the protection of the law (limiting or denying recourse to the applicable constitutional and procedural guarantees).

15. However, it is very important to point out that, at the time of submission of this report, the National Congress is discussing a new draft criminal code that contains improvements to the wording of the definition of the offence of enforced disappearance. The proposed amendments include: (i) an explicit reference to various forms of arrest, detention or abduction, while retaining the generic offence of deprivation of liberty; (ii) longer prison terms; (iii) an explicit reference to a penalty of disqualification; (iv) the imposition of security measures against persons who have already served a custodial sentence; (v) recognition of enforced disappearance as a crime against humanity when it is widespread or systematic; and (vi) punishment of preparatory acts, such as conspiracy, solicitation and incitement to commit an enforced disappearance, even if the offence was not consummated.

16. Lastly, between 23 December 2010 (the date of entry into force of the Convention for Honduras) and 16 July 2012 (the date of entry into force of the offence set out in article 333-A), the Public Prosecution Service generally used the offence of abduction, established in article 201 of the Criminal Code, and offences committed by public officials in violation of constitutional rights, established in article 333 of the Criminal Code, as the basis for bringing charges and issuing warrants for alleged enforced disappearance.<sup>6</sup>

### **Article 3: Measures to investigate disappearances carried out by non-State actors**

17. As Honduras has already reported to other United Nations bodies, in particular the Human Rights Council during the universal periodic review in 2015,<sup>7</sup> for more than a decade the country has experienced an increase in transnational organized crime. This has been associated in particular with drug trafficking between South and North America, smuggling of persons from Central America to North America, trafficking in persons for purposes of commercial sexual exploitation and the operation of youth gangs that are involved in several of these illicit activities but that also extort money from small traders and transport operators. As stated in the above-mentioned report for the universal periodic review, government action has led to a considerable decrease in homicide rates and significant achievements in the fight against organized crime. A situation as complex as the

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<sup>6</sup> The annexes contain the full text of the current Criminal Code.

<sup>7</sup> See the national report of Honduras submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, A/HRC/WG.6/22/HND/1, twenty-second session of the Human Rights Council.

one described, however, lends itself to the commission of acts of enforced disappearance by non-State actors.

18. The Public Prosecution Service makes use of several different types of offences to prosecute such criminal conduct, depending on the circumstances. Many cases are investigated as instances of abduction or unwarranted deprivation of liberty, on the basis of articles 192, 201 and 193 of the Criminal Code. In cases involving child or adolescent victims, offences relating to the abduction of minors, established in articles 197 and 198 of the Criminal Code, are also invoked. In cases involving women victims, charges of abduction with intent to defile may also be brought, in accordance with article 144 of the Code. If the deprivation of liberty results in the death of the victim, the accused will be investigated for the offence of homicide or murder, pursuant to articles 116 and 117 of the Code. In several of these situations, the rules on concurrence of offences apply, whereby the penalties may be cumulative or the penalty for the most serious offence may be applied and increased by one quarter (Criminal Code, arts. 35 and 36).

19. Also, depending on the status of the victim and the alleged perpetrator, the Public Prosecution Service may assign the investigation to the Office of the Special Prosecutor for Organized Crime (in cases of abduction and unwarranted deprivation of liberty), the Office of the Special Prosecutor for Children (in cases of abduction of minors), the Office of the Special Prosecutor for Women (in cases of abduction with intent to defile) or the Office of the Prosecutor for Offences against Life (in cases of homicide and murder).

20. At the regional level in Central America, the biggest problem in this regard is with migrants heading north in the hope of reaching the United States of America. For this reason, on 8 May 2012, the Government of Honduras signed the Inter-Institutional Cooperation Agreement on the Establishment of Mechanisms for the Exchange of Information on Untraced Migrants and Unidentified Bodies. The following are parties to this agreement: the Ministry of Human Rights, Justice, Governance and Decentralization and the Ministry of Foreign Affairs, representing the Government; the National Migration Forum and the Centre for Research and Promotion of Human Rights in Honduras, representing civil society; and the Argentine Forensic Anthropology Team, participating as an international technical partner. Under the Agreement, a forensic database has been established containing general information on migrants (e.g. the place where they began their migration and the date and place of the most recent contact with them), any ante-mortem data that has been collected (e.g. dental records or fingerprints), saliva and/or blood samples from relatives for the purpose of identification through genetic analysis and forensic reports from key countries along the migration route that report having identified the remains of missing migrants. Within an overall framework of respect for personal data, donors who make a formal request are given access to the database records, but only those relating to their own information or case. In addition, pursuant to the Agreement, the consulates of Honduras in countries and cities that see the most activity along the migration route play an important role, both in obtaining information from local forensic authorities and in facilitating the repatriation of remains. The Agreement is automatically renewable on a yearly basis and provides for a gradual transfer of technical expertise from the Argentine Forensic Anthropology Team to the Forensic Medicine Department of the Public Prosecution Service. As at September 2015, the Argentine Forensic Anthropology Team had documented 349 cases of missing Honduran migrants and had collected 794 DNA samples from their family members.<sup>8</sup>

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<sup>8</sup> In recent years, associations of family members of missing migrants have also been established to gather information and they are a great help to the authorities and technical teams. These associations include the Committee of Family Members of Missing Migrants from El Progreso, which was

#### **Article 4: Enactment of national legislation that is in line with the Convention**

21. As already explained in this report, in the paragraphs devoted to compliance with article 2 of the Convention, Honduran criminal legislation establishes enforced disappearance as a separate and specific offence. This domestic legal provision includes the three key elements of the definition in the Convention.

22. In addition, a new draft criminal code is currently being discussed by the National Congress, which includes improvements to the current wording of the criminal offence.

23. As has also already been stated in this report, prior to the entry into force of the offence of enforced disappearance (Criminal Code, art. 333-A), and even afterwards in cases where the perpetrators have no connection to the State, cases have been prosecuted under other offences which, although involving deprivation of liberty, are different from enforced disappearance. By way of illustration, the provisions defining the most relevant offences are set out below.

Article 192. Abduction. A person commits the offence of abduction and shall be punished with a term of imprisonment of from 20 years' to life if he or she, through the use of violence, intimidation, deceit or any other method that invalidates consent, removes, retains, transports, conceals or otherwise deprives one or more persons of their liberty, with any of the following purposes, even if that desired purpose is not achieved:

- (a) Obtaining money, property, title deeds or any other advantage or benefit in exchange for the release of the abductees;
- (b) Forcing a person into doing or not doing something; or
- (c) Publicity or political aims.

If any of the following circumstances apply, the applicable penalty shall be:

- (1) From 40 years' to life imprisonment if the act causes or leads to the death of the victim;
- (2) From 30 years' to life imprisonment if the victim or any other person dies as a result of the rescue.

If the abductors release the victim without their demands being met, the applicable penalty shall be from 10 to 20 years' imprisonment.

If the release leads to the deaths of agents of the public authority or of any other person involved, the provisions set out in subparagraph 2 above shall apply.

If, as a result of the rescue, the victim or any other person is injured, the perpetrators shall be punished with the same penalty as that set out in subparagraph 2, except that the minimum penalty shall be lowered by one third.

Article 197. (Abduction of minors). The abduction of a child under 12 years of age by persons other than their parents shall be punished with from 6 to 8 years' imprisonment. Under the same circumstances, the abduction of a child between 12 and 18 years of age shall be punished with from 4 to 6 years' imprisonment.

Article 201. (Common provision that applies to the two preceding articles). Anyone who abducts a person with motives other than those set out in article 192 shall be

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founded in the northern city of El Progreso in the Department of Yoro (a location that has one of the highest outflows of migrants) but is also active at the national level.



liable to a term of imprisonment of from 20 to 30 years if the victim is found unharmed; if the perpetrator fails to disclose the whereabouts of the victim or to establish that the victim has been released, the penalty shall be from 30 to 40 years' imprisonment.

Article 144. (Abduction with intent to defile). Anyone who, with sexual intent and the use of force, intimidation or deceit, abducts or retains a person shall incur a penalty of from 4 to 6 years' imprisonment.

In cases where the victim is under 18 years of age, the length of the sentence set out in the preceding paragraph shall be increased by half.

## **Article 5: Enforced disappearance as a crime against humanity**

24. As already explained in this report in the paragraphs devoted to actions taken to comply with article 2 of the Convention, Honduras has amended the current Criminal Code to establish the offence of enforced disappearance in article 333-A. This provision, however, still does not characterize enforced disappearance as a crime against humanity. The new draft criminal code that is currently before the National Congress therefore includes this characterization, particularly when enforced disappearances are committed in a widespread or systematic manner. In this regard, the Government will inform the Committee about the final wording as approved by the legislature once the new code has been adopted.

25. In the sphere of international law, Honduras adopted the Rome Statute of the International Criminal Court by Decree No. 236-2002 of 30 May 2002. Article 7 (i) of the Statute classifies enforced disappearance as a crime against humanity, thereby placing it within the jurisdiction of the International Criminal Court, which is complementary to national criminal jurisdictions (Rome Statute, art. 1).

## **Article 6: Criminal responsibility in relation to enforced disappearance**

26. Provisions on criminal responsibility for participation in an offence, as either principal or accomplice, apply to all criminal offences, including enforced disappearance. These provisions are contained in the current Criminal Code, as follows:

Article 32. Principals are those who participate directly in the commission of a criminal act, those who directly force or induce others to commit a criminal act and those who cooperate in the commission of a criminal act by means of an act without which the criminal act would not have been committed.

In the case of acts of omission, principals are those who fail to do what is required by law, those who cause the failure to act and those who cooperate in the failure to act.

Article 33. Accomplices are those who are not covered by the preceding article and who cooperate in the commission of a criminal act through acts prior to or simultaneous with the act in question.

If it is clear from the circumstances of the case that the person accused of complicity sought only to cooperate in the commission of a criminal act less serious than that committed by the principal, the punishment applied to the accomplice shall be only that relating to the act that he or she sought to carry out.

27. In addition, the Honduran Criminal Code penalizes not only completed offences but also all their constituent elements: attempt, conspiracy and solicitation. The criminal relevance of these three elements is reflected as follows:

Article 15. An attempt occurs when, with the intent to commit a given offence, unequivocal acts are taken to commit the offence, but the offence is not completed for reasons beyond the offender's control.

Article 17. Conspiracy and solicitation to commit an offence are punishable only in cases specifically provided for by law.

Conspiracy occurs when two or more persons agree to commit an offence.

Solicitation occurs when a person who has decided to commit an offence asks another person or persons to carry it out.

28. It should be noted that, currently, the definition of the offence of enforced disappearance contained in article 333-A makes no reference to conspiracy or solicitation. Thus, as already mentioned in this report in the paragraphs relating to compliance with article 2 of the Convention, the new draft criminal code expressly includes such preparatory acts.

29. With regard to the possibility of opposing an order to carry out an act of enforced disappearance, Honduran law clearly prohibits, at a number of different levels and in relation to a number of different areas, the invocation of an order from a superior as a justification for committing an offence or other unlawful act. This prohibition is found in the highest law of the land, the Constitution:

Article 323. Public officials are vested with authority, legally responsible for their official conduct, subject to the law and never above the law.

No civilian or military officer or employee is required to obey orders that are illegal or that entail the commission of an offence.

30. At the international level and more specifically, the Inter-American Convention on Forced Disappearance of Persons, which has been part of national law since the date of its entry into force for Honduras, establishes the following in the first paragraph of article 8:<sup>9</sup>

Article VIII. The defence of due obedience to superior orders or instructions that stipulate, authorize, or encourage forced disappearance shall not be admitted. All persons who receive such orders have the right and duty not to obey them.

31. The prohibition on invoking due obedience is also reflected in ordinary legislation, particularly in criminal legislation and in regulations governing the police force. With regard to criminal matters, the subject is addressed in the Criminal Code as follows:

Article 24. The following persons are exempt from criminal responsibility:

1 ...

(6) Anyone who performs an act of legitimate obedience, provided that:

(a) The order is issued by a competent authority;

(b) The official has an obligation to carry out the order; and

(c) The act or omission ordered does not violate or restrict the exercise of the rights and guarantees set out in the Constitution and in the international human rights treaties to which Honduras is a party.

32. The Organic Act on the National Police<sup>10</sup> also includes several provisions that reinforce the prohibition set out in the Constitution, in treaties and in criminal law on

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<sup>9</sup> Inter-American Convention on Forced Disappearance of Persons, adopted by Decree No. 110-96 and deposited with the General Secretariat of the Organization of American States on 11 July 2005. Pursuant to article XX of the Convention, it entered into force for Honduras on 11 August 2005.

invoking due obedience to justify acts of enforced disappearance and other human rights violations. These provisions apply to both subordinates and superiors. Thus, they also cover the duty of superiors to avoid, report and prevent any acts of enforced disappearance that might be committed by their subordinates. These provisions relate to the obligations, prohibitions and disciplinary regime for police officers:

Article 24. Members of the National Police have the obligation to:

- (1) Comply with and ensure compliance with the Constitution, international treaties concluded by Honduras and other laws and regulations ...
- (9) Report any illegal orders issued by their superiors to the Public Prosecution Service ...

Article 33. Police officers are prohibited from:

- (1) Taking any action that constitutes abuse, arbitrariness or excessive use of force; ...
- (4) Invoking due obedience when the orders or actions in question involve the commission of offences or misdemeanours or when they are contrary to the law; ...
- (11) Inducing or allowing other members of the police force or third parties to carry out unlawful acts, to act in violation of this Act or to carry out orders that are unlawful or that entail the commission of an offence; ...
- (16) Carrying out any act that is prohibited by the Constitution, by international treaties and conventions in force in Honduras, this Act or other laws and regulations in force in the country ...

Article 123. Serious offences include:

1 ...

- (8) Failure to report knowledge of criminal offences to the relevant police authorities ...

33. In addition, the current Criminal Code establishes concealment as a separate offence; that offence also applies to both subordinates and superiors.

Article 388. A penalty of from 3 to 5 years' imprisonment shall apply to anyone who, without prior agreement with the principals of or accomplices to an offence, but with sufficient grounds for believing that the offence was committed:

- (1) Conceals the offender or facilitates his or her escape to avoid prosecution;
- (2) Seeks to cause the evidence of the offence to disappear;
- (3) Keeps, hides, purchases, sells or receives as collateral or as part of an exchange the product or instruments of the offence;
- (4) Refuses, without good reason, to allow the authorities to enter his or her residence to arrest an offender;
- (5) Fails to report to the authorities information he or she has about the commission of an offence when required to do so by virtue of his or her profession or occupation. In such cases, in addition to the applicable custodial sentence, a

<sup>10</sup> Organic Act on the National Police of Honduras, adopted by Decree No. 67-2008 of 12 June 2008, published in *La Gaceta* No. 31,749 on 31 October 2008. The annexes to this report include the full text of the Act.

special disqualification for a period double the term of imprisonment shall be imposed; and

(6) Helps the principals or accomplices to benefit from the product or proceeds of the offence or benefits personally from such product or proceeds.

Where concealment is carried out for financial gain, the sentence shall be increased by one third. If the accessory performs the acts referred to in this article on a routine basis, the penalty shall be increased by 50 per cent.

## **Article 7: Obligation to punish enforced disappearance**

34. Article 333-A of the Criminal Code, the full text of which is contained in this report in the paragraphs on article 2 of the Convention, provides for prison sentences of from 15 to 20 years for those who commit the offence of enforced disappearance, in addition to a fine of from 25 to 50 times the minimum wage. Furthermore, in cases where the accused are public officials or employees, the penalty is increased by one third.

35. With regard to disciplinary proceedings, the rules governing members of the police and the armed forces provide that, once sufficient evidence of the commission of an offence has been obtained, the investigation must be referred to the Public Prosecution Service, as the body competent to deal with such matters. A conviction will lead to separation from service.

36. With regard to the police force, the Organic Act on the National Police is also based on the premise that members of the police force are required first and foremost to comply with and ensure compliance with the Constitution, international treaties to which Honduras is a party and other applicable laws and regulations (art. 24 (1)). It follows that any abuse of authority or ill-treatment of persons is dealt with as serious misconduct (art. 123 (17)), which is punishable by dismissal, particularly if it causes harm to citizens (art. 119 (5)). Moreover, if an offence is committed as a result of serious misconduct, the matter will be brought to the attention of the Public Prosecution Service (art. 123, last paragraph). In such situations, the first paragraph of article 124 of the Organic Act states that the bringing of a public criminal or civil action against a member of the police force does not preclude simultaneously initiating and carrying out the administrative investigation necessary to bring disciplinary proceedings. The rule that applies in such cases is supplemented by the provisions on dismissal set out in the last paragraph of article 116 and in article 126, which states as follows:

Article 126. Members of the police force may be dismissed from their posts without responsibility being attributed to the State, for any of the following reasons:

(1) Failing to comply with or seriously violating any of the obligations or prohibitions set out in this Act;

(2) Having been convicted in a final judgement for committing a premeditated offence.

37. With regard to the armed forces, the Armed Forces Personnel Act provides:<sup>11</sup>

Article 45. Separation from service for officers of the armed forces is a status that constitutes an absolute dismissal from the service, which occurs in the event of death, dishonourable discharge in accordance with the law and conviction by a final court

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<sup>11</sup> Armed Forces Personnel Act, adopted by Decree No. 231-2005 of 30 August 2005 and published in *La Gaceta* No. 30,822 on 11 October 2005.

judgment for an offence punishable by imprisonment, which carries an additional penalty of separation from service.

38. The Criminal Code supplements the provisions applicable to cases of enforced disappearance, which are currently punishable by from 15 to 20 years' imprisonment, as follows:

Article 62. Imprisonment for more than 5 years carries with it general disqualification for the duration of the sentence and deprivation of civil rights.

Article 48. General disqualification refers to disqualification from holding public office or posts and exercising political rights or professions requiring qualifications for the duration of the sentence, and results in:

- (1) Deprivation of all public offices or posts, even if the office is an elected one, as well as of the right to practise professions requiring qualifications;
- (2) Loss of all political rights and disqualification from obtaining the same; and
- (3) Disqualification from taking up a public office or post or exercising the aforementioned professions or rights.

39. This is reiterated in article 80 of the Armed Forces Personnel Act, which states that if, during the course of an administrative investigation, it is determined that a criminal offence has been committed, it shall be reported to the competent authority (the Public Prosecution Service); and in article 187 of the Armed Forces Act, which includes a final sentence of imprisonment together with disqualification as one of the three situations in which separation from service takes place.<sup>12</sup>

40. The maximum penalty provided for in national legislation is life imprisonment (Constitution, art. 97), which under the Criminal Code is reserved for the following cases: (i) murder committed in exchange for payment, remuneration or the promise of remuneration, or accompanied by theft or rape (Criminal Code, art. 117); (ii) the murder of judges, prosecutors, police officers, protected witnesses and State officials involved in combating crime (art. 117-A), in which case, as in the case referred to above, the sentence may vary from 30 years' to life imprisonment; and (iii) abduction that leads to or results in the death of the victim, which is punishable by from 40 years' to life imprisonment.

41. In decreasing order of severity of punishment come two other types of aggravated homicide, namely parricide (Criminal Code, art. 118) and femicide (Criminal Code, art. 118-A), both of which are punishable by from 30 to 40 years' imprisonment.

42. The penalty currently imposed for enforced disappearance, which is from 15 to 20 years' imprisonment (Criminal Code, art. 333-A), is comparable to that imposed for ordinary homicide (Criminal Code, art. 116).

43. Some offences are subject to special aggravating or mitigating circumstances, as is the case with enforced disappearance when the perpetrator is a public official. However, the factors that can modify criminal responsibility apply in principle to all offences, including, of course, enforced disappearance.

44. The most relevant mitigating circumstances in connection with enforced disappearance include the following: the offender sought to effectively repair the harm caused or prevent its harmful consequences; and the offender was in a position to evade justice by fleeing or other appropriate means but instead surrendered voluntarily to the competent authority (Criminal Code, art. 26 (7) and (8)).

<sup>12</sup> Armed Forces Act, adopted by Decree No. 39-2001 of 16 April 2001, published in *La Gaceta* No. 29,617 on 29 October 2001.

45. The aggravating circumstances that could be applied in cases of enforced disappearance are as follows: acting with known premeditation or with guile, fraud or dissimulation; carrying out the act with the assistance of armed persons or persons who ensure or provide impunity; carrying out the act in an isolated area or while taking advantage of the cover of night; carrying out the act in a place that merits respect or reverence or in the home of the victim, provided the victim did not provoke the act; carrying out the act by destroying a wall, roof or floor or by breaking doors or windows; carrying out the act as part of a group; performing the act using an automobile, ship or aircraft or any other similar means sufficient to ensure the effectiveness of the assault or the offender's flight; being a repeat offender; and committing the offence with hatred or contempt based on the victim's sex, gender, religion, national origin, status as an indigenous person or person of African descent, sexual orientation or gender identity, age, marital status or disability, ideology or political opinion (Criminal Code, art. 27 (6), (12), (13), (15), (18), (19), (21), (25) and (27)).

### **Article 8: Statute of limitations in cases of enforced disappearance**

46. The current criminal legislation includes regulations governing the statute of limitations for criminal proceedings and sanctions, which are applicable to all offences. These provisions, however, must be interpreted consistently, in the context of the Honduran legal order as a whole, and particularly in accordance with the Constitution. Two articles of the Criminal Code and two articles of the Constitution are quoted below:

Article 97 (Criminal Code). The statutory limitation period for criminal proceedings is:

(1) Equal to the maximum duration of the penalty applicable to the offence, increased by half, if the penalty is a custodial sentence.

However, the statute of limitations shall in no case be less than two years; ...

The above regulations are without prejudice to those established in the Constitution.

Article 100 (Criminal Code). Penalties imposed by a final judgement are subject to prescription under the terms set out in article 97.

The period of prescription shall commence on the date of the enforceable sentence or of a violation of the terms of the sentence, where appropriate.

Article 325 (Constitution). The right to bring civil liability actions against public officials is extinguished after a period of 10 years and, in the case of a criminal action, after double the period laid down in the Criminal Code.

In both cases, the period shall begin to run from the date on which the public official left the office in which he or she incurred criminal responsibility.

There is no statute of limitations in cases in which the death of one or more persons is caused by a wilful act or omission for political motives.

Article 326. The right to take proceedings against violators of the rights and guarantees established by this Constitution is public and may be exercised by simply lodging a complaint, without bond or formality of any kind.

47. It follows from a reading of article 97 of the Criminal Code and article 325 of the Constitution that there is no statutory limitation period for criminal proceedings in respect of cases in which the death of one or more persons is caused by wilful acts committed by public officials for political motives. Moreover, the placement of article 326 in the chapter on the responsibility of the State and its officials and immediately after the article

establishing the inapplicability of the statute of limitations effectively links the provision to the protection of fundamental rights. Although the offence of enforced disappearance is not expressly mentioned in any of these provisions, its relevance to the matter is clear.

48. Another of the grounds for the extinction of criminal responsibility that could relate to enforced disappearances is amnesty, referred to in article 96 (3) of the Criminal Code. In this regard, the most recent amnesty decree adopted in Honduras clearly states, in the penultimate paragraph of the first article, that amnesty is not applicable to crimes against humanity:

Article 1. ... This decree does not apply to any act that constitutes an offence related to corruption, such as misappropriation of public funds, illegal enrichment, bribery or other related criminal offences, or crimes against humanity and human rights violations.<sup>13</sup>

49. The imprescriptible nature of crimes against humanity in Honduran national law was not originally provided for in criminal law (see Criminal Code, art. 97, cited above). It is, however, set out in the Inter-American Convention on Forced Disappearance of Persons, which is part of national law by virtue of article 16 of the Constitution, which establishes that international treaties concluded by Honduras with other States form part of domestic law upon their entry into force. In this regard, the aforementioned Convention states the following:

Article VII. Criminal prosecution for the forced disappearance of persons and the penalty judicially imposed on its perpetrator shall not be subject to statutes of limitations.

However, if there should be a norm of a fundamental character preventing application of the stipulation contained in the previous paragraph, the period of limitation shall be equal to that which applies to the gravest crime in the domestic laws of the corresponding State party.

50. In addition, the new draft criminal code, to which reference has already been made in this report, particularly in relation to compliance with articles 2 and 4 of the Convention, includes an article that specifically covers cases in which the statute of limitations will not apply, including crimes against humanity. The Government will inform the Committee of the final wording adopted by Congress once the code has been approved.

51. The classification of enforced disappearance as a continuing offence and the reference point for calculating the statute of limitations for this offence were not originally provided for in Honduran criminal law (Criminal Code, arts. 37 and 98). However, the continuous nature of this offence is referred to in the Inter-American Convention on Forced Disappearance of Persons, which, as already stated, forms part of national law. In this regard, the Convention states the following:

Article III. The States parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offence and to impose an appropriate punishment commensurate with its extreme gravity. This offence shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

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<sup>13</sup> Decree No. 2-2010, adopted by the National Congress on 27 January 2010 and published in *La Gaceta* No. 32,129 on 2 February 2010. This amnesty law is applicable to certain specifically mentioned offences attempted or consummated during the period from 1 January 2008 to 27 January 2010, in the context of the constitutional crisis that resulted in a coup d'état and the formation of a de facto government in the second half of 2009.

52. In any case, once the non-applicability of statutory limitations to criminal proceedings and penalties arising from enforced disappearance is established, the reference point for calculating the statutory limitation becomes less of an issue.

### **Article 9: Establishment of national and universal jurisdiction in cases of enforced disappearance**

53. The rules regarding the application of Honduran criminal law are general, which means that they apply to all offences established in the Criminal Code and in special criminal laws (Criminal Code, art. 12); this obviously includes enforced disappearance. In criminal matters, the State establishes its jurisdiction primarily on the basis of territoriality. The national courts may, however, try offences committed abroad if any of the circumstances specifically mentioned in the legislation are present. The following are the most relevant provisions of the Criminal Code in this regard:

Article 3: Honduran criminal legislation is applicable to any person who commits a punishable act in the national territory and in other places subject to the jurisdiction of Honduras, save where exceptions are laid down in international law.

Article 5: The Honduran courts shall also deal with offences committed abroad when the accused is present in Honduras and one of the following conditions is met:

- (1) Where the person concerned has not been tried for an offence committed on board a merchant or private Honduran ship or aircraft or where, having been tried, the person has escaped and failed to serve the whole or part of the sentence imposed;
- (2) Where the accused is a Honduran and his or her extradition has been requested by the State in whose territory the punishable act was committed;
- (3) Where the offender is a Honduran government official and enjoys diplomatic or official immunity;
- (4) Where a person who has committed an offence against a Honduran national has not been tried in the country in which the offence was committed, where his or her extradition has not been requested, or where, having been tried, he or she has escaped and failed to serve the whole or part of the sentence imposed; and
- (5) Where, pursuant to the international treaties to which Honduras is a party, the offence is subject to Honduran criminal legislation for reasons different from those just mentioned or seriously violates universally recognized human rights. Preference shall be given, however, to the claim of the State in whose territory the punishable act was committed, so that this claim shall be enforced before criminal jurisdiction is exercised by the competent Honduran court.

Article 8: Honduran criminal law is not applicable to the foreign Heads of State present in the national territory, diplomatic agents or other persons who enjoy immunity under international law.

### **Article 10: Treatment of alleged perpetrators of enforced disappearances committed abroad**

54. If a person alleged to have committed an offence of enforced disappearance is present in the national territory and the Honduran State invokes one of the situations specified in article 5 of the Criminal Code (as set out in the previous paragraph), proceedings may only be initiated in two ways: (i) by means of criminal proceedings instituted by the Public Prosecution Service, in accordance with national legislation



(Constitution, art. 232; Public Prosecution Service Act, art. 6; and Code of Criminal Procedure, art. 25),<sup>14</sup> or (ii) by means of a request made by another State or the International Criminal Court in the context of surrender or extradition proceedings. The procedures established in the Code of Criminal Procedure apply in the first scenario. A detailed description of the second scenario is contained in the paragraphs of the report relating to article 13 of the Convention.

55. Regarding consular assistance for foreign persons detained on these grounds, the principle enshrined in article 31 of the Constitution provides that in Honduras “foreigners shall enjoy the same civil rights as Hondurans, subject to restrictions established by law on substantiated grounds of law and order, security or social interest”. Article 11 of the Migration and Aliens Act contains similar provisions.

56. In the area of criminal procedure, this principle is taken up by the Code of Criminal Procedure, which is itself aligned with the Vienna Convention on Consular Relations<sup>15</sup> and states the following:

Article 101. Accused persons and their rights.

All accused persons are guaranteed the right to a defence. Hence they have the right:

(1) ...

(2) To inform a natural or legal person of their choosing forthwith of their detention and the place in which they are detained.

If the natural or legal person who is the addressee of the communication is outside the territory of the Republic of Honduras, the fact and place of their detention shall be brought to the notice of the relevant diplomatic or consular mission.

If none of those circumstances is applicable, the Office of the National Commissioner for Human Rights shall be informed.

...

(9) To be assisted by an interpreter or translator if they do not know Spanish.

### **Article 11: Obligation to initiate criminal proceedings in cases of enforced disappearance**

57. Under article 5 (5) of the Criminal Code (as cited in the paragraphs relating to article 9 of the Convention), national courts are currently able to exercise universal jurisdiction. Universal jurisdiction is also provided for in the new draft criminal code, which introduces a specific reference to the “principle of universal jurisdiction” applicable to crimes against humanity and war crimes.

58. Similarly, as already reported with respect to the measures taken in connection with article 10 of the Convention, the Constitution, the Migration and Aliens Act and the Code of Criminal Procedure all guarantee equal rights and treatment of foreigners and nationals in the criminal justice system.

<sup>14</sup> Public Prosecution Service Act. Decree No. 228-93, issued on 13 December 1993. Code of Criminal Procedure. National Congress Decree No. 9-99-E, issued on 19 December 1999. Published in *La Gaceta* No. 29,176 on 20 May 2000. In force as of 19 May 2002.

<sup>15</sup> The Vienna Convention on Consular Relations was adopted by the National Congress by means of Decree No. 71, published in *La Gaceta* Nos. 19,339, 19,340 and 19,341 on 11, 12 and 13 December 1967, respectively.

59. Regarding the authority with jurisdiction to try such cases, the Code of Criminal Procedure, which is aligned with article 303 of the Constitution, clearly states the following:

Article 7. Independence of judges and magistrates. The adjudication of offences and misdemeanours, as well as the supervision of the enforcement of sentences and security measures, shall be the responsibility of independent and impartial judges and magistrates, who are subject only to the Constitution, treaties and laws ...

60. On this point, it is important to note that although the Honduran Constitution “confers on military courts jurisdiction to try major and minor military offences ... their jurisdiction may not, under any circumstances, be extended to cover persons who are not in the active service of the armed forces” (Constitution, art. 90). Moreover, “where a major or minor military offence involves a civilian or former military personnel, the competent ordinary court shall try the case” (Constitution, art. 91). Developing the point still further, the National Congress interpreted the second paragraph of the above-mentioned article 90 to mean that military courts have jurisdiction over “major and minor offences of a strictly military nature” and that “in the event of a conflict of jurisdiction in terms of whether the offence falls under ordinary or military criminal law, ordinary law shall prevail”.<sup>16</sup> In view of the foregoing, and in the light of the fact that the offence of enforced disappearance is covered solely by ordinary criminal law, it is not possible for a case of this type to be tried by a military court, even if it involved only military personnel or occurred within a military unit.

61. Due process guarantees for nationals and foreigners are set out in detail in both the Constitution and the Code of Criminal Procedure, as follows: the right of defence (Constitution, arts. 82 and 83; Code of Criminal Procedure, arts. 14 and 15), the presumption of innocence (Constitution, art. 89; Code of Criminal Procedure, art. 2), the right to an independent and duly appointed judge (Constitution, arts. 90 and 304; Code of Criminal Procedure, art. 7) and the right to a trial (Constitution, art. 94; Code of Criminal Procedure, art. 1). Furthermore, Honduras is party to various human rights conventions that protect these rights, in particular the American Convention on Human Rights and the International Covenant on Civil and Political Rights.<sup>17</sup>

## **Article 12: Mechanisms for resolving cases of enforced disappearance and guarantees of access to justice**

62. In general, all criminal offences are prosecuted publicly and ex officio in Honduras. The very few exceptions to this principle do not include enforced disappearances. The principle is set out in the Code of Criminal Procedure as follows:

Article 25. Public prosecution. The Public Prosecution Service shall be responsible for the prosecution of offences and may act ex officio or at the request of the interested party. The Counsel General’s Office shall be responsible for prosecuting

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<sup>16</sup> The interpretation of the second paragraph of article 90 of the Constitution was adopted by the National Congress through Decree No. 58-93 of 30 March 1993, published in *La Gaceta* No. 27,059 on 2 June 1993.

<sup>17</sup> The American Convention on Human Rights, Pact of San José. Adopted by the Inter-American Specialized Conference on Human Rights in San José, Costa Rica, on 22 November 1969. Adopted by Honduras through Agreement No. 8 of 22 November 1976. Ratified by Decree No. 523 of the Head of State, in the Council of Ministers, on 26 August 1977 and published in *La Gaceta* No. 22,287 on 1 September 1977. The International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations through resolution 2200A (XXI) in New York, United States of America, on 16 December 1966. Adopted by National Congress Decree No. 64-95 on 18 April 1995 and published in *La Gaceta* No. 28,293 on 24 June 1997.

those cases that fall within its jurisdiction, without prejudice to the involvement of the Public Prosecution Service. Proceedings may also be brought by the victims of an offence, where appropriate.

The Public Prosecution Service shall prosecute all offences *ex officio*, with the exception of those set out in articles 26 and 27 of this Code.

63. This provision is further strengthened by article 92 of the Code of Criminal Procedure, which establishes the functions of the Public Prosecution Service as the body responsible for instituting proceedings.

64. Such cases are judged under criminal law, in accordance with the regulations set out in articles 54 to 91 of the Code of Criminal Procedure. The Constitution and the Code provide for the independence of judges and magistrates, as indicated above in relation to article 11 of the Convention.

65. Specifically, cases of enforced disappearance are investigated by the Office of the Special Prosecutor for Human Rights, which reports to the Public Prosecution Service. It should be noted that a programme intended to strengthen the Office will be implemented from 2016 onward, with the support of the European Union.<sup>18</sup> Measures to be taken under the programme include: (i) a capacity-building diploma course for the Office's staff, provided by the United Nations University for Peace; (ii) a public information campaign for potential users of the Office's services; (iii) the recruitment of professional support staff in the legal, psychology and information technology fields; (iv) the procurement of telephone call tracing and facial composite systems; (v) the reorganization of registration, document-handling and case-processing systems; (vi) the purchase of furniture and equipment; (vii) the promotion of closer cooperation and links with civil society organizations with a view to improving case resolution; (viii) the development of technical manuals and investigation protocols across several areas and subjects; (ix) the creation of a case law database.

66. The Office's budget for 2015, funded from domestic sources, was 12,676,499 lempiras (equivalent to approximately US\$ 577,000). The Office has branches in three of the four largest cities in Honduras: Tegucigalpa (the capital), San Pedro Sula (the second city) and the port city of La Ceiba, on the Caribbean coast (the city with the fourth largest population). Its staff is distributed as follows:

<i>City</i>	<i>Prosecutors</i>	<i>Assistants</i>	<i>Administrative assistants</i>
Tegucigalpa	14	4	6
San Pedro Sula	6	-	3
La Ceiba	2	1	2
*Choluteca	1	-	-
*Tocoa	1	-	-
<b>Total</b>	<b>24</b>	<b>5</b>	<b>11</b>

\* Prosecutors in these branches deal with human rights cases along with other work.

67. Since the Convention's entry into force for Honduras on 23 December 2010, the Public Prosecution Service has received 54 complaints of disappearances at the national level. All of these cases are being investigated; the identity and status of the suspected

<sup>18</sup> This programme is part of the Honduras Human Rights Support Programme (PADH), under financing agreement DCI-ALA/2011/022-857, concluded between the European Union and the Republic of Honduras.

perpetrators have yet to be established with certainty. Consequently, the cases cannot yet be classed as enforced disappearances.

68. Criminal investigations are carried out by the Investigative Police, which is a department of the National Police and operates under the technical and legal direction of the Public Prosecution Service. This branch of the police is tasked with investigating crimes and identifying offenders in order to provide the objective evidence needed by court officials to launch a criminal prosecution, in accordance with articles 63 and 65 of the Organic Act on the National Police. Article 64 provides that the main function of the Investigative Police is to:

- (1) Investigate, ex officio or by order of the Public Prosecution Service, publicly actionable offences and, where legally appropriate or upon request, privately actionable offences, subject to the victim's prior authorization ...

69. If a prosecutor or police officer refuses to receive or investigate a citizen's complaint, the person concerned may exercise his or her right of petition under article 80 of the Constitution and take the matter to a higher level or to the relevant internal affairs unit. Furthermore, the Public Prosecution Service has a dual oversight process that first involves administrative proceedings launched by the National Oversight Department,<sup>19</sup> which reports to the Attorney General's Office and investigates complaints against Public Prosecution Service officials and employees so that disciplinary measures may be applied by the relevant bodies. If the investigation finds that an offence has been committed, the case is referred to the Office of the Special Prosecutor for the Investigation and Prosecution of Officials and Personnel of the Public Prosecution Service.<sup>20</sup>

70. Even before criminal proceedings are launched, victims may apply for habeas corpus or personal appearance and lodge a complaint with the Office of the National Commissioner for Human Rights. This report has already referred to these constitutional provisions in the section on compliance with article 1 of the Convention. Citizens may also turn to the several human rights NGOs operating in the country.

71. Honduran law also provides for two mechanisms designed to protect victims and complainants. First, the Act on the Protection of Witnesses in Criminal Proceedings<sup>21</sup> provides for the establishment of a specific programme within the Public Prosecution Service for protecting victims, witnesses and other parties involved in criminal proceedings. Second, the Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials<sup>22</sup> provides for the establishment of a national protection council, to include representatives of stakeholder groups, and a range of preventive, protection and emergency measures. In accordance with the Act, the Ministry of National Security and Defence is the body responsible for implementing those measures. To that end, the Ministry operates under the guidance of the National Protection Council and the Ministry of Human Rights, Justice, Governance and Decentralization.

72. The following provisions relate to access by the investigating authorities to places of detention. The first is taken from the Public Prosecution Service Act, the second from the

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<sup>19</sup> The National Oversight Department of the Public Prosecution Service was created pursuant to Decision of the Attorney General No. 14-99 of 22 June 1999.

<sup>20</sup> The Office of the Special Prosecutor for the Prosecution of Officials and Personnel of the Public Prosecution Service was created pursuant to Decision of the Attorney General No. 18-2013 of 25 September 2013.

<sup>21</sup> The Act on the Protection of Witnesses in Criminal Proceedings was adopted on 21 June 2007 and published in *La Gaceta* on 18 July 2007.

<sup>22</sup> The Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials was adopted by Decree No. 34-2015 on 16 April 2015.

Organic Act on the Office of the National Commissioner for Human Rights and the third from the Constitutional Justice Act:<sup>23</sup>

Article 3 (Public Prosecution Service Act). When exercising its legal and regulatory powers, the Public Prosecution Service shall enjoy full functional, administrative, technical, financial and budgetary independence.

It may not, therefore, be obstructed, impeded or limited in any way, by any authority. On the contrary, all the civil and military authorities of the Republic are required to provide the Public Prosecution Service with the cooperation and assistance needed for it to perform its functions fully.

Any official or employee who, without justification, refuses to provide the cooperation or assistance requested shall be punished for failure to perform the duties of his or her post and disobedience to authority.

Article 7 (Organic Act on the Office of the National Commissioner for Human Rights). In the performance of his or her duties, the National Commissioner for Human Rights shall have free access to all civilian and military establishments and places of detention, imprisonment or internment and no objection whatsoever may be raised to such visits.

Article 28 (Constitutional Justice Act). On the powers of the enforcement judge and the obligations of the defendant authority when a habeas corpus action is instituted without prior notice. When the interested party so requests or the enforcement judge deems it necessary, the proceedings for habeas corpus shall be held in the place where the detainee or prisoner is being held, without prior notice to any authority or person.

When the head of the establishment or the person acting on his or her behalf is notified of the writ of habeas corpus, he or she must immediately present the aggrieved person and hand him or her over to the enforcement judge without delay, along with the case report and file. Pending a decision, the court shall adopt the safety measures that it deems necessary to protect the detainee or prisoner. Those measures must be respected, without exception, by the relevant authorities.

The enforcement judge shall have free access to all premises of the place of detention, including outside normal working hours, and shall carry out the investigations and inquiries that he or she deems necessary.

73. In addition to the above mechanisms, the State has created the National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment, in fulfilment of the commitments it assumed upon signing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, in particular, the Optional Protocol to that Convention, which calls for the establishment of a national preventive mechanism.<sup>24</sup> The Committee undertakes monitoring and training activities, processes complaints and issues recommendations. In 2014 and 2015, it made more than 400 visits — most of them

<sup>23</sup> Constitutional Justice Act, adopted by Decree No. 244-2003, published in *La Gaceta* No. 30,792 on 3 September 2005.

<sup>24</sup> The National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment was established pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by Decree No. 374-2005 of 20 January 2006. The National Preventive Mechanism Act was adopted, also in pursuant to the Optional Protocol, by Decree No. 136-2008 of 1 October 2008 and published in *La Gaceta* on 5 December 2008.

unannounced — to various places of detention, including prisons, police stations, juvenile detention centres and psychiatric hospitals.<sup>25</sup>

74. The Organic Act on the National Police, the Armed Forces Personnel Act, the Code of Criminal Procedure and the Criminal Code contain sufficiently clear provisions on preventing suspects in enforced disappearance cases from influencing criminal investigations:

Article 116 (Organic Act on the National Police). If a police officer is the subject of an order of committal to prison for wilful wrongdoing and that order becomes final or is confirmed on appeal, he or she shall be immediately suspended from the police service without pay ...

Article 99 (Armed Forces Personnel Act). If there is information that a member of the armed forces may have committed administrative irregularities or a criminal offence, he or she shall be suspended from his or her post until the corresponding investigation has been concluded by the Administrative Investigation Board, which shall recommend the action to be taken.

Article 178 (Code of Criminal Procedure). On pretrial detention.

One of the following circumstances must apply for pretrial detention to be ordered:

1. ...
2. Risk that the accused will impede the investigation; ...
4. Demonstrable risk that the accused will take or attempt to take reprisals against the accuser or plaintiff.

75. Article 180 of the Code of Criminal Procedure sets out in greater detail conduct that may be deemed to impede an investigation, including the destruction of evidence or exertion of influence over other accused parties or witnesses. Lastly, the section of the Criminal Code that deals with the abuse of authority provides as follows:

Article 356 (Criminal Code). Any public official or employee, whether civilian or military, who issues orders or instructions or who in any way interferes with cases, affairs or business that are matters for the exclusive jurisdiction of a judicial authority shall be punished by from 3 and 6 years' imprisonment and a fine equal to three times their most recent wage.

### **Article 13: Extradition of alleged perpetrators**

76. There are two main provisions in Honduran legislation relating to extradition. The first is article 102 of the Constitution, which establishes that:

Article 102. No Honduran may be expatriated or handed over by the authorities to a foreign State.

This provision does not apply to cases relating to drug trafficking of any kind, terrorism or any other form of organized crime or cases where there is an extradition treaty or agreement with the requesting country.

Under no circumstances may a Honduran be extradited for political crimes or related common crimes.

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<sup>25</sup> National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment, Fourth Annual Report, 2014; National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment, Fifth Annual Report, 2015.

77. The second provision, article 150 of the Code of Criminal Procedure, indicates that, in extradition cases, the provisions of the relevant bilateral or multilateral international treaties and agreements concluded by the country will largely apply.

78. Additionally, Honduran legislation sets out the institutional responsibilities concerning the trial and sentencing of extradition cases. First, the Supreme Court is tasked with “trying cases of extradition and such others as are to be judged in accordance with international law” (Constitution, art. 313 (4)). To that end, on 8 May 2013, the Court issued general guidelines for the judiciary intended to protect the fundamental guarantees and rights of the parties and regulate this special procedure more strictly. The full text of the guidelines is annexed to this report.

79. In relation to extradition proceedings, the Migration and Aliens Act provides:<sup>26</sup>

Article 91. Implementation. Responsibility for handing over or receiving persons extradited in accordance with the law and international treaties ratified by the State of Honduras shall lie with the Ministry of the Interior and Justice<sup>27</sup> in coordination with the Ministry of Foreign Affairs and other relevant authorities ...

80. Honduras has signed several bilateral and one regional extradition treaties, principally with countries with which it has geographical and historical links. The treaties are mostly based on an open list system of extraditable offences; in other words, in principle they include all offences, with the exception of those expressly excluded by the States parties. Those excluded offences often include political crimes, acts that are not criminalized in the requested State and those punishable by less than 1 year’s imprisonment. The text of these agreements is annexed to this report for further information.

81. The extradition treaties to which Honduras is currently party are listed below. The footnotes contain information on the decrees approving the treaties and, where applicable, whether the treaties have been concluded with States that are not parties to the Convention and whether they provide for a closed list of offences:

<i>Instrument</i>	<i>Date of adoption</i>
Extradition treaty between Honduras and the United States of America <sup>28</sup>	15 January 1909
Extradition Treaty between the Republic of Honduras and the Kingdom of Spain <sup>29</sup>	13 November 1999

<sup>26</sup> Migration and Aliens Act, adopted by Decree No. 208-2003 of 12 December 2003; published in *La Gaceta* No. 30,331 on 3 March 2004.

<sup>27</sup> These functions are currently undertaken by the Ministry of Human Rights, Justice, the Interior and Decentralization. The combining of the ministerial portfolios relating to human rights and the interior was authorized by the Act on the Optimization of Public Administration, Improvement of Public Services and Government Transparency, adopted by Decree No. 266-2013 of 16 December 2013 and published in *La Gaceta* No. 33,336 on 23 January 2014.

<sup>28</sup> The United States of America is not party to the Convention, and article 2 of the treaty sets out a closed list of crimes, which was extended through the Additional Agreement of 21 February 1927.

<sup>29</sup> Extradition Treaty between the Republic of Honduras and the Kingdom of Spain was adopted by the National Congress through Decree No. 79-2000 and published on 16 June 2000.

<i>Instrument</i>	<i>Date of adoption</i>
Treaty on the Transfer of Sentenced Persons between the Republic of Honduras and the Kingdom of Spain <sup>30</sup>	13 November 1999
Central American treaty on a simplified detention and extradition order <sup>31</sup>	2 December 2005

82. During the period in which the Convention has been in force, no cases of enforced disappearance have been recorded in which Honduras has received an extradition request from another country or in which Honduras has made such a request to another country.

83. Regarding possible obstacles to the application of the extradition treaties concluded by Honduras, it should be noted that article 102 of the Constitution and the texts of several treaties prohibit the extradition of nationals present in the country who have committed crimes abroad, except in cases involving terrorism, drug trafficking and organized crime. However, as already stated in the paragraphs on article 9 of the Convention, Honduran criminal law (Criminal Code, art. 5 (2)) allows Honduran courts to try these cases.

84. Furthermore, as already noted in the paragraphs relating to article 5 of the Convention, Honduras is party to the Rome Statute of the International Criminal Court. In that regard, on 19 September 2002, Honduras concluded an agreement with the Government of the United States of America under which the parties undertook not to surrender nationals of either country to the International Criminal Court without the other country's express consent, particularly if they are current or former government employees or officials, contractors or military personnel. In the preamble to the Agreement, both parties reiterate their intention to investigate and prosecute all acts alleged to have been committed by their nationals.<sup>32</sup>

85. Enforced disappearance may not be considered as a political offence for the purpose of mounting a defence in extradition proceedings, in accordance with the current definition of the offence contained in the Criminal Code (see the section of the report relating to article 2), the latest amnesty decree (see the section on article 8) and the extradition treaties listed here.

#### **Article 14: International legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance**

86. Honduras has signed three legal assistance treaties — one regional and two bilateral — with countries with which it has historical and geographic links. These instruments cover a wide range of areas of cooperation between judicial bodies dealing with criminal

<sup>30</sup> Treaty on the Transfer of Sentenced Persons between the Republic of Honduras and the Kingdom of Spain was adopted by the National Congress through Decree No. 19-2000 of 14 March 2000, published in *La Gaceta* No. 29,167 on 10 May 2000. The ratification instruments were exchanged on 30 March 2001.

<sup>31</sup> Guatemala and Honduras are parties to the Convention. Belize, El Salvador, Nicaragua and the Dominican Republic are not parties to the Convention. The Central American treaty on a simplified detention and extradition order was adopted by Congress through Decree No. 31-2007 and published in the Official Gazette on 30 April 2007.

<sup>32</sup> Agreement between the Government of the United States of America and the Government of the Republic of Honduras regarding the surrender of persons to the International Criminal Court, signed at New York, 19 September 2002.



matters; depending on the treaty, these areas can include the completion of documentation, the provision of evidence and the enforcement of judgments.

87. The treaties listed below — with the exception of the first, which includes two States that are not parties to the Convention — were concluded with States parties to the Convention:

<i>Instrument</i>	<i>Date of adoption</i>
Treaty on Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama <sup>33</sup>	29 October 1993
Treaty on the Transfer of Sentenced Persons, between the Republic of Honduras and the Kingdom of Spain <sup>34</sup>	13 November 1999
Treaty on Mutual Judicial Assistance in Criminal Matters between the Republic of Honduras and the United Mexican States <sup>35</sup>	24 March 2004

88. During the period in which the Convention has been in force, no cases of enforced disappearance have been recorded in which Honduras has been requested to provide legal assistance to another country or in which Honduras has requested such assistance from another country.

### **Article 15: International cooperation with victims of enforced disappearance**

89. Other than those listed in the section on article 14 of the Convention, Honduras has not signed or modified any agreements to provide assistance to victims of enforced disappearance and facilitate their search.

### **Article 16: Prohibition of the expulsion of persons who may be victims of enforced disappearance**

90. The Migration and Aliens Act covers a number of situations relating to aliens' stay in and departure from Honduran territory, at least three of which are relevant to the objectives of the Convention. The first of these is deportation, which is carried out administratively by the National Institute of Migration in cases where persons have entered the country illegally, where their status becomes irregular upon expiration of their residence permit or where they fail to produce documentation proving they entered the country

<sup>33</sup> The Republics of Costa Rica, Guatemala, Honduras and Panama are parties to the Convention; the Republics of El Salvador and Nicaragua are not parties to the Convention. The Treaty on Mutual Legal Assistance in Criminal Matters between Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama was adopted by the National Congress through Decree No. 96-96, which was published in *La Gaceta* on 20 May 1997.

<sup>34</sup> Treaty on the Transfer of Sentenced Persons, between the Republic of Honduras and the Kingdom of Spain was adopted by the National Congress through Decree 19-2000 of 14 March 2000, which was published in *La Gaceta* No. 29,167 on 10 May 2000. The ratification instruments were exchanged on 30 March 2001.

<sup>35</sup> Treaty on Mutual Judicial Assistance in Criminal Matters between the Republic of Honduras and the United Mexican States was adopted by the National Congress through Decree No. 152-2006, which was published in *La Gaceta* on 4 December 2006.

legally (art. 88). In cases of overstay, deportation can be avoided by paying the corresponding fine. The second situation is expulsion, which can be ordered administratively by the Ministry of Human Rights, Justice, Governance and Decentralization as a consequence of serious misconduct by foreign nationals, such as participation in movements which employ violence, involvement in illegal activities, undermining public health, the economy or international peace or after serving a sentence for a criminal offence (art. 89). The third situation is extradition (art. 91), which can be ordered by the Supreme Court and which has been dealt with in this report in the paragraphs on article 13 of the Convention.

91. Three aspects should be pointed out regarding the actions mentioned above, in relation to the impossibility of expelling a person who may be at risk of enforced disappearance. First, all decisions are subject to appeal and may not be enforced until the relevant remedies have been pursued or until such time as the decisions become final. Secondly, in any given case, the rules on refuge and asylum prevail over those on expulsion. Thirdly, provisions protecting fundamental rights are not affected during emergency situations.

92. Decisions by the National Institute of Migration can be contested using the remedies provided for in the Administrative Procedure Act (regulations implementing the Migration and Aliens Act, art. 146).<sup>36</sup> Decisions can be contested by an application for review (decided by the body which handed down the decision) and by an appeal (decided by a higher body). Article 31 of the Administrative Procedure Act provides that decisions of the Administration in relation to individual cases take effect once they are final. Once these administrative remedies are exhausted, judicial remedies can be pursued under the regulations set out in the Administrative Court Act, in which case it falls to the claimant to request the suspension of the contested decision (arts. 120 to 124).<sup>37</sup>

93. Regarding extradition proceedings before the Supreme Court, the Court upheld the principle of two hearings in the order referred to in the section on article 13. Under article 6 of the order, the case is heard in the first instance by a single judge, while the appeal is heard by the full bench of the Supreme Court. The extradition is carried out only when the judgment becomes final.

94. The Migration and Aliens Act covers refuge and asylum in chapter IV on conditions and special permits for residence. Article 42 sets out who will be recognized as a refugee, in line with international standards; articles 44, 45 and 46 further state the following:

Article 44. Non-refoulement, resettlement and repatriation. No person or group of persons belonging to any of the categories laid out in article 42 of this Act shall be obliged under any circumstances to return to a country in which their rights might be jeopardized. It is also prohibited to return an asylum seeker from the frontier, port or airport on arrival or once the person concerned has entered Honduran territory.

With regard to the resettlement of refugees in a third country or their repatriation to their country of origin, the Migration and Aliens Department is required to coordinate such actions with the Office of the United Nations High Commissioner for Refugees and other relevant authorities.

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<sup>36</sup> Regulations implementing the Migration and Aliens Act, approved by Agreement No. 018-2004 on 3 May 2004 and published in *La Gaceta* No. 30,379 on the same date.

<sup>37</sup> Administrative Procedure Act, approved by Decree No. 152-87 on 28 September 1987 and published in *La Gaceta* No. 25,391 on 1 December 1987. Administrative Court Act, approved by Decree No. 189-97 on 20 November 1987 and published in *La Gaceta* No. 25,416 on 31 December 1987.

Article 45. Extradition of an asylum seeker. The extradition of an asylum seeker will be carried out only if it has been established that his or her request for asylum was not founded on the grounds provided for in article 42 of this Act.

Article 46. Prohibition of deportation or expulsion. Persons awaiting recognition of their refugee status or persons who have acquired such status shall not be deported or expelled from the national territory save on duly substantiated grounds of security or public order ...

95. Asylum is dealt with in articles 52 and 53 of the Migration and Aliens Act; those articles develop the following constitutional provisions:

Article 101. Honduras recognizes the right to asylum in the form and subject to the conditions laid down in the relevant legislation.

When it is legally appropriate to revoke or not to grant asylum, a fugitive from political persecution or a refugee may not, under any circumstances, be expelled to the State demanding his or her return.

The State shall not authorize the extradition of persons accused of political and related offences.

96. In the light of the two preceding paragraphs, the review of the provisions of national legislation on emergency situations dealt with in the section on article 1 of the Convention and the review of the provisions on equal rights of Hondurans and foreign nationals dealt with in the section on article 10, it can be concluded that the prohibition on expulsion in cases where there is a risk of enforced disappearance should not be affected by such situations. This is so because the constitutional articles on life (art. 65), respect for physical, psychological and moral integrity (art. 68), asylum (art. 101), and effective judicial remedies (art. 90) are not suspended during a state of emergency.

97. Lastly, with respect to the training on human rights and the prevention of enforced disappearances given to staff members of the National Institute of Migration,<sup>38</sup> there are at least four relevant initiatives: (i) training offered to staff periodically by the Office of the United Nations High Commissioner for Refugees (UNHCR), the Centre for Research and Promotion of Human Rights (an NGO), the International Organization for Migration (IOM) and the Institute itself; (ii) the training programmes run by the Ministry of Human Rights, Justice, Governance and Decentralization for public employees and officials, in which staff from the Institute have participated since 2014; (iii) the work of the Human Rights Office within the Institute; and (iv) the recent creation of the Institute's Training Centre.

98. Under the first of these initiatives, since 2011, the Centre for Research and Promotion of Human Rights and UNHCR have run at least one annual workshop/seminar on assistance for refugees and persons displaced by violence. Since 2015, IOM, the National Forum for Migration (a civil society organization) and the Institute itself have increased their human rights and migration training days for the Institute's staff, running at least eight events in various regions of the country where the Institute has a presence. Also during 2015, staff from the Institute's regional offices participated in training days on gender and human trafficking run by the Institute's own staff. This training seeks to disseminate the knowledge the trainers acquired during a six-month postgraduate course.<sup>39</sup>

<sup>38</sup> The National Institute of Migration was created by Executive Decree PCM 031-2014 of 30 June 2014, which was published in *La Gaceta* No. 33,468 on 2 July 2014. It replaces the previous Directorate General for Migration and Aliens.

<sup>39</sup> The postgraduate course began in April 2015 and takes place at the Judicial Training College, with the sponsorship and collaboration of the European Union, World Vision and the Nicaraguan Health System Federation. The course aims to strengthen participating organizations by developing

99. Under the second initiative, the Ministry of Human Rights, Justice, Governance and Decentralization has given human rights training to 100 of the 463 public servants of the National Institute of Migration, including technical and administrative staff and inspectors. In addition, five institutional outreach workers have been trained in a 90-hour programme. An analysis of the Institute's human rights training needs has also been carried out.

100. Under the third initiative, the Human Rights and Migration Services Office aims to offer a dignified service to nationals and non-nationals who use the Institute's services, regardless of their legal or migration status. The Office is responsible for the implementation of the Migrants' Human Rights Programme, which has formed part of the Institute's strategic agenda since its creation in 2014.

101. Lastly, on 22 October 2015, with support from IOM,<sup>40</sup> the National Institute of Migration opened its training unit, which aims to design, deliver and continuously improve the management and development of the Institute's human resources. The unit seeks not only to develop the Institute's staff, but also to improve respect for the rights of migrants.

### **Article 17: Prohibition of secret detention**

102. Secret or unofficial detention is banned in Honduras. The Constitution expressly states that:

Article 85. No one may be detained or imprisoned save in such places as are determined by law.

103. The Constitution also sets out the conditions under which deprivation of liberty may occur and the authorities which may give permission for it:

Article 84. No one may be arrested or detained except under a legally issued written warrant from a competent authority and on grounds already established in law.

Notwithstanding, an offender in flagrante delicto may be apprehended by anyone for the sole purpose of being handed over to the authorities.

The arrested or detained person must be informed forthwith of his or her rights and the acts which he or she is suspected of having committed, and he or she must be permitted to communicate the fact of his or her arrest to a relative or other person of his or her choice.

104. The Criminal Code of Procedure and the Organic Act on the National Police further expand upon the concepts of a "legally issued written warrant" and of "in flagrante delicto". The first of these concepts refers to an order issued, with a statement of reasons, by a competent judge or court (arts. 173 and 174). The Public Prosecution Service also has the power to issue such a warrant, but only as an exceptional or provisional measure (art. 176). Article 176 also requires that "the relevant judge be informed without delay of any pretrial detention ...". The prosecutor who has ordered the detention usually has a period of 24 hours to inform the relevant judge. This is increased to 48 hours when complex or multiple crimes are being investigated, when a large number of suspects or victims are involved or when there are difficulties in obtaining evidence. It should be noted that, in practice, detentions ordered by prosecutors are rare in Honduras. With respect to arrest in flagrante delicto, article 175 of the Criminal Code of Procedure sets out the strict conditions under

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appropriate instruments to fight gender-based violence and human trafficking. It consists of six modules taught over one week each month, for a total of six months.

<sup>40</sup> Support was provided under an IOM regional programme for Mesoamerica, Strengthening Capacities to Protect and Assist Migrants in Vulnerable Situations, financed by the Bureau of Population, Refugees, and Migration of the Department of State of the United States of America.

which the police may act without a court order. In this instance, the law sets an even shorter time period within which the relevant judge must be informed, given that “within the six hours following the time of arrest, the police authority which has carried out the arrest or which has taken into custody a person arrested in flagrante delicto must inform the Public Prosecution Service or the competent judge of the fact ....” The six-hour rule is reiterated in article 35 of the Act on Policing and Harmonious Social Relations, which further states that failure to comply with the rule will give rise to administrative or criminal responsibility.

105. In relation to the provisions for and means of timely notification of arrest, access to lawyers, family members, and, in the case of foreign nationals, consular assistance, please see the information provided in the section on article 10 of the Convention. Additional relevant provisions can be found in article 282 of the Code of Criminal Procedure and articles 27 and 28 of the Organic Act on the National Police, which establish mandatory registration of the arrest, the medical examination of the detainee, where necessary, and access to human rights organizations:

Article 282 (Code of Criminal Procedure). Rules governing the detention or arrest of a person. When apprehending, detaining or arresting a person, members of the National Police shall act in accordance with the following rules:

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7. At the time of arrest, they shall inform the relatives or associates of the detainee of the facility to which the detainee will be taken; and,

8. They shall record in a special register that shall be deemed to be a public document the place, date and time of the arrest, as authorized by the Minister of Security.

Article 27 (Organic Act on the National Police). At the time of the arrest or detention, the police authorities must explain to the detainee, and keep him or her informed of, the following rights and issues:

(1) ...

(5) The right to appoint a lawyer to provide technical assistance from the moment of arrest and to present such evidence as is deemed necessary to mount a defence; and

(6) Examination of the detainee by a doctor or medical examiner, at the request of the detainee or his or her lawyer, to record the detainee’s state of physical or mental health on arrival at the detention facility, without prejudice to subsequent police proceedings.

Article 28 (Organic Act on the National Police). All detainees have the right to be provided with the facilities necessary for their family members, spouse, friends or other interested parties to supply them with food, clothing and medicine. These facilities shall also be provided to the authorities of accredited human rights organizations and their members in the fulfilment of their duties.

106. The Public Defence Service, which is part of the judiciary, has offices in 30 towns around the country, meaning that some of the 18 departments have more than one office.<sup>41</sup> Another important point, reported in 2012, is that the Public Defence Service has the third largest budget within the judiciary, receiving 12 per cent of programmed funds. Only the section responsible for justices of the peace and the administrative services receive more, at

<sup>41</sup> <http://www.poderjudicial.gob.hn/institucional/organizacion/dependencias/defensa/Paginas/D%C3%B3nde-Estamos.aspx> (accessed 10 November 2015).

14 and 24 per cent respectively.<sup>42</sup> There is, however, still much work to be done and more resources required to improve the number of public defenders per head of population.<sup>43</sup>

107. In relation to the guarantees enjoyed by certain institutions to inspect prisons and detention centres, please see the section of this report on article 12 of the Convention. The section explains that the Public Prosecution Service, the Office of the National Commissioner for Human Rights, habeas corpus enforcement judges and the National Committee for the Prevention of Torture have full and unconditional access to any place where detainees or prisoners are held.

108. In addition to these mechanisms, there are also enforcement judges, whose powers are regulated by articles 60, 381 and 382 of the Code of Criminal Procedure and whose main function is to “oversee and supervise the enforcement of sentences and security measures ...”.

109. In addition to these bodies, which are independent of the prison administration system and the security forces, the new National Prison System Act provides for the creation of the Inspectorate-General (arts. 19 and 20). Although the Inspectorate-General is primarily designed to oversee the operation of detention facilities and supervise staff, it can also handle complaints made to it by any person and inform the Public Prosecution Service of the probable commission of an offence.<sup>44</sup>

110. In relation to the guarantee for any person with a legitimate interest to bring proceedings before a court in order to decide on the lawfulness of the detention, please see the explanations on habeas corpus and the appeal of pretrial detention in the sections of this report on articles 1, 12 and 22 of the Convention.

111. Lastly, in relation to the existence of official registers of detained persons and prisoners, under article 17 (3) of the Convention, all State agencies involved in the detention, custody and treatment of persons deprived of their liberty or with the power to oversee those agencies report that they have not only general or specific rules which oblige them to register arrests, pretrial detention and prison sentences, but also operational registers showing the persons for whom they are responsible at any given moment. The agencies in question are the National Police, the armed forces (which, in exceptional circumstances and by court order, have custody of detainees being tried for organized crime), the Technical Criminal Investigation Agency of the Public Prosecution Service, the Prisons Directorate, enforcement judges (who oversee the administration of prisons), the National Institute of Migration and the Directorate for Children, Adolescents and Families (which runs centres for adolescents in conflict with the law).

112. In the case of the prison administration system, the mandatory data, registers and files kept are comprehensive. In this regard, the regulations implementing the National Prison System Act contain a whole chapter (arts. 317 to 325) on the content of entry registers for prison facilities.<sup>45</sup>

113. However, not all registers in all institutions contain all the elements and requirements laid out in article 17 (3). Furthermore, there is no system in place to centralize the data held by the various institutions and there is no harmonizing regulation governing all institutions — which is easily accessible to front-line officers — that ensures access to information for family members, lawyers or human rights organizations. For this reason,

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<sup>42</sup> Judiciary of Honduras. Annual Report 2012. pp. 88-89.

<sup>43</sup> [Supreme Court]. Strategic Plan of the Judiciary 2011-2016. p. 8.

<sup>44</sup> The National Prison System Act was adopted through Decree No. 64-2012, of 14 May 2012, which was published in *La Gaceta* No. 32,990 on 3 December 2012.

<sup>45</sup> Regulations implementing the National Prison System Act, adopted through Executive Decision No. 322-2014 of 2 December 2014, published in *La Gaceta* No. 33,680 on 12 March 2015.

Honduras undertakes to evaluate the current state of institutional registers and to work to create a single central register of all persons deprived of their liberty, with operational protocols which ensure access for any person with a legitimate interest with a view to preventing violations of human rights, including the safeguarding of personal data.

### **Article 18: Access to information by relatives, lawyers and persons with a legitimate interest**

114. The various sections of this report contain information on a number of provisions and measures that ensure access by any person with a legitimate interest to information on the details and circumstances of a detention. First, in the section on article 10, reference is made to the right of detainees to notify their detention to a person of their choice or their country's consular authorities in the case of foreign nationals. The section on article 12 deals with the protection provided to complainants and human rights organizations under the Witness Protection Act and the Act on the Protection of Human Rights Defenders, Social Communicators and Justice Officials. Furthermore, the section on article 17 sets out the duty of the police, at the time of arrest, to inform the relatives or associates of the detainee of the facility to which the detainee will be taken. The paragraphs on that article of the Convention also provide information on the means of access that the police must provide to relatives and human rights organizations, as well as on the operation at the national level of the public defence service. Lastly, in the section on article 22, it is explained that any person may invoke habeas corpus on behalf of a detainee. Equally important is the fact, evident to any observer, that all forms of the national press regularly cover police activities in Honduras, which, in a way, constitutes an additional guarantee of the right to access to information in cases of deprivation of liberty.

115. The regulations implementing the National Prison System Act provide for data privacy with respect to detainees (arts. 322 and 323). In this regard, article 322 states that "subject to the prior written consent of the detained person, the prison administration may provide personal information to governmental institutions or bodies that justify the usefulness of such information, except in the case of judges and the Public Prosecution Service where the information is necessary for the discharge of their functions". It is important to note, however, that these restrictions are established with a view to protecting the detainees' privacy, not concealing a detention from relatives or persons with a legitimate interest.

### **Article 19: Collection and legitimate use of medical information and genetic data**

116. Honduran legislation provides for the possibility of obtaining the medical information and/or genetic data of persons charged with or suspected of having committed an offence or of those held in pretrial detention or serving a prison sentence. While the term "genetic data", within the meaning of the UNESCO International Declaration on the subject,<sup>46</sup> is not specifically mentioned in the provisions concerned, three articles from, respectively, the Code of Criminal Procedure, the Public Prosecution Service Act and the National Prison System Act are relevant in this regard:

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<sup>46</sup> Article 2 of the International Declaration on Human Genetic Data defines human genetic data as "information about heritable characteristics of individuals obtained by analysis of nucleic acids or by other scientific analysis". United Nations Educational, Scientific and Cultural Organization (UNESCO), thirty-second session, Paris, 29 September to 17 October 2003.

Article 107 (Code of Criminal Procedure). Physical examinations and sample collection from the accused. In order to establish the truth, the court may, if necessary, order at the request of the interested party that individuals charged with or suspected of having participated in the commission of an offence undergo such medical examinations or provide such samples as may be technically and scientifically useful, reliable and proportionate to that end, provided that such measures present no danger to the person's health.

Such interventions shall be performed in a manner that does not affront the modesty or dignity of the examinee.

When such interventions are necessary to establish the truth, they may be performed even against the will of the accused or suspect.

Force may be used only when it is proportionate and presents no danger to the integrity of the examinee.

Such interventions shall necessarily be carried out by medical or health personnel, laboratory technicians or microbiologists, as appropriate.

Subject to the above requirements and in cases where judicial authorization cannot be obtained because the lapse of time might prejudice the inquiry and render it redundant, the Public Prosecution Service may order such examinations and sampling to be performed; it must immediately submit a reasoned report to the competent judge, who shall validate or disregard the examinations and sampling.

Article 52 (Public Prosecution Service Act). The Forensic Medicine Department is responsible for performing autopsies in accordance with the law; carrying out physical, clinical, physiological, psychological, psychiatric and other types of examinations within the forensic medical field, as required by the Attorney General's Office or any of the other directorates, departments or units of the Public Prosecution Service and judicial bodies.

Article 43 (National Prison System Act). All persons, on admission to prison, must be examined by a qualified medical practitioner in order for the necessary clinical examinations and explorations to be carried out to determine their state of health, the treatment to be followed and their capacity to work and to adopt the relevant prophylactic measures to guarantee their health.

117. Medical evaluation on admission to prison is also covered in article 134 of the regulations implementing the National Prison System Act.

118. The following paragraphs will consider the use of such data beyond the immediate prison and procedural needs and provisions on their protection and storage, first in relation to medical information and then to the treatment of genetic data.

119. The regulations implementing the National Prison System Act provide that medical records "should be properly filed and only accessible to authorized personnel. The data included in the individual clinical record are confidential".

120. In general, it is important to note also that the Code of Ethics for the Medical College of Honduras,<sup>47</sup> a regulatory framework that contains an entire chapter on medical practitioners and human rights (arts. 59 to 71), establishes the following in articles 14, 18 and 62:

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<sup>47</sup> [Http://www.colegiomedico.hn/descargas/leyes\\_y\\_reglamentos/27\\_reglamento\\_codigo\\_etica.pdf](http://www.colegiomedico.hn/descargas/leyes_y_reglamentos/27_reglamento_codigo_etica.pdf) (accessed 14 November 2015).



Article 14. Medical confidentiality is defined as the act of safeguarding information which, in the exercise of his or her professional duties, is brought to the knowledge of the doctor in the context of the doctor-patient relationship, either because it was entrusted to the doctor or because it was noted or intuited. This information must not be shared, except with the patient's prior consent, to prevent harm to the patient or third parties.

Article 18. The use of medical informatics systems must not compromise the patient's right to privacy, without his or her consent.

Article 62. All persons deprived of liberty have the right to medical care and privacy without discrimination or prejudice of any kind, provided that such care is requested by the competent authorities and that safety standards and adequate conditions for treatment are met to ensure the physical integrity of the medical practitioner and patient.

121. It is worth recalling that, under the Constitution of the Republic (art. 177) and the Act on Compulsory Membership of Professional Associations (art. 4),<sup>48</sup> membership of a professional association is mandatory in Honduras, thus ensuring that those associations operate as robust regulatory systems of their members' practices.

122. The regulations on genetic data are contained in the rules and handbooks issued by the Supreme Court of Justice and the Directorate of Forensic Medicine, such as the regulations governing the handling of physical and biological evidence obtained as a result of the commission of an act constituting an offence<sup>49</sup> and the manual of forensic services and handling of evidence.<sup>50</sup> The Directorate of Forensic Medicine also follows the manual on good practice guidelines for forensic genetics laboratories, adopted at the 10th meeting of the Ibero-American Working Group on DNA Analysis (GITAD) on 5 and 6 June 2014 in Mexico City. All these instruments contain guidelines on staff training, standards for facilities and infrastructure, the handling of evidence, including biological evidence, analytical procedures, security and the submission of decisions and reports.

123. The only genetic database of disappeared persons and their families that currently exists is that set up within the framework of the cooperation agreement between Honduras and a number of civil society organizations with the Argentine Forensic Anthropology Team. Reference is made to the database in the section on article 3 (situations in which there is no presumed involvement of Honduran State agents or private individuals with its acquiescence), which provides information on the measures taken to investigate the whereabouts of missing migrants.

## **Article 20: Exceptions to access to information about a detention, for security reasons or to safeguard the investigation**

124. There appear to be no possible legal restrictions in domestic law on access by persons with a legitimate interest to information about a detention. Even where the accused is held in incommunicado detention, pursuant to an order by a judge or the public

<sup>48</sup> Act on Compulsory Membership of Professional Associations, adopted on 17 May 1962, published in *La Gaceta* No. 17,692 on 6 June 1962.

<sup>49</sup> The regulations governing the handling of evidence obtained as a result of the commission of an act constituting an offence were issued by the Supreme Court of Justice and published in *La Gaceta* on 27 November 2004.

<sup>50</sup> The manual of forensic services and handling of evidence is a technical instrument adopted by the Directorate of Forensic Medicine of the Public Prosecution Service in 2012.

prosecutor on an exceptional and temporary basis (Code of Criminal Procedure, art. 192), the right of the detained person to communicate with his or her counsel is safeguarded:

Article 192. Incommunicado detention of a suspect held in pretrial detention. The judge, at the request of the public prosecutor responsible for the investigation, may order the placement of the accused in incommunicado detention for a period of not more than 24 hours, if there are grounds to fear that he or she would otherwise obstruct a specific measure of the investigation. The judge shall record the grounds for the detention in his or her decision.

The incommunicado detention shall not prevent the accused from communicating with his or her defence counsel immediately prior to making a statement or prior to any act that requires his or her personal participation or from accessing books, magazines, newspapers or similar objects ....

125. In addition, since the entry into force of the Code of Criminal Procedure in May 2002, Honduras has adopted an adversarial system in which the investigative and judicial functions are separate; consequently, measures such as the secrecy of the judicial or investigative proceedings do not exist. It is rather the judge's duty to guarantee the rights of the defendant during the investigation conducted by the Public Prosecution Services.

126. As to remedies to obtain information on a detention without delay or, if necessary, to contest a refusal to disclose information on persons deprived of liberty, particularly relevant in this regard are the writ of habeas corpus, referred to in the sections on articles 1, 12 and 22 of this report, and the complaints procedure operated by the Office of the National Commissioner for Human Rights, described in the sections on articles 1 and 12. As previously mentioned, these are mechanisms that can be used under any circumstances, even during the suspension of guarantees.

### **Article 21: Verification of the release of persons deprived of their liberty**

127. With regard to laws and practices to verify the release of persons deprived of their liberty, the administrative and criminal rules that provide for the punishment of persons who fail to record an incident of any kind are applicable to the release of a detainee in a police station; those rules are set out in detail in the section on article 22 below. Responsibility for monitoring and ensuring that such a release actually takes place, in the event that charges cannot be brought against the detainee or investigated within the first 24 hours, lies with the person who authorized the release: in the first instance, the prosecutor assigned to the case or the duty prosecutor and, in the second instance, senior officers in charge of the police station in question or the corresponding shift or duty officers.

128. Within the prison system there are regulations on the discharge of prisoners for reasons of transfer between prisons and final release and as a result of prison credits. On transfers, the National Prison System Act provides as follows:

Article 92. The transfer of convicted prisoners from one penal facility to another must be notified to the enforcement judge at least 24 hours' in advance.

This transfer must be notified by the prison authorities to the persons designated by the detainee and the responsible human rights representative in the prison.

129. The second paragraph of this provision, particularly the term "human rights representative", is formulated in such a broad way that, depending on the case and the entities in a specific prison, notice may be given to any official or civil society body performing functions related to human rights protection in a given establishment.

130. Although article 93 of the National Prison System Act provides for urgent transfers for security reasons, which may be authorized by officials of the National Prisons Directorate, those officials must inform the enforcement judge without delay.

131. With regard to final release, the Act provides the following:

Article 105. Prison directors and registrars must notify the enforcement judge, at least 30 days in advance, of the sentence completion date for all persons deprived of their liberty under their responsibility to ensure their release on the date established in the prison sentence.

132. The regulations implementing the National Prison System Act also set out a discharge procedure, applicable to both final discharges and those carried out for transfers:

Article 99. Discharge procedure. Any form of release entails:

- (1) Verification of the legality of the release papers and the identification of the judicial officer submitting them;
- (2) Verification of the identity of the person being released;
- (3) Return of the belongings required, according to whether the discharge concerns a short-term internal transfer, a final internal transfer or final release; and
- (4) Immediate notification of the discharge to the requesting or ordering authority (whether an internal or external transfer or final release) and to the relevant institutional authority.

133. It follows from these provisions that, in the penitentiary system, the authorities responsible for overseeing the release are prison directors, the National Prisons Directorate and enforcement judges, in their respective areas of competence.

134. Needless to say, in both police stations and prisons, the detainee's or prisoner's lawyer plays a role in overseeing the effective release of the person deprived of liberty.

135. Notwithstanding the foregoing, the State undertakes to review and standardize procedures and protocols for the release of detainees and prisoners from all official institutions that have custody of persons deprived of their liberty. To that end, efforts will be made to strengthen independent verification mechanisms on the effective release of detainees and prisoners, including courts and human rights protection institutions and organizations. This initiative will be carried out within the framework of the national single central register for persons deprived of their liberty, referred to at the end of the section of the report on article 17.

## **Article 22: Prevention and punishment of irregular deprivation of freedom**

136. As previously mentioned in this report, in the sections on articles 1 and 12 of the Convention, Honduran national law provides for the guarantee of habeas corpus, not only as a means for the competent judge or court to determine the lawfulness of the deprivation of liberty, but also to correct possible abuses that might occur during lawful detention or imprisonment (Constitution, art. 182, developed in the Constitutional Justice Act, arts. 13 to 40). Regarding the legal capacity and requirements needed to apply for habeas corpus, it is important to note that any aggrieved person or any other person acting on his or her behalf may apply for habeas corpus and that proceedings may "be instituted without any oral or written authority or formality, by any means of communication, on working days or non-working days at any time and free of charge".

137. The same constitutional provision provides that “judicial authorities that fail to hear such actions incur criminal and administrative responsibility” and that “authorities who order and officials who act on the order to conceal the detainee or who breach this guarantee in any other way shall be punishable for the offence of wrongful imprisonment”. The rule is developed in the Criminal Code, which provides as follows:

Article 333. (Offences committed by public officials in violation of constitutional rights). Any public official or employee who:

- (1) Illegally detains or holds a person incommunicado or does not immediately comply with an order of habeas corpus issued by the competent authority;
- (2) Fails to order the release of a detainee in a timely manner when legally required to do so or retains that person after receiving the release order;
- (3) Subjects persons in his or her custody to ill-treatment or unlawful coercion;
- (4) Fails to process or decide, in accordance with the terms of the law, a petition for habeas corpus or *amparo* or in any way hinders its consideration; or
- (5) Orders, executes or consents to the expatriation of a Honduran national, shall be punishable by a term of imprisonment of from 3 to 5 years and a fine of from 50,000 to 100,000 lempiras.

138. From the administrative and disciplinary standpoint, the Organic Act on the National Police also very clearly sets out the following:

Article 123. Serious offences include:

- (1) ...
- (6) Failure to record facts or relevant developments in the service in the corresponding books or documents; doing so maliciously, omitting information or details to distort the truth of what occurred or was ordered; removing pages, obliterating information or making any alterations in official records, without prejudice to any criminal responsibility that may arise ...

139. Finally, it should be noted that even a decision of pretrial detention ordered by a competent judge may be appealed (Code of Criminal Procedure, art. 190) and that it is still common in Honduran forensic practice to challenge the decisions of the court of appeal through the remedy of *amparo* (Constitution, art. 183 and Constitutional Justice Act, arts. 41 to 73).

### **Article 23: Training of law enforcement personnel**

140. Between 2010 and 2014, the Human Rights and International Humanitarian Law Directorate of the Armed Forces held more than 30 courses and seminars on human rights, international humanitarian law and the prevention of torture, trafficking in persons and domestic and family violence. Over 17,000 persons took part in these events, including new army recruits, military police, students from the various military academies, officials undergoing training as part of the promotion process and auxiliary personnel from various units. The trainers came from the Ministry of Human Rights, Justice, Governance and Decentralization, the National Institute for Women, the National Committee for the Prevention of Torture, the Office of the National Commissioner for Human Rights, the Public Prosecution Service, the Committee for the Defence of Human Rights in Honduras (an NGO) and the armed forces themselves, through the above-mentioned Directorate. In addition, training is carried out by the military academies and armed forces schools, which include human rights modules as a permanent part of their curriculum.

141. The Ministry of Security, during 2014 alone, led training and/or awareness-raising sessions on human rights issues for 4,747 personnel, with the support of 21 speakers from other State institutions, NGOs and the Inter-American Institute of Human Rights. The police force has been incorporating human rights training into its system of instruction since the late 1990s. However, based on the results of an assessment of various activities carried out by the police during the de facto Government in 2009, the Truth and Reconciliation Commission recommended that the system should be reviewed. Therefore, in 2012, the office responsible for the follow-up to the recommendations of the Truth and Reconciliation Commission conducted an assessment of the human rights components in the police instruction system and drafted a proposal for modifying its content and methodology. As a result, a new general curriculum for the training of basic-grade police officers has been implemented; the new programme lasts 11 months and includes a human rights module which is taught over four academic terms.

142. With regard to the National Prison Institute, it is reported that, from 2013 to 2015, with the support of the Ministry of Human Rights, Justice, Governance and Decentralization, training was provided for 869 prison officials. In 2013, 222 officers participated in refresher workshops on human rights, torture prevention and minimum rules for the use of force, firearms and the treatment of persons deprived of liberty. In 2014, 350 recruits began a training course that specifically covers the duties of prison guards and human rights. Finally, in 2015, 75 prison officers took part in a human rights refresher course.

143. With regard to the psychopedagogic detention centres managed by the Directorate for Children, Adolescents and Families, in 2014 human rights training was provided to 222 soldiers, who are assigned only to the external perimeter areas of centres for juvenile offenders, as part of their basic training course.<sup>51</sup>

144. While all the institutions within the justice system that, in accordance with their legal powers, are involved in the custody or treatment of persons deprived of their liberty (including the National Police, the armed forces, the Public Prosecution Service, the judiciary, the Prisons Directorate, the National Institute of Migration and the Directorate for Children, Adolescents and the Family) report having participated in awareness-raising programmes on enforced disappearance, they also acknowledge that they have done so in the context of general human rights training.

145. The Government of Honduras, in the context of the submission of this first report to the Committee on Enforced Disappearances, therefore undertakes to review the staff training programmes of all these institutions with a view to including specific modules on the issue, pursuant to article 23 (1) of the Convention and other applicable national and international laws and regulations. The State party will report to the Committee on these efforts in due course and will invite civil society organizations to participate in the design and implementation of those modules.

146. With regard to the provisions setting out the obligation to report acts of enforced disappearance and those setting out the explicit prohibition to obey orders or instructions to commit such acts, see the paragraphs in this report on article 6 of the Convention.

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<sup>51</sup> The Government was compelled to assign a minimum number of military personnel to safeguard the perimeter of detention centres for juvenile offenders, owing to the frequent escapes from those facilities, several of which were carried out by violent youth gangs.

## Article 24: Broad definition of victims and their rights

147. Victims have access to a number of legally recognized rights. First, the concept of victim extends beyond the person directly harmed by the offence to include the “spouse or partner, children, adoptive parents, or relatives up to the fourth degree of consanguinity or the second degree of affinity and heirs in offences resulting in the death of the victim ...” (Code of Criminal Procedure, art. 17). Second, article 16 of the Code of Criminal Procedure sets out the victim’s rights as follows:

- (1) To join the proceedings as civil parties or complainants, in accordance with the present Code; victims have the right to seek the assistance of the Public Prosecution Service if they lack the financial means to do so;
- (2) To be informed, at their request, of the results of the proceedings even if they have not participated in them;
- (3) To be heard, at their request, before any ruling that terminates or suspends the criminal proceedings;
- (4) To attend the public hearings, in accordance with the provisions of this Code;
- (5) To challenge the unwarranted administrative dismissal of the proceedings before the superior of the prosecutor concerned in the cases envisaged in this Code; and
- (6) To exercise the rights recognized in other legislation.

Victims shall be informed of their rights when filing a complaint with the Public Prosecution Service or other prosecuting body, when filing a complaint with the competent court or when making their first appearance in the proceedings.

148. With regard to mechanisms to conduct investigations and locate victims, see the paragraphs in this report on article 12 of the Convention, which provide information on the public prosecution of criminal offences, the functioning of the Office of the Special Prosecutor for Human Rights and the Investigative Police, mechanisms for the protection of victims and complainants, the competences and powers of investigative bodies and the penalties for those who obstruct the investigation.

149. With regard to locating missing persons (persons whose whereabouts are unknown), the Forensic Medicine Department of the Public Prosecution Service has a support service for relatives and concerned persons.<sup>52</sup> Family members are invited to complete a form that serves as a record of the missing person, and one or more interviews are held with a specialist of the Department, who could also request information about the person’s dental records and medical history (ante-mortem data). If the person is not initially found in the morgue, a telephone contact number is provided to the families so that they can maintain regular contact with the authorities. The information provided by the relatives is used to check against unidentified bodies that enter the morgue subsequently.

150. With regard to the return of remains, the pathology division of the Forensic Medicine Department has established general requirements for the return of bodies, with the aim of ensuring that autopsy and morgue services are provided free of charge, the relatives of the deceased are properly identified, the body is handed over in a dignified manner and subsequent registration procedures are facilitated.<sup>53</sup>

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<sup>52</sup> <https://www.mp.hn/Forense/inicio/busqueda-de-personas-desaparecidas/> (accessed 15 November 2015).

<sup>53</sup> <https://www.mp.hn/Forense/inicio/busqueda-de-personas-desaparecidas/> (accessed 15 November 2015).

151. Finally, with regard to exhumations and the analysis and return of skeletal remains of allegedly disappeared persons, the Public Prosecution Service has, in past decades, requested the cooperation of international forensic teams; however, no such requests have been made since the entry into force of the Convention.

152. The Forensic Medicine Department stores the genetic material of missing persons on so-called FTA cards (a registered trademark), which are kept at a controlled temperature, thereby preserving the genetic information fully intact for future matching. These cards are currently being systematized in preparation for their eventual computerization. As already indicated in the section on article 3 of the Convention, the only existing database at this time is the missing migrants database, which is managed within the framework of a regional project with the Argentine Forensic Anthropology Team.

153. Regarding procedures to enable victims of enforced disappearance to obtain compensation and what such compensation might cover, the Constitution provides the following with regard to the accountability of public servants:

Article 324. Public officials who, in the performance of their duties, break the law, thereby harming individuals, are civilly and jointly responsible with the State or the public-sector institution that employs them, without prejudice to any action for recovery that may be brought against the official concerned in cases of negligence or intent ...

154. Additionally, title IX of the existing Criminal Code (arts. 105 to 114) concerns civil liability arising from an offence. It is useful here to reproduce at least two of these provisions:

Article 105. Anyone who incurs criminal liability for an offence or misdemeanour is also civilly liable.

Article 107. Civil liability includes:

- (1) Restitution;
- (2) Reparation for moral and material damages;
- (3) Compensation for damage.

155. At the international level, particularly with regard to protection bodies of the inter-American human rights system, the State of Honduras has also duly responded to claims for full reparation for victims of enforced disappearances which occurred before the entry into force of the Convention. Under this mechanism, compensation has been paid and measures of satisfaction and guarantees of non-repetition have been adopted.

156. In the recent past, Honduras has sought to establish a national reparations programme that incorporates a human rights approach: first, in 2008, through Executive Decree PCM 028-2008, which was considered to be limited in scope; and later, through the submission of a draft decree to the National Congress in May 2010, which was not ruled on or adopted during the period from 2010 to 2014. Since the need for such a programme still exists, the State undertakes to prepare a new draft decree, through the Ministry of Human Rights, Justice, Governance and Decentralization, to be submitted to the National Congress following consultations with civil society organizations wishing to be part of the initiative. The programme established under that legislation should set out a comprehensive approach to reparation for victims and also contain specific provisions for cases of enforced disappearances, thereby allowing for compensation, restitution, satisfaction and rehabilitation, among other measures.

157. As to the issue of arrangements and procedures for recognizing enforced disappearance for civil status purposes with a view to settling legal issues for the victim's

family, there are in Honduras general regulations on declaring the absence or presumed death of a person. These are set out in the Civil Code (arts. 83 to 89)<sup>54</sup> and the National Registration Act (arts. 43 (15) and 86 (3)).<sup>55</sup>

158. Lastly, with reference to the right to form and participate in associations, in April 2011, the National Congress adopted the Special Act on the Promotion of Non-governmental Organizations for Development.<sup>56</sup> The Act, which is the first to give effect to the right to freedom of association as set out in article 78 of the Constitution, strengthens the legal certainty of non-profit organizations, associations and foundations and defines their rights and obligations. It is in this legal framework that numerous organizations working for the promotion and protection of human rights in the country carry out their activities.

### **Article 25: Protection of children of disappeared persons and disappeared children**

159. The Constitution devotes an entire chapter to the rights of children and adolescents (arts. 119 to 126). These provisions clearly establish the obligation of the State to protect children from all forms of cruelty and to respect the international agreements which safeguard their rights. In addition, Honduras has been a party to the Convention on the Rights of the Child since 1990,<sup>57</sup> which highlights the best interests of the child as a guiding principle for all actions undertaken by public or private institutions (art. 3).

160. It was in this framework that the Code on Children and Adolescents was promulgated in 1996.<sup>58</sup> The Code establishes a set of rights, the most relevant of which are the following:

Article 25. In accordance with their degree of maturity, children shall have the right to know their legal status and to be informed of their powers and rights.

Article 29. Every child has the right to a nationality, to his or her personal identity, to possess a forename and surname and to know who his or her parents are. These rights are inalienable.

161. The Code also provides for sanctions for anyone carrying out irregular adoptions:

Article 171. Any person promoting or effecting the adoption of a child without fulfilling the requirements established in this Code and in the Family Code or engaging in irregular practices that are harmful to the child shall be liable to from 4 to 6 years' imprisonment.

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<sup>54</sup> Civil Code. Decree No. 76 of the National Constituent Assembly of 19 January 1906, which empowers the executive branch to issue codes and laws defined in Decree No. 65 of the same Assembly. Published in *La Gaceta*, No. 2,655 of 9 February 1906.

<sup>55</sup> The National Registration Act, adopted through Decree No. 62-2004 of 11 May 2004, published in *La Gaceta* No. 30,390 of 15 May 2004.

<sup>56</sup> Legislative Decree No. 32-2011, of 5 April, adopting the Special Act on the Promotion of Non-governmental Organizations for Development. It was published on 27 June 2011 in *La Gaceta*, No. 32,552.

<sup>57</sup> Convention on the Rights of the Child. Adopted by the United Nations General Assembly in New York, United States of America, on 20 November 1989. Approved by the National Congress through Decree No. 75-90 of 24 July 1990. Published in *La Gaceta*, No. 26,259 of 10 October 1990.

<sup>58</sup> Code on Children and Adolescents. Decree No. 73-96 of the National Congress, of 30 May 1996. Published in *La Gaceta*, No. 28,053 of 5 September 1996.



The foregoing penalty shall be increased by two thirds where:

- (a) The act is committed for gain; or
- (b) The person committing the act has taken advantage of his or her official or professional situation. In such circumstances, such person shall lose his or her job and shall be debarred from exercising his or her profession for five years.

162. Honduras is also a party to the Convention on the Civil Aspects of International Child Abduction.<sup>59</sup>

163. In addition to the existing regulations, it is expected that Honduras will shortly accede to the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which, while it does not cover the issue of enforced disappearances, certainly establishes tighter controls over adoption procedures through cooperation with other States.

164. Furthermore, a preliminary draft act on adoption has been prepared, which states that adoptions are invalid where they are the result of an unlawful act and provides for the establishment of a special programme to ensure an inter-institutional response to children who have disappeared because of de facto or illegal adoptions.

165. The State will report to the Committee once these two initiatives have been definitively approved.

166. It is important to bear in mind, as noted in the paragraphs on article 4 of the Convention, that the abduction of minors is a criminal offence, as is the falsification of documents (Criminal Code, art. 284), punishable by from 3 to 9 years' imprisonment. Falsification, where committed by a public official or employee in abuse of his or her authority, also results in disqualification from holding any public office of from 2 and 10 years (art. 290).

167. Lastly, no information is available on any complaints or steps taken to develop databases of genetic data or programmes to enable adults who believe themselves to be children of disappeared persons to re-establish their identity, since, according to official records, there have been no cases in Honduras involving enforced disappearance of children or the unlawful removal of children of parents subjected to enforced disappearance or of children born during their parents' enforced captivity; taking as reference the definition set out in article 2 of the Convention.

## Conclusions and commitments

168. As stated by the Committee in its guidelines on the form and content of reports, States must consider the reporting process not only as a means to ensure compliance with their international obligations, but also as an opportunity to review their laws, institutional frameworks and practices in relation to the rights protected by the Convention. In the present case, it has been noted that, on the one hand, substantial progress has been made in the prevention and punishment of enforced disappearances but that, on the other, challenges remain to be overcome. In this regard, the State has undertaken to take concrete measures, which will be written into a plan that will include:

<sup>59</sup> Honduras acceded to the Hague Convention on the Civil Aspects of International Child Abduction, of 25 October 1980, on 15 December 1993 pursuant to the deposit of the corresponding instrument. The Convention therefore entered into force for the country on 1 March 1994. However, owing to an omission, this instrument was not published in *La Gaceta* until 22 January 2004.

(a) The introduction of specific material on the Convention and the prevention of enforced disappearances into the training programmes of all institutions responsible for holding in custody and dealing with persons deprived of their liberty;

(b) The implementation of the draft single central register for persons deprived of their liberty; and

(c) The submission to the National Congress of a bill on comprehensive reparation for victims of human rights violations, with specific provisions on victims of enforced disappearances.

169. Civil society will be invited to participate in the design and implementation of all these initiatives. This specific plan will also be incorporated into the Public Policy and National Action Plan on Human Rights.

170. For all the above reasons, the State of Honduras considers that it has used this opportunity to carry out a transparent and in-depth assessment of its performance.

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