

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 41/99; Case 11.491
Session:	Hundred and Second Regular Session (22 February – 12 March 1999)
Title/Style of Cause:	Minors in Detention v. Honduras
Doc. Type:	Report
Decided by:	Chairman: Professor Robert K. Goldman; First Vice-Chairman: Dr. Helio Bicudo; Second-Vice Chairman: Dean Claudio Grossman; Commissioners: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated:	10 March 1999
Citation:	Minors in Detention v. Honduras, Case 11.491, Inter-Am. C.H.R., Report No. 41/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by:	APPLICANTS: the Center for Justice and International Law and the Asociacion Casa Alianza
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. BACKGROUND

POSITIONS OF THE PARTIES

A. The petition

1. On April 13, 1995, the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "IACHR") received a petition filed by the Center for Justice and International Law (CEJIL) and the Asociación Casa Alianza against the Republic of Honduras, (hereinafter the "State" or "Honduras"), wherein the petitioners alleged the unlawful arrest of street children and their incarceration in Tegucigalpa's central prison facility. According to the petitioners, the juveniles were housed in cells 19 and 24, along with approximately 80 adult prisoners in each cell. At the time the petition was filed, Daniel Varela had already been incarcerated with adults for two years. Alex Hostilio Tomé Vargas had spent three months with adults in cell 24, a fact known to the judge in his case.

2. The petitioners argued that this practice was in violation of Article 122, paragraph 2 of the Constitution of Honduras, which stipulates that "No juvenile under the age of 18 shall be confined in a jail or prison", and Article 37 of the United Nations Convention on the Rights of the Child, which provides that "...every child deprived of liberty shall be separated from adults."

3. The petitioners stated that juveniles are routinely subjected to physical and sexual abuse in the cells of the Central Penitentiary. They also stated that on March 28, 1995, they and a

representative of the Inter-American Commission on Human Rights spent four hours in that penal institution interviewing some 26 juveniles who were being held in cell No. 24 alongside more than 40 adult prisoners. The names of the juveniles were: Alexis Correa, Alexis López Yollandir, Cosme Flores, Carlos Alberto Duarte, Carlos René Najera, Carlos Roberto Ambrosio, Cristian Omar Gamboa, Eddy Elvir, Francisco Alexander Alvarez, Francisco Vásquez, Héctor Rafael Girón Ponce, Jorge Alberto Calix, Jorge Pedro Díaz, Juventino Galdámez Aguilar, Kenneth Joel Perdomo, Marlon Antonio Martínez Pineda, Miguel Angel Quiroz, Nicolás Quiroz Jiménez, Sixto Celestino Acosta, Saúl Edgardo Gómez, Santos Enrique López, Selvin Alonso Romero, Tomás Antonio González Galindo, Ulises Eduardo Vargas, Wilier Alexis Mejía, and Walter Alonso Cárcamo.

4. The petitioners reported that on January 16, 1995, the Supreme Court had handed down a ruling in banc authorizing juvenile court judges to order juveniles confined in separate areas of the Central Penitentiary.

5. The petitioners noted that on April 4, 1995, Juvenile Court Judge Sandra Quiroz ordered that seven of the 28 juveniles being held with adults in the Tegucigalpa Central Penitentiary be transferred to the Jalveta Juvenile Facility, which is run by the National Social Welfare Board, a Government agency in charge of juvenile detention facilities. However, because the Jalveta facility was not equipped to incarcerate juveniles, the seven escaped.[FN1]

[FN1] The petitioners listed the names of the escaped juveniles: Tomás Antonio González Galindo, Cristian Omar Gamboa, Marlon Antonio Martínez Pineda, Héctor Rafael Girón Ponce, Kenneth Joel Perdomo Pacheco, Juventino Galdámez Aguilar and Nicolás Quiroz Jiménez.

6. As for the exhaustion of domestic remedies, the petitioners reported that five applications seeking writs of habeas corpus had been filed in the Honduran courts on behalf of Alex Hostilio Tomé Vargas, Daniel Varela, and the other imprisoned juveniles, but without success. The first petition seeking a writ of habeas corpus, which petitioned the court to have the juveniles removed from the adult facility or at least kept in cells separate from the adults, was filed on March 20, 1995, with the First Court of Appeals of Tegucigalpa. The second petition seeking a writ of habeas corpus was filed on behalf of Alex Hostilio Tomé Vargas and Daniel Varela on March 30, 1995. On March 29, 1995, the petitioners filed another petition for a writ of habeas corpus with the First Court of Appeals, on behalf of 26 juveniles being held in cell N° 24 of the Central Penitentiary.[FN2] Examining Judge Reina Sánchez, who visited the children in cell N° 24 and saw for herself that they were incarcerated alongside 40 adult prisoners, had 24 hours to decide on the petition and report to the Court of Appeals. The Court had 48 hours to issue its report. As of April 12, 1995, the petitioners had not received any report from either the examining judge or the Court of Appeals. The petitioners reported that the mothers of 21 juveniles still being held with adult prisoners in cell 24 at that time reported that their children were being raped by the adult prisoners.[FN3]

[FN2] Alexis Correa, Alexis López Yollandir, Cosme Flores, Carlos Alberto Duarte, Carlos René Najera, Carlos Roberto Ambrosio, Cristian Omar Gamboa, Eddy Elvir, Francisco Alexander Alvarez, Francisco Vásquez, Héctor Rafael Girón Ponce, Jorge Alberto Calix, Jorge Pedro Díaz, Juventino Galdámez Aguilar, Kenel Omar Pacheco, Marion Antonio Martínez Pineda, Miguel Angel Quiroz, Nicolás Quiroz Jiménez, Sixto Celestino Acosta, Saúl Edgardo Gómez, Santos Enrique López, Selvin Alonso Romero, Tomás Antonio González Galindo, Ulises Eduardo Vargas, Wilmer Alexis Mejía, and Walter Alonso Cárcamo.

[FN3] See "Mothers charge that their sons are being raped in the Central Penitentiary", *El Tiempo*, April 12, 1995.

7. The petitioners pointed out that because of the courts' unwarranted delay, the remedies under domestic law had proven to be ineffective in putting an end to the injustices and the physical, sexual and psychological abuse to which the juveniles confined in Honduran prisons were being subjected. They therefore requested that the petition be declared admissible on the grounds of the exception provided for in Article 46(2) of the Convention.

8. As for the Supreme Court ruling in banc, the petitioners reported that on April 17, 1995, they had requested the Honduran Bar Association's opinion on the legality of this ruling and on April 19 of that year had requested that the Attorney General's Office intervene to have the practice declared unlawful.

9. The petitioners alleged that the juveniles' physical integrity was imperiled and that the situation was contrary to all international laws governing the detention of minors, among them: Articles 5, 7, 19 and 29(b) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"); Articles 7 and 10(b) of the International Covenant on Civil and Political Rights; Articles 3(1), 19(1) and, especially, 37 of the Convention on the Rights of the Child; and Article 13(4) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

B. Reply of the State

10. The State responded to the petition via a note of June 2, 1995, which was forwarded to the petitioners that same day.

11. In its submission of reply, Honduras stated, *inter alia*, that:

The situation that Honduras is experiencing is the consequence of tremendous economic constraints which have had a very serious impact in psychological and social terms. Some of these constraints have created new situations for which our country was ill-prepared in terms of both experience and the necessary and adequate infrastructure, such as today's alarming rate of juvenile felonies and serious crime (patricide, homicide, rape, possession and sale of drugs, robbery, unlawful entry, and armed assault).

12. The State also said that "supreme efforts" were being made to cope with the problem without violating international obligations. Here it underscored the negotiations with the Spanish

Government to secure financing with which to build the First Closed Center to house and handle "highly dangerous juvenile offenders". It also reported that it had earmarked funds to modernize old facilities, since "the existing facilities are open institutions with no perimeter walls or other means to prevent escape or other violations of appropriate security measures".

13. As for the Supreme Court ruling in banc, the State pointed out that it had been handed down because the specialized facilities were grossly inadequate in terms of security; it was also the consequence of a premeditated murder committed when one juvenile and his girlfriend killed the former's parents. That Supreme Court ruling in banc allowed juvenile courts to send highly dangerous juveniles to adult penal institutions until such time as the planned specialized institutions opened. That ruling also stated that juveniles were to be transferred to "separate areas within the central penitentiary or departmental prisons, and that the strictest measures are to be taken to keep them totally isolated from the rest of the prison population (...)". This implied, in the opinion of the State, that the judicial authorities were obligated to take the strictest measures to ensure that juveniles were held in separate areas, totally isolated from the rest of the prison population.

14. The State also asserted that, judging from the reports of the competent authorities, "the recommendations and conditions set by the Supreme Court for the confinement of juveniles in adult penal institutions are being followed."

C. Observations of the petitioners

15. In a submission dated August 18, 1995, the petitioners presented their observations to Honduras' reply. These observations were sent to Honduras on August 25, 1995. The petitioners pointed out that, while the State had not provided exact figures on the number of juveniles being held, the figures from the Office of the National Human Rights Commissioner and the applications seeking writs of habeas corpus filed by Casa Alianza indicate that 201 juveniles were being held in adult penal institutions.

16. The petitioners again stated that applications seeking writs of habeas corpus had been filed on behalf of the imprisoned juveniles, but without result.

17. The petitioners reported that, according to a study done in 1995 by Dr. Leo Valladares, Human Rights Commissioner, 84 juveniles had been held in the Jalteva Prison. The juveniles had been detained on the following grounds:

- 50 for vagrancy;
- 15 for sniffing resistol;
- for taking drugs;
- for their own protection;
- for marijuana use, and
- for being orphans.

18. According to the petitioners, many juveniles had been housed in adult facilities because the State had no better place to send them, which was a flagrant violation of their right to

personal liberty. "To incarcerate juveniles for being orphans or for their own protection is a violation of the most elementary rules of due process, presumption of innocence, the principle of legality and personal liberty, all guaranteed under the American Convention."

19. The petitioners pointed out that almost none of the juveniles in custody had a public defender, despite the fact that Article 21 of the Juvenile Law of Honduras requires the State to provide detained juveniles with legal representation.

20. According to the petitioners, the conclusion is that the State is guilty of having arbitrarily detained children who have not been accused of any crime, and of failing to observe international laws that require it to provide juveniles with pro bono legal services to defend their rights. The petitioners alleged that the State of Honduras had thus failed to provide the procedural guarantees of due process contained in the Convention and in international human rights laws that protect minors.

D. Final observations of the State

21. On August 25, 1995, the State presented its final observations concerning the situation of the juveniles being held in adult penal institutions and enclosed communications describing the emergency measures taken to resolve the situation.

22. The State attached to its observations a communication dated May 11, 1995 from Major Carlos Quezada Aguilar, Director of Penal Institutions, wherein he states that at special rehabilitation home N° 24, the only facility that meets the minimum conditions required to keep juveniles separate from the rest of the prison population, juveniles have the essential basic services (water, light, beds, a kitchen, interior patio, sanitation and other facilities), receive visits from family members, and are under the coordination of one adult and two juvenile assistants, who serve as disciplinary aides. Adult prisoners are not allowed in that cellblock and, when summoned to the technical or administrative offices, a juvenile is always escorted by security staff and by the disciplinary aides. All activities are carried out in common areas, but at no time is any contact with adult prisoners allowed. As for medical care, the Director states that juveniles receive assistance from the departments of Psychology, Social Work, Medicine, Legal Affairs and others. He adds that of the 28 juveniles on the list, only six were sent there by a juvenile court judge; the others were sent by order of criminal courts of first instance, from which one can infer that they are adult prisoners.

23. The State reported that as of July 5, 1995, juveniles being held at the Central Penitentiary and at departmental prison facilities had been transferred to the Támara Closed Facility, known as the "Centro Juvenil Renaciendo", which had recently gone into operation and had the capacity to accommodate 40 juveniles. It was also reported that an additional facility capable of holding 40 juveniles was under construction at the El Hatillo Juvenile Shelter and Observation Center in Tegucigalpa, which is surrounded by a perimeter wall.

E. Additional information

24. In addition to the routine processing of submissions and those related to the adoption of precautionary measures, the parties also sent several additional submissions, which were promptly forwarded to the other party.

25. On November 28, 1995, the State reported that the Supreme Court of Justice had decided to nullify its ruling in banc of July 16, 1995, "on the grounds that the causes for the ruling no longer obtained."

26. On August 18, 1995, the petitioners submitted information on three juveniles[FN4] being held in the Choloteca detention facility. They also stated that the petitions seeking writs of habeas corpus filed on behalf of these three juveniles had elicited no formal response from the Supreme Court. The petitioners alleged that, while the juveniles had been released, a serious violation of due process had nonetheless occurred, because the Supreme Court had failed to hand down any ruling on the petitions filed. They also reported that 23 juveniles were being held in the San Pedro Sula Prison[FN5]. The three collective petitions seeking writs of habeas corpus filed on their behalf on June 4, 1995, had not yet been decided. They also reported that four more juveniles [FN6] were being held at the San Pedro Sula prison and that a collective petition for a writ of habeas corpus had been filed on their behalf on June 30 of that year, but that the Supreme Court had not yet handed down its decision.

[FN4] The juveniles were Víctor Rolando Domínguez, Idas Muñoz and Levin Irasu Girón Sánchez.

[FN5] The minors were: 1) George, Melvin Geovany; 2) Cruz, Marco Antonio; 3) Guzmán, Juan Carlos; 4) Umaña Reyes, Edwin José; 5) Recinos Castillo, Manuel Ovideo; 6) Solís Mencía, Alex; 7) Castañeda, Jhony Efraín; 8) Castellón, Ramón Antonio; 9) Ramírez, Raúl Ramón; 10) Fonseca, Luis Edgardo; 11) Paredes, Francisco; 12) Barahona, Jorge David; 13) Muñoz, Manuel Alberto; 14) López, Jimmy Walter; 15) Rodríguez, Geovany; 16) Hernández, Daniel; 17) Miranda Borjas, José Manuel; 18) Hernández, Carlos Santos; 19) Flores Jeréz, Alvaro Ismael; 20) Meléndez, Jorge Alberto; 21) Martínez, Víctor José, and 22) Navas Urbina, Luis Alonso.

[FN6] Their names are: Cerrato, Edwin Geovany; Núñez, Juan Carlos; Hanania Sacka, Jorge Iván, and Contreras, Joel Alberto.

27. In that same submission, the petitioners reported that four minors[FN7] were being held at the El Progreso Penal Institution in the department of Yoro. They also reported that a petition for a writ of habeas corpus had been filed on behalf of the first three with the Yoro district lower court judge, who had dismissed the petition on the grounds that the court did not have the competence to hear the claim. In response to the petitioners' assertions that the court's ruling was unconstitutional and a violation of the amparo law, the petition for a writ of habeas corpus was declared admissible and Professor Rina Morales de Villela, juvenile defender in the municipality of Yoro, was appointed examining magistrate. While 12 more juveniles were found to be detained in the Choloteca facility[FN8], no petition for a writ of habeas corpus could be filed because on the day of the petitioners' visit, which was a weekend, no courthouse or judicial office was opened with an authority competent to receive the petition. The petitioners noted that this in itself was unconstitutional and contrary to due process of law.

[FN7] Their names are: Franklin Bactilio, Carlos Wilfrido Pérez Ramírez, Jenny Osias Alemán and Carlos Roberto Murillo Mencilla.

[FN8] They were: Ulloa, Angel Eduardo; Mendoza, Luis Gerardo; Videl, Neptaly Alonso; Perdomo, Juan Francisco; Herrera, Juan Antonio; Osorto, Héctor Johnny; Enríquez, Jairo; Medrano, Edwin Andrés; Medrano, Wilmer Andrés, Chacón, Carlos Hernán; López, Aquileo, and Ramos, Ronny Alberto.

28. On February 23, 1996, the petitioners requested that, as a follow-up to the hearing held on February 22, 1996, the Commission should take steps to have three juveniles being held with adults transferred to a juvenile facility. These juveniles were: Oneida Díaz Castillo, age 16 and 8 months' pregnant, who had been sent to Choluteca on February 12, 1996, where she was incarcerated alongside 21 adults and had to sleep on the floor; and Jonhathan Donaire and René Arturo Alvarado, ages 15 and 13, respectively, who had been incarcerated in Comayagua on February 19, 1996.

29. On March 13, 1996, the petitioners reported that despite the revocation of the Supreme Court ruling in banc, minors were still being sent to penal institutions for adults. They also reported that on March 26, 1996, the juveniles Carlos Efraín Pineda Moreno, age 16, Mariano Rodríguez Leiva, and Ramón Izaguirre Guzmán were imprisoned in Gracias, Lempira, by order of the departmental lower court judge. They also reported that José Amilcar Vega, age 17, had been sent to the Santa Rosa de Copán prison on January 19, 1996, by order of the second criminal court, and that the youth had been sexually assaulted by the prisoners from the time he was admitted. They also said that Alexis Jeovanny Pavón Martínez, age 17, was being held at the La Ceiba Prison Farm in Atlántica and that a petition seeking a writ of habeas corpus had been filed on his behalf on February 29, 1996, without result. They further reported that María Suyapa Caballero, age 14, and José Omar Vásquez, age 17, were being held in prison in the city of Santa Bárbara, by order of the third court of first instance. The petitioners reported that on February 28, 1996, the departmental court of first instance had sent the juveniles Darwin Betancourt Varela and Ramón A. Cerato, aged 17 and 16 years, respectively, to the Choluteca prison. They also reported that in Santa Bárbara, the third court of first instance had sentenced José Omar Vásquez Hernández, age 17, to an adult detention facility.

30. On April 2, 1996, the State reported, inter alia, that the minor Oneyda Díaz Castillo had been released on orders from the Choluteca court of first instance and that Jonhathan Donaire and René Arturo Alvarado had been transferred from the Comayagua Prison to the El Hatillo Boys' Shelter. It also reported that 107 juveniles had been sent to the El Hatillo Shelter.

31. On May 15, 1996, the State reported that: Darwin Rexieri Betancour and Ramón Antonio Cerrato Pérez had been released thanks to the efforts of the Public Defender's Office; Oneida Liseth Castillo had been released on February 23, 1996, because she was a minor; Carlos Efraín Pineda [FN9] was in a facility for minors; by order of supernumerary judge of first instance Felipe René Speer, Alex Giovanny Martínez had been placed in the custody of Mrs. Maira Lolita Galeas; José Amilcar Barnica Vega, age 18, had been released on February 20, 1996, by order of

the second court of first instance; Suyapa Caballero was returned to her mother on February 23 of the same year by order of the third departmental court of first instance of Santa Bárbara, while José Oscar Vásquez had been examined by the forensic physician to determine his probable age. The physician concluded that he was approximately 18 years old and, as the attached birth certificate showed, was born in September 1972.

[FN9] According to the case file, Carlos Efraim Pineda was being held at the Central Penitentiary, to which he had been sent by the departmental judge of first instance. A petition seeking a writ of habeas corpus had been filed on this juvenile's behalf on February 18, 1996.

32. On May 24, 1996, the petitioners reported that on March 26 of that year, they had confirmed that five juveniles were being held at the Danlí Prison Farm in the department of El Paraíso. [FN10] They also reported that on May 13, 1996, they had visited that prison facility and found two more juveniles in custody there. [FN11] The petitioners further noted that the Danlí prison was less than an hour away from the El Hatillo Shelter, one of the facilities which the Government of Honduras had said was especially equipped to house juveniles and had sufficient space available.

[FN10] The juveniles were: Oscar Ernesto Paz Urrutia (who declared his age to be 16), detained by order of Ricardo Rodríguez, first judge of the first instance for Danlí; Elvin Antonio Pérez (who declared his age to be 17), who was detained on March 21 by order of the first judge of first instance for Danlí; Pedro Fabián Palma (17), held since August 14, 1995, by order of the Danlí criminal magistrate; Isidro Dagoberto Reyes Ordóñez (16), detained on January 3, 1996, by order of the criminal magistrate, and Ceferino Rivas Trejo (17), detained on February 27, 1996, by order of the Teupacenti magistrate.

[FN11] The first of these juveniles was Santos Rufino Ordoñez (17), detained on March 21, 1996, and placed in the Danlí Prison Farm by the Danlí second court of first instance. Over a month after being taken into custody, the judge agreed to send him to a forensic physician to determine how old he was. On April 24, 1996, it was found that he was, in fact, a minor. However, it was not until May 9 that the judge ordered his release, which did not take place until May 13, when representatives of Casa Alianza appeared to request his release. The other minor was Carlos Guillermo Vindel (17), incarcerated on May 7 by order of the second magistrate of El Paraíso.

33. In the same submission of May 24, 1996, the petitioners acknowledged that on February 20, 1996, the State had transferred Oneyda Díaz Castillo, Jonathan Donaire and René Arturo Alvarado to the El Hatillo Shelter. According to the petitioners, however, in its submission of May 15, 1996, the State had omitted any reference to the situation of the other juveniles still being held in adult penal institutions. The petitioners reported that on March 14, 1996, new petitions seeking writs of habeas corpus had been filed on behalf of a number of juveniles being held with adults in Santa Rosa de Copán.[FN12]

[FN12] The first of these was filed on behalf of Delmy Ondina Villela, Juan José Portillo and Marco Antonio Merino, who were being held by order of the first judge of first instance; the second was filed on behalf of José Luis López Chinchilla and Jeremías Lara Hernández, detained by order of the second judge of first instance; the third petition was filed on behalf of Carlos Roberto López Guevara, José Francisco Gómez and José Antonio Martínez, who were ordered taken into custody by the first court of first instance of the department of Copán.

34. In a submission dated July 15, 1996, the petitioners reported that between June and July, a number of petitions had been filed seeking writs of habeas corpus on behalf of juveniles being held in custody alongside adults.[FN13] According to the petitioners, the courts failed to take prompt action on any of these petitions.

[FN13] The minors for whom the petitions of habeas corpus were filed are: Felipe Ponce, confined in the Central Penitentiary by order of the Magistrate of the Municipality of Guaimaca; Jorge Armando Sevilla Hernández, confined by order of the Texiguat municipal magistrate, and José Antonio Madariaga Huete, confined in the Choluteca prison by order of the El Triunfo municipal magistrate.

35. The petitioners reported that they had repeatedly petitioned the Supreme Court to issue clear and precise instructions to the juvenile judges and courts concerning the treatment of juvenile offenders. According to the petitioners, the Supreme Court has ignored its petitions and has allowed the practice of incarcerating juveniles alongside adults to continue.

36. On August 16, 1996, the petitioners pointed out that after visiting a number of penal institutions nationwide, they had established that between August 6 and 13 of that year, 11 juveniles had been incarcerated in the San Pedro Sula prison,[FN14] three in the Tela Prison[FN15], four in the La Ceiba Prison Farm[FN16], four in the Santa Bárbara Prison[FN17] and four in the Gracias prison in Lempira[FN18]. They also reported that the National Human Rights Commissioner had confirmed the presence of 5 juveniles[FN19] in the Central Penitentiary.

[FN14] The juveniles detained in the San Pedro Sula prison were: 1) Arnoldo Edgardo Corea, age 16, sent there by the Choloma magistrate on August 23, 1995 -in other words, he had been confined alongside adults for almost one year, without any measures being taken; 2) Dennis Adonay Pérez Licon, age 17, who was incarcerated in the prison on January 25, 1996, by order of the Choloma magistrate; 3) Luis Alejandro Hernández, age 17, sent there by the first court of first instance of San Pedro Sula on March 26, 1996; 4) Dennis Omar Hernández, age 17, confined since April 18, 1996, by order of the San Pedro Sula court of first instance; 5) Olvin Nahum Turcios Mejía, 16, sent on May 18, 1996, by order of the Choloma magistrate; 6) Santiago Cruz Ramírez, 16, held since July 3, 1996; 7) Edwin Alexander Ramos, 17, jailed since July 12, 1996 by order of the third court of first instance of San Pedro Sula; 8) José Aníbal

Hernández Ramos, 16, confined there by order of the third court of first instance of San Pedro Sula on July 22, 1996; 9) Osman Alexis Erazo Zelaya, 17, held since July 26, 1996, by order of the first court of first instance of San Pedro Sula; 10) Jonathan Danilo Trinidad Ramos, 16, held in August 1, 1996, by order of the first court of first instance of San Pedro Sula, and 11) Ivis Fernando Cárcamo, 17, held since August 7, 1996, by order of the third court of first instance of San Pedro Sula.

[FN15] The three juveniles held in the Tela Prison were: 1) Olvín Javier Argueta Mejía, 16, detained since July 18, 1996, by order of the Tela district court; 2) Delmy Arely Escalante, confined by order of the Tela district court of first instance, and 3) Armando Abraham Mortes Castro, confined by order of the criminal magistrate.

[FN16] The four juveniles detained at the La Ceiba Prison Farm were: 1) Saúl Alberto Meléndez, 16, confined since April 25, 1994, more than two years, by order of the La Ceiba magistrate; 2) José Jeremías Pascual Murillo, age 17, confined since April 2, 1996, by order of the La Ceiba magistrate; 3) Carlos Orlando Rubí Martínez, age 16, confined since May 1996 by order of the La Ceiba magistrate; 4) Héctor Virgilio Solís, age 17, confined since August 1996 by order of the La Ceiba court of first instance.

[FN17] The four juveniles detained in the Santa Bárbara Prison were: 1) Ramón David Mercado Zúñiga, by order of the first court of first instance; 2) José Nelson Castellanos López, confined there by order of the second court of first instance; 3) Rigoberto González, confined by order of the second court of first instance, and 4) Héctor Manuel Mejía, confined by order of the third court of first instance.

[FN18] The four juveniles held in the Gracias prison, Lempira, were: 1) Julio César Carbajal, sentenced to the Gracias prison by the magistrate of Talgua, Lempira; 2) José Ovidio Cardoza, sent to the Gracias prison by order of the Lempira criminal magistrate; 3) Julio Gutiérrez Rosales, sent to the Gracias prison by order of the criminal magistrate of Gracias, Lempira, and 4) José Damián Sánchez, held in the prison at Gracias, Lempira, by order of the magistrate of Iguala, Lempira.

[FN19] 1) Wilmer Francisco Barahona Reconco, 17, sentenced by the first criminal court of first instance; 2) Julio César Pacheco Escobar, 17, sent there by the first criminal court of first instance; 3) Julio Francisco Cáceres, 16, sent there by the first criminal court; 4) José Neptalí Amador, 16, sent there by the second criminal magistrate; and 5) Felipe Antonio Hernández Ponce, 15, by order of the Guaymaca magistrate. (Letter of July 3, 1996, from the National Human Rights Commissioner to Attorney Lissie Rivera, National Director of the Public Defender's Office, Letter No. 404-DC/96) and delivered in her office.

37. On August 20, 1996, the petitioners reiterated the previous information and added the names of another 37 juveniles being held in the San Pedro Sula Prison.[FN20] They also reported that the following 37 juveniles were detained in adult prisons: Ivis Fernando Cárcamo, aged 17 years; Marco Antonio Cruz; Andrés Portillo Flores; Wilson Orellana Torres; José Efrain Hernández; Ramón Enrique Colón; Daniel Humberto Rosales; Melvin Armando Ramos; José Javier Rodríguez; José Vicente Fernández; Douglas Javier Ramos; Juan Carlos Cano; Genaro Pérez; Alex Ramírez López; Francisco González; José Hernán Ayala; Maden Jean Bodden; Javier Pineda García; Francisco Alcides Torres; Víctor José Martínez; Jorge Alberto Meléndez; Howen Alexis Romero; Moisés Israel Urbina; José Danilo Arraiga; Denis Rolando Vargas; Samuel Antonio Flores; Edwin Evaristo Palacios; Carlos Alberto Medina; Omar Angel Salazar;

José Angel Flores; Edwin Geovany Mejía; Edwin Geovany Mendoza; Jesús Edgardo Madrid; David López Pineda; Denis A. Reyes; Carlos Adrián Zuñiga and Dorian Baide.

[FN20] They also reported that, in addition to the 11 minors, the following 36 juveniles were held in adult facilities: Marco Antonio Cruz; Andrés Portillo Flores; Wilson Orellana Torres; José Efraín Hernández; Ramón Enrique Colón; Daniel Humberto Rosales; Melvin Armando Ramos; José Javier Rodríguez; José Vicente Fernández; Douglas Javier Ramos; Juan Carlos Cano; Genaro Pérez; Alex Ramírez López; Francisco González; José Hernán Ayala; Maden Jean Bodden; Javier Pineda García; Francisco Alcides Torres; Víctor José Martínez; Jorge Alberto Meléndez; Howen Alexis Romero; Moisés Israel Urbina; José Danilo Arraiga; Denis Rolando Vargas; Samuel Antonio Flores; Edwin Evaristo Palacios; Carlos Alberto Medina; Omar Angel Salazar; José Angel Flores; Edwin Geovany Mejía; Edwin Geovany Mendoza; Jesús Edgardo Madrid; David López Pineda; Denis A. Reyes; Carlos Adrián Zúñiga and Dorian Baide.

38. On August 26, 1996, the petitioners submitted a note which the Secretary General of the Central Penitentiary had sent to the Special Prosecutor for Juvenile Matters, in which he listed the names of 11 juveniles being held in custody without court-appointed attorneys. This, according to the petitioners, was proof of their allegations. The names of these minors are: Miguel Angel Herrera, José Antonio Hernández, Angel Ede Herrera Umanzor, Eugenio Joaquín Argeñal, Luis Alonso Cruz Padilla, Germán Alexander Bonilla, José Portillo Sánchez, Melvin Jesús Soto Rodríguez, Angel Edemir Hernández, José Antonio Hernández, Miguel Angel Herrera, all aged 17 years.

39. On October 28, 1996, the State reported that the Child and Adolescent Code, which has been in force since October 5, 1996, had introduced into Honduran law the principle of presumption of innocence in the case of juvenile offenders. Article 1 of the abovementioned Code provides that: "In case of doubt as to the age of a child and until such time as the child's true age is established, the presumption shall be that he or she has not yet turned 18 years of age." In addressing the request for precautionary measures which the Commission had made in connection with the juveniles housed in the San Pedro Sula Prison, the Government of Honduras stated that: "This instrument will be very useful in the strenuous efforts which we are making to overcome this regrettable situation."

40. On November 20, 1996, the petitioners reported that a tour of the penal institutions in the northern part of the country on November 13 of that year had turned up 16 juveniles in the San Pedro Sula Prison[FN21] and three in the Trujillo Prison.[FN22]

[FN21] The 16 juveniles in San Pedro Sula Prison were: 1) Marco Antonio Cruz, who had been there since April 12, 1995, by order of the first court of first instance; 2) Andrés Portillo Flores, incarcerated since May 15, 1995, by order of the first court of first instance; 3) Jorge Alberto Meléndez, incarcerated since January 6, 1995, by order of the third court of first instance; 4) Arnold Corea, incarcerated since August 23, 1995, by order of the first court of first instance of Choloma; 5) Dorian Baide, incarcerated since September 28, 1995, by order of the first court of

Villanueva; 6) Javier Pineda García, incarcerated since August 1, 1995, by order of the second court of first instance; 7) José Danilo Arriaga, held since January 25, 1996, by order of the third court of first instance; 8) Ramón Enrique Colón, incarcerated on March 19, 1996, by order of the first judge of first instance; 9) Daniel Humberto Rosales, incarcerated on March 19, 1996, by order of the first court of first instance; 10) Samuel Antonio Flores, incarcerated on March 28, 1996, by order of the third court of first instance; 11) José David Rodríguez, incarcerated on March 30, 1996, by order of the first court of first instance; 12) Omar Angel Salazar, incarcerated on September 5, 1996, by order of the third court of first instance; 13) Denis Cruz, incarcerated on July 3, 1996, by order of the first court of first instance; 14) Jorge Enrique Ayala, incarcerated on September 5, 1996, by order of the third court of first instance; 15) Francisco Alfredo Reyes, incarcerated on September 12, 1996, by order of the first court of first instance; and 16) Wilmer Alexis Sánchez. The petitioners reported that only five of these had undergone the forensic examination that the law requires to determine their age and that only eight had been assigned public defenders.

[FN22] The juveniles in the Trujillo Prison were: 1) Noel Santiago Escoto, 16, in prison since June 12, 1996, by order of the Saba magistrate; 2) Carlos Humberto Chinchilla Ayala, 17, in prison since October 14, 1996, by order of the Saba magistrate; and 3) Juan Pastor Figueroa, 17, in prison since August 9, 1996, by order of the Tocoa magistrate.

41. On December 9, 1996, the State sent an official communique from the Supreme Court, dated December 2, 1996, containing information on the situation of the minor Carlos Enrique Jaco, which will not be addressed here inasmuch as it is the subject of another proceeding before the Commission, and on the situation of 10 other juveniles.[FN23]

[FN23] Case of Arnaldo Edgardo Corea. The San Pedro Sula juvenile court judge acknowledged that the juvenile in question was incarcerated in the San Pedro Sula penal institution, but reported that his transfer to the El Carmen Boys' Shelter had already been ordered.

Case of Adonay Pérez Licona. A complaint was filed with the first juvenile court of first instance in connection with this case; on September 3, 1996, that court ordered that he be admitted to the El Carmen Boys' Shelter.

Case of Luis Alejandro Hernández. The first criminal court of San Pedro Sula, where the juvenile was indicted, reported that on October 14, 1996, it had ordered his case transferred to the San Pedro Sula juvenile court.

Case of Denis Omar Hernández. This juvenile was indicted in San Pedro Sula's first criminal court of first instance; the case was turned over to San Pedro Sula's juvenile court on March 12, 1996.

Case of Olvin Nahum Turcios Mejía. This juvenile was turned over to the San Pedro Sula first juvenile court of first instance and the judge ordered that he be placed in the El Carmen Boys' Shelter.

Case of Santiago Cruz Ramírez. This juvenile was brought before the first criminal court of first instance of San Pedro Sula where Judge Ceferino Justiniano Lara ordered his case transferred to the San Pedro Sula juvenile court on August 19, 1996.

Case of Edwin Alexander Ramos. This juvenile was brought before San Pedro Sula's third criminal court of first instance, which turned his case over to the city's juvenile court on September 13, 1996.

Case of José Anibal Hernández Ramos. Brought before the third criminal court of first instance of San Pedro Sula, this juvenile was sent to the San Pedro Sula Prison on July 22, 1996; his case was turned over to the juvenile court, which ordered that he be placed in the El Carmen Boys' Shelter.

Case of Osman Alexis Erazo Zelaya. This juvenile was indicted before the San Pedro Sula first criminal court of first instance; from there his case was transferred to the city's juvenile court, which decided to send him to the Boys' Shelter in the above-mentioned city.

Case of Jonatan Danilo Trinidad Ramos. This juvenile was brought before San Pedro Sula's first criminal court of first instance; his case was turned over to the juvenile court as of August 10, 1996.

Case of Olvin Javier Argueta Mejía. Indicted before the Tela district court of first instance, the judge ordered this juvenile released on September 3, 1996.

Case of Delmi Aracely Escalante. This juvenile was brought before the Tela district court of first instance and was released from custody on August 15, 1996.

Case of Armando Abraham Montes Pineda. Brought before the Tela district court of first instance, this juvenile was released from custody on August 20, 1996.

42. On January 16, 1997, the State sent a copy of a Supreme Court ruling published in Circular N° 11, dated July 22, 1996, which was sent to all judges of first instance with jurisdiction over juveniles. That circular states, inter alia, that in view of the fact that the provisional measures allowing confinement of juveniles had been revoked on November 14, 1995, and that the National Social Welfare Board had advised the Supreme Court that it would have 8 centers^[FN24] for juvenile offenders ready by 1996, the Court had decided to order all judges with juvenile jurisdiction to ensure compliance with Article 122 of the Constitution.

[FN24] These centers were as follows:

El Hatillo Boys' Observation Center (diagnostic center);
Jalteva Juvenile Guidance Center (a semi-open facility for treatment of mild offenders);
El Carmen Shelter in San Pedro Sula (a closed facility for first-time offenders);
El Carmen Guidance Center at San Pedro Sula (a treatment center);
"Renacimiento" (a high-security facility for serious offenders);
Támara Girls' Shelter (a closed, diagnostic facility), and
Támara Guidance Center (a closed treatment center for children).

43. That same day, the State submitted communique N° 3566-SCSJ-96 wherein the Secretariat of the Supreme Court reported, inter alia, that the Director of the Public Defender's Office had been instructed to assign a certain number of public defenders to serve as defense counsel for the juveniles whose cases were to come before the juvenile courts and to monitor them carefully.

44. On July 30, 1997, the petitioners reported that in December 1996 and January 1997, the Marcala, El Progreso, Tela, La Ceiba, Trujillo and Olanchito penal institutions were also housing dozens of children. They also stated that on April 18 of that year, they had found juveniles housed with adults in the Comayagua and La Ceiba facilities and that on June 26, during a visit to a number of the Danlí adult courts, out of 17 of the cases heard, six involved juveniles. According to the petitioners, as of July 30, 1997, the following minors were still being held in adult facilities: José Daniel Henríquez Pavón, José Luis Martínez (16 years old), Osman Efraín Iriarte (16 years old), Alba Luz González (18 years old), and Donaldo Enrique at the La Ceiba Prison; Faustino Serrano A. (15 years old) at the Olanchito prison, and Efraín Reinaldo Botai (14 years old) in the Trujillo prison.

45. In that same submission, the petitioners stated that the State tries to justify the practice of housing large numbers of juveniles with adults by claiming a lack of funds.

46. On October 15, 1996, the petitioners reported that the Asociación Casa Alianza of Honduras, one of the petitioners in the instant case, had been intimidated and harassed. According to the petitioners, high-ranking Honduran Government officials had threatened to take away the Association's legal status and to deport Bruce Harris and other Casa Alianza officials, whom it branded as "dangerous aliens" whose purpose was to slander Honduras. The petitioners alleged that the president of the Honduran Bar Association had threatened to revoke the membership of the Association's legal advisor, Gustavo Escoto. Other intimidation tactics included various comments that appeared in the press, among them one stating that "the attitude of some Hondurans who travel abroad to tarnish Honduras' image is a disgrace." [FN25]

[FN25] See El Heraldó: "Casa Alianza seeks publicity", Sunday, October 6, 1996; La Tribuna: "Casa Alianza's legal status will be revoked if it keeps up its complaints", Thursday, October 10, 1996; La Prensa: "Private development organizations determined to slander Honduras", Friday, October 11, 1996, p. 4A; El Nuevo Día: "Slandering Honduras is no way to resolve the juvenile problem", Saturday, October 12, 1996, p. 14; La Prensa: "Casa Alianza acting recklessly", Monday, October 14, 1996, p. 20A; El Heraldó: "Slander, says Sosa Coella: The Director of Casa Alianza should be deported", Thursday, October 10, 1996.

47. On August 18, 1997, the petitioners sent a submission to which they attached a Supreme Court ruling of June 26, 1997, which had been handed down in a petition seeking a writ of habeas corpus filed on behalf of four juveniles. There the Court dismissed the petition on the grounds that the four juveniles' detention in the San Pedro Sula Prison was lawful.

48. On September 26, 1997, the State transmitted information indicating that Marvin Omar Martínez, Juan Leonardo Morales, and Santos Rogelio Hernández were minors at the time of the events, and that Osman Daniel Mejía, Edgardo Salgado Nájera, Juan Leonardo Morales, Henry Alberto Pineda, Wilmer Ramón Castro, Abel Rubi Antúnez, Carlos Rafael Murillo, José Eugenio Pavón, Héctor Virgilio Solís, Jesús Alfredo Romero Paz, Santiago Eugenio Puerto, José Ramón Ponce del Arce, and Luis Fernando Núñez were of legal age at the time of the events. It also presented information relating to other minors and to a number of writs of habeas corpus. Some

of this information has been included in the table provided in Annex I to this report. The names and data on the detainees whose legal age was demonstrated are not included in the Annex.

II. PRECAUTIONARY MEASURES

49. On May 22, 1995, the petitioners urgently requested the Commission to adopt precautionary measures to guarantee the life and physical safety of the juveniles being held in the Central Penitentiary of Tegucigalpa and to ensure that they be housed in facilities that were appropriate to their status.[FN26] This request was amplified on June 6, 1996 to include 34 children being held in the San Pedro Sula Prison and three being held in the Choluteca jail.

[FN26] In particular, they requested that: a) the juveniles be separated from the adult prisoners; b) medical and psychological treatment be provided to juveniles who had been the victims of physical, sexual and psychological abuse, and c) the necessary security measures be taken to guarantee the life and safety of the juveniles detained in the Central Penitentiary at Tegucigalpa.

50. On February 22 and October 11, 1996, during the Commission's 92nd and 93rd sessions, respectively, two hearings were held at which the State and the petitioners made presentations. At the second of these two sessions, the Commission heard testimony from a juvenile named Francisco Jaco and received information from the petitioners relating to the detention of other minors in adult prisons.[FN27]

[FN27] The minors in respect of whom this information was presented were the following: 1) Agurcia, Allan Alexis (16 years old), born on 22.04.80, incarcerated on 07.03.96 in the La Ceiba Prison on the orders of the criminal court of first instance; 2) Alvarez, Francisco Alexander (16 years old), born on 12.05.78, incarcerated in the Central Penitentiary on 18.01.95, on the orders of the Juvenile Court judge. Transferred to the El Hatillo Boys' Shelter on 8.6.95; 3) Antunez, Reynaldo de Jesús (17 years old), remanded to the Juticalpa Prison on 7.6.96, on the orders of the second court of first instance. Declared in an interview that he had been abused; 4) Avila Rochez, Hernán (17 years old), born on 5.5.79. Remanded to the Puerto Cortes prison on 01.09.96 on the orders of the court of first instance; 5) Bonilla, Elmin Otoniel (17 years old), remanded to the Trujillo prison on 23.04.96 on the orders of the criminal magistrate of the Sata district. (Declared in the accompanying interview that he had been abused); 6) Bonilla, Fidel Angel. Remanded to the Nacaome Penitentiary on 10.05.96 on the orders of the district court of first instance of Nacaome; 7) Borjas, Denis Rolando (17 years old), born on 21.10.78. Remanded to the San Pedro Sula penitentiary on 21.03.96, on the orders of the third criminal court of first instance; writ of habeas corpus filed on 25.10.96; 8) Caballero, Nahum Antonio (17 years old), incarcerated in the La Ceiba prison; 9) Canales, José Santos (17 years old), born in 1978, remanded on 27.06.96 to the Choluteca prison on the orders of the first departmental court of first instance; writ of habeas corpus filed on 07.10.96; 10) Carias, Ramón Medardo (16 years old), born on 11.12.79, remanded to the La Ceiba prison in 1996; 11) Castro, Roger Alberto (17 years old), born on 14.07.79. Remanded to the Choluteca prison on 14.07.96 on the orders of the first departmental court of first instance; writ of habeas corpus filed on 07.10.96. Declared in

interview that he had been abused; 12) Chacón Contreras, Luis Arnoldo (16 years) born on 12.04.79. Remanded on 21.06.96 to the first criminal court of first instance; 13) Chavez Zelaya, Isaid Noel (17 years old), born on 13.05.79. Remanded to the La Ceiba penitentiary on 08.08.96, by order of the criminal court magistrate. Declared in accompanying interview that he had been abused; 14) Cuadra Toruno, Marlon José, incarcerated in Danli, sent there on 04.09.95 on the orders of the criminal court magistrate; writ of habeas corpus filed on 10.09.95; 15) Doblado Meléndez Jessica A. (15 years old), born in 1981. Sent on 19.09.96 to the Santa Bárbara prison on the orders of the departmental court of first instance. Declared in accompanying interview that she had been abused; 16) Espinoza Ramos, Isaías, remanded to the Santa Rosa Copan prison; 17) Flores Juarez, Alvaro Ismael, born on 10.04.78. Remanded to the Sula prison, writ of habeas corpus filed on 22.02.95 in the third criminal court. Detained for 338 days; 18) Funez Nelsin, Marcial, remanded to the Trujillo prison on 30.11.95, on the orders of the magistrate of the criminal court of Sata. Writ of habeas corpus filed on his behalf on 07.10.96; 19) Funez Pineda, Cesar Geovanny, born on 24.04.81. Remanded to the San Pedro de Sula prison on 05.03.96 on the orders of the magistrate in the municipality of Cadona and juvenile court of first instance. Writ of habeas corpus filed on his behalf on 07.03.96. Incarcerated for 29 days; 20) Galeano, Rodimel Santos, born in 1979. Remanded to the San Pedro de Sula prison on the orders of the first criminal court of first instance. Declared in interview that he had been abused; 21) Galeas, Anabel Isabel, remanded to the Choluteca prison on 27.08.96, on the orders of the magistrate of the El Triunfo criminal court. Writ of habeas corpus filed on 07.10.96; 22) García Colindres, Walter Jesús, born on 22.03.80 according to his birth certificate. Remanded to the San Pedro de Sula prison on 25.09.96 on the orders of the first criminal magistrates court. Writ of habeas corpus filed on his behalf on 07.10.96. Detained for 9 days; 23) Gómez, Wilmer Antonio, born on 23.08.79. Remanded to the Choluteca prison on 10.07.96, on the orders of the first departmental court of first instance. Writ of habeas corpus filed on his behalf on 07.10.96; 24) González Alba Luz, born on 21.01.79. Remanded to the La Ceiba prison on 21.02.96 on the orders of the criminal court of first instance. Writ of habeas corpus filed on his behalf on 07.10.96; 25) Henriquez Gabriel, remanded to the Santa Rosa Copan prison on the orders of the second court of first instance. Writ of habeas corpus filed on his behalf on 19.09.96; 26) Hernández, Henry Jhovany, born on 25.06.78. Remanded to the San Pedro de Sula prison on the orders of the second criminal magistrate's court; 27) Hernández, Ramón Obdulio. Remanded to the La Ceiba prison on 17.01.96 on the orders of the magistrate of Jutiapa Atlantida. Declared in interview that he had been abused; 28) Hernández Acosta, Oscar A., born on 19.04.78. Remanded to the La Ceiba penitentiary on 18.03.96, on the orders of the criminal court of first instance. Writ of habeas corpus filed on his behalf on 07.10.96; 29) Hernández Umanzor, Angel Edemir, born on 11.08.80 according to his birth certificate. Remanded to the Central Penitentiary of Tegucigalpa on 16.08.96 on the orders of the fifth criminal court of first instance; 30) Herrera, Yenny Leticia, born on 30.07.80. Remanded to the La Ceiba penitentiary on 01.05.96 on the orders of the criminal court of first instance. Writ of habeas corpus filed on his behalf on 07.10.96; 31) Ibans, Willis, born on 23.12.78. Remanded to the La Ceiba penitentiary on the orders of the Guanaja court. Declared in interview that he had been abused; 32) Ibans Welcome, Yeisan, born on 26.06.78. Remanded to the La Ceiba prison in July 1996 on the orders of the Roatán court; 33) Izaguirre, Carlos, born on 05.04.79. Remanded to the San Pedro Sula penitentiary on 24.10.96 on the orders of the third criminal court of first instance. Writ of habeas corpus filed on his behalf on 25.10.96. Brought before the juvenile court of first instance; detained for 1 day; 34) Lobo Izaguirre, Iris Nohemí, born on 18.09.79. Remanded to the Puerto

Cortés prison on 17.09.96 on the orders of the court of first instance; 35) López Velásquez, Santos Enrique, born on 23.03.78. Remanded to the Central Penitentiary on 24.03.95 on the orders of the criminal magistrates court of Comayuhua. Writ of habeas corpus filed on his behalf on 29.03.95; 40 days in detention; 36) Madrid, Walter, remanded to the Santa Barbara prison on 09.07.96 on the orders of the first departmental court of first instance; 37) Maldonado, Celin Roberto, born on 22.11.78. Remanded to the La Ceiba prison on 15.01.96 on the orders of the criminal magistrates court. Declared in interview that he had been abused; 38) Manzanares, Santos Nery, born on 12.01.79. Remanded to the La Ceiba prison on 04.08.96 on the orders of the criminal magistrates court; 39) Martínez Erazo, Víctor Manuel, born on 20.12.78; remanded to the San Pedro de Sula prison on 04.10.96 on the orders of the first criminal magistrates court. Writ of habeas corpus filed on his behalf on 25.10.96; 40) Martínez Oseguera, José Luis, remanded to the La Ceiba prison in 1996; 41) Matamoros, José Rufino, born on 31.07.79. Remanded to the Choluteca prison on 25.05.96 on the orders of the first departmental court of first instance given on 07.10.96; 42) Matute Pastrana, Edwin Daniel, born in 1979. Remanded to the La Ceiba prison in 1996; 43) Méndez Rodríguez, Rosalio, born on 22.10.78. Remanded to the Santa Bárbara prison on 08.11.95 on the orders of the first court of first instance; 44) Palma Sánchez, José Migdonio, born on 22.06.77. Remanded to the Puerto Cortés prison on 24.09.93 on the orders of the magistrates court; 45) Paredes, Ramón Alberto, remanded to the Choluteca prison, on the orders of the first departmental court of first instance; 46) Ponce, Hermes Denis (alias Edwin Renán Ponce), born on 11.11.78. Remanded to the San Pedro de Sula prison on 05.09.96 on the orders of the third criminal court of first instance. Writ of habeas corpus filed on his behalf on 07.10.96. Released on 11.10.96. Declared in interview that he had been abused. 1 month, 6 days spent in detention; 47) Pouse Velásquez, José Ramón, born on 28.08.79. Remanded to the La Ceiba prison; 48) Puerto, Santiago Eugenio, born on 15.12.79. Remanded to the La Ceiba prison in June 1996 on the orders of the criminal magistrates court. Declared in interview that he had been abused; 49) Puerto, Héctor Enrique, born on 18.07.79. Remanded to the La Ceiba prison on 07.10.96; 50) Quintanilla, Manuel, born on 12.05.79. Remanded to the San Pedro de Sula prison on 24.10.96 on the orders of the third criminal court of first instance. Writ of habeas corpus filed on his behalf on 25.10.96; in detention for 1 month and 1 day; 51) Ramos, Asunción, remanded to the Santa Rosa Copán prison on 16.05.95 on the orders of the first court of first instance; 52) Reyes, Henry Obed, born on 30.11.78. Remanded to the La Ceiba prison on 30.11.95 on the orders of the criminal court of first instance. Writ of habeas corpus filed on his behalf on 07.10.96; 53) Rodas, Nelson Raúl, born on 10.01.79. Remanded to the Central Penitentiary of Tegucigalpa on 04.09.96 on the orders of the second criminal court of first instance; 54) Rodas Zambrano, Edwin Fidel, born on 23.04.79. Remanded to the Central Penitentiary in Tegucigalpa on 04.09.96 on the orders of the second criminal court of first instance; 55) Romero Cantor, Ramón A., born in 1981; remanded to the Central Penitentiary of Tegucigalpa on 31.08.96 on the orders of the first criminal court of first instance. Writ of habeas corpus filed on his behalf on 11.09.96; 56) Romero López, Arlis Starling (Alex Ramírez) born on 08.06.78. Remanded to the San Pedro de Sula prison on 13.05.96 by order of the first criminal court of first instance. Writ of habeas corpus filed on his behalf on 25.10.96. Declared in interview that he had been abused; 57) Sánchez, Mario Ricardo, born on 11.05.78. Remanded to the San Pedro de Sula prison on the orders of the criminal court of first instance. Declared in interview that he had been abuse; 58) Santamaría, Manuel, born on 10.07.78. Remanded to the Puerto Cortés prison on 23.02.95 on the orders of the court of first instance; 59) Santos Coto, Eduardo David, born on 06.02.79. Remanded to the La Ceiba prison in 1996; 60) Sevilla

Hernández, Jorge Armando, born on 27.04.79. Remanded to the Yuscaran prison in the department of El Paraíso on 19.06.96 on the orders of the municipal magistrates court of Texiguot, district of Yuscaran, given on 27.06.96; six days in detention; 61) Sorto, Edwin Omar, born on 12.03.79. Remanded to the Santa Rosa Copán prison on the orders of the first court of first instance; 62) Turcios, Carlos Alexander, remanded to the Trujillo prison on 25.04.96 on the orders of the criminal magistrates court of Sata. Declared in interview that he had been abused; 63) Vallejo, Marlon José, remanded to the Choluteca prison on 28.08.96 on the orders of the criminal magistrates court of El Triunfo; 64) Velásquez Romero, Armando, remanded to the El Progreso prison on 13.09.96 on the order of the criminal magistrates court; 65) Villafranca Castro, Eblin Romey, born on 05.06.79. Remanded to the San Pedro de Sula prison on the orders of the first criminal court of first instance. Declared in interview that he had been abused; 66) Zambrano, Gladis Emerita, remanded to the Santa Bárbara prison; 67) Zelaya, Oscar Rolando, born on 04.06.79. Remanded to the La Ceiba prison in August 1996 on the orders of the criminal court of first instance.

51. On October 21, 1996, pursuant to a decision reached by the Commission at its 93rd session, the State was asked to adopt precautionary measures for the juveniles being held at the San Pedro Sula prison facility.

52. On November 20, 1996, the petitioners reported that the State had not yet adopted the requested precautionary measures; that it had failed to advise the courts that they were to cease the practice of incarcerating juveniles in adult facilities; and that it continued to allow juvenile offenders to be sent to those facilities.

53. On December 23, 1996, the Commission received another communication from the petitioners reporting that Honduras had not yet adopted the precautionary measures requested by the Commission and requesting, inter alia, that the Commission ask the Government to report what concrete measures had been adopted with regard to the assignment of public defenders to all juveniles and that it request the Government to suspend the practice of incarcerating juveniles in adult facilities.

54. On December 26, 1996, the Commission requested information from the State concerning the specific measures adopted pursuant to the Commission's request for precautionary measures, dated December 21, 1996, and reiterated its request that those measures be carried out.

55. On January 16, 1997, the State reported on the steps taken to comply with the precautionary measures requested by the Commission. That information was forwarded to the petitioners on March 13, 1997.

III. FRIENDLY SETTLEMENT

56. In a hearing held at Commission headquarters on February 22, 1996, the Commission offered its good offices to begin a process aimed at reaching a friendly settlement between the State and the petitioners, pursuant to Article 48(1)(f) of the Convention and Article 45 of the

Commission's Regulations. On March 1, 1996, a meeting was held between the petitioners and officials from the National Social Welfare Board and the Foreign Ministry of Honduras to reach a friendly settlement in this case. However, no agreement was reached. As a result, the petitioners reported that it had not been possible to reach a friendly settlement and requested that the report provided for in Article 50 of the American Convention should be issued. In these circumstances, the Commission deemed the process of seeking a friendly settlement to have been exhausted.

IV. COMPETENCE OF THE COMMISSION

57. The Commission is competent to examine and rule on the present case by virtue of Article 44 of the American Convention on Human Rights, inasmuch as it alleges a violation of the rights guaranteed by the Convention in Articles 5 (right to humane treatment); 7 (right to personal liberty); 8 and 25 (right to a fair trial and right to judicial protection, respectively), and 1.1, which provides for the duty of the States to respect and guarantee the rights and freedoms recognized in the Convention.

V. ADMISSIBILITY OF THE PETITION

58. The present petition satisfies the formal admissibility requirement stipulated in Article 46(1)(c) of the Convention, inasmuch as the subject of the petition is not pending in another international proceeding for settlement. It also fulfills the requirement stipulated in subparagraph (d) of that Article, in that it contains the name and signature of the legal representative of the entity lodging the petition, a non-governmental organization that has legal status in one or more member states of the Organization. The Commission therefore deems this requirement to have been satisfied.

59. In the instant case, the State has not filed a challenge based on the failure to exhaust the remedies under domestic law[FN28], nor did it specify exactly which remedies are still available to the petitioners. It has not, moreover, denied allegations relating to the inefficacy of the remedies attempted or the delay in ruling on the petitions seeking writs of habeas corpus. Nor has it presented any documentary evidence to that effect. While these facts alone would suffice to declare the admissibility requirements stipulated in Article 46(1)(a) and (b) satisfied, the Commission will elaborate further with the following observations:

[FN28] See Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgement of June 26, 1987, paragraph 88.

60. The petitioners have alleged that the remedies available under domestic law have proven to be ineffective since not one of the many petitions seeking a writ of habeas corpus filed with the Honduran courts was decided "without delay" as required under Article 182 of the Constitution of Honduras.

61. The writ of habeas corpus is the traditional remedy which protects by way of recourse one's physical or corporal liberty or freedom of movement by means of a summary judicial proceeding that takes the form of a trial. As a rule, the writ of habeas corpus protects persons who are already being deprived of their freedom under unlawful or arbitrary circumstances, precisely in order to put an end to the circumstances that extend the deprivation of their freedom. Whether or not this remedy is effective in affording protection depends in large part on whether the petition seeking this remedy is acted on swiftly, thus making it a suitable and effective means of reaching a decision on a matter in as little time as possible.

62. In Honduras, the writ of habeas corpus or exhibición personal provided for in Article 182 of the Constitution (Decree N° 131 of January 11, 1982) affords its protection to persons unlawfully imprisoned or detained, whose rights are being infringed by the aggravated circumstances of their detention. Action on the petition must be immediate or summary, to ensure that the protection is afforded swiftly, thus making it an effective remedy. [FN29]

[FN29] Article 182 of the Constitution of Honduras provides as follows:

The State recognizes the guarantee of habeas corpus. Consequently, any aggrieved person or party acting on the aggrieved party's behalf shall be entitled to file a petition seeking a writ of habeas corpus when:

1. The aggrieved party is held prisoner or detained unlawfully or his exercise of individual freedom is inhibited in any way;
2. During legal detention or imprisonment, the aggrieved party is subjected to anguish, torture, harassment, unlawful imposition or any form of coercion, restriction or discomfort that is not necessary for his individual security or for order in the prison;

...

The judges or magistrates may not disregard petitions seeking writs of habeas corpus and have the inescapable obligation to act immediately to stop any violation of the person's liberty or right to humane treatment.

Courts that fail to admit these petitions shall be held criminally and administratively liable.

The authorities who order that a detainee be concealed and the agents who carry out that order or in any way violate these guarantee shall be guilty of the crime of unlawful detention.

63. The Commission therefore considers that the petition seeking a writ of habeas corpus is a duly recognized guarantee in the Constitution of Honduras and is the appropriate formal remedy to protect the human rights of persons unlawfully detained or held prisoner under unacceptable conditions.

64. In the instant case, the petitioners filed numerous petitions seeking writs of habeas corpus [FN30] on behalf of the juveniles being held in facilities for adults. Only one was ultimately decided, and then it was by a Supreme Court ruling dated June 26, 1997, denying the petition for a writ of habeas corpus filed on behalf of four juveniles (Edwin Alexander Ramos, Alexis Josué Rosales, Ileana María Mendoza and Florinda Litzeth Banegas), who were being held at the San Pedro Sula Prison. The Court ruled that the decision to incarcerate them had been a lawful one. [FN31] That decision overturned the ruling of the San Pedro Sula Appellate Court which, based

on the fact that the earlier Supreme Court ruling in banc had been revoked, had granted the writ of habeas corpus on the grounds of unlawful detention and had ruled said detention to be in violation of Article 122 of the Constitution, which makes it unlawful to confine juveniles under the age of 18 in an adult jail or prison. None of the petitions filed, including this one, was decided "without delay" as required under the Constitution of Honduras.

[FN30] See table attached as Annex II.

[FN31] In its decision of June 26, 1997, the Supreme Court found that:

... the detention of the alleged offenders was not unlawful and [given] the fact that no juvenile facility exists nearby in that city, the court's decision was respectful of the rights of the juveniles deprived of their freedom.

65. The Commission considers that the remedy of habeas corpus is, in principle, the appropriate one in terms of form and was available to the petitioners to ascertain whether a juvenile alleged to have been taken into custody by the authorities was lawfully detained and to secure the juvenile's release or his possible transfer to a juvenile facility if the juvenile is being held in an adult facility. However, it finds that to ensure the effectiveness of this remedy, it must be acted upon swiftly, which did not happen in the instant case. This rendered the petitions of habeas corpus that were filed ineffective because they were "powerless to compel the authorities" [FN32] to ensure proper protection within a reasonable period of time in order to prevent the consummation or worsening of the human rights violation that was the object of the complaint.

[FN32] See Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, No. 4 (1988), paragraphs 66-68; Godínez Cruz Case, Judgment of January 20, 1989, Series C, No. 5 (1989), paragraphs 69-71; Fairén Garbi and Solís Corrales Case, Judgment of March 15, 1989, Series C, No. 6 (1989), paragraphs 91-93.

66. Based on the foregoing, the Commission finds that in the case of the juveniles Edwin Alexander Ramos, Alexis Josué Rosales, Ileana María Mendoza and Florinda Litzeth Banegas, whose petition seeking a writ of habeas corpus was denied by the Supreme Court on June 26, 1997, the remedies under domestic law have been exhausted pursuant to Article 46(1)(a) of the Convention. It further finds that the petition on behalf of the other juveniles whose names are listed in Annex I to this report, is admissible because of the delay in handing down a ruling on the petitions filed on their behalf, as provided in Article 46(2)(c) of the Convention.

67. In view of the foregoing, the Commission now makes the following observations:

VI. MERITS

A. The detention of juveniles in adult prison facilities on orders from judges who lack jurisdiction over juveniles

68. This petition is a consequence of the Honduran Supreme Court ruling in banc of January 16, 1995, authorizing the incarceration of juveniles in separate cellblocks of adult prison facilities. The petitioners allege, inter alia, that because of that Supreme Court ruling in banc, street children are being incarcerated alongside adult prisoners and are being abused by those adult prisoners both physically and sexually. The petitioners also allege that many of the juveniles sent to adult prison facilities have been ordered there by criminal-court judges or other judges or magistrates hearing their cases, rather than by juvenile court judges.

1. Rights of the child (Article 19 of the American Convention)

69. Article 19 (rights of the child) of the American Convention provides that "Every minor child has the right to the measures of protection required by his status as a minor on the part of his family, society, and the state." [FN33] Article 5(5) of the Convention provides that "Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals".

[FN33] Under Article 27 of the Convention, the rights of the child are non-derogable, even in the event of war, public danger or other emergency that threatens the independence or security of the State Party.

70. The Commission recognized the special protection that Article 19 of the Convention accords to children when it stated that:

...the acts that are alleged constitute a violation of the rights to personal liberty, personal integrity and life, as well as a failure of the duty to guarantee free and full exercise of such rights as prescribed by Article 1.1 of the Convention ... aggravated in the instant case by the fact that the victim was a minor, age 15, who, under Article 19 of the Convention, is to be afforded special protection. (Emphasis added) [FN34]

[FN34] See Commission Report 1/91, case 9999, preambular paragraph 9, p. 97; Report 49/90, case 9918, operative paragraph three, p. 122; report 56/90, case 9936, operative paragraph seven, p. 149.

71. Similarly, in its 1991 Annual Report, the Commission stated that... "A child deprived of liberty must not be held in an institution for adults. The prison system is today a fundamental factor in the launching of criminal careers, since, while the prison does offer rehabilitation programs, it also employs methods that only reinforce criminal behavior." [FN35]

[FN35] Annual Report of the Inter-American Commission on Human Rights (1991). OEA/Ser.L/V/II.81, Doc.6, rev.1, 14 February 1992, p. 326.

72. For an interpretation of a State's obligations vis-a-vis minors, in addition to the provision of the American Convention, the Commission considers it important to refer to other international instruments that contain even more specific rules regarding the protection of children. Those instruments include the Convention on the Rights of the Child [FN36] and the various United Nations declarations on the subject. This combination of the regional and universal human rights systems for purposes of interpreting the Convention is based on Article 29 [FN37] of the American Convention and on the consistent practice of the Court [FN38] and of the Commission in this sphere. [FN39]

[FN36] Adopted by the United Nations General Assembly in resolution 44/25, November 20, 1989, and ratified by Honduras on August 10, 1990.

[FN37] Article 29 of the Convention on norms governing interpretation reads as follows:

No provision of this Convention shall be interpreted as:

- a. permitting any State Party, group or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
- b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party;
- c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
- d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

[FN38] The Inter-American Court of Human Rights has held that in its reference to other international conventions, not just those on the regional plane, Article 29 of the Convention demonstrates a "certain tendency to integrate the regional and universal systems for the protection of human rights." Inter-American Court of Human Rights, "Other Treaties" subject to the advisory jurisdiction of the Court (Art. 64 American Convention on Human Rights)", Advisory Opinion OC-1/82, September 24, 1982. Series A N° 1, paragraph 41. The Court found that Article 29 of the Convention "indicates an intention not to restrict the protection of human rights to determinations that depend on the source of the obligations." This tendency--the Court added--is evident in the Preamble, which recognizes that "the principles on which the treaty is based are also proclaimed in the Universal Declaration of Human Rights and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope." *Idem*.

[FN39] The Inter-American Court of Human Rights has recognized and upheld the Commission's practice in this regard: The Court has found in this connection that:

The need of the regional system to be complemented by the universal finds expression in the practice of the Inter-American Commission on Human Rights (...) [which has] properly invoked in some of its reports and resolutions "other treaties concerning the protection of human rights in the American states," regardless of their bilateral or multilateral character, or whether they have been adopted within the framework or under the auspices of the inter-American system.

73. As for the detention of juveniles alongside adults, Article 37(c) of the United Nations Convention on the Rights of the Child, which was ratified by Honduras on August 10, 1990, states that "... every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so..."

74. In keeping with these provisions, Article 122(2) of the Constitution of Honduras stipulates that "No child under the age of 18 shall be confined in a jail or a prison." Article 119 of the Constitution stipulates, moreover, the State's blanket obligation to protect children.

75. The Commission finds that taken together, these provisions make it clear that the State of Honduras has an obligation to keep juveniles separate from adult inmates.

2. Proven facts regarding the incarceration of minors in adult penal institutions

76. Based on the evidence provided, the Commission has established that Honduras has an administrative practice of allowing children of both sexes under the age of 18 to be deprived of their freedom and confined to penal institutions for adults. That practice, instituted as a result of the Honduran Supreme Court ruling in banc of January 16, 1995, has created a widespread situation throughout Honduran territory, and not just in a few isolated cases.

77. According to the State, the Supreme Court ruling in banc was adopted as a temporary measure to cope with the alarming rate of juvenile delinquency, ranging from petty to serious crimes, and the lack of security at the country's existing juvenile facilities. The State has acknowledged that, under that ruling, juvenile offenders were placed in "separate areas within the central penitentiary or departmental prisons" and that "the strictest measures were being taken to keep them totally isolated from the rest of the prison population(...)." On November 29, 1995, the State reported that the Supreme Court had decided to revoke its earlier ruling in banc, issued on January 16, 1995, "on the grounds that the causes for the ruling no longer obtained." That ruling was to take effect on January 1, 1996. [FN40]

[FN40] Communication to the juvenile court judges and all others throughout the Republic who are hearing cases involving juveniles via Official Notice N° 5561-SCSJ-95, Circular N° 18 of the Supreme Court of Justice, Republic of Honduras.

78. The Commission considers that it has been established that the incarceration of juveniles in adult penal institutions began with the full approval of the State in January, 1995, as a consequence of the aforementioned Supreme Court ruling in banc. This general practice of detaining children together with adults continued despite the derogation of the aforementioned ruling in banc. Children were incarcerated in a number of different adult facilities, including the following: the Tegucigalpa Central Penitentiary, the Jalteva Prison, the San Pedro Sula Prison, the Tela Prison, the Santa Bárbara Prison, the La Ceiba Prison Farm in Atlántica, the Gracias Prison in Lempira, the Danlí Prison Farm, the Trujillo Prison, the Choluteca Prison, the El Progreso Penal Facility in the department of Yoro, the Santa Rosa de Copán Prison Farm, the Puerto Cortés Prison and the Comayagua Prison.

79. The situation of the 28 juveniles being held at the Tegucigalpa Central Penitentiary, who were the subjects of the original petition, was confirmed in a table presented by the State in its reply submission of June 2, 1995. This table, entitled "Log of juveniles admitted to the Central Penitentiary, reason for confinement and current status" was prepared by the National Human Rights Commission, Children's Rights Department, and lists the juveniles being held at the Tegucigalpa Central Penitentiary as of March 26, 1995. The names of the 28 juveniles whom the petitioners list in their petition appear in that log.

80. As for the other juveniles whose confinement in adult prisons was reported throughout the various stages of the consideration of this petition, on August 25, 1995, the State reported that effective July 5, 1995, juveniles in the Tegucigalpa Central Penitentiary and the departmental prisons were being transferred to the newly-opened Támara closed facility, called the "Centro Juvenil Renaciendo", which could accommodate 40 juveniles. While these measures indicate the State's interest in addressing the plight of the minors in question, in the Commission's view, it is also a tacit acknowledgement of their incarceration in adult facilities.

81. On April 2, 1996, the State reported [FN41] that Oneyda Díaz Castillo had been released two weeks earlier and that Jonhathan Donaire and René Arturo Alvarado had been transferred from the Comayagua Prison to the El Hatillo Boys' Shelter on February 2, 1996.

[FN41] Note N° 180/96/MPH/OEA, dated April 2, 1996.

82. The State did not refute the allegation to the effect that, prior to the adoption of these measures, the juveniles had been held in adult penal institutions, or that the other juveniles named by the petitioners were or had been held in various prisons throughout the country. Moreover, a letter dated March 19, 1996, from the Director of the Juvenile Affairs Division to the Ministry of Foreign Affairs of Honduras [FN42] reports that "The El Hatillo Shelter, which is for juvenile offenders, currently has 107 juveniles under the age of 18, who were sent there by the juvenile and departmental courts. Some were being held temporarily in the adult prisons while work on re-equipping the facilities to accommodate minors was being completed." This is an express acknowledgment of the fact that these juveniles had been held in adult facilities before being transferred to the juvenile facility.

[FN42] Letter attached as an annex to the State's additional submissions, dated April 2, 1996.

83. On May 15, 1996, Honduras reported that Darwin Rexieri Betancour and Ramón Antonio Cerrato Pérez had been released thanks to the efforts of the Public Defender's Office; Oneida Liseth Castillo had been released in February 1996; Alex Giovanni Martínez had been placed in the custody of Maira Lolita Galeas after having been held at the La Ceiba Prison Farm [FN43]; José Amilcar Barnica Vega had been released on February 20, 1996 (according to the letter, he had been held at the Prison Farm at Santa Rosa de Copán); Suyapa Caballero was undergoing

psychiatric evaluation before being sent to the Girls' Shelter, and José Oscar Vázquez had been examined by a forensic physician to determine his probable age, the finding being that he was approximately 18 years old. The State did not deny that these juveniles had been previously held in an adult prison facility. In the case of Carlos Efraín Pineda, the State reported that he was at the time in a facility for juveniles. It is important to note that according to the record, this juvenile had previously been held at the Central Penitentiary, sent there by order of the departmental judge of first instance. A petition seeking a writ of habeas corpus on behalf of this juvenile was filed on February 18, 1996.

[FN43] See letter from the Supernumerary Judge of First Instance to the Director of the La Ceiba Prison Farm, March 8, 1996.

84. The record also contains a statement by the minor Daniel Varela, made at the Tegucigalpa Rehabilitation Center on January 27, 1995, in the presence of a notary public, wherein he states, inter alia, that in the cell in which was being held "most of the inmates are 54 years old" and that there are also "other young detainees who are around 20 and 21 years old."

85. The Commission considers that, albeit on a smaller scale, the practice of incarcerating juveniles in adult penal institutions continued even after the Supreme Court ruling in banc, of January 16, 1995, was revoked. The Commission also considers it an established fact that, contrary to what the State alleges, the minors were in contact with adult inmates. This can be inferred from, among other sources, newspaper articles containing public statements by judicial authorities, which remain unchallenged and are part of the evidence in this case. Thus, for example, in an article on April 12, 1995, *El Tiempo* reported on a visit that representatives from Casa Alianza, from the Office of the National Human Rights Commissioner, from the Office of the Special Prosecutor for Human Rights and from the courts made to the Central Penitentiary (CP), where they found a cell measuring six meters by six meters containing 40 people, among them 27 juveniles.

86. On April 19, 1995, *El Nacional* also published a statement by attorney Teodolinda Mejía, Prosecutor for Juveniles and the Disabled of the Attorney General's Office, denying Casa Alianza's assertion that her Office and the Office of the Human Rights Commissioner were doing nothing to help the children being held at the Central Penitentiary. Under the subtitle "Incarceration among adults", the Prosecutor stated the following: "...According to Mejía, she and the representative of the Human Rights Commissioner had been working on the case since she took office, following a petition from Casa Alianza concerning two specific cases; however, by the time the study was completed, they had found 27 cases of juveniles incarcerated with adults" in the Central Penitentiary. [FN44]

[FN44] Sobre Niños recluidos en la PC Casa Alianza falta a la verdad (Casa Alianza misleads public about children detained in the Central Penitentiary), *El Nacional*, April 19, p. 13A.

87. Another article, entitled "Juveniles from the San Pedro Sula Prison to be transferred to Jalteva", [FN45] reported that Juvenile Court Judge Elizabeth Gatica Mitchell "said that she did not like the place. Because of the overcrowded and cramped conditions, juveniles were always in contact with adults." The article stated that 40 juveniles were being held in that penal institution.

[FN45] El Heraldó, May 19, 1995.

88. The article entitled "Judge Gatica displeased with the cells built for juvenile offenders" stated that in the juvenile court judge's opinion, the cells which the director of the local prison had ordered built to accommodate the incarcerated juveniles were too small and therefore resulted in overcrowding; they were also too close to the adult prisoners." "The new cells which Hause ordered built for juveniles are located in the southern area of the local facility, very close to the kitchen and a sewing workshop where adult prisoners are free to move about." [FN46] Another article entitled "The judge confirms it: they rape minors in the San Pedro Sula Prison", states the following: (...) "Judge Gatica Mitchell also visited cell No. 10, which currently houses 30 juveniles who are over the age of 16 but less than 18 and who share the cell with adult inmates." [FN47]

[FN46] El Periódico, May 19, 1995, p. 19.

[FN47] El Tiempo, Friday, May 19, 1995, p. 51.

89. The article entitled "Prosecutors confirm rape of a minor" reports on a visit that staff from the Office of the Prosecutor for Human Rights and the Supreme Court made to the Central Penitentiary. According to the article, "compliance with the Supreme Court ruling ordering that juveniles not be held in the Penitentiary has been hampered by the lack of sufficient rehabilitation centers to accommodate minors under the age of 18 who commit crimes against society." The article goes on to say that the official information came from Supreme Court magistrate Blanca Valladares, who after confirming that a minor had been raped in that facility, stated that: "[this] is why they decided yesterday to transfer all juveniles to cell No. 24, where prisoners who have supposedly been rehabilitated in the CP are kept." (Emphasis added) These statements by the Supreme Court magistrate confirm that the minors were transferred to a cell (cell N° 24) where they continued to be incarcerated alongside adult inmates. [FN48]

[FN48] El Heraldó, April 20, 1995, p. 16.

90. On November 1, 1996, the Director General of Penal Institutions told the newspaper El Tiempo that there were over 2,000 inmates at the Central Penitentiary, among them "10 minors, still awaiting a decision by the Tegucigalpa courts as to where they would be sent." [FN49] On January 9, 1996, juvenile court judge Elizabeth Gatica Mitchell told the newspaper El Tiempo that "...of the 30 minors in the San Pedro Sula Prison as of November of last year, only eight are

still being held in that adult facility." She added, however, that "other courts or even the police themselves may have sent juveniles to that penal institution without notifying the juvenile court." [FN50]

[FN49] "Ten juveniles still at the Central Penitentiary", El Tiempo, November 1, 16.

[FN50] "Only eight minors being held at the San Pedro Sula Prison", El Tiempo, January 9, 1996, p. 28.

91. More recently, on July 25, 1997, El Heraldo reported that "a juvenile day worker was recently indicted in the second criminal court of first instance for having stolen three stalks of bananas from the Tela Railroad Company, a banana transnational." According to the newspaper, "court personnel were shocked because the minor was sent to the local prison..."

92. On the question of evidence, it is important to point out that the State has supplied no evidence that would refute the petitioners' allegations regarding the situation of the many juveniles involved in this case. Instead, it has confined itself to generalities and references to one or another minor; the information supplied with respect to any specific juvenile is invariably incomplete. The State, moreover, has not provided an exhaustive list--one matched against the records of persons sent to every prison in the country--of the number of minors incarcerated; their date of birth; the date they entered the penal institution; their transfer to a juvenile facility or release from the penal institution; the reason they are being held; the court that sentenced each juvenile to a penal institution in the country; the names of the penal institutions to which they were sent and, if appropriate, the juvenile facilities to which they were transferred; the name of the public defender assigned to defend each one; copies of the petitions filed seeking writs of habeas corpus, the dates on which they were filed and the decision or decisions adopted on each of these petitions. Nor has it presented documentary evidence that demonstrate these facts, or copies of the court rulings on the petitions filed seeking writs of habeas corpus. All it has supplied are a few birth certificates and findings of the forensic physicians certifying the ages of the minors; in most cases, no reference has been made to the date on which the events took place, making the Commission's job that much more difficult.

93. The Inter-American Court of Human Rights stated the following in this regard:

In contrast to domestic criminal law, in proceedings to determine human rights violations, the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation. The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State and unless the Government provides the necessary resources. [FN51]

[FN51] Inter-American Court of Human Rights, Velásquez Rodríguez Case, supra note 32, paras. 135-136; Inter-American Court of Human Rights, Godínez Cruz Case, supra note 32, paragraphs 141 and 142.

94. The Court invoked this jurisprudence in the Neira Alegría case concerning the situation of two people being held in the San Juan Bautista Prison (known as "El Frontón") in Peru, having been charged with the commission of alleged terrorist acts. [FN52]

[FN52] See Inter-American Court of Human Rights, Neira Alegría et al. case, Judgment of January 19, 1995, Series C N° 20 (1995), paragraph 65.

95. The Commission referred to the abovementioned jurisprudence in its Report N° 55/97, in which it argued that the relationship that existed between the agents of the State and the individuals captured after attacking the military barracks of the "General Belgrano" Third Mechanized Infantry Battalion of the province of Buenos Aires was analogous to that of prison guards and the prisoners in their custody. [FN53] Both the Court's jurisprudence and the Commission's doctrine just alluded to, apply in the instant case, where the inmates were defenseless and under the absolute control and in the exclusive custody of the State.

[FN53] See Inter-American Court of Human Rights, Report N° 55/97, paragraphs 195 and 196.

96. Based on the foregoing, the Commission considers that, while in the instant case, the burden of proof to refute the charges made and proven by the petitioners was on the Honduran State, no proof was forthcoming. In the Commission's view, this is sufficient ground to take as true the facts alleged by the petitioners and uncontested by the State, based on the principle that "... the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgement of the truth of allegations made, so long as the contrary is not indicated by the record or is not compelled as a matter of law." [FN54] In the instant case, the State's silence and its lack of diligence in defending itself aside, the evidence still tends to corroborate many of the facts alleged.

[FN54] Inter-American Court of Human Rights, Velásquez Rodríguez Case, note 32 above, paragraph 138; Godínez Cruz Case, note 32 above, paragraph 144.

97. As for the press clippings submitted as evidence, the Commission finds, as the Inter-American Court of Human Rights has stated, that they cannot be regarded as documentary evidence per se. However, "many of them contain public and well-known facts which, as such, do not require proof; others are of evidentiary value, as has been recognized in international jurisprudence (Military and Paramilitary Activities in and against Nicaragua, supra 127, paras. 62-64) [FN55], insofar as they textually reproduce public statements, especially those of high-ranking members ... of the Government, or even of the Supreme Court of Honduras..." [FN56] In the instant case, the Commission considers that these are well-known facts that have drawn a

reaction worldwide; [FN57] there are also statements from the judicial authorities who are responsible for judicially protecting the non-derogable rights of the child. The Commission therefore considers that these press articles have special evidentiary value, since conclusions that are consistent and uncontested regarding public and well-known events may be drawn from them.

[FN55] The complete title is Nicaragua V. United States of America, Merits, Judgment, I.C.J. Reports 1986, paragraphs 62-64.

[FN56] Inter-American Court of Human Rights, Velásquez Rodríguez Case, note 32 above, paragraph 146.

[FN57] See, for example, "Canada asks why children are being jailed in Honduras". El Heraldo, June 2, 1995. This article reports that "for over four and one half months, juvenile court judges have been sending minors to prison on such charges as disorderly conduct, petty theft and even alcoholism. These children are being placed in the same cells as dangerous adult male criminals and are exposed to physical and sexual abuse.." See letter from London's Central American Human Rights Committee to President Reina, April 26, 1995, concerning the unlawful incarceration of minors with adults in the Central Penitentiary of Tegucigalpa.

See also "They exploit international pressure exerted over the unlawful incarceration of juveniles." El Heraldo, April 8, 1995. "Honduras violates its Constitution by incarcerating minors with adult prisoners" in La Nación, July 1995, which reports that Italian authorities had warned the Honduran Government that in less than 40 days the European Union would introduce trade sanctions against Honduras for having violated international treaties on the rights of children. According to the article, the National Human Rights Commissioner, Leo Valladares, said "we put it on notice ..." El Heraldo, September 22, 1995.

98. From these facts, taken in light of the applicable rules, it may be concluded that the practice of incarcerating minors under the age of 18 in adult penal institutions, thus placing their physical, mental and moral health in serious peril, is a violation of Article 19 of the Convention, which stipulates the obligation to provide special protection for children, a non-derogable obligation echoed in the Constitution and laws of Honduras. The practice of incarcerating children in adult facilities also violates Article 1(1) of the Convention, which stipulates the State's positive obligation to ensure the exercise of the rights of minors who are subject to its jurisdiction, without discrimination of any kind.

3. Applicable rules in the prosecution of minors

99. With regard to the prosecution and trial of minors, as pointed out earlier, Article 5(5) of the Convention establishes the specific obligation to bring minors "before special tribunals, as speedily as possible, for trial." In other words, this article establishes the duty to create a special jurisdiction with competence to try crimes and offenses committed by persons under the age of 18, which shall be the only court competent to prosecute minors.

100. Article 122 of the Honduran Constitution also requires that juvenile courts be established, by stipulating that "the law shall establish the jurisdiction and special courts to try family and juvenile cases."

101. In the Commission's view, this provision relies on one of the principal rules of international law in the matter of children's rights, namely, the prohibition against prosecuting children [FN58] as adults. The implication here is that the area in which the juvenile criminal justice system applies is much narrower than the area in which ordinary criminal law applies, given the obligation under Article 19 of the Convention to provide special protection for children.

[FN58] Under Article 1 of the Convention on the Rights of the Child, a child is every person under the age of 18.

4. Proven facts relating to the practice whereby judges with no jurisdiction over juvenile matters remand children to adult penal institutions

102. The incarceration of children in adult penal institutions by order of judges who have no jurisdiction in juvenile cases but are, instead, criminal court or other judges, is inferred from, inter alia, the following documents:

- 1) Table entitled "Log of juveniles remanded to the Central Penitentiary, reason for confinement and current status", which the State presented with its submission of reply dated June 2, 1995; [FN59]
- 2) Letter dated July 3, 1996 from the National Human Rights Commissioner to the National Director of the Public Defender's Office, listing the names of five juveniles being held at the Central Penitentiary by order of judges who are not juvenile court judges; [FN60]
- 3) Letter dated August 22, 1996, from the Secretary General of the Central Penitentiary to the Special Prosecutor for Minors. The inference from the information contained in that letter is that the 11 minors mentioned therein were sent to that penal institution by the fifth criminal court and not by the juvenile court. [FN61] The State did not contest this information.
- 4) List of minors detained in the San Pedro Sula Prison between August 6 and 13, 1996, which the petitioner forwarded on August 16, 1996, and which has not been contested by the State. [FN62]
- 5) Statement issued by the Supreme Court, dated December 2, 1996, and forwarded by the State on December 30, 1996, which refers to these juveniles (see supra, note N° 23) in connection with the actions taken on the Commission's request for precautionary measures. The conclusion one draws from that information is that in all but one case (Adonai Pérez Licón), the juveniles had not been sent to the prison by special juvenile courts. The State also reported that the 11 juveniles who had been inmates at the San Pedro Sula Prison had been transferred to various juvenile facilities.
- 6) List of juveniles in the San Pedro Sula Prison on November 13, 1996, as reported by the petitioners in a communication dated November 20, 1996. Sixteen of the juveniles had been sentenced to that penal institutions by judges of first instance and not by juvenile court judges.

No mention is made of who had incarcerated the remaining juvenile. The State has not contested this information, which demonstrates that it continued to allow minors to be incarcerated in this prison even after having reported, on December 30, 1996 that it had transferred the minors whose names are given in the above paragraph to juvenile facilities. [FN63]

7) List of minors in the Tela Prison as of August 9 and 13, 1996, as reported in the petitioners' submission of August 16, 1996. One of the juveniles was sent to that prison by order of the Tela district court, a second by order of the Tela district court of first instance, and a third by the criminal magistrate. None had been sent there by a juvenile court judge. In a submission dated December 30, 1996 the State reports that these juveniles had been brought before the Tela district court of first instance, which confirms the fact that none of them had been sent there by order of a juvenile court. It later reported that they were released on September 30, 1996, August 15, 1996, and August 20, 1996, respectively. [FN64]

8) List of four minors held at the La Ceiba Penal Institution between August 9 and 13, 1996, presented by the petitioners and uncontested by the State. Of these four, three had been sent by order of a magistrate and one by a court of first instance. The State has not contested this information. [FN65]

9) List of minors detained in the Santa Bárbara Prison between August 9 and 13, 1996. The four minors had been sent to that prison by a court of first instance, not by a juvenile court. The State has not contested this information. [FN66]

10) List of minors held at the Prison of Gracias, Lempira, supplied by the petitioners and uncontested by the State. Two of these juveniles were confined in that penal institution by a magistrate and two by a criminal magistrate. [FN67]

11) List of five minors detained in the Danlí Prison Farm as of March 26, 1996. Two were sent by a court of first instance, two by a criminal magistrate, and one by a magistrate. The State has not contested this information.

12) List of two minors detained in the Danlí prison as of May 13, 1996. Information uncontested by the State. One was sent by a court of first instance and the other by a magistrate. [FN68]

13) List of five minors incarcerated in the Danlí Prison Farm as of March 26, 1996, information uncontested by the State. [FN69]

14) List of three minors incarcerated in the Trujillo Prison on November 13, 1996. Information uncontested by the State. The three had been remanded by order of a magistrate. [FN70]

[FN59] "Log of juveniles admitted to the Central Penitentiary, reason for confinement, current status", presented by the State with its submission of reply, dated June 2, 1995. According to this table, the cases of the following minors were being heard in courts without jurisdiction over juvenile matters: 1) Alexis Corea García, second criminal court; 2) Carlos Roberto Ambrosio Castro, first criminal court; 3) Cosme Flores, first criminal court; 4) Francisco Vásquez, second criminal court; 5) Jorge Alberto Calix Medina, second criminal court; 6) Juventino Galdamez Aguilar, second criminal court; 7) Jorge Pedro Díaz, Talanga magistrate; 8) Sixto Celestino Acosta, first criminal court; and 9) Wilmer Alexis Escoto Mejía, second criminal magistrate.

[FN60] The letter, dated July 3, 1996, from the National Human Rights Commissioner to the National Director of the Public Defender's Office, mentions the following five minors being held at the Central Penitentiary by order of judges not of the juvenile courts: 1) Wilmer Francisco

Barahona Reconco, 17, ordered to that prison by the first criminal court of first instance; 2) Julio César Pacheco Escobar, 17, ordered there by the first criminal court of first instance; 3) Julio Francisco, 16, incarcerated there by order of the first criminal court of first instance; 4) José Neptalí Amador, 16, by order of the second criminal magistrate, and 5) Felipe Antonio Hernández Ponce, 15, by order of the Guaymaca magistrate.

[FN61] The inference from the letter that the Secretary General of the Central Penitentiary sent to the Special Prosecutor for Juvenile Offenders, dated August 22, 1996, is that the 11 juveniles mentioned therein were not sent to that penal institution by a juvenile court judge, but rather by the fifth criminal court. The names of the juveniles in question are: 1) Miguel Angel Herrera; 2) José Antonio Hernández; 3) Angeles de Herrera Umanzor; 4) Eugenio Joaquín Argeñal; 5) Luis Alonso Cruz Padilla; 6) Germán Alexander Bonilla; 7) José Fortillo Sánchez; 8) Melvin Jesús Soto Rodríguez; 9) Angel Edemir Hernández; 10) José Antonio Hernández, and 11) Miguel Angel Herrera.

[FN62] The minors being held in the San Pedro Sula Prison as of August 6 and 13, 1996, were as follows: 1) Arnoldo Edgardo Corea, age 16, by order of the Choloma magistrate since August 23, 1995; 2) Dennis Adonay Pérez Licon, age 17, incarcerated in the prison on January 25, 1996, by order of the Choloma magistrate; 3) Luis Alejandro Hernández, age 17, incarcerated by order of the first court of first instance of San Pedro Sula on March 26, 1996; 4) Dennis Omar Hernández, age 17, confined since April 18, 1996, by order of the San Pedro Sula court of first instance; 5) Olvin Nahum Turcios Mejía, 16, incarcerated since May 18, 1996, by order of the Choloma magistrate; 6) Santiago Cruz Ramírez, 16, held since July 3, 1996 by order of the first court of first instance of San Pedro Sula. 7) Edwin Alexander Ramos, 17, jailed since July 12, 1996 by order of the third court of first instance of San Pedro Sula; 8) José Aníbal Hernández Ramos, 16, incarcerated by order of the third court of first instance of San Pedro Sula since July 22, 1996; 9) Osman Alexis Erazo Zelaya, 17, incarcerated on July 26, 1996, by order of the first court of first instance of San Pedro Sula; 10) Jonathan Danilo Trinidad Ramos, 16, incarcerated since August 1, 1996, by order of the first court of first instance of San Pedro Sula; and 11) Ivis Fernando Cárcamo, 17, incarcerated since August 7, 1996, by order of the third court of first instance of San Pedro Sula.

[FN63] These minors were: 1) Marco Antonio Cruz, confined since April 12, 1995, by order of the first court of first instance; 2) Andrés Portillo Flores, incarcerated since May 15, 1995, by order of the first court of first instance; 3) Jorge Alberto Meléndez, incarcerated since January 6, 1995, by order of the third court of first instance; 4) Arnold Corea, incarcerated since August 23, 1995, by order of the first court of first instance of Choloma; 5) Dorian Baide, incarcerated since September 28, 1995, by order of the first court of Villanueva; 6) Javier Pineda García, incarcerated since August 1, 1995, by order of the second court of first instance; 7) José Danilo Arriaga, incarcerated since January 25, 1996, by order of the third court of first instance; 8) Ramón Enrique Colón, incarcerated since March 19, 1996, by order of the first court of first instance; 9) Daniel Humberto Rosales, incarcerated since March 19, 1996, by order of the first court of first instance; 10) Samuel Antonio Flores, incarcerated since March 28, 1996, by order of the third court of first instance; 11) José David Rodríguez, incarcerated since March 30, 1996, by order of the first court of first instance; 12) Omar Angel Salazar, incarcerated since June 8, 1996, by order of the third court of first instance; 13) Denis Cruz, incarcerated since July 3, 1996, by order of the first court of first instance; 14) Jorge Enrique Ayala, incarcerated since September 5, 1996, by order of the third court of first instance; 15) Francisco Alfredo Reyes,

incarcerated since September 12, 1996, by order of the first court of first instance; and 16) Wilmer Alexis Sánchez.

[FN64] The juveniles being held at the Tela facility as of August 16, 1996, were: 1) Olvín Javier Argueta Mejía, 16, incarcerated on July 18, 1996, by order of the Tela district court; 2) Delmy Arely Escalante, confined by order of the Tela district court of first instance, and 3) Armando Abraham Mortes Castro, confined by order of the criminal magistrates court.

[FN65] The minors were: 1) Saúl Alberto Meléndez, 16, confined since April 25, 1994, in other words for more than two years, by order of the La Ceiba magistrates court; 2) José Jeremías Pascual Murillo, age 17, confined since April 2, 1996, by order of the La Ceiba magistrates court; 3) Carlos Orlando Rubí Martínez, age 16, confined since May 1996 by order of the La Ceiba magistrates court; and 4) Héctor Virgilio Solís, age 17, confined since August 1996 by order of the La Ceiba court of first instance.

[FN66] The minors at the Santa Bárbara Prison were: 1) Ramón David Mercado Zúñiga, sent to the prison by order of the first court of first instance; 2) José Nelson Castellanos López, sent by order of the second court of first instance; 3) Rigoberto González, confined by order of the second court of first instance, and 4) Héctor Manuel Mejía, confined by order of the third court of first instance.

[FN67] The names of the minors were: 1) Julio César Carbajal, confined in the Gracias prison by order of the magistrate of Talgua, Lempira; 2) José Ovidio Cardoza, sent to the Gracias prison by order of the Lempira criminal magistrate; 3) Julio Gutiérrez Rosales, sent to the Gracias prison by order of the criminal magistrate of Gracias, Lempira; and 4) José Damián Sánchez, held in the prison of Gracias, Lempira, by order of the magistrates court of Iguala, Lempira.

[FN68] The minors were: 1) Santos Rufino Ordoñez (17), detained on March 21, 1996, and sent to the Danlí Prison by the Danlí second court of first instance, and 2) Carlos Guillermo Vindel (17), incarcerated on May 7 by order of the second magistrate of El Paraíso.

[FN69] The minors were: 1) Oscar Ernesto Paz Urrutia (who declared his age to be 16), incarcerated by order of Ricardo Rodríguez, first district court of first instance of Danlí; 2) Elvin Antonio Pérez (who declared his age to be 17), incarcerated on March 21 by order of the first district court of first instance of Danlí; 3) Pedro Fabián Palma (17), held since August 14, 1995, by order of the Danlí criminal magistrates court; 4) Isidro Dagoberto Reyes Ordóñez (16), incarcerated on January 3, 1996, by order of the criminal magistrates court, and 5) Ceferino Rivas Trejo (17), incarcerated on February 27, 1996, by order of the Teupacenti magistrates court.

[FN70] The minors detained in the Trujillo facility were: 1) Noel Santiago Escoto, 16, incarcerated on June 12, 1996, by order of the Saba magistrates court; 2) Carlos Humberto Chinchilla Ayala, 17, incarcerated on October 14, 1996, by order of the Saba magistrates court; and 3) Juan Pastor Figueroa, 17, incarcerated on August 9, 1996, by order of the Tocoa magistrates court.

103. Based on the foregoing, the Commission considers as proven the fact that the minors whose names appear in Annex 1 to this report had not been sentenced to adult penal institutions by juvenile courts, which is a violation of Article 5(5) of the Convention.

B. Violation of the right to personal liberty

104. The petitioners allege that many of the minors have been incarcerated in adult penal institutions for acts that were not criminalized in penal law, such as vagrancy or because they were orphans, or because the courts had no better place to send them.

1. Legal framework

105. Under Article 7 of the American Convention, States parties thereto have the obligation to guarantee the right to personal liberty and security of all persons subject to their jurisdiction. Paragraph 2 of that article states that "No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto." Paragraph 3 adds that "No one shall be subject to arbitrary arrest or imprisonment."

106. In the Gangaram Panday case, the Inter-American Court of Human Rights interpreted Article 7 of the Convention, pointing out that under paragraphs 2 and 3 thereof, no one may be arrested or detained unlawfully. In other words, no one may be deprived of his freedom except for the reasons and under the conditions established by the Constitution of the State or by laws established pursuant thereto (material aspect) and in accordance with the procedures therein stipulated (formal aspect). The norm provided for in paragraph 3 of Article 7 is that no one shall be detained arbitrarily, in other words, for reasons incompatible with the respect for the individual's basic rights, "because, among other things, they are unreasonable, unforeseeable or lacking in proportionality." [FN71]

[FN71] See Inter-American Court of Human Rights, Gangaram Panday Case, Judgment of January 21, 1994, Series C N° 16 (1994), paragraphs 45-51.

107. Therefore, to examine the situation of the minors incarcerated with adults in Honduras in the light of Article 7 of the Convention, one has to look at domestic legislation.

108. Article 84 of the Honduran Constitution provides that "No one shall be arrested or detained without a written warrant from a competent authority, issued with the proper legal formalities and for a reason previously established by law". Article 120 of the Constitution provides that "Minors, the physically or mentally handicapped, those whose conduct is not conventional, orphans and abandoned children shall be subject to a special law providing for rehabilitation, supervision and protection, as the case may be." "Abandonment" is defined in Article 141 of the Child and Adolescent Code and includes in subparagraph (b), among others, children who were abandoned at birth or later by their families and those who engage in begging or "vagrancy".

109. The Commission considers that the practice of incarcerating a minor, not because he committed a criminalized offense but simply because he was abandoned by society or was at risk, or is an orphan or a vagrant, poses a grave threat to Honduran children. The State cannot deprive of their freedom children who have committed no crime, without incurring international responsibility for the violation of their right to personal liberty (Article 7 of the Convention).

110. Depriving a minor of his liberty unlawfully, even if it be for a criminalized offense, is a serious violation of human rights. The State cannot argue the need to protect the child as grounds for depriving him of his liberty or of any other rights inherent in his person. Minors cannot be punished because they are at risk, that is to say, that because they need to work to earn a living, or because they have no home and thus have to live on the streets. Far from punishing minors for their supposed vagrancy, the State has a duty to prevent and rehabilitate and an obligation to provide them with adequate means for growth and self-fulfillment. In this connection, Article 39 of the Convention on the Rights of the Child states that:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment ... Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

111. Principles 1.1 to 1.3 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice -hereinafter the "Beijing Rules"--provide that:[FN72] "Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family" (Principle 1.1); "Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible" (Principle 1.2), and "Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources ... for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law." (Principle 1.3).[FN73]

[FN72] The Beijing Rules were (unanimously) adopted by the United Nations General Assembly, in its resolution 40/33 of November 29, 1985.

[FN73] The Commentary that appears in the Beijing Rules in connection with Principles 1.1 to 1.6 states that:

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity for intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requirements designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency.

112. The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)[FN74] provide that States should "avoid criminalizing and penalizing a child for behavior that does not cause serious damage to the development of the child or harm to others."

[FN74] Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990.

113. There is a clear tendency in international human rights law to afford greater protection to minors than to adults and to limit the role of *ius puniendi*. This is why States are required to afford them greater guarantees in the event of their detention, which should only be an exceptional measure.

114. The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty[FN75] specifically reinforce the idea that minors shall be deprived of their liberty only in exceptional cases. Rule 1 states that: "Imprisonment should be used as a last resort."

[FN75] Adopted by General Assembly resolution 45/113 of 14 December 1990.

115. Article 37 of the Convention on the Rights of the Child also provides that "the arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort."

116. These and other bodies of international law provide clear standards for the design of social policy and the ancillary role that penal law policy plays in regard to minors: first, the State may not use its *ius puniendi* to obviate or disregard children's social problems; second, the State must keep intervention under criminal law at a minimum. Punishment must be a last resort used by the State to deal with only the most serious criminal acts. Thus, the State's *ius puniendi* should not be used in cases that are not serious or where other methods less onerous to the child's fundamental rights could be used.

117. Generally speaking, international human rights law favors reserving those penalties that most severely restrict a minor's fundamental rights for only the severest of crimes. Hence, even in the case of criminalized offenses, laws protecting the child must advocate some form of punishment other than imprisonment or deprivation of liberty.

118. The 1995 study by Dr. Leo Valladares, Human Rights Commissioner, concludes that the reasons for the incarceration of the 84 juveniles in the Jalteva Prison included the following: 50 for vagrancy, 1 for protection and 1 for being an orphan.[FN76]

[FN76] See, "What's happening to the children?", by Jorge Valladares, Executive Director of the Center for Human Rights Research and Promotion (CIPRODEH).

119. The information concerning the 50 cases of vagrancy and the one case of an orphan being incarcerated was confirmed by the Executive Director of the Center for Human Rights Research and Promotion (CIPRODEH), who stated that "Vagrancy is a crime in Honduras, and the penalty

is indefinite imprisonment. Being orphaned, a derelict, or unconventional: these are crimes in Honduras." [FN77]

[FN77] Jorge Valladares. "What's happening to the children?" In *Contacto con tus Derechos*, June 1, 1995.

120. The Commission, however, considers that in the present case, it has not been proved that the minors referred to by the parties were detained for motives of vagrancy, protection, abandonment or because they are orphans. For this reason, the Commission concludes, in this particular case, that the State's violation of article 7(2) of the American Convention has not been proved.

121. Article 7(6) of the American Convention states that: "Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful." In the case in question, the petitioners have shown that on numerous occasions, and before a number of Honduran courts, they filed petitions seeking writs of habeas corpus to secure the release of the juveniles incarcerated in adult prisons or at least to get them transferred immediately to special juvenile facilities. A table listing the petitions filed is attached to this report as Annex I.

122. As the petitioners state, and the State does not contest, the applications in question were not decided with due promptness. The Commission has received information that the only application seeking a writ of habeas corpus that the court did fully process was the one filed on January 19, 1996, by Rolando Quiñónez, representing Casa Alianza. This petition was filed with the San Pedro Sula Court of Appeals on behalf of four juvenile offenders incarcerated in the San Pedro Sula Prison by order of juvenile court judge Elizabeth Gatica Mitchell. Inquiries conducted by the examining judge found that the four juveniles were being held unlawfully. On February 14, 1996, the San Pedro Sula Court of Appeals granted a writ of amparo on behalf of the four juveniles, on the grounds that they were being held illegally since the Supreme Court ruling that had authorized judges to send juvenile offenders to the adult facilities had been nullified effective January 1, 1996. On February 21 of that year, the Court of Appeals, in compliance with Article 32 of the Amparo Law, sent the case to the Supreme Court.

123. Under Article 33 of the Amparo Law [FN78], the Supreme Court is required to rule on the case within six days of receiving the record of the court proceedings and amend, confirm or revoke the appellate court decision. It was not until June 26, 1997 that the Supreme Court of Honduras revoked the appellate court ruling of February 14, 1996, and nullified the writ of amparo granted by the San Pedro Sula Court of Appeals on behalf of the four juvenile offenders incarcerated in the San Pedro Sula Prison. In short, the only final judgment handed down on any of the many applications filed seeking writs of habeas corpus came one year and four months after the deadline established in the Amparo Law.

[FN78] Amparo Law, April 15, 1936.

124. The Commission, therefore, concludes that the State has violated the right to personal liberty (Article 7(6) of the Convention), in keeping with the general principle contained in Article 1(1) thereof, which establishes Honduras' obligation to ensure the free and full exercise of the rights recognized in the Convention to all persons subject to its jurisdiction, without distinction of any kind.

C. Violation of the right to humane treatment

125. In the Commission's view, Article 5(5), taken in combination with Article 19 of the Convention, make clear the State's duty to house detained minors in facilities separate from those housing adults. It is obvious that the obligation that follows from Article 19, namely, to grant a child special protection, cannot be interpreted solely as requiring the creation of juvenile courts; instead, "the protection required by his status as a minor" also means that minors shall be housed separately from adults, in other words, in special juvenile facilities.

126. Under Article 5(6) of the Convention, "Punishment consisting of deprivation of liberty shall have as an essential aim the reform and social rehabilitation of prisoners". The Commission believes that, in the case of children, this aim is absolutely impossible to achieve in penal institutions in which children are forced to live alongside adult criminals.

127. Article 5(1) of the Convention stipulates that "Every person has the right to have his physical, mental, and moral integrity respected." Subparagraph 2 provides that "No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

128. In the instant case, the petitioners allege that some of the boys and girls incarcerated in adult penal institutions have been abused and beaten by the older inmates in those institutions.

129. The petitioners have stated that the imprisoned children live in fear of the adult inmates, "who force them to take drugs and sexually abuse them." They are also incarcerated in subhuman conditions, in an overcrowded environment where promiscuity is rampant. Many are forced to sleep on the floor, since the penal institutions do not have beds. They are not given adequate medical attention and some have infectious and contagious diseases.

130. The Commission considers that the cohabitation of juvenile and adult inmates is a violation of the human dignity of these minors and has led to abuses of the juveniles' personal integrity. The physical superiority of the adult inmates enables them to force themselves upon the juveniles and abuse them. The evidence of this include the reports presented by the petitioners, newspaper articles reporting these facts[FN79] and the statements of the juveniles themselves[FN80]. The actions or omissions of prison, police and judicial officials in this regard are, in the Commission's view, directly imputable to the State.

[FN79] See, for example, "Mothers announce that their children are being raped in the Central Penitentiary", *El Tiempo*, April 12, 1995, reporting the sexual abuse of minors by the adult prisoners; "Confirmation of the sexual abuse of minors", an article which reports that cases of sexual abuse of minors in the Central Penitentiary were confirmed by a commission that visited the institution. The members of the commission were Blanca Valladares, Supreme Court justice, Sonia Marlina Dubón, human rights prosecutor with the Office of the Attorney General, and Linda Rivera, National Director of the Public Defender's Office. Justice Valladares stated that "Unfortunately, one boy was raped three months ago and there have been many other cases in the past." She went on to say that "the 24 juveniles have to be separated from the adults and taken to the facilities that were announced in Leparterique, Francisco Morazán and Cucuyagua, Copán. *La Prensa*, Honduras, April 20, 1995: "Prosecutors confirm rape of a minor at the Penitentiary". *El Heraldo*, April 20, 1995, p. 16. "Minors at the San Pedro Sula Prison will be moved to Jalteva", an article that cites juvenile court judge Elizabeth Gatica Mitchell: "Gatica says she has information of adult prisoners who have attempted to rape the juveniles or who supply them with marijuana." "The new cell that Huse ordered built for the juveniles is located in the southern area of the local facility, very close to the kitchen and a sewing workshop where adult prisoners are free to move about", *El Periódico*, May 19, 1995, p. 19. "A judge affirms: They are raping juveniles at the San Pedro Sula Prison", an article that reports that "Yesterday, juvenile court judge Elizabeth Gatica Mitchell ordered the removal of nine juveniles under the age of 15 from the San Pedro Sula Prison because of overcrowding and promiscuity in their current surroundings..." The article goes on to say that the judge found that the older inmates had raped some of the juveniles and forced them to take drugs. "Judge Gatica Mitchell also visited cell No. 10, which currently houses 30 juveniles over the age of 16 but under the age of 18, who share the cell with adult inmates." *Tiempo*, Friday, May 19, 1995, p. 51. See also *Tiempo*, Wednesday, April 23, 1997.

[FN80] Statement by the juvenile Daniel Varela, given on January 26, 1995, at the Rehabilitation Center in the city of Tegucigalpa. Statement by Francisco Jaco, in a hearing before the Inter-American Commission on Human Rights, October 11, 1996.

131. The State presented a note from the National Welfare Board, dated May 17, 1995, stating that the juveniles in the Central Penitentiary are given "excellent care". In the Commission's view, this information is contradicted by the information reported in the newspaper articles mentioned earlier (see note above...) and by the Newsletter of the Office of the Human Rights Commission, which reported that when cell No. 24 was visited, "the walls were virtually falling apart; the bunks went almost as far as the ceiling and had no mattresses; only a few bricks were left on the floor. All this was indicative of the overcrowded conditions in which most Honduran prisoners live..." The newsletter also reported that "being housed with adults, they become the victim of multiple abuses."

132. In one of the documents presented by the State, the National Social Welfare Board stated that "the investigation by the Central Penitentiary indicated that the allegations of rape by adults are not true." [FN81] This claim is refuted by the statements made to the press by Supreme Court Justice Blanca Valladares who, upon leaving the facility, said that they had been previously informed that minors imprisoned there for various crimes were being sexually abused.

"Valladares said that, unfortunately, yesterday they confirmed that one juvenile imprisoned in the country's main penal institution was raped by another inmate" and "they had therefore decided to remove all juveniles from cell No. 24, which is where prisoners who have supposedly been rehabilitated at the CP are housed (emphasis added). Justice Valladares also said that: "At the present time, juveniles who have committed serious crimes are in cell No. 24, which also houses another type of individual, those who are considered to have achieved some measure of rehabilitation and who are cast in the role of parents to the children ..."[FN82]

[FN81] Note from the National Social Welfare Board, dated June 1, 1995, addressed to Dr. Mauricio Aguilar Robles, Deputy Director of International Organizations of the Ministry of Foreign Affairs, explaining the situation of the incarcerated juveniles.

[FN82] "Prosecutors confirm the rape of a minor", El Herald, April 20, 1995, p. 16. Justice Valladares also said that "despite the Supreme Court ruling in banc that juveniles not be held in the Penitentiary, it has been difficult to ensure compliance since there are not enough rehabilitation centers to accommodate minors under the age of 18 implicated in crimes against society."

133. In the Commission's view, these statements confirm the fact that even after it was discovered that a juvenile had been raped and with the knowledge that juveniles were being raped in the Central Penitentiary, State officials decided to transfer them to cell N° 24, also occupied by adults, where they would continue to face similar risks.

134. The Inter-American Court of Human Rights has found that "Pursuant to Article 5(2) of the Convention, every person deprived of his or her liberty has the right to be detained in conditions that are respectful of her or his personal dignity and that the State must guarantee to that person the right to life and to humane treatment. Consequently, since the State is the institution responsible for detention establishments, it is the guarantor of these rights of prisoners.[FN83] (Emphasis added).

[FN83] Inter-American Court of Human Rights, Neira Alegría et al., note 52 above, paragraph 60.

135. In other words, the State, by depriving a person of his liberty, places itself in the unique position of guarantor of his right to life and to humane treatment. When it detains an individual, the State introduces that individual into a "total institution"--such as a prison--where the various aspects of his life are subject to an established regimen; where the prisoner is removed from his natural and social milieu; where the established regimen is one of absolute control, a loss of privacy, limitation of living space and, above all, a radical decline in the individual's means of defending himself. All this means that the act of imprisonment carries with it a specific and material commitment to protect the prisoner's human dignity so long as that individual is in the custody of the State, which includes protecting him from possible circumstances that could imperil his life, health and personal integrity, among other rights.

136. The obligation that follows from being the guarantor of these rights means that agents of the State must not only refrain from engaging in acts that could harm the life and physical integrity of the prisoner, but must also endeavor, by all means at their disposal, to ensure that the prisoner is maintained in such a way that he continues to enjoy his fundamental rights, especially his right to life and to humane treatment. Thus, the State has a specific obligation to protect prisoners from attacks by third parties, including other inmates.

137. When the State fails to provide this protection to its prisoners, especially those who, by their particular circumstances, are defenseless or at a disadvantage, as in the case of juveniles, it violates Article 5 of the Convention and incurs international responsibility. This was the Court's interpretation of Article 5 of the Convention, where it states that this principle refers, in essence, to the rule that no one "should be subjected to torture or to cruel, inhuman or degrading punishment or treatment, and that all persons deprived of their liberty must be treated with respect for the inherent dignity of the human person." [FN84]

[FN84] *Idem*, para. 86.

138. At the international level, the United Nations Convention on the Rights of the Child provides that States Parties' shall, *inter alia*, develop institutions and services for the care of children (Article 18). States Parties are also to take "all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for the identification, reporting, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement." (Article 19).

139. In this connection, Article 37 of the same Convention provides that "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the physical, social, cultural, moral and psychological needs of persons of his or her age..."

140. In the Commission's view, the State's duty to protect the personal integrity of any person deprived of liberty includes the obligation to take all measures necessary to prevent attacks or assaults against a prisoner by agents of the State or private individuals. These obligations become all the more compelling when juveniles are involved. In such cases, the State must not only endeavor to protect their personal integrity, but also to promote the full development of their personality and their reintegration into society. [FN85]

[FN85] Article 40 of the Convention on the Rights of the Child makes express reference to the "desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

141. In the instant case, the State has violated the special right of minors to have their physical, mental and moral integrity respected, because it has subjected them to inhuman and degrading treatment and has failed to take the steps necessary to prevent adult inmates from physically or sexually assaulting or abusing the juvenile inmates. The Commission can, therefore, conclude that the State is responsible for having violated the right to humane treatment (Article 5(1) and 5(2) of the Convention), in keeping with the general principle contained in Article 1(1) thereof, which establishes Honduras' obligation to ensure the free and full exercise of the rights recognized in the Convention to all persons subject to its jurisdiction. It has also violated international obligations freely undertaken in relation to the special protection that it must afford to children, all of which are echoed in its own Constitution and in the Child and Adolescent Code of Honduras.

D. Right to a fair trial and judicial protection

1. Violation of Articles 8(1) and 25(1) of the American Convention

142. Article 8(1) of the American Convention on Human Rights provides that "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law..."

143. Article 25(1) of the Convention provides that "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the Constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

144. In other words, taken together, articles 8 and 25 of the Convention guarantee every person's right to recourse to a competent, independent and impartial court, to have his case heard within a reasonable time and with the necessary judicial guarantees, and to have the competent judicial authority issue a ruling determining what his rights are.

145. When the admissibility requirements were examined, there was some preliminary discussion of the efficacy of the domestic remedies. Our conclusion was that this petition was admissible because there had been an unwarranted delay in rendering a judgment on the applications for writs of habeas corpus filed on behalf of the juveniles incarcerated in adult penal institutions (Article 46(2)(c) of the Convention). When we examined the right to personal liberty (Article 7(6) of the American Convention), we also took note of the delay in processing the writs of habeas corpus. We now turn again to this matter because the State's observance of the obligations established in Articles 8 and 25 of the Convention is very relevant to the applicability of the exceptions provided for in Article 46(2) of the Convention and, in the instant case, to the right guaranteed under article 7(6) of the Convention. In the instant case, we conclude, as a

matter of merit, that the State of Honduras has failed to fulfill its obligation to provide the minors with a simple and prompt recourse before competent judges or tribunals.

146. The Commission therefore concludes that, in the instant case, the juveniles held in Honduran prisons have not had a simple and prompt recourse that protects them against the judges' practice of incarcerating them in adult penal institutions and, consequently, against the harassment and assaults of older inmates. This is a violation of articles 8(1) and 25 of the American Convention on Human Rights, all in keeping with the general principle contained in Article 1(1) thereof, which requires States to ensure the free and full exercise of the rights recognized in the Convention.

2. Violation of Article 8(e) of the American Convention (the right to a public defender)

147. Article 8, subparagraphs (d) and (e) of the Convention establish the following minimum judicial guarantees regarding the right of defense: (d) "The right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel" and (e) "the inalienable right to be assisted by counsel provided by the State, whether paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law".

148. At the international level, Article 37(d) of the United Nations Convention on the Rights of the Child stipulates that "Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance ...". Under Article 40 of that Convention, the child has the right to "have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law and in the presence of legal or other appropriate assistance..."

149. Article 7(1) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) stipulates "the right to counsel...". Article 15(1) states the following: "Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country."

150. In keeping with these international obligations, Article 182 of the Child and Adolescent Code of Honduras provides that "As in all proceedings, proceedings involving a juvenile shall observe the procedural guarantees upheld in the Constitution and in the laws, especially those that refer to (...) the right to immediate professional legal counsel and aid (...)" Under Article 21 of the Juvenile Jurisdiction Law, the State is required to provide legal representation to detained juveniles: "Representation of minors, for their defense and protection, shall be the responsibility of special prosecutors appointed by the Supreme Court."

151. The petitioners allege that many of the children incarcerated in adult penal institutions have not had a court-appointed lawyer to represent them. The Commission considers this fact was proven in connection with a number of the juveniles, based on the following documents: a communication dated July 3, 1996, from the National Human Rights Commissioner to the National Director of the Public Defender's Office, which lists 11 juveniles incarcerated at the Central Penitentiary who "do not have a public defender." [FN86] The same conclusion can be

drawn from the letter of August 22, 1996, from the Secretary General of the Central Penitentiary to the Special Prosecutor for Juveniles.

[FN86] The list of minors without public defenders is as follows: 1) Wilmer Francisco Barahona Reconco, 17, remanded by the first criminal court of first instance; 2) Julio César Pacheco Escobar, 17, remanded by the first criminal court of first instance; 3) Julio Francisco, 16, remanded by order of the first criminal court; 4) José Neptalí Amador, 16, remanded by the second criminal magistrates court; and 5) Felipe Antonio Hernández Ponce, 15, remanded by order of the Guaymaca magistrates court.

152. Given the foregoing, the Commission concludes that, in accordance with Article 8(2)(e) of the American Convention, in all proceedings and from the time he is charged the Honduran State has the legal duty to provide a juvenile with a court-appointed attorney if he has not engaged private representation. This is echoed in the numerous international rules to which we have referred above and in Honduran law itself, which incorporates and confirms this legal obligation in its domestic legislation. The Commission therefore finds that, by not providing those juveniles with a court-appointed attorney, the State has violated Article 8(2)(e) of the Convention and the international obligations that Honduras freely undertook to guarantee the inviolability of the right of self-defense, all in keeping with the general principle contained in Article 1(1) of the Convention, which establishes the State's duty to ensure the enjoyment of the rights recognized in the Convention.

E. Alleged threats against officials of the Asociación Casa Alianza of Honduras

153. On October 15, 1996, the petitioners reported that the Asociación Casa Alianza of Honduras, one of the petitioners in this case, had been the target of intimidation and harassment. According to the petitioners, high-ranking officials of the Honduran Government had threatened to cancel the Association's legal status and to deport Bruce Harris and other officials of Casa Alianza, whom it labeled as "dangerous aliens" intent upon besmirching Honduras. The petitioners alleged that the President of the Honduran Bar Association threatened to revoke the membership of Casa Alianza's legal counsel, Gustavo Escoto. Other acts of intimidation included several articles that appeared in the press, one of which stated that "the attitude of some Hondurans who travel abroad to tarnish Honduras' image is a disgrace." [FN87]

[FN87] See El Heraldo: "Casa Alianza seeks publicity", Sunday, October 6, 1996; La Tribuna: "Casa Alianza's legal status will be revoked if it keeps up its complaints", Thursday, October 10, 1996; La Prensa: "Private development organizations intent on slandering Honduras", Friday, October 11, 1996, p. 4A; El Nuevo Día: "Slandering Honduras is no way to resolve the juvenile problem", Saturday, October 12, 1996, p. 14; La Prensa: "Casa Alianza acts recklessly", Monday, October 14, 1996, p. 20A; El Heraldo, Thursday October 10, 1996: "In the opinion of Sosa Coella, the Director of Casa Alianza should be deported for slander", and La Prensa: "Casa Alianza violates Honduran laws", Saturday, October 12, 1996, p. 36A.

154. With regard to these allegations, it is important to note here that the Inter-American Court of Human Rights has found that the "insinuation that persons who, for any reason, have recourse to the inter-American system for protection of human rights are disloyal to their country is unacceptable and cannot constitute a basis for any penalty or negative consequence. Human rights are higher values that 'are not derived from the fact that (an individual) is a national of a certain state, but are based upon attributes of human personality'(American Declaration of the Rights and Duties of Man, Whereas clauses, and American Convention, Preamble)."[FN88]

[FN88] Velásquez Rodríguez Case, note 32 above, paragraph 144.

155. The Commission therefore considers that any act of intimidation or threat against the petitioners must be duly investigated and punished as a violation of the human rights of the persons who were the targets of those tactics.

VII. LEGAL BASIS FOR THE OBLIGATION

156. In the instant case, it has been shown that Honduras has failed to comply with Article 1(1), which establishes the State's obligation to respect the rights and freedoms established therein and to ensure the free and full exercise of those rights and freedoms to all persons subject to its jurisdiction.

157. Interpreting this article, the Inter-American Court of Human Rights has ruled that:

This obligation implies the duty of the States Parties to organize the Governmental apparatus and, in general, all the structures through which Government is exercised, so that they are all capable of juridically ensuring the free and full enjoyment of human rights.[FN89]

[FN89] Velásquez Rodríguez case, note 32 above, para. 166; Godínez Cruz case, note 32 above, para.175.

158. The Commission cannot disregard the State's considerable effort to improve its laws relating to the juvenile justice system and thus to make them more compatible with its international obligations in the field of human rights. Evidence of this effort is the enactment of the Child and Adolescent Code (Decree N° 73-96), which entered into force on October 5, 1996, and represents a significant step forward for the protection of children's rights in Honduras. The Commission also recognizes the efforts made to equip and modernize special juvenile facilities and to transfer juveniles to them. Another positive measure was the revocation of the Supreme Court ruling in banc, effective January 1, 1996.

159. By the same token, however, the Commission cannot ignore the fact that for as long as the Supreme Court ruling in banc was in effect and even after it was revoked, the State, through

its agents, among them the courts, permitted the incarceration of juveniles in penal institutions where they came into contact with adult inmates who abused them.

160. While the issue in this case is the international responsibility of the State, through its agents, the Commission wishes to point out that it is a long-standing rule that any individual--be he a public official or private citizen--has the duty to respect the rules of international law, especially the United Nations Charter, the international covenants on human rights and other conventions on that subject, and therefore to respect and protect fundamental rights and freedoms. While the purpose of the covenants is to protect the rights and freedoms of individuals from States, those individuals must also cooperate if the covenants are to be enforced. In other words, an individual has duties vis-a-vis other individuals and vis-a-vis the community of which he is a member and the obligation to advocate respect for and observance of established rights. This obligation is based on Articles 29(1) and 30 of the Universal Declaration, on paragraph 8 of its preamble and, at the regional level, on Articles 29(a) and 32(1) of the American Convention. In the case of minors, that obligation is amplified in Article 19 of the Convention, which requires that special protection be afforded where minors are involved. The civil servant as an agent of the State, and the individual as a member of society are required to provide such protection. This means that a judge or public official cannot remain indifferent to the lack of juvenile facilities and simply incarcerate juveniles in adult penal institutions. On the contrary, that judge or public official has an obligation to do everything within his power to prevent a juvenile from being incarcerated in an adult facility.

161. Given the duties that international human rights law makes incumbent upon every human being--public official or otherwise--,the incarceration of juveniles alongside adults could not be ordered without violating the American Convention. To be in compliance with the Convention, judges and public officials can invoke their duty under Article 2 of the Convention, and on that basis adopt "other measures" with a view to ensuring the free and full exercise of the juvenile's rights (Article 1 of the Convention).

162. The failure to comply with these duties and the resulting violation of the American Convention by agents of the State, incur the State's obligations under the Convention. This is confirmed by the jurisprudence of the Inter-American Court of Human Rights, which found that "under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law" since "in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State." [FN90]

[FN90] Velásquez Rodríguez Case. Note 32 above, paras. 170 and 172.

163. In the instant case, based on the evidence compiled the Commission can conclude that while specific orders were given to end the practice of holding juveniles in adult penal institutions, those orders were either ignored or flagrantly disobeyed by public officials, especially those in the judicial branch of Government charged with the administration of juvenile

justice. This practice was also condoned by the highest court in the land and was clearly tolerated by the Government. The Commission has also established that the State has not punished the judges who ordered these incarcerations[FN91], with the exception of one judge from the second criminal magistrate's court of San Pedro Sula, who was removed from the bench on February 10, 1997.[FN92] The judge was removed from the bench for having sent juveniles to adult penal institutions, as a consequence of which one juvenile died.

[FN91] This, despite the fact that via Official Communication No. 1985-SCSJ-96, the Supreme Court sent out Circular No. 11, dated July 22, 1996, to all judges with jurisdiction over juveniles reminding them to ensure "compliance with the constitutional provision Article 122(2) of which stipulates that: "No juvenile under the age of 18 shall be confined in a jail or prison". This circular also contained the Supreme Court ruling in banc, operative paragraph two of which states "that failure to comply with this ruling in banc shall constitute sufficient cause for this Supreme Court, upon learning of the matter [failure to comply with paragraph 2 of Article 122 of the Constitution], to take the appropriate legal actions, in strict application of the judicial statute."

[FN92] The Commission has been informed that a petition of cassation has been filed challenging the ruling of the San Pedro Sula Court of Appeals in which a violation of the Judicial Statute is alleged. According to reports, that case is with the Supreme Court for its review and decision.

164. The Inter-American Court of Human Rights has clearly stated that "The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure that the victim receives adequate compensation."[FN93]

[FN93] Velásquez Rodríguez case, note 32 above, paras. 172-174; Godínez Cruz case, note 32 above, paras. 181-184.

165. Like the duty to prevent, the duty to investigate is not a mere formality: "An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests... regardless of which agent is eventually found responsible for the violation. Moreover, where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the Government, thereby incurring the international responsibility of the State".[FN94]

[FN94] Velásquez Rodríguez Case, *idem*, paragraph 177; Godínez Cruz Case, *idem*, paragraph 188.

166. From the information in the case file, it is abundantly clear that in the instant case, the Judiciary has not ruled promptly on the applications seeking writs of habeas corpus filed on behalf of the juveniles; that it has failed to comply with the constitutional and legal provisions that protect minors and that, with the exception of one case, has not conducted any serious investigation to prosecute and punish those judges and authorities guilty of violating the human rights of juveniles. From the foregoing one can infer that the practice of incarcerating juveniles in adult penal institutions, by order of judges who do not have jurisdiction in juvenile matters, for causes not criminalized as offenses and without providing the accused juveniles with court-appointed defense counsel, has been supported and tolerated by the Government.

167. The Commission therefore concludes that the State has violated its obligation under Article 1(1) of the Convention to respect and ensure the human rights of these juveniles.

VIII. DEVELOPMENTS SUBSEQUENT TO REPORT N° 26/98

168. On April 9, 1998, the Commission sent to the Honduran State report N° 26/98, referring to the present case, pursuant to article 50(2) of the Convention, and granted it a period of two months to take the necessary steps to comply with the recommendations contained therein.

169. The Commission will now proceed to determine whether Honduras has taken the necessary measures to give effect to the recommendations in provisional report N° 26/98, which were as follows:

A. That the minors who are still being held in prison with adults should be transferred immediately to detention centers appropriate to their status as minors

170. With respect to this recommendation, the State reported that at the present time there are no prisoners younger than 18 years of age being held in prisons or penitentiaries in the country, and that the Director of Penal Establishments has issued precise instructions to all Chief Warders of Prison to comply strictly with Article 122 of the Constitution, and not to admit to those centers any prisoners younger than 18 years who have committed violations against criminal laws.

171. The State reported, moreover, that in order to ensure that this order is effectively implemented, a Supervisory Commission for Penal Establishments exists in each department of the Republic, comprised of the governor of the department, the mayor and representatives of the municipality at large, to whom the Minister of the Interior and of Justice has issued instructions to undertake periodic and unannounced visits with a view to enforcing this ruling and severely punishing any violations. In this respect, the State seeks the cooperation of the petitioners, asking that they communicate immediately with the Minister of the Interior and of Justice to report any case in which a minor under 18 years of age is being held in contravention of this order.

172. The Commission considers that the measures taken by the State in this matter represent a very positive advance with regard to the situation of minors in Honduras.

173. At the same time, the Commission urges the petitioners, as the State has requested, to inform the competent authorities of any cases where minors of less than 18 years of age are

being held in a prison or adult penitentiary, or under preventive arrest at police centers to prevent any recurrence of this practice. At the same time, the Commission wishes to point out, as it did in preliminary report N° 26/98, that long before the approval of that report by the Commission, the State had already issued specific orders to terminate this practice, which orders were circumvented or openly disobeyed by public officials, especially those within the judicial agency responsible for the administration of juvenile justice. Moreover, this practice was validated by the Supreme Court of Justice of Honduras in a ruling of June 26, 1997, to which we have referred above, i.e., after the same court had revoked the ruling in banc with effect from January 1, 1996.[FN95]

[FN95] That ruling denied the appeal for habeas corpus filed on behalf of the minors Edwin Alexander Ramos, Alexis Josué Rosales, Ileana María Mendoza, and Florinda Litzeth Banegas, who were being detained at the Penal Center of San Pedro Sula, on the grounds that the decision to detain them had been "legal".

174. Against this background, the Commission urges the State to use all means at its disposal to prevent the detention of minors under conditions not permitted by the law.

B. That the State investigate and punish those public officials responsible for ordering or condoning the practice of interning minors in adult penal institutions, and those who, in disobedience of express orders, have continued this practice

175. On this point, the State reported that fresh criminal proceedings have been initiated against certain judges who have ordered the detention of minors aged 18 years in criminal institutions subsequent to the revocation of the ruling in banc by the Supreme Court of Justice, and that on May 4, 1998, criminal proceedings were instituted against former Judge Elizabeth Gatica Mitchell for the crimes of "abuse of authority, violation of the duties of public officials and illegal detention", and that her conviction is currently being appealed before the Court of Appeals of the department of Cortés.

176. The Honduran State reports as well that fresh criminal proceedings have been instituted against attorney Vianey Cruz Recarte, former magistrate in the second criminal court of San Pedro Sula, for similar offenses and for presumed responsibility in the death of the minor Carlos Enrique Jaco, whose case was separated from the present case and is the subject of independent proceedings before the Commission.

177. On the basis of the information supplied to it, the Commission considers that the State has endeavoured to comply (but has only partially succeeded) with its second recommendation insofar as it has taken criminal action against judges who have ordered the detention of minors 18 years of age in penal centers subsequent to the revocation of the ruling in banc, but it notes that no action has been taken as yet to investigate and prosecute those judges and other public officials who ordered or condoned the detention of minors in such centers before the revocation of the ruling in banc, and to whom the State makes no reference in its response. Moreover, the Commission's recommendation cannot be satisfied merely by investigating and prosecuting those

presumably responsible, but requires as well effective punishment of those responsible for the acts or omissions investigated, which is the inescapable corollary of any effective investigation.

178. This order must be followed by exemplary punishment, as the Supreme Court itself stated to juvenile court judges in its Ruling N° 1985 SCSJ-96 and circular N° 11, of July 22 1996, where it notes that: "Failure to observe this ruling in banc shall be sufficient grounds for this High Court, once it is made aware of such a fact, (non-compliance with paragraph 2 of Article 122 of the Constitution), to take appropriate legal action in strict application of its judicial duties". Unfortunately, as noted in report N° 26/98, the Court itself subsequently validated this practice, in its ruling of June 26, 1997.

179. Against this background, the Commission reiterates to the State the recommendation contained in section (b) of its Report N° 26/98.

C. That an investigation be undertaken, and that, where responsibility is determined, the persons found responsible for ordering or condoning acts of physical aggression against minors during their time in prison be tried and punished

180. On the basis of the considerations set out with respect to the preceding recommendation, the Commission again repeats the recommendation contained in letter c) of Report N° 26/98.

D. That there be compensation for the violations, including payment of indemnity to the minors who have been detained with adults in the penal institutions of Honduras

181. The Commission reiterates with respect to this point the recommendation contained in letter d) of Report N° 26/98, in light of the fact that the good intentions expressed by the State in its response with respect to paying indemnities have still not been put into effect.

E. Additional observations of the State

182. The State maintains that the petitioners deliberately created confusion as to what is the age of majority in Honduras (21 years) and the age below which a person may not be held criminally responsible (minors of less than 18 years); i.e., that in many cases the persons who, according to the petitioners, were "minors" were in fact 18 years of age or older, and could thus properly be detained in prisons.

183. On this point, the Commission notes that in the list of minors who have been detained with adults in the prisons of Honduras (Annex I to Report N° 26/98), the Commission included only those whom it considered to be under the age of 18 years, based on the evidence submitted by the parties, undisputed allegations, and certain presumptions it made in favor of the minor in cases where forensic reports indicated a probable age of between 17 and 19 years, but the individuals concerned were placed arbitrarily above the age of criminal responsibility (18 years). This may be readily verified by consulting the corresponding column of Annex I, which lists the age of the minors.

184. As for the press clippings to which the State makes reference, the Commission, as noted in Report N° 26/98, took them into account to the extent that they demonstrate publicly known facts that do not by themselves require proof; others have value, as has been recognized by international jurisprudence, "because they reproduce the text of public statements, especially of senior officials of the Government...or of the Supreme Court of Justice of Honduras".[FN96]

[FN96] See case of Velásquez Rodríguez, note 32 above, para. 172. See also "Military and Paramilitary activities in and against Nicaragua," Merits, Judgment, I.C.J. Reports 1986, paras. 62-64.

185. Consequently, the Commission reiterates the evidentiary value which it has given to these press articles, to the extent that they can be used to draw consistent and undisputed conclusions about facts that were public and well known at the time they occurred. These clippings, furthermore, serve to corroborate the evidence submitted with the statements of testimony, and in many cases serve to compensate for the silence or evasive responses of the State which, by themselves, would have been sufficient grounds to presume the alleged facts to be true.

186. With respect to the exhaustion of domestic remedies, the Commission reiterates, as it noted in its provisional report, that the State did not bring forth in a timely manner its argument that internal jurisdictional remedies had not been exhausted, nor did it indicate concretely which remedies were still available to the petitioner. The State, moreover, did not refute the allegations concerning the ineffectiveness of the remedies sought, nor the delays in the processing of writs of habeas corpus. It has submitted no documentary evidence of any kind on these points. According to the statements received, it is apparent that only one of the applications for a writ of habeas corpus filed by the petitioners was decided by the Supreme Court, and that decision was both late and unfavorable to the four minors being held in an adult penitentiary.

187. Consequently, the Commission reiterates that in the case of the four minors referred to in that decision, internal remedies were exhausted and, in the case of the other minors, the complaint is admissible in light of the exceptions stipulated in Article 46(2)(a) and (b) of the Convention.

188. The Commission notes the observations of the State to the effect that "there are new developments that have followed from the change of Governmental administration (1998 - 2002)". While it welcomes news of positive changes, the Commission wishes to stress that the Inter-American Court of Human Rights has held that "it is a principle of international law that the State must answer for the acts of its agents performed in the course of their official duties, and for the omissions of those agents, even if they were acting outside the limits of their competence or in violation of domestic law" [FN97]. Under the American Convention, and in particular pursuant to article 1(1) thereof, it is the Honduran State that has acquired the obligation to respect and to guarantee the free and full exercise of the rights recognized in the Convention for all persons subject to its jurisdiction. That is to say, the passive subject of the obligations deriving from this provision of the Convention, which for the most part are concrete and automatic, is not the Government or any other body that exercises public power, but rather

the State itself. In effect, according to the principle of identity or continuity of the State in international law, that responsibility subsists independently of any change of Government over the course of time and, concretely, between the time of the illegal act that gave rise to the responsibility and the time that it is denounced.[FN98] Otherwise, the system of oversight created by the Convention would be weakened and would not be adequate to its object and purpose.

[FN97] Velásquez Rodríguez case, note 32 above, para. 172.

[FN98] Idem, para. 184.

189. The State claims, moreover, that the procedure for friendly settlement was not concluded, and it recognizes that it may have "failed to inform the honorable Commission to this effect". On this point, the Commission limits itself to pointing out that a process for friendly settlement requires the parties to keep it informed of the progress achieved, something that the State did not do in the case in question. Moreover, the petitioner expressly reported that no agreement had been reached. The Commission therefore reiterates its findings contained in Report 26/98 with respect to this matter.

190. Finally, the State wishes to draw attention to a reproduction error contained in report 26/98, which will be corrected by the Commission.

IX. CONCLUSIONS

191. On the basis of the foregoing, the Commission concludes that the Honduran State has taken positive steps to put an end to the practice of incarcerating juveniles in adult prisons. It notes, however, that the State has not taken the appropriate measures to comply with the recommendations contained in sections "B", "C" and "D" of Report 26/98, which was prepared and communicated to the State pursuant to Article 50 of the American Convention.

192. The Commission therefore reiterates its conclusion that the State has failed to fulfil its obligation to respect and guarantee the rights to personal integrity (Article 5), personal freedom (Article 7), due process (Article 8) and protection under the law (Article 25), which are set out in the American Convention, in violation of the rights of the juveniles incarcerated in adult prisons. By reason of those violations, the State of Honduras has also failed to fulfil its obligation to respect and guarantee the human rights and safeguards provided for in Article 1(1) of the American Convention.

193. By virtue of the foregoing considerations and conclusions, and the provisions of Articles 51(3) of the American Convention and 48 of the Regulations of the Commission, the Commission decides to reiterate, and where appropriate to re-formulate in accordance with the response of the State, the recommendations that still remain to be implemented by the State of Honduras:

X. RECOMMENDATIONS

The Commission recommends that the State of Honduras should adopt the following measures:

- A. Issue formal instructions to juvenile judges that as soon as they become aware of an order to detain a minor of less than 18 years in a prison or an adult penal center, they should take the appropriate legal action.
- B. Investigate, prosecute and punish those public officials responsible for ordering or condoning the practice of interning minors in adult penal centers, and those who, in disobedience of express orders, have continued this practice.
- C. Investigate, prosecute and punish persons who have ordered or condoned acts of physical aggression against minors during their stay in prison.
- D. Repair the damage caused by violations that have been identified, including the payment of an indemnity to the minors who have been detained with adults in the penal centers of Honduras before, during and after the revocation of the ruling in banc of the Supreme Court. The names of those minors appear in Annex I to this report.

XI. FINAL CONSIDERATIONS ON THE STATE'S REPLY

194. On January 21, 1999, before the deadline set by the Commission, Communication N° 020-DDHN was received, in which the State reported the implementation of the recommendations contained in Report N° 72/98.

195. The State of Honduras also confirmed that, at the national level, to date, no orders have been given for the detention of any minor in jails or prison establishments for adults.

196. The Commission must now decide if the State of Honduras has taken the appropriate steps to implement the recommendations contained in Report N° 72/98.

197. In the above-mentioned communication, the State made no mention of the implementation of the recommendation contained in paragraph "A" of section IX above.

198. With regard to the recommendation contained in paragraphs "B", "C" and "D" of section IX above, the State reported that the "Office of the Public Prosecutor has launched in the criminal courts the investigation of the events requested by the Honorable Inter-American Commission on Human Rights and has issued standing instructions for the implementation of measures aimed at clarifying those events and punishing those guilty of the alleged unlawful detentions and abuse of authority. As credible evidence of this, the State cites the complaint and subsequent petitions for summary proceedings brought by the Office of the Prosecutor in Francisco Morazan and the memorandum sent to regional and local offices of the Public Prosecutor to inform them of the status of the proceedings in the matter under consideration".

199. As evidence of the measures taken in connection with the above-mentioned recommendations, the State attached a communication dated January 19, 1999, from the Public

Prosecutor to the judge in the criminal court of first instance, in the context of the criminal investigation of acts of unlawful detention and abuse of authority committed against various minors. The communication contains a request for the names of the titular or alternate judges who participated in sessions Nos. 3 and 56 of January 16 and November 14, 1995, which approved and revoked, respectively, the ruling in banc that juvenile court judges should order the incarceration of juvenile offenders only in separate areas within the Central Penitentiary or departmental prisons.

200. In response to the same recommendations, the State also attached "reports by regional prosecutors on the status of proceedings brought against various minors who were alleged to have been victims of unlawful detention and of their current situation", which shed no light on whether the recommendations were acted upon.

201. The Commission attaches importance to the fact that the State has instituted criminal proceedings to "investigate the illegal detentions and abuses committed against various minors" and is of the view that this represents a step towards the implementation of the recommendation contained in paragraphs "B" and "C" of section IX above, although it does not represent the full and effective implementation of the recommendations, which require it to: "investigate, bring to trial and punish public officials responsible for ordering or condoning the practice of incarcerating minors in adult penal establishments, and those who, in disregard of express orders, have continued the practice (recommendation "B"), and to "investigate, bring to trial and punish those persons who have ordered or condoned acts of physical aggression against minors during their stay in prison "(recommendation "C").

202. With regard to the recommendation contained in paragraph "D" of section IX above, concerning the repair of the damage caused and the payment of an indemnity by way of compensation, the State reported that it was preparing a plan of work that would include a scholarship and job training program as well as monetary compensation to indemnify the minors in question for the harm which they suffered. In support of this claim, it attached communication N° DE-019-99, of January 18, 1999, from Mr. Jorge Valladares Valladares, Executive Director of the Honduran Institute of the Child and Family (IHNFA) addressed to the Director for Human Rights and Drug Trafficking Control, in the Ministry of Foreign Affairs. This communication describes the plan under development.

203. On February 23, 1999, during its 102^o session, the Commission received from the State the "Proposal submitted to the Inter-American Commission on Human Rights (IACHR) for compensation offered by the Honduran Institute of the Child and Family (INHFA) to juvenile criminal offenders who were detained in adult penal establishments." Despite having received this information past the deadline set in report N° 72/98, the Commission takes note of its content, in view of its relevance to the case under consideration:

PROPOSAL SUBMITTED TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR) FOR COMPENSATION OFFERED BY THE HONDURAN INSTITUTE OF THE CHILD AND FAMILY (INHFA) TO JUVENILE CRIMINAL OFFENDERS WHO WERE DETAINED IN ADULT PENAL ESTABLISHMENTS.

I. BACKGROUND

The Inter-American Commission on Human Rights received a formal complaint concerning the detention of 333 juveniles who had been incarcerated in adult penal establishments before, during and after the revocation of the ruling in banc handed down by the Supreme Court of Justice of Honduras in contravention of the provisions of the Constitution and other national and international rules in force in Honduras.

On the subject of the urgent situation that required the above-mentioned decision to be taken by the judicial authorities of Honduras and the opinion of the Inter-American Commission of Human Rights (IACHR) on the matter, the Honduran Institute of the Child and Family (IHNFA) has stated no opinion and has declined to do so.

II. COMPENSATORY MEASURES PROPOSED BY THE IHNFA

At the request of our local representatives abroad who are in official communication with the Inter-American Commission on Human Rights in Washington, IHNFA made a formal proposal in communication N° DE-019-99, dated January 18, 1998, along the following lines:

Formulation of a plan to provide compensation for these 333 individuals:

- (a) Investigate the current situation of each of the affected persons;
- (b) Introduce a scholarship and job training program (PBE) for juveniles under the age of 18 who fulfil the requirements for obtaining this assistance; and
- (c) Those who for any reason are unable to benefit from the educational and training support program shall be entitled to monetary compensation of a maximum of 200.00 lempiras for each day of their detention that is duly certified by the judicial authorities.

It should be made clear that the third method of compensation is the last measure to be taken in cases in which, for exceptional reasons, recourse cannot be had to the compensatory measure of education and training, which the Institute normally uses for cases of juvenile criminal offenders.

The number of beneficiaries for each category of compensatory measure shall be the object of a survey which will be carried out and its results submitted to the authorities of the Ministry of Foreign Affairs for transmittal to the Commission.

III. LIMITATIONS OF THIS PROPOSAL IN RELATION TO THE CASE BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The Honduran Institute of the Child and Family (IHNFA) wishes to advise that the proposal submitted must be viewed in the context of a compensatory measure that is comparable to the treatment which this Institute would afford to any juvenile offender under our regular programs of social rehabilitation and which are based on the following:

- (a) The proposal presented as a compensatory measure to the IACHR cannot be interpreted as the acceptance of responsibility for the acts alleged. It therefore does not indicate the express

or tacit acceptance of the acts that are at the heart of the case brought before the Commission. Rather, it is a socio-educational measure that is based on our laws governing such matters that are currently in force.

(b) These compensatory measures will depend on the results of the diagnostic study carried out in each individual case in the effort to identify each affected juvenile and to determine his current social and legal status. In this regard, the IHNFA will in its implementation of the socio-educational measures attach the greatest priority to the measure that provides for monetary compensation.

(c) The juvenile offenders referred to in the list (333 individual cases) are the target population for these measures and therefore any other case prior or subsequent to the proceeding currently opened by the Commission is not comparable with the proposal that has been put forward. The IHNFA has the authority granted to it under domestic legislation to decide how to intervene in each individual case that is brought to its attention.

(d) The statistics used by the IHNFA and the judicial authorities with jurisdiction over juveniles indicate that the number of individual cases similar to those presented to the Commission has declined in absolute terms and remittances are delivered to the offices of the IHNFA throughout the country (6 regional offices in the country). It can therefore be said that the main issue raised is not a typical one in the new system of juvenile criminal justice because of the entry into force of the Child and Juvenile Code, which indicates that the conditions that existed before have been virtually eliminated.

(e) Finally, the IHNFA as the institution charged with ensuring the full protection of children reiterates its impartiality even as it sets out its views and reaffirms its commitment to promote respect for national laws and international treaties applicable in this sphere.

204. The Commission acknowledges and values this proposal for indemnization made by the Honduran State in implementation of the recommendation contained in paragraph "D" of section IX above, which has been reflected in the information communicated and which, if implemented, would help to repair the damage caused and compensate the victims through socio-educational measures (in the case of victims who are still minors) or through monetary compensation (in the case of those who, for any reason, are unable to take advantage of the education and training program).

205. If implemented, this proposal would be a significant step towards the fulfilment of the above-mentioned recommendation, but does not constitute proof that the recommendation has been fully implemented. With respect to the minors whose names are listed in Annex I to this report, implementation of the recommendation would mean "repairing the damage caused by the violations that have been confirmed, including the payment of an indemnity by way of compensation to those minors who have been incarcerated alongside adults in penal establishments in Honduras before, during and after the revocation of the ruling in banc." The Commission notes that repair of the damage and compensation must be effected without prejudice to the fact that some of these minors may now have attained the age of majority.

206. The Commission notes, moreover, that the offer of the Honduran Institute of the Child and Family (IHNFA) does not appear to represent a special measure to repair the damage caused by the violations that have been identified in the report. Rather, the proposal was made "in the context of a compensatory measure similar to the treatment which this Institute would accord to any juvenile offender under our regular programs of social rehabilitation". However, the Commission considers that, ultimately, what is important is that those minors whose rights have been violated should be the ones to benefit from the effective measures to repair the damage caused recommended by the State in report N° 72/98.

207. In addition, as provided in the offer proposed by the State, the proposal "cannot be interpreted as the acceptance of responsibility for the acts alleged. It therefore does not indicate the express or tacit acceptance of the acts that are at the heart of the case brought before the Commission. Rather, it is a socio-educational measure that is based on our laws governing such matters that are currently in force." This means that the State does not expressly accept its international responsibility for the violations that have been identified in this report. The Commission considers that this unilateral declaration by the State does not free it from the conclusions contained in Report N° 72/98 and that what is important at this stage of the proceedings is the implementation of the recommendations made in the above-mentioned report with a view to effectively repairing the damage caused to the minors concerned by the present case.

208. Furthermore, the State declared that "the IHNFA has the authority granted to it under domestic legislation to decide how to intervene in each individual case that is brought to its attention", which means that it is up to the discretion of the Institute to determine the remedial measure or compensation that should be given to each of the victims on the Commission's list (Annex I).

209. In light of these considerations and of the provisions of article 51 (3) of the American Convention and article 48 of its Regulations, the Commission decides to reiterate the conclusions contained in section VIII above and the recommendations contained in paragraphs "A", "B", "C" and "D" of section IX above, to make public this report and to include it in its annual report to the General Assembly of the OAS.

210. In accordance with the provisions of the instruments that govern its mandate, the Commission will continue to evaluate the measures adopted by the State of Honduras in fulfilment of the four recommendations mentioned above, until these have been fully implemented by the State.

Done and signed at the Headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on 10 March 1999. (Signed) Robert K. Goldman, Chairman; Hélio Bicudo, First Vice Chairman; Claudio Grossman, Second Vice Chairman; and Commissioners Alvaro Tirado Mejía, Carlos Ayala Corao and Jean Joseph Exume.