

ACCESS TO JUSTICE FOR CHILDREN: HONDURAS

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

According to Article 16 of the Political Constitution of the Republic of Honduras (*Constitución Política de la República de Honduras*),¹ “all international treaties must be approved by National Congress prior to ratification by the Executive Branch.” All international treaties concluded by Honduras with other states, once ratified, become part of domestic law. When an International Treaty affects a constitutional disposition, it should be approved by the Congress in the same way a constitutional reform would². Children are entitled to all the guarantees contained in the international treaties that apply³.

Furthermore, Honduras has ratified other relevant international instruments, including the optional protocols to the CRC on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography (April 2, 2002); ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (October 25, 2001); the American Convention on Human Rights (August 26, 1977)⁴; and the Iberoamerican Convention on the Rights of the Youth.

Honduras has not yet ratified the third optional protocol of the CRC, which stipulates means for access to international justice when violations of their rights are not sufficiently or promptly resolved in national courts.

B. Does the CRC take precedence over national law?

In case of conflict between international instruments and national law, the former will prevail⁵.

The Childhood and Adolescence Code⁶ sets forth that, for the implementation of the provisions related to children, the authorities shall comply with the following normative hierarchy: (i) the Constitution; (ii) ratified international treaties and conventions; (iii) the provisions set forth in the Code of Childhood and Adolescence; (iv) the Code of Family; (v) general or special laws and their regulations; (vi) judicial precedents of the Supreme Court of Justice; and (vii) general principles of law.⁷

¹ See <http://www.honduras.com/honduras-constitution/>.

² Article 17 of the Constitution.

³ Article 119 of the Constitution.

⁴ See http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

⁵ Article 18 of the Constitution.

⁶ Decree No. 73-96, published in the Federal Official Gazette on September 5, 1996.

⁷ Articles 3 and 4 of the Childhood and Adolescence Code.

C. Has the CRC been incorporated into national law?

The CRC was ratified by Decree No. 75-90 on July 24, 1990 and was published in the Federal Official Gazette on August 10, 1990.⁸ The Constitution sets forth that international treaties concluded by Honduras with other states, once ratified, become part of domestic law.⁹ Therefore, the CRC was incorporated into national law on July 24, 1990, the day it was ratified by the Executive Branch.

D. Can the CRC be directly enforced in the courts?

All legally signed treaties have status of internal law and, thus, directly enforced¹⁰. Children have the protection of all related international documents¹¹.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

The Supreme Court of Honduras has issued several resolutions regarding civil, family, criminal and administrative matters, pointing to the implementation of the CRC in the national system¹²¹³¹⁴, however, they were used mainly to reinforce national law.

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children are under the rule of Paternal Power (Patria Potestad), exercised almost exclusively by the father, which entails “protecting and directing them and administering their property”¹⁵.

The protection of the childhood is directly under care of the parents, their legal representatives or, in their absence, the State¹⁶.

A Child can be emancipated only in case of death or, judicially, by a) habitual mistreatment; b) abandonment or; c) mental unfitness or viciousness¹⁷. The procedure only takes place by petition of a consanguineous relative of the child or by action of a State agent such as the Child's Court, INHFA (Honduran Institute of Childhood and Family) or Attorney General. In this case, the child will be placed under a tutor, preferably a relative, without gaining petitioning powers.

⁸ See www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Tratados/PrincipalesTratadosInternacionales.pdf

⁹ Article 16 of the Constitution.

¹⁰ Article 18 of the Constitution.

¹¹ Article 119 of the Constitution.

¹² <http://crinarchive.org/Law/instrument.asp?InstID=1659>

¹³ <http://www.bettercarenetwork.org/Law/instrument.asp?InstID=1661>

¹⁴ Cases AF0083 and ACC0016 from the Supreme Court, available at http://www.poderjudicial.gob.hn/juris/Jurisprudencia_Cedij.aspx

¹⁵ Article 238 of the Civil Code of the Republic of Honduras.

¹⁶ Article 83 of the Childhood and Adolescence Code.

¹⁷ Article 266 of the Civil Code of the Republic of Honduras

The child will be kept informed of the procedures and their meanings, in language fit to his or her maturity and age. All judicial procedures involving children will have an informative and re-educative purpose¹⁸.

Article 40, a and c of the Childhood Code states that children should receive education about their rights and international fundamental rights.

If the child has no legal representative, the INHFA will exercise this function until one is appointed. The INFHA, the Attorney General and the child's relatives have the responsibility to initiate the procedures to submit that child to a representative.¹⁹

Victims or their representatives will not be able to pardon a child's rights offender, expressly or tacitly²⁰.

Section Fifth of the Code, articles 162 and following, give a comprehensive understanding of mistreatment, by omission, suppression or transgression, including all forms of well-being disturbance by any person responsible for the child, even if a crime is not constituted. If those responsible are the parents or legal representatives, any person can bring the case to the attention of the Public Attorney, INHFA or directly to the Children's Courts, who should continue the legal procedures.

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

As explained above, children are not entitled to bring cases on their own names. They must always be represented. In cases where a child has been mistreated, constituting or not a crime, anybody can bring it to the attention of to the authorities, specially to the INHFA.

Even when there is a financial conflict of interests between the child and whoever exercises the Patriarchal Power, the judicial remedy will have to be initiated by the Attorney General or the INHFA²¹.

The Attorney General will, ultimately, initiate the criminal persecution regardless of the acquiescence of the victim when he or she is a minor, according to article 26 of the Penal Code. However, the same article states that crimes of sexual nature committed against victims older than 14 will need the requirement of the victim to be persecuted, which is contradictory²².

C. In the case of infants and young children, how would cases typically be brought?

In the case of infants and young children, the child's parent or legal guardian would typically initiate a lawsuit on behalf of the child in the manner described in Part II.A and B above.

¹⁸ Article 87 of the Childhood and Adolescence Code.

¹⁹ Articles 160 and 161 of the Childhood and Adolescence Code.

²⁰ Article 90 of the Childhood and Adolescence Code.

²¹ Article 157 of the Childhood and Adolescence Code.

²² Penal Code, available at: <http://www.ccit.hn/wp-content/uploads/2013/12/Codigo-Pena-Honduras.pdf>.

If it is of criminal nature, the State Prosecutor will be entitled to initiate it on its own initiative, if summoned by anyone, including a minor.

The INHFA is the government spearhead agency regarding children's rights and is responsible for bringing cases to the Child's Courts, whether provoked or not.

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

The State shall appoint attorneys in order to defend the poor and to ensure the people and the interests of children and incapable²³. Such attorneys must provide them with legal assistance and judicial representation in defense of their individual freedom and other rights. In case of non-criminal cases, however, there is no established sector of procurators, although the INHFA would be responsible to provide legal assistance²⁴.

In a civil case, anyone can require cost-free and comprehensive judiciary assistance, but it will have to be granted by the judge²⁵.

The Regulation of the Public Defense Program²⁶ sets forth provisions to regulate the services of judicial employees of the Public Defense Program, so that such services are provided free of charge and efficiently to all criminal defendants who lack direct or indirect financial means for their own defense.

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

There is no provision stating that the legal representative must agree with the case, although the administrative-representative power is fully on their hands. Ultimately, in the case of conflict of interests or any sort of mistreatment of children, anyone can bring the case to the attention of the public officials and, since they are entitled to initiate proceedings on their own initiative, no obstacle for children themselves to bring the case to their attention.

III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Children and their representatives may initiate legal proceedings in Criminal Courts to challenge violations of their rights under domestic law in accordance with the Criminal

²³ Article 83 of the Constitution.

²⁴ Honduran Institute of Childhood and Family Law, Decreto 199-97; available at: <http://www.poderjudicial.gob.hn/juris/Leyes/Ley%20del%20Instituto%20Hondure%C3%B1o%20de%20la%20Ni%C3%B1ez%20y%20la%20Familia%20HNFA%20%28actualizada-07%29.pdf>

²⁵ Article 90 and following of the Civil Procedure Code.

²⁶ Decree number 05-94, published in the Federal Official Gazette on September 29, 1994, available at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Reglamento%20para%20el%20Programa%20de%20la%20Defensa%20P%C3%ABlica.pdf>

Procedure Rules.²⁷

Furthermore, the Childhood Code protects children from any acts that can interfere with their psychological development, dignity, self-esteem and well-being²⁸. Pursuant to Article 266 of the Code, all legal actions intended to restore a child's enjoyment of his or her rights shall be brought before the competent Childhood Court (*Juzgado de Letras de la Niñez*). It is important to note that, once initiated, an action for restitution of rights cannot be withdrawn or abandoned.²⁹ When a child's right is presumably violated, any authority in Honduras (judicial, police, government, medical, etc.) must, and every person can, present the complaint before the competent institution.

Any act by a public official, or any obligation created by law, can be challenged by requiring a writ of *amparo* to maintain and restore the enjoyment of the rights and guarantees set forth by the Constitution.³⁰ The writ of habeas corpus is also well established in Honduran legal system.

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),³¹ on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights³². A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.³³ The petition must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, the name(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.³⁴ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.³⁵ When a petition is declared admissible, the IACHR attempts to reach a "Friendly Settlement" between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).³⁶ Individuals do

²⁷ See <http://www.poderjudicial.gob.hn/juris/Leyes/CODIGO%20PROCESAL%20PENAL.pdf>.

²⁸ Article 141.

²⁹ Article 268 of the Code of Childhood and Adolescence.

³⁰ See <http://www.poderjudicial.gob.hn/juris/Leyes/Ley%20de%20Amparo.pdf>

³¹ The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a "dual role" as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at: http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm; American Convention on Human Rights, 'Pact of San Jose, Costa Rica', Chapter VII, available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

³² American Convention on Human Rights, Article 44.

³³ Rules of Procedure of the Inter-American Commission on Human Rights, Articles 31-32, available at: <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

³⁴ Ibid., Article 28.

³⁵ Ibid., Article 23.

³⁶ Ibid., Article 45.

not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.³⁷ The Court's judgments are legally binding on the State against which they are made.

B. What powers would courts have to review these violations, and what remedies could they offer?

The Civil and Criminal Codes may each impose, depending on the violation, different awards ranging from fines, awards and injunction mandates to deprivation of liberty and of paternal power, definitively or cautulary.

Courts have full power to review the constitutionality or validity of any law or official act, incidentally, in a appropriate requirement or through a writ of *amparo*³⁸.

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

The writ of *amparo* can be pursued by any civil apt person, even without the acquiescence of those affected.³⁹ An organisation would be entitled to pursue an *amparo* in favour of an individual or collectively affected group of people, namely children, in the form further explained in III.D.

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

The President of the Republic of Honduras has the power to grant legal capacity to civil associations, in the form and in favour of the determinate group or class they will represent as informed in the formal requisition⁴⁰⁴¹. Such associations have full legal capacity from the moment of their creation to their extinction⁴²⁴³. Thus, Non-governmental organisations are permitted to file challenges in representation of collective victims without naming them, because such associations are acting for themselves, within their legally granted capacity⁴⁴.

Article 272 of the Childhood and Adolescence Code further states that the private entities, authorised by the State to represent children's rights, and after agreement with the public institutions, can implement national policies relating to, amongst others, legal issues.

The Attorney General and INHFA both have legitimacy to file a suit in favour of a group of children.

³⁷ American Convention on Human Rights, Article 63.

³⁸ Article 184 an 185 of the Political Constitution.

³⁹ Article 25 of the Law of Amparo.

⁴⁰ Article 20 of the Constitution.

⁴¹ Resolution N°770-A-2003 of the State Secretariat of the Acts of Governmentality and Justice, creating the Register and Functioning of Civil Associations Unity(URSAC)

⁴² Article 56 of the Civil Code.

⁴³ Article 61.4 of the Civil Procedure Code.

⁴⁴ Article 566 and following of the Civil Procedure Code.

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

As discussed above, non-governmental organisations have legal capacity to represent and file challenges against potential children's rights violations before the courts, if constituted for that purpose. Article 572 of the Civil Procedure Code further states that the legitimised civil associations can intervene in the procedure.

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Cases in the interest of children are under jurisdiction of the Childhood Courts.⁴⁵ In addition, criminal representations may be filed orally or in writing to initiate an investigation before the General Attorney or any other competent authority.⁴⁶

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

The Public Defense Program provides all criminal defendants, adults and children, who lack direct or indirect financial means for their own defense with services from attorneys, free of charge.⁴⁷

In a civil case, anyone can require cost-free and comprehensive judiciary assistance, but it will have to be granted by the judge⁴⁸.

Furthermore, any assistance sought in the INHFA will be free of charge, as any procedure to reestablish the fundamental rights of the child.

C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

As explained in III.D, NGO's formed expressly for this end, can represent collective interests of children. Furthermore, if a case does not fulfil the prerequisites to gratuitous justice, or there are no sufficiently available public defenders, there is no obstacles for receiving pro bono legal assistance; although, if there is no conflict of interests, the

⁴⁵ Article 266 of the Code of Childhood and Adolescence.

⁴⁶ Article 270 of the Criminal Code.

⁴⁷ Article 83 of the Constitution and Public Defence Programme, available at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Reglamento%20para%20el%20Programa%20de%20la%20Defensa%20P%C3%BAblica.pdf>.

⁴⁸ Article 90 and following of the Civil Procedure Code.

selection of a lawyer will normally rest with the legal representatives.

No national programme or legal requisite for law firms to provide pro bono services could be found.

D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

Legal proceedings against violations of rights must generally be brought to courts before the expiration of a period equal to the duration of the penalty specified for the offense, increased by half in case of detention. However, the prescribed term may not be in any case less than two years.⁴⁹

According to Article 44 of the American Convention of Human Rights, “any person or group of persons, or any nongovernmental entity legally recognised in one or more member states of the Organisation, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.”⁵⁰ The Convention does not establish a prescription term to initiate legal procedures and, therefore, children or their legal representatives may bring a case at any time before the Inter-American Court.

Rights to nationality, name, identity and parental affiliation are unreachable by temporal limitation⁵¹.

There is no legal disposition halting the term of limitation until the child reaches legal adulthood. It is important to notice that, in Honduras, this adulthood is only fully reached at 21, although there are cases where it can be granted by a judge after 18.

E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

Documentary evidence, testimony and expert declaration are admissible to prove a violation if presented in appropriate manner and time. The Code of Criminal Procedure sets forth special rules relating to the interrogation of children under the age of fifteen.⁵² Where the victim is under 15 years of age, he or she is entitled to testify in informal and non-hostile environments, with his or her testimony being recorded to facilitate its reproduction in public where necessary. The Code also establishes that minors shall be accompanied by their parents or legal guardians during interrogations.

In civil procedures, minors can testify, but no oath is to be taken⁵³ and special conditions like the absence of interference from other people or the help of specialists may apply⁵⁴.

⁴⁹ Article 97 of the Criminal Code.

⁵⁰ See http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

⁵¹ Article 29 of the Childhood and Adolescence Code.

⁵² Article 331 of the Code of Criminal Procedure.

⁵³ Article 297.2 of the Civil Procedure Code.

⁵⁴ Article 633.6 of the Civil Procedure Code.

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Honduras legislation is not clear on the length of time it may take a court to dictate a sentence when there has been a violation.

The Childhood Code establishes that cases involving children should always be expedited and summary, without limiting the duration to a specific period.

In the *amparo* procedure, the judge can establish the immediate suspension of the act, decision or law, under the penalty of fine for the coercive authority. After the response of the authority and final allegations, which should happen in less than six days altogether, a sentence shall be proclaimed⁵⁵.

Honduras is signatory to the American Convention of Human Rights, which guarantees the right to a fair trial in a reasonable time.⁵⁶

Article 143 of the Code of Criminal Procedure sets forth that all requests made by the parties shall be resolved within the next three business days from their presentation. If the court fails to issue a decision during such period, either party may request immediate resolution. In this case, the judge must rule within the next twenty-four hours. If the judge does not comply with this provision, the victim in the case may submit a complaint, which could ultimately result in criminal liability.⁵⁷

Every year, Honduras government issues a report of the judicial management in courts and the Supreme Court⁵⁸.

G. Appeal. What are the possibilities for appealing a decision to a higher court?

Children's claims are followed in the Ordinary Procedure, entitled to all the appealing system.

The Courts of Appeals are specialised courts, with jurisdiction over the appeals to the rulings of inferior courts and other claims filed before First Instance Courts. Therefore, they are the second stage of the judicial process, prior to accessing the Supreme Court of Justice. Among their attributions, the Courts of Appeals are also granted jurisdiction over the claims against the state, working as First Instance Courts in such processes.⁵⁹

The Supreme Court of Justice is the highest court, and its decisions cannot be appealed, but all cases can be revised, either by the dispositions of the criminal and civil procedure codes, or through the pursuance of a writ.

H. Impact. What are the potential short-term and long-term impacts of a negative

⁵⁵ Article 27 and 28 of the Law of Amparo.

⁵⁶ Article 8.1 of the American Convention on Human Rights.

⁵⁷ See <http://www.poderjudicial.gob.hn/juris/Leyes/CODIGO%20PROCESAL%20PENAL.pdf>.

⁵⁸

<http://www.poderjudicial.gob.hn/transparencia/planeacion/informes/Documents/Informe%20de%20Gesti%C3%B3n%20Judicial%202012%20Portal%20UV%202.pdf>.

⁵⁹ Section IV, Chapter I of the Courts Organisation and Jurisdiction Law. See http://www.oas.org/juridico/pdfs/mesicic4_hnd_ley_trib.pdf.

decision? Is there a possibility for political backlash or repercussions from a positive decision?

As discussed above, the Judiciary System in Honduras is composed of the Supreme Court of Justice (the highest instance), the courts of appeals and the courts. In this sense, negative decisions taken by the courts of appeals or the courts can eventually be appealed and corrected. However, the decisions taken by the Supreme Court of Justice are definitive and binding, and set precedents for further cases. Therefore, within the judicial system, a negative decision from a higher court will have greater and more far-reaching effects than a negative decision from a lower court.

When the Supreme Court issues a negative decision, the only remaining recourse is in the international instance, and one must exhaust all levels of national system before resorting to such recourse.

Honduras has a poor recent history in judicial independence. In 2010, judges that opposed the coup d'état against former elected president were fired. In 2012, four Supreme Court judges were summarily fired by the Congress after accepting a recourse against a police law reform⁶⁰. Political and economical influence in the implementation of judicial decisions is a constant throughout the country.

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

The enforcement of awards in civil proceedings is relatively straightforward and governed by the Civil Procedure Rules and the Constitution. Civil and criminal responsibility is established thoroughly to enforce judicial decisions.

Some circumstances to take into consideration are the change in the law, the terms for filing the action, political influence on judicial decisions, support (or lack thereof) from the government agencies or other institutions entrusted with the rights of children.

V. Additional factors. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

On 28 February 2014, the government issued Acuerdo N° 2196-A-2013 cancelling the register of 5.429 civil society organisations, including several human rights and, specifically, children's rights organisations. It is largely decried that this is a form of the government, which stems from a 2010 coup d'état, to put pressure on civil society and penalise associations that have publicly confronted the government.

The Family Code, the Law Against Domestic Violence and the Law for the Integral Development of Children^{61,62}.

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⁶⁰ <http://fusion.net/justice/story/honduran-congress-fires-supreme-court-judges-11247>

⁶¹ Applicable legislation at:

http://www.oas.org/dil/esp/derecho_de_familia_red_de_cooperacion_honduras_sustantiva.htm

⁶² Available at: <http://inj.gob.hn/images/Ley%20Marco%20Juventud%202011.pdf>

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