

ATTACKS ON JUSTICE - HONDURAS

Highlights

The Honduran Judiciary remains deeply politicized with the highest judicial offices still being distributed between the two main parties as illustrated by the election of Supreme Court Judges in January 2002, and the election of the new Prosecutor General in February 2004. Judges do not enjoy security of tenure since they can be removed at the discretion of the Supreme Court President, who is alleged to be guided by political considerations. After a legal struggle with the Supreme Court, Congress amended the Constitution in order to confer upon itself the right to have the final say in the interpretation of the Constitution. Official corruption within all state institutions, including the judiciary, remains a serious and unaddressed problem. The Office of the Prosecutor experienced a crisis after about 200 prosecutors went on strike following the removal of ten of their colleagues from office for criticizing a decision of the Prosecutor General in October 2004. Threatened with being removed by Congress over alleged irregularities in the functioning of his Office, Prosecutor General Navarro resigned on 28 June 2005 and was replaced by Leónidas Rosa Bautista. Having entered into force in February 2002, the new *Code of Criminal Procedure* is expected to improve the fairness and efficiency of the criminal justice system. However, impunity, particular with regard to the rising number of violent child deaths, continues unabated.

BACKGROUND

The rising levels of criminality, violence and widespread poverty, combined with a difficult socio-economic situation and an inefficient judiciary and police force have resulted in great insecurity amongst the general population. Most people, including the elites and the media, blame street children and youth gangs, the so-called Maras, for the high level of crimes, including murders, robberies, kidnappings and drug trafficking, and favour repressive policies. On 31 March 2005, the inhabitants of a village southeast of Tegucigalpa chased down and killed two gang members for allegedly killing an elderly storeowner.

On 27 November 2001, Ricardo Maduro Joest of the Nationalist Party was elected to the presidency with an agenda to fight crime through a zero tolerance policy. After being sworn in on 29 January 2002, he started to implement his security policy, which included measures such as the use of armed forces in law enforcement operations. International human rights organizations expressed their concerns over the use of soldiers to perform police duties (see [Amnesty International, 25 February 2003, Honduras, Zero Tolerance...for Impunity](#)). In addition, several controversial laws were adopted to fight crime in general and gang activity in particular. On 8 August 2003, Congress unanimously adopted an amendment of Article 332 of the *Criminal Code*. Known as *Anti-Gang Law* (“*Ley Antimaras*”), the amendment aims at fighting gang violence, not only by increasing maximum sentences for certain offences, but

also by creating the new crime of illicit association, making gang membership a crime. This amendment entails that mere membership, often presumed through tattoos or a certain way of dressing, rather than the perpetration of a crime, is criminalized. According to government authorities, about 2000 suspected gang members have been arrested in application of the law as of December 2004.

The Supreme Court is the highest judicial organ of the country, both in jurisdictional and administrative terms and its jurisdiction covers all the territory of the State. The Supreme Court exerts original jurisdiction in certain cases; in others, it acts like an appeals court and adopts definitive rulings against which there is no later recourse. It is composed of 15 Magistrates, appointed by Congress for a seven-year term. It is divided into five specialized Chambers, each one with three or four Magistrates: Civilian, Labor, Criminal and Administrative (*Contencioso-Administrativo*); the Constitutionalist Chamber is composed of five Magistrates. The President is elected by a 2/3 majority vote in the National Congress, on a nomination proposed by the members of the Supreme Court itself, upon the favorable vote of the 2/3 parts of his Magistrados (art. 315 Constitution). At the moment the Magistrada Vilma Moral Montalván exerts the Presidency.

On January 27, 2006, José Manuel Zelaya Rosales, from the Liberal Party, took power as President. During the election campaign Zelaya promised to double police numbers from 9'000 to 18'000. He also promised to initiate a program of re-education amongst the Mara Salvatrucha gangs. He has rallied against government corruption and promised to improve the situation of Hondurans.

The gang problem

Violence has been rising in the country since 1997, when teen gangs labelled “Maras” began appearing, considerably raising the number of violent deaths. Most of the Maras were young men of 16 to 29 years old. They are implicated in armed robberies and other violent crimes.

In 2003, Congress modified the *Criminal Code* to make gang membership a crime (see above). Human rights organizations, the National Commission for Human Rights (*Comisionado Nacional de los Derechos Humanos, CONADEH*) and scholars criticised the law for nullifying the presumption of innocence since it does not provide a definition of what constitutes a gang nor gang membership, thus giving the police unfettered discretion to define these notions (CONADEH, *Annual Report 2003*, chapter II, Security and Justice in Spanish only; and IFES/FOPRIDEH, *State of the Judiciary Report: Honduras 2003*). On 9 October 2003, the Supreme Court rejected a constitutional challenge to the reform presented by human rights organizations for lack of standing of the petitioners. Some of the organizations claimed to have been threatened and intimidated, for which they blamed the government, arguing that its severe criticism of their activities created the public perception that they supported gang members. During 2004, the Supreme Court dismissed the petition of a person affected by the law, arguing that it had already issued an opinion when the law was still in draft form.

In December 2004, five days after 28 people died in an attack of a city bus by heavily armed men, allegedly gang members, Congress adopted two legislative reforms to

strengthen the legal repression of gangs and gang members. First of all, Congress unanimously approved another reform to article 332 of the Criminal Code stiffening the maximum sentence for the crime of illicit association from 20 to 30 years. Secondly, it approved a reform of article 71 of the Constitution to increase both the maximum time of isolated detention from 24 hours to 72 hours and the maximum time of judicial detention to conduct the investigation from six to seven days. Human rights organizations severely criticised this constitutional amendment as contrary to Honduras' Constitution and its international obligations. However, Congress did not ratify the amendment (for constitutional amendments to enter into force they need to be approved and ratified by two consecutive legislatures).

As a result of the wave of violence, a large number of Hondurans openly support the re-introduction of capital punishment. The National Party's candidate for the presidential elections, President of Congress Porfirio Lobo Sosa, advocated a tough policy against gang members, including the re-introduction of capital punishment.

Local human rights activists are concerned over the tough policy and legislative measures against gang members (see *Comité de Familiares de Detenidos-Desaparecidos en Honduras*, [Situación de los Derechos Humanos en Honduras 2004](#)). They claim that although the gang problem is the underlying reason for these measures, they apply to everybody and are open to abuse. In addition, human rights organisations suspect that the unresolved killings of children and youths are part of a social cleansing campaign aiming at eliminating the gang problem (see below, [Access to Justice](#)).

Prison conditions remain harsh, with a high rate of overcrowding. Inmates die every year due to violence from both prison guards and fellow prisoners. For example, on 5 April 2003, of 68 persons, 61 prisoners died. On 17 December 2004 a court found the director of the prison guilty of homicide. Proceedings against 39 other individuals are ongoing (CONADEH, *Annual Report 2003*, chapter II, Security and Justice). During 2004, a court acquitted the director of a prison facility where in May 2004, 107 prisoners had died after the outbreak of a fire. In 2005, 13 inmates were killed and another 30 wounded in a shootout between rival groups inside Honduras' biggest prison.

Freedom of expression

On 17 February 2004, the Prosecutor General's Office challenged article 345 of the *Penal Code (Decree Number 144-83)* before the Supreme Court. That article typified the crime of "desacato", which consisted of offending a public authority. On 19 May 2005, the Supreme Court of Justice declared Article 345 unconstitutional and consequently inapplicable, because it ran contrary to the right of freedom of expression. The Special Rapporteur on Freedom of Expression to the Inter-American Commission on Human Rights expressed his satisfaction at the ruling (<http://www.cidh.oas.org/relatoria/showarticle.asp?artID=638&IID=1>).

While there have been small improvements related to freedom of expression over the years, lawsuits, together with the exercise of censorship and self-censorship, remain the main means by which the practice of journalism continues to be restricted. This becomes even more apparent around election time. A *Transparency Law (ley de*

transparencia), which deals with access to public information and the protection of individual privacy, as well as habeas data, is due to be passed in 2006.

THE JUDICIARY

Independence

Article 303 of the Constitution provides for an independent judiciary; however, the judiciary is deeply politicised and subjected to external pressure originating from political parties, the media, the legislature, the government and economic and military pressure groups ([INECIP, 2002, Informe sobre Monitoreo a la afectación de la Independencia Judicial en la República de Honduras](#)). The population mistrusts judges, perceiving cases' outcomes to be determined by political and economic interests or corruption. An opinion poll published on 13 August 2004 reports that 38% of Hondurans think that they can bribe a judge.

On 13 November 2002, CONADEH, the National Commissioner for Human Rights, challenged the constitutionality of legislative decree 161-99 of 20 October 1999, which ratified the constitutional reform provided for in *Decree 307-98*. The reform amended Article 218(9) of the Constitution, stipulating that Congress' interpretation of the Constitution was one of the exceptions where the executive could not veto Congress. The amendment validated Congress' practice to interpret the Constitution through legislative decrees adopted with a simple majority, although in reality most of these "interpretations" amount to constitutional reforms, which should be adopted with a two-thirds majority vote and ratified by the following legislature. A unanimous [ruling](#) of the Supreme Court's Constitutional Chamber on 7 May 2003 declared the decree unconstitutional for violating the principle of separation of powers and undermining the judiciary's independence. This ruling led to a conflict between the Judiciary, the Executive and Congress.

After threats to dismiss the judges and affirming its power to have the final say in the interpretation of the constitution, Congress adopted on 22 May 2003 a decree ordering the official government journal *La Gaceta* not to publish the sentence, considering that this would invalidate it. Both the Attorney-General (*Procurador General*) and the Minister of the Interior and Justice (*Ministro de Gobernación y Justicia*) publicly criticised the judgement. Having sent the sentence to *La Gaceta* and the media, the Supreme Court considered the matter to be solved and the sentence to be in effect (report of the ICJ fact-finding mission in September 2003, in Spanish only [Honduras - La administración de Justicia, la independencia del poder judicial y la profesión legal: misión del CIJA, 16-25 de septiembre de 2003](#)).

However, to eliminate all doubts, on 20 January 2004, Congress adopted *Decree 241-03*, ratifying *Decree 276-02* of 8 August 2002, providing for a reform of [Article 205 of the Constitution](#) which gives Congress the explicit power to interpret the Constitution through a decree adopted with a two-thirds majority vote in a single legislature.

On 25 January 2002, Congress elected the 15 new Supreme Court judges, including the Supreme Court's president, after the entry into force of *Decree 262-2000* in April

2001. Amending Articles 308, 311 and 314 of the Constitution, the decree raised the number of Supreme Court judges to 15, provided for an election from a list established with the participation of civil society and prolonged the judges' terms from four to seven years. Commentators welcomed the measures, hoping that they might de-politicise the judiciary and strengthen its independence. However, as in the past, judges were elected according to their party affiliation, not experience or merits. Since the unwritten rule that the majority party in Congress gets the majority of Supreme Court seats was maintained, eight of the judges appointed belonged to the then ruling National Party (*Partido Nacional*) while the other seven were affiliated to the opposition party, the Liberal Party (*Partido Liberal*). This system facilitates the influence of both politicians and other powerful actors over the judiciary ([report of the ICJ fact finding mission](#)). An indication of this phenomenon may be inferred by the fact that important decisions of the new Supreme Court continue to be adopted with an 8-7 split according to the judges' party affiliations (see below, under corruption).

Disillusionment over the Supreme Court's politicisation led to the resignation of Supreme Court Justice Blanca Esmeralda Valladares on 10 December 2003 (CONADEH, *Annual Report 2003*, chapter II, Security and Justice). On 19 February 2004 Congress elected her successor, Héctor Fortín Pavón, affiliated to the Liberal Party. Civil Society organizations questioned the appropriateness of electing a lawyer who had previously defended police officers accused of destroying evidence on summary executions. The same day Congress elected Roberto Lagos, affiliated to the National Party, to replace judge Navarro who had been elected by Congress as Prosecutor General (*Fiscal General*, see below). Commentators pointed out that once again the two big traditional parties had distributed the highest judicial offices among themselves.

Security of tenure

The 1980 *Law on the Judicial Career (Ley de la Carrera Judicial)* gives the Supreme Court the authority to appoint and remove all lower judges in accordance with its substantive requirements. However, by virtue of a resolution adopted in 2002, the President of the Supreme Court has been exercising this prerogative.

Apart from questioning the legality of this delegation, civil society organizations, academics, lawyers and judges, including judges of the Supreme Court, criticise the incumbent president of the Supreme Court, Vilma Cecilia Morales, for being guided by political considerations and not complying with both the administrative procedures and substantive requirements concerning recruitment, appointment and removal provided for in the *Law on the Judicial Career* ([report of the ICJ fact finding mission](#) and IFES/FOPRIDEH, *State of the Judiciary Report: Honduras 2003*). Security of tenure is undermined since judges can be removed at the Supreme Court President's discretion. The politicisation of the Supreme Court compromises thus, the independence of the judiciary as a whole.

As a consequence of having their tenure subjected to the Supreme Court president's discretion, the lower judges lack independence from the country's highest judicial organ. Within the context of the application of the new Anti-Gang Law, the Supreme Court reportedly instructed lower judges to follow the government's policy and to decide cases accordingly. Moreover, upon the request of the executive, new judges

were selected to hear cases exclusively involving gang-members. Allegedly they were chosen for their loyalty to the government (Institute for Comparative Studies in Criminal and Social Sciences, *Instituto de Estudios Comparadas en Ciencias Penales y Sociales INECIP*, [report on judicial independence in Central America](#), in Spanish only).

CONADEH regrets that with the exception of the Special Prosecutor of Human Rights, neither the Office of the Prosecutor (*Ministerio Público*) nor the courts maintained an independent position towards the government's anti-gang policy (CONADEH, *Annual Report 2003*, chapter II, Security and Justice).

Harassment of judges

On 12 October 2004, the Secretary of the Ministry of Police and Security (*Secretaría de Seguridad y Policía Nacional*), Oscar Álvarez, handed over a list of 16 judges allegedly involved in organized crime to the Supreme Court President and the media. He based his accusations on specific sentences issued by the judges, freeing individuals accused of involvement in organized crime or gangs. The Office of the prosecutor (*Ministerio Público*) was neither officially informed nor had conducted any investigation. The accused judges denied the allegations, pointing out that the Minister should appeal the sentences if not satisfied, instead of making unfounded and irresponsible accusations. None of the judges was eventually charged.

On 30 January 2004, three judges acquitted four out of six individuals accused of kidnapping because the evidence presented had been obtained from defendants in the absence of their lawyers. Subsequently, then President Maduro visited the court in San Pedro Sula to request explanations and announced that he was going to ask the Supreme Court for a personal report on the case.

Corruption

The Judiciary has done little to fight corruption, both in general and within the judiciary itself. During 2002, the Supreme Court dismissed 19 judges on various charges, including corruption. After investigations by the Anti-corruption prosecutor on the 4 January 2003, the Supreme Court President announced the dismissal of the co-ordinator of the courts in San Pedro Sula, Walter Darío Paz Bueso. The President explained that judges under Paz's administration were investigated as well and that 54% of the denunciations to the Office of the Court Inspector (*Inspectoria de Tribunales*), the entity through which the Supreme Court monitors the performance of judicial staff, originated in San Pedro Sula. In the whole country, 593 proceedings against judges were simultaneously ongoing.

Although the judiciary has the constitutional power to proceed against high-profile public officials accused of embezzlement, there have not been any convictions, leaving the impression that the judiciary does little to fight corruption. For example, during the last years, several lower courts acquitted former President Rafael Leonardo Callejas from corruption charges. With the eight votes of judges from Calleja's National Party against the seven votes of the others, the Supreme Court ratified the decrees ordering his release in April 2003. The same month, in the case of congress delegate Pineda Ponce's son-in-law, accused of murdering the environmental activist

Carlos Luna, the Court's Constitutional Chamber admitted a petition to protect the defendant's constitutional rights (*amparo*), opening the way for his release. Cardinal Oscar Andrés Rodríguez, the President of the National Anti-Corruption Council established in 2001, publicly claimed that Callejas and Ponce had put pressure on the Supreme Court and negotiated their sentences with the Supreme Court Justices ([report of the ICJ fact finding mission](#), generally on corruption: Transparency International Latin America and the Caribbean, *Honduras National Integrity System*, in Spanish only, and FOPRIDEH, *Estado de la Situación de Corrupción en Honduras*, Octubre 2004).

LEGAL PROFESSION

The profound politicisation of the country's single bar association is illustrated by the conflict within the association and between the association and the Supreme Court during the period under review. On 13 June 2002 the Supreme Court adopted rules and regulations (*Acuerdo 03-02 Reglamento sobre examen para obtener el exequatur de Notario de la Corte Suprema de Justicia*) concerning the bestowment of the notary title. Some lawyers contested the Supreme Court's authority to subject candidates to an exam as provided for in these rules and regulations and requested an extraordinary session of the assembly of the bar association. After inconclusive deliberations on 28 June 2002, the Assembly continued its tumultuous discussions on 3 August 2002, during which they approved a resolution suspending membership of the bar for all the Judges of Supreme Court. The association's executive board was also suspended.

Because article 309 of the Constitution requests Supreme Court judges to be members of the Bar Association, the assembly requested Congress to elect new ones. Instead, on 8 August 2002 Congress adopted *Decree 275-02*, which interprets article 313 of the Constitution authorising the Supreme Court to confer the title of notary as giving the Supreme Court the power to adopt rules and regulations on the matter.

24 of the lawyers participating in the assembly were charged with serious offences such as crimes against the form of government undermining the State's internal security (*delito contra la forma de gobierno en perjuicio de la seguridad interior del Estado*).

The conflict within the bar association between those pushing for the suspension of the Supreme Court judges, the so-called "dissident lawyers", and the executive board seemed resolved in April 2003 with the signature of a reconciliation agreement. However, in June 2003 the dissident lawyers accused the executive board of having violated this agreement. To resolve the conflict within the bar association, its Honour Tribunal (*Tribunal de Honor del Colegio de Abogados*) suspended the executive board on 19 February 2004. ([report of the ICJ fact finding mission](#))

On 24 of February 2005, the Office of the Prosecutor General decided to drop charges against the remaining 16 "dissident lawyers" and ordered the prosecutor in charge to request their acquittal.

Despite frequent allegations of corruption within the Bar association concerning the management of assets, there have not been any investigations by the Honour Tribunal ([report of the ICJ fact finding mission](#)).

Cases of harassment of Lawyers

Lawyer Marcelino Martínez Espinal was repeatedly harassed due to his representation of the detained indigenous leaders Marcelino and Leonardo Miranda. On at least three occasions between **February** and **September 2003**, unidentified individuals followed him in a car. Fearing for his personal safety, he felt no longer able to visit his clients in prison.

The then National Commissioner of Human Rights, **Dr Leo Valladares Lanza**, and Deputy Commissioner **Sonia Marlina Dubón**, reportedly received anonymous death threat calls in May 2002, allegedly linked to the Commission's work investigating official corruption and its involvement in the appointment of Supreme Court Judges. Sonia Marlina Dubón had been elected as a Supreme Court Judge on 25 January 2002.

The Supreme Court was accused of discrimination by a blind lawyer, Luis Raúl Pinto, for denying him on 1 August 2002 the title of notary due to his disability, despite his professional records. Claiming that the true reason might be his lack of affiliation to any political party or the country's powerful business community, he introduced a petition to the IACHR on 14 July 2003.

PROSECUTORS

The term of General Prosecutor (*Fiscal General*) Roy Edmundo Medina, which was supposed to end in March 2009, ended in March 2004; he was allegedly forced to resign. He has been repeatedly accused of abuse of power. For example, in May 2002, the former president of the prosecutors' association, René Adán Tomé, filed a complaint alleging that the General Prosecutor had ordered in 2001 the special prosecutor against corruption not to charge then presidential candidate Maduro for his alleged involvement in a corruption case. Medina dismissed the accusations as politically motivated. The claimant alleged that his superior, the General Prosecutor, abused his powers and violated his duties in 11 cases.

A recent study by the Justice Studies Center of the Americas illustrates the inefficiency of the Office of the Public Prosecutor: on the one hand, the office seems to bring many weak and supposedly poorly investigated cases to the courts with only 28.75% of all cases resulting in condemnatory rulings. On the other hand, the Office accumulates a large backlog of cases with only 20% of all cases entering the office during the course of one year, being effectively treated.

On 17 February 2004, Congress elected the then Supreme Court Judge Ramón Ovidio Navarro Duarte as Mr. Medina's successor. Commentators pointed out that once again the two dominant political parties had distributed the offices among themselves, with Navarro being affiliated to the National Party and the elected Deputy Prosecutor General, Yuri Fernando Melara Berlío, to the Liberal Party. Although Navarro had

resigned as a Supreme Court judge just before his election by Congress, the legality of his appointment was questioned because according to article 20 of the Law on the Office of the Prosecutor, Supreme Court judges' are not eligible as Prosecutors General. Moreover, doubts as to the appropriateness of his election were raised because he had successfully defended former President Rafael Callejas against corruption charges (INECIP, [report on judicial independence in Centralamerica](#)). Navarro took up his new post on 11 March 2004.

At the beginning of October 2004, Prosecutor General Navarro announced that he would not continue proceedings in about 90 cases linked to corruption pending before the Supreme Court, including seven cases against former President Callejas who had previously been acquitted by three lower courts when Navarro was still his defence lawyer. Navarro ordered prosecutors not to introduce further petitions. The Prosecutors' Association protested against this decision, claiming that Navarro was favouring Callejas and other National Party politicians. Navarro's response was to remove 10 prosecutors and transfer another seven to remote places. Requesting Navarro's removal and their colleagues' reappointment, about 200 prosecutors initiated a strike on 21 October 2004. The Supreme Court's ruling of 28 October 2004 rejecting Navarro's decision and ordering him to continue the cases did not help to resolve the crisis within the Office of the Prosecutor. On 24 December 2004, the Supreme Court declared the inadmissibility of the charges brought by the Special Prosecutor for Human Rights against Navarro for the unjustified removal of the ten prosecutors. It confirmed this decision on 7 January 2005 reasoning that the Special Prosecutor for Human Rights did not have the Prosecutor General's authorization to go before the Supreme Court as requested by the Law on the Office of the Prosecutor. On 16 February 2005 the Supreme Court, in an 8-7 ruling (Nationalists and Liberals) acquitted former President Callejas from all corruption charges. According to the president of the prosecutor's association, the Court's decision illustrates the rampant corruption affecting all state institutions.

Under threat of being removed by Congress, which was about to consider in an extraordinary session a report of the Ethics and Transparency Commission on the irregularities occurring in the Office of the Prosecutor, including allegations of corruption against them, Prosecutor General Navarro and his deputy Yuri Melara resigned on 28 June 2005. Congress elected Leónidas Rosa Bautista as his successor to complete his term. The report of the Ethics and Transparency Commission proposed, among other things, to start considering a new Law on the Office of the Prosecutor to resolve the structural problems affecting the internal independence of the prosecutors. In 2002, 23.8% of prosecutors reported that they were subjected to internal interference in the exercise of their functions ([INECIP, 2002, Informe sobre Monitoreo a la afectación de la Independencia Judicial en la República de Honduras](#)).

On 7 June 2005, former Deputy Prosecutor General Melara was accused by the State Department of the United States of being involved in cases of corruption. As a result, he has been forbidden to enter US territory since last December.

Cases of harassment of Prosecutors

The Special Prosecutor for Human Rights, **Aída Romero**, reported that a week after introducing charges against Prosecutor General Navarro before the Supreme Court, a

car deliberately hit her when she was crossing the streets after leaving the office of a human rights organization on 9 December 2004. In addition, during the crisis affecting the Office of the Prosecutor, several prosecutors were allegedly threatened in October and November 2004.

ACCESS TO JUSTICE

The new *Code of Criminal Procedure* entered into force on 20 February 2002. the Code's main feature is that it replaces the old inquisitorial model with an adversarial one. The *Special Law on Transition and Inter-institutional Follow-up of the System* (*Ley especial de Transición y Seguimiento Interinstitucional del Sistema*), which entered into force the same day, was passed to ensure the reform's successful implementation. The normative changes through the new Code were complemented by institutional changes in court administration. ([CEJA, 2004, Informe de Seguimiento de la Reforma Procesal Penal en Honduras](#)). In May 2002, the Supreme Court reorganised the courts into two systems: one dealing with cases under the new system and one dealing with the backlog of cases under the old system, which are to be resolved by May 2006 ([US Department of State, Country Reports on Human Rights Practices 2004, Honduras](#)).

The new Code's provisions providing for the possibility of an abbreviated procedure in cases where all parties agree, should further improve the efficiency of the criminal justice system and prevent a backlog of cases. However, after being in force for two years, a recent study of the Justice Studies Center of the Americas depicted a growing tendency to accumulate pending cases in the courts. ([CEJA, 2004, Informe de Seguimiento de la Reforma Procesal Penal en Honduras](#)).

The new Code introduces the institution of the "judge of execution of the sentence and provisional measures" (*Juez de Ejecución de Penas y Medidas de Seguridad*), charged with supervising the implementation of the measures ordered by a judge.

In order to reduce the country's large amount of pre-trial detainees, the new Code limits pre-trial detention to one year for crimes whose maximum sentence goes up to six years and to two years for crimes punishable by six years and more. In addition, the new Code provides for alternative measures to pre-trial detention. As of June 2002, the country's prison facilities held more than twice their intended capacity of prisoners, among which 78.5% had not yet been sentenced ([Justice Studies Center of the Americas, Report on Judicial Systems, Honduras](#)). After two years of having entered into force, the amount of pre-trial detainees was reduced to 75%, but the total amount of the prison population had slightly increased. Pre-trial detainees under the old system remain in jail until a judge reviews their case since the new Code does not apply retroactively. During 2002, pre-trial detention amounted to 49% of all provisional measures ordered while in 2003 this percentage was reduced to 45.7%. Thus, in quantitative terms, pre-trial detention is still the most widely used provisional measure. Due to the large number of pre-trial detainees, the Honduran State cannot fulfil its obligation under international human rights law to keep them separated from convicted prisoners ([CEJA, 2004, Informe de Seguimiento de la Reforma Procesal Penal en Honduras](#)).

The introduction of public, oral hearings under the new Code faces some important obstacles. First of all, infrastructural constraints, namely the insufficient size of courtrooms, prevents the public from attending many trials. More importantly, some lower judges reportedly consider that only the trial hearings as such but not the preliminary hearings are public. ([CEJA, 2004, Informe de Seguimiento de la Reforma Procesal Penal en Honduras](#))

After their arrest on 8 January 2003, the leaders of an indigenous organisation, Marcelino Miranda and Leonardo Miranda were sentenced on 16 December 2003 to a 25-year term for the battery and murder of Juan Reyes Gómez in the context of an alleged land dispute. The trial was criticised for violating their right to a fair trial. After the ruling was confirmed by the Court of Appeals in June 2004, the Supreme Court granted their appeal as it found serious irregularities in the judicial proceedings and sent the case back to the Appeals Court on 11 November 2004. The charges brought against various police officers for torturing the brothers while in detention were dismissed in September 2003 ([Amnesty International, 25 year sentence of indigenous activist](#)). Reportedly, due to their influence over the judiciary, political and economic actors misuse the judiciary and exploit the weak court system in cases brought against environmental and indigenous activists .

Impunity

Impunity for the country's economic, political and military elite continues to be a major problem. Following the widespread impunity for politically motivated crimes existing in the 1980s, the country's elite now enjoys impunity for corruption (see above) and socially and economically motivated killings. Released in September 2002, the [Report of the UN Special Rapporteur on Extrajudicial, Arbitrary and Summary Executions](#) describes frequent murders of children and youths, and to a lesser extent of environmental activists and transsexuals. Most cases remain without investigation and witnesses are often harassed.

According to human rights organizations, 2170 children were killed between 1998 and February 2003. They suspect members of the state security apparatus to be colluding with private security firms and the business community in organising “death squads” as part of a social cleansing campaign. The government denies any allegations of a state policy to murder youths. Honduran society reacts with indifference to these murders, believing either the official version that most of the killings are the result of inter-gang violence or in some sectors, perceiving the killings as a solution to public insecurity. A court ruling in April 2002 condemning a police officer to a 6-year prison term for the murder of a 17 year-old boy in 2000 was the first conviction for the murder of a child since the tracking of youth killings began in 1998.

To tackle this issue, former President Maduro created a Special Investigative Unit for Violent Deaths of Children on 2 September 2002. However, the unit has fallen short of its objectives and can only look into a small number of cases. After denouncing in September 2002 security forces' participation in at least 20 cases of extrajudicial executions and accusing the director of the National Police, Coralia Rivera, of having destroyed evidence which could have proven police forces' involvement, the head of the National Police's Internal Affairs Unit, Sub-Commissioner Maria Luisa Borjas,

received telephone death threats. Having been suspended since December 2002 - she was removed from her office on 25 February 2005 - allegedly for having failed to prove her claims, Coralia Rivera was accused by the Special Prosecutor of Human Rights of having destroyed evidence in December 2003. However, the case was closed in April 2004 with the ruling of the first Court of Appeal confirming the decision of a judge of first instance not to continue the case for lack of proof of the charges. In the meantime, the killing of children has continued with about 700 deaths reported between February 2003 and September 2004 (CONADEH, *Annual Report 2003*, chapter II, Security and Justice and [Amnesty International, Honduras, Zero Tolerance...for Impunity](#)).

Investigations into human rights abuses committed in the 1980s make only slow progress with criminal proceedings pending against about 20 active or retired military and police officers by the end of 2004. Since enforced disappearance is not a crime under the Honduran Criminal Code, they are accused of illegal detention and murder. In compliance with a judgement of the Inter-American Court of Human Rights ([Juan Humberto Sánchez v. Honduras, judgement of June 7, 2003](#)), then President Maduro publicly acknowledged for the first time the responsibility of the state for the enforced disappearances and killings of left-wing opponents by security forces in the 80s and early 90s.

LEGAL REFORMS DURING THE PERIOD

- August 2002:** *Decree 275-02* interpretation of Article 313 of the Constitution, giving the Supreme Court the power to adopt rules and regulations concerning the bestowment of the notary title.
- 8 August 2003:** amendment of article 332 of the *Criminal Code*, known as “Operation Freedom” an anti-gang law, amended again on 28 December 2004. It gives the authority to the police to arrest and imprison people associated with illicit groups whose sole intention is to terrorize and endanger the lives of law-abiding citizens.
- January 2004:** *Decree 241-03*, amended the Constitution, ratifies *Decree 276-02*, gives Congress power to interpret Constitution.
- July 2004:** ratification of *Legislative Decree 175-2003*, removes constitutionally granted immunity for high public officials, including judges of the Supreme Court. Subject to Congress' approval, the Supreme Court has jurisdiction to hear cases against high public officials.