

GUATEMALA'S FORGOTTEN CHILDREN

Police Violence and Abuses in Detention

**Human Rights Watch / Americas
Human Rights Watch Children's Rights Project**

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GLOSSARY

Gaviotas	Detention center for boys, located in Guatemala City.
Gorriones	Detention center for girls, located near Guatemala City.
NGO	Nongovernmental organization.
Pavón	High-security adult male prison, for those who have been convicted and sentenced. Minors are rarely held in Pavón.
Pavoncito	Adult male prison for those awaiting sentencing. Minors are occasionally held in Pavoncito.
REMAR	Spanish-based evangelical organization, “Rehabilitation of the Marginalized” (Rehabilitación de los Marginados). Rehabilitates Spanish and Latin American drug addicts and ex-convicts by having them work with troubled youth.
San José Pinula	Detention center for boys, located in San José Pinula, about forty-five minutes by car from Guatemala City.
TOM	Office of Treatment and Guidance for Children (Tratamiento y Orientación de Menores). Government agency charged with administering all juvenile detention and protection services.
Zone 18	Preventive detention center. Houses adult males awaiting the filing of charges or trial, as well as post-adjudication offenders. Minors frequently held there as well. Has a separate wing for adult female offenders.

I. SUMMARY

As a 1990 State Party to the Convention on the Rights of the Child, Guatemala was one of the first countries to commit itself to respecting the human rights of children. Nearly seven years later, that commitment has borne little fruit.

Thousands of children living in Guatemala's streets face routine beatings, thefts, and sexual assaults at the hands of the National Police and private security guards (who are under the jurisdiction of the Interior Ministry). More serious crimes against street children, including assassination and torture, have lessened since the early 1990s, but still occur. In April 1996, sixteen-year-old Susana Gómez was raped by two National Police officers in Guatemala City while a third kept watch. In September 1996, sixteen-year-old Ronald Raúl Ramos was shot and killed by a drunken Treasury Police officer in Tecún Umán. More than ten other street children were murdered in 1996 under suspicious circumstances. As of April 1997, all of the perpetrators in these cases remained at large.

Three convictions for murders of street children were handed down recently, two in late 1996 and one in January 1997. These convictions, against three private security guards, two National Police officers, and a former military commissioner, were significant and encouraging news. Hundreds of other cases involving crimes against street children, however, remain stalled; most are never even investigated. Crimes against street children are a low priority for police investigators, particularly when a fellow officer is implicated.

In contrast to the impunity enjoyed by police offenders, juvenile offenders, and even non-offenders, are dealt with harshly. "Juvenile justice" in Guatemala suffers from multiple and severe defects, rendering it less than justice and little more than warehousing. Street children are arrested and locked up arbitrarily, sometimes merely for being homeless, other times for such vague offenses as "creating a public scandal," or "loitering." There are no government programs for street children, the vast majority of whom were abandoned or abused by their families.

Once children are arrested, they may spend months in pre-adjudication detention, often solely because they have no family to claim them. When they do receive their hearing, their due process rights may be ignored by the judge: several children told us that judges had refused to let them speak, or had banished them from the room while hearing evidence against them. These children are not supplied with legal assistance of any kind. Sentences vary enormously, often according to children's economic status.

Judges send other children into detention facilities "for their own protection." Fifty percent or more of all detained girls fall into this category.

Children in protective custody are incarcerated together with juvenile offenders. Thus, children who were raped or beaten by their parents, children who were found in a malnourished state, runaways, even some children with physical disabilities, are thrown into the same dreary facilities as are drug addicts, pickpockets, prostitutes, and violent offenders. What's more, ages at the centers range from eight to seventeen. As a result, eight-year-old abuse victims and seventeen-year-old murderers may end up in the same place, together.

Children in detention are offered no meaningful rehabilitation or education, no meaningful psychological treatment, and, with the exception of one facility, no vocational training. They are crowded together in unsanitary conditions, with no privacy and little respect for their personal integrity. Detained children are vulnerable to mistreatment from staff members and from other detainees, sometimes with staff acquiescence. They are left in the hands of untrained and unqualified personnel. All of these conditions contravene international standards.

As titular head of the Social Welfare Office (Oficina de Bienestar Social), First Lady Patricia de Arzú is responsible for Guatemala's juvenile detention centers, or "re-education centers," as some of them are known. Claiming a lack of resources and corruption among their own staff, the First Lady's office has virtually abdicated control over the juvenile facilities by inviting in REMAR (Rehabilitación de los Marginados), a Spanish evangelical organization, which purportedly provides its services free of charge. REMAR is dedicated to rehabilitating Spanish ex-convicts and drug addicts by sending them abroad to work with troubled children. The organization now controls all three of the boys' centers.

A touchstone of the REMAR approach is "the rod." The boys we spoke with had these reactions to the word "REMAR": "beatings," "baseball bat," "aluminum baseball bat," "broomstick," "firewood," "isolation room," "broken finger," and "broken ribs." The use of physical punishment and punitive isolation against children is strictly forbidden under international law. Despite widespread reports of these abuses, no Guatemalan authority is supervising the actions of REMAR: not the Human Rights Ombudsman, not the office of Treatment and Guidance for Minors (Tratamiento y Orientación de Menores), which is under the First Lady and is directly responsible for the detention centers, and not the First Lady herself. To the contrary, the realm of REMAR was recently expanded — until the summer of 1996, they were responsible for only one of the boys's centers.

In addition, REMAR runs nine of its own, private centers for children. Guatemalan minors' judges send nearly 1,000 children to these centers each year. The children remain under REMAR control until REMAR tells the judge that the child is ready to be released. There are no visits from court personnel, no evaluations of REMAR personnel, and no independent monitoring or oversight.

Children who had been in these centers reported suffering frequent physical abuse, as well as religious coercion. (Religious coercion was also reported by children in the state facilities run by REMAR.)

In 1996, the Guatemalan legislature passed a new Minors' Code, scheduled to take effect in the last quarter of 1997. The new code is a vast improvement over the existing code. It extends procedural protections to children accused of crimes, including the right to a lawyer at government expense. It forbids the placement of children in protective custody into juvenile detention centers. It also forbids the imprisonment of children for status offenses, such as running away or being homeless. The code contains a host of other improvements — if all of them were implemented, most of the abuses described in this report would come to an end. Until that happens, Guatemala remains an everyday violator of children's human rights.

This report is based on interviews with thirty-five children and youths, conducted in August and September 1996 by a researcher for the Human Rights Watch Children's Rights Project. We also spoke extensively with representatives of Guatemalan and international nongovernmental organizations, including several dedicated exclusively to working with street children. Government officials we interviewed included representatives of the Social Welfare Office of the Presidency of the Republic, the Office of the Human Rights Ombudsman, the Minors' Magistrate, and the Public Ministry's Minors' Division.

The Guatemalan government refused to grant our researcher access to juvenile detention centers. A few centers were visited briefly through other means. Apart from those visits, information on the detention centers was gathered and confirmed through interviews with recent detainees.

II. RECOMMENDATIONS

Recommendations to the Guatemalan Government:

General recommendations:

- The government should take every step necessary to ensure that the 1996 Minors' Code, scheduled to come into force in September 1997, is fully implemented without delay.
- Current abusive practices should be halted immediately to conform to the requirements of international and Guatemalan law. Particular attention should be paid to the practices of the National Police, private security guards (for which the Interior Ministry holds regulatory responsibility), the Minors' Courts, all state-run juvenile detention facilities, and all privately-operated custodial facilities that accept children sent by court order.
- In order to ascertain compliance with international and Guatemalan law, independent nongovernmental organizations, including international human rights monitors, should be allowed periodically to investigate the juvenile justice system in its entirety, or any part thereof, including juvenile detention facilities. These monitors should be permitted to conduct confidential interviews with detained children of their choosing, with the consent of the children involved.
- The government should itself periodically initiate and/or undertake evaluations of the Guatemalan juvenile justice system, including juvenile detention facilities.

Recommendations regarding abuses against street children:

- The Public Ministry and the National Police should thoroughly and impartially investigate all allegations of crimes committed against street children. The current practice of investigating only those cases on which outside pressure is brought to bear must end immediately.
- Complaints regarding police mistreatment of children should be investigated promptly and thoroughly. Where appropriate, disciplinary measures and criminal proceedings should be ordered.

- Any police officer found to have committed a criminal offense against a child should be prosecuted to the fullest extent of the law.
- The Public Ministry should vigorously prosecute all crimes against street children, especially violent crimes, rather than allowing them to languish in inaction.
- All police officers should receive rigorous and periodic training in human rights, children's rights, and relations with street children. What constitutes abusive police behavior should be defined explicitly for all officers. Examples of abusive and prohibited behavior—including stealing, soliciting bribes, soliciting sex, sexual assault, physical beatings, and illegal detention—should be clearly explained.
- Female police officers should be recruited. When possible, police teams working the downtown Guatemala City area should be composed of at least one female, with the goal of reducing sexual violence by police officers against street girls.
- Immediate and concrete steps should be taken to increase the effectiveness of the Office of Professional Responsibility of the National Police, and in particular the responsiveness of that office to complaints alleging police misconduct against children. Procedures should be implemented that will allow complainants and witnesses to protect their identities should they reasonably fear reprisals.
- The emergency hotline number (155), already installed and publicized, should be put into service immediately and publicized again as a working number. Any child or interested party, including police officers, should be able to call the number to report an incident of abuse or obtain information regarding services available to street children. The hotline should be adequately staffed with trained personnel twenty-four hours a day.
- Comprehensive statistical data regarding the situation of street children should be collected and disseminated to the public, to nongovernmental organizations, to the media, and to the U.N. Committee on the Rights of the Child.

Recommendations regarding the administration of juvenile justice:

- All children facing the possible deprivation of their liberty should be provided with a lawyer.
- The practice of lengthy pre-adjudication detentions should be ended immediately. Detention pending trial should be used only as a measure of last resort and for the shortest possible period of time, in accordance with international law. Under no circumstances should a child be held pending adjudication for more than the thirty working days permitted under Guatemalan law, and detention of this length should be mandated only in exceptional cases.
- No children should be held in detention solely because they lack a responsible parent or guardian who is willing and/or able to take them home. Instead, foster care or other non-punitive custody arrangements should be provided.
- Until privately-run REMAR centers are thoroughly investigated, monitored, overseen, and approved by the responsible Guatemalan authorities, no child should be sent by a judge to such a center. Even after such centers are approved and oversight is established, no child should be sent by a judge to a REMAR facility unless the child, in consultation with his or her attorney, so agrees. In the meantime, private or state-run alternatives to REMAR centers should be established as soon as possible, and should also be subject to a rigorous approval process and ongoing monitoring.
- A child detained in any state or private facility should be interviewed at regular pre-determined intervals by trained and qualified government staff; their rehabilitative progress should be assessed, and their prospects for release should be discussed fully with them.
- No child should be incarcerated for the commission of a status offense (an offense for which an adult could not be jailed).

Recommendations regarding juvenile detention facilities:

- A full investigation into privately-operated REMAR centers should be undertaken immediately, and the findings of that investigation publicized.
- Physical punishment or abuse by staff of children should be strictly prohibited at all facilities, whether private or state-run. Staff found to have abused children should be appropriately disciplined, including dismissal. Where appropriate, criminal charges should be brought against offending staff members. Staff should be fully informed of the rules and consequences concerning physical abuse of children.
- Children should be informed of the internal rules of the facilities to which they are committed and their rights and obligations immediately upon entry. The rules of the institution should be made available to children upon request and posted in highly visible places.
- A complaint system should be initiated that allows detained children to make confidential complaints to facility directors, to the Children's Rights Defender of the Office of the Human Rights Ombudsman, and/or to other appropriate national or international agencies. The system should ensure that all complaints are investigated and responded to promptly.
- In addition, the Children's Rights Defender should make unannounced inspections of all juvenile centers, and should intervene whenever there are reasonable grounds to believe that abuses have been committed.
- Meaningful control and supervision over REMAR staff in state facilities should be implemented immediately. Any direct or indirect financial support to REMAR by the Guatemalan government should immediately cease. Should allegations of abuses by REMAR staff persist, the government should expel the organization from state facilities.
- All juvenile detention facility personnel, including REMAR staff, should be specially trained to work with troubled children and qualified to perform their duties, in accordance with predetermined criteria.
- Each employee in a juvenile facility, including REMAR staff, should have his or her performance reviewed periodically by an independent agency.

Such review should include multiple confidential interviews with detained children.

- All disciplinary measures should be approved and witnessed by non-REMAR staff and reported to the director of the Office of Treatment and Guidance for Children.
- In keeping with international childrens' rights norms, corporal punishment should never be used.
- Under no circumstances should isolation be used as a punitive measure.
- Children should be kept in separate facilities according to their age groups. In particular, children twelve years old and under should be separated from children over the age of twelve.
- Physical and sexual abuse between detained children should be strictly guarded against by all appropriate means, including adequate staffing, rigorous monitoring, and the appropriate placement of children in facilities and dormitories.
- Meaningful educational and vocational training should be instituted at all facilities. Libraries and recreational activities should be made available to all children at all facilities.
- Toilet and shower facilities should be sanitary and allow for individual privacy. Children should have access to toilet facilities at all times of the day and night.
- Each detained child should have his or her own bed. Beds and sleeping quarters should be clean, safe, and in good repair. There should be periodic supervision of sleeping quarters throughout the night.
- Each child should receive adequate medical care, including mental health care. Medical emergencies should be dealt with promptly, regardless of the child's economic status.

- Each detention facility should implement drug abuse prevention and rehabilitation programs; these programs should be administered by qualified personnel.
- The government should collect and disseminate statistical data regarding children in detention. Such information should include: the reason for detention; the length of time in detention; the disposition of the case (i.e., measures imposed by judge); the frequency of review of these measures; family history; medical condition, including any substance addiction or abuse; previous detentions; and any complaints or concerns noted by the child.

Recommendations to the European Union:

- The European Union should develop guidelines for ensuring that its funds are not and will not be utilized by a juvenile justice system that violates the human rights of detained children and youth. An important first step would be to commission a prompt and independent investigation of conditions in the juvenile justice system, with public findings and recommendations; the European Union should use its leverage to ensure that these recommendations are implemented.
- In particular, the European Union should vigorously protest the use of punitive isolation and physical punishment in children's centers, and insist on adequate state supervision and control over the centers.
- The European Union and all Member States providing direct and indirect aid to Guatemalan law enforcement agencies should insist on significant improvement in police conduct toward street children. In particular, training programs provided by the Spanish Civil Guard to the National Police should incorporate instructions on coping with street children without abusing their rights. Failure to improve in this area would warrant a cutoff of aid to the police.

Recommendations to the United States:

- The United States government should review the effectiveness of the Office of Professional Responsibility of the police to determine why it has failed to adequately address police violence against street children.

- U.S. assistance to law enforcement agencies should include a component on the human rights of street children. Continued serious abuses by the police should prompt a reconsideration of aid.

Recommendations to the United Nations, including the U.N. Special Rapporteur on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, the U.N. Working Group on Arbitrary Detention, and the U.N. Committee on the Rights of the Child:

- The U.N. Special Rapporteur on Torture and the U.N. Committee on the Rights of the Child should investigate police violence against Guatemalan street children. They should also evaluate the government's response to this violence, including efforts at prevention and sanctions against offending officers. The findings of these studies should be the basis for detailed and public recommendations to the government of Guatemala.
- The U.N. Working Group on Arbitrary Detention, The U.N. Special Rapporteur on Torture, and the U.N. Committee on the Rights of the Child should investigate conditions of detention for children in Guatemala, including, but not limited to, the use of corporal punishment and isolation. They should evaluate the government's response to illegal conditions and practices in juvenile detention facilities. Based on their findings, they should make detailed and public recommendations to the Guatemalan government.
- The U.N. Working Group on Arbitrary Detention and the U.N. Committee on the Rights of the Child should investigate the extent to which due process protections are observed by the Guatemalan government in depriving children of their liberty. They should make detailed and public recommendations to the Guatemalan government, aimed at full and rapid observance of due process rights in the detention and confinement of children.
- The U.N. Committee on the Rights of the Child should devote a theme day to the topic of police violence against street children.

III. ABUSES AGAINST STREET CHILDREN

Background

Street Children

Street children in Guatemala number between 1,500 and 5,000, the majority of whom reside in Guatemala City.¹ Girls make up between 20 and 30 percent of Guatemala's street children.²

¹ According to the Guatemalan government, there are 1,500 street children in Guatemala. U.N. Committee on the Rights of the Child, "Summary Record of the 307th Meeting," CRC/C/SR.307, June 3, 1996, p. 8. Based on its own statistics, the non-governmental organization Casa Alianza, the Latin American branch of the New York-based

Covenant House, believes that there are 1,500 to 2,000 street children in Guatemala City alone, with an undetermined number in other areas of the country. Children's Rights Project interview with Street Coordinator Mario Alvarado, August 30, 1996. Sólo Para Mujeres, an organization dedicated to working with street girls, estimates there are 5,000 street children in Guatemala. Human Rights Watch Children's Rights Project interview with Director Manuel Rueda, Guatemala City, September 10, 1996.

Regarding the Guatemalan government's failure to study the situation of street children, the U.N. Committee on the Rights of the Child said: "The Committee is deeply concerned about the insufficient efforts to collect disaggregated statistical data and to identify appropriate qualitative and quantitative indicators on the situation of children, particularly those belonging to the most disadvantaged groups, including those living and working in the street, [and] victims of abuse, neglect or ill-treatment . . ." U.N. Committee on the Rights of the Child, "Concluding observations of the Committee on the Rights of the Child: Guatemala," CRC/C/15/Add.58, p. 3.

² Casa Alianza statistics, August 28, 1996, show 19 percent of street children

Human Rights Watch follows the definition of street children formulated by the Inter-NGO Programme for Street Children and Street Youth:

Street children are those for whom the street . . . more than their family has become their real home, a situation in which there is no protection, supervision or direction from responsible adults.³

contacted from January through August 1996 were female; Sólo Para Mujeres Director Manuel Rueda estimated that 30 percent of Guatemala City street children are girls. Human Rights Watch Children's Rights Project interview, September 10, 1996.

³ Save the Children, *Street and Working Children: A Guide to Planning, Development Manual 4*, 1994, p. 15. This report follows the definition of "child" as it appears in Article 1 of the Convention on the Rights of the Child: "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Under Guatemalan law, majority is attained at the age of eighteen. Decree Number 78-96 (Minors Code), Article 2.

In Guatemala, most of the street children we spoke with lived and slept in the streets, finding shelter in parks, under stairways, and in doorways. A smaller number slept in cheap flophouses, pooling their money with friends in order to rent a room for the night. Others spent their days in the streets but returned to their homes to sleep.⁴

Sixty-five percent of Guatemala City's street children and youth are between the ages of ten and seventeen.⁵ Most of the rest are eighteen or older, with only about 3 percent younger than ten.⁶ The majority live in the downtown area of Guatemala City, and more than 60 percent are from Guatemala City itself. Approximately 10 to 15 percent have migrated to Guatemala from neighboring Central American countries, especially Honduras and El Salvador. The remaining 25 percent are from other areas of Guatemala, both urban and rural.

⁴ According to Casa Alianza statistics provided to Human Rights Watch, 80 percent of the children sleep on the street, 5.5 percent at home, 4 percent in hotels, and 3 percent in shelters. (The remaining children did not specify where they slept.) Casa Alianza internal-use statistics, August 28, 1996.

⁵ Information in this paragraph is from Casa Alianza statistics for the period of January - August 1996, given to Human Rights Watch Children's Rights Project on September 2, 1996 (Casa Alianza statistics).

⁶ Note that according to Dr. René Zamora, staff physician for Casa Alianza, the number of younger street children, for example, five to seven years old, is increasing. Human Rights Watch Children's Rights Project interview, Guatemala City, September 20, 1996.

Although there are street children in other Guatemalan cities, nongovernmental outreach and shelter programs are concentrated primarily in Guatemala City. There are no government programs for street children anywhere in the country.

The practice of inhaling the fumes of shoe glue (*pegamento*) or paint thinner (*solvente*) is prevalent among Guatemalan street children, who get high to escape pain, hunger, and desolation. Seventy-five percent of Guatemalan street children themselves told Casa Alianza they were frequent inhalant users or addicts.⁷

According to Casa Alianza street educators, however, more than 90 percent are most likely addicted to chemical inhalants.⁸ Nearly every child and youth we interviewed on the street, some as young as eight, inhaled paint thinner during the course of our conversation, some of them continuously. Some of the children were so intoxicated they had trouble speaking. Long-term mental impairment was apparent among older street youth, and was attributed by street youth and street educators alike to years of inhaling the chemical fumes. "It eats your brain," one boy told us. Toluene, a potent chemical that destroys brain cells and other organ tissues, is a common component of the industrial solvents and glues used by the children.

⁷ Casa Alianza statistics.

⁸ Human Rights Watch Children's Rights Project interview, Guatemala City, August 27, 1996.

Robbery, prostitution, and begging are the main sources of income for most street children.⁹ Street educators say that the majority of street children engage in petty thievery, and the majority of street girls prostitute themselves, usually beginning at the age of twelve.¹⁰ Condom use is sporadic, and the pregnancy rate among street girls is high. The Casa Alianza staff physician confirmed the high rate of pregnancy among girls,¹¹ as well as a growing rate of AIDS infection. From January to September 1996, he saw eight girls with AIDS, including three who died. The only boy he had seen with AIDS was a transvestite.¹² Health workers and street educators predict that the incidence of AIDS will rise dramatically without intervention.¹³ To date, there are no government AIDS education programs, much less any outreach toward street children and prostitutes.

The Casa Alianza physician also stated that the following ailments are common among street children: head lice, intestinal parasites, skin parasites, pneumonia, tuberculosis (afflicting 30 to 40 percent of the children); and a host of sexually transmitted diseases, including gonorrhea and syphilis — these diseases are most common among girls.¹⁴

⁹ Casa Alianza statistics show 85 percent of Guatemalan street children engaging in one or more of these practices.

¹⁰ Human Rights Watch Children's Rights Project interview with Mario Alvarado, Casa Alianza street coordinator, Guatemala City, August 27, 1996.

¹¹ See also Tamara Rice Lave, "Breaking the Cycle of Despair: Street Children in Guatemala City," *Columbia Human Rights Law Review*, vol. 27, no. 1, Fall 1995, pp. 57, 66, footnote 46, citing testimony that 55 percent of street girls interviewed reported having been pregnant at least once.

¹² Human Rights Watch Children's Rights Project interview with Dr. René Zamora, Guatemala City, September 20, 1996. Dr. Zamora told Human Rights Watch Children's Rights Project that he does not routinely test the street children under his care for AIDS. He tests some, but never those under the age of fourteen.

¹³ Doctors Without Borders reported that data regarding AIDS in Guatemala is unreliable, as it has not been adequately studied. The humanitarian group also reported seeing three cases of girls with AIDS in the juvenile detention facilities in 1996. Human Rights Watch Children's Rights Project interview with Arlette García and Doris Mesilla, Doctors Without Borders, Guatemala City, September 4, 1996.

¹⁴ Human Rights Watch Children's Rights Project interview with Dr. René Zamora, Guatemala City, September 20, 1996.

Regarding the health hazards of police abuse, the doctor said:

A few years ago it was very common to see kids who had been beaten up by the police. They would beat them, sometimes severely . . . I saw burst bladders and intestines, broken ribs. They'd make the children swallow bags of glue. I still see these kinds of abuses, but less than before. Five years ago, I'd see four or five cases of police beatings a day. Now, I see five or six a month. Bruises, contusions.¹⁵

According to the doctor, beatings now come at least as often at the hands of private police as from National Police. "Those guys, yes, they are very aggressive with the kids," he told us.¹⁶ At the time we spoke with him, Dr. Zamora had been the Casa Alianza staff doctor for nine years.

Many of the children we spoke with, particularly the younger boys, were barefoot, poorly clothed, and covered with scrapes and cuts. Street educators carry first-aid kits and minister to the children's minor medical needs on the spot, dispensing antibacterial salve, band-aids, and aspirin.

¹⁵ Ibid.

¹⁶ Ibid.

According to street educators, social workers, and the children themselves, the vast majority of these children are on the streets because their families have abused or abandoned them. One study, for example, found that 64 percent of street girls interviewed had been victims of incest.¹⁷ The following stories, told to Human Rights Watch during our mission, are typical:

- Victor,¹⁸ eight or nine years old, spends his days inhaling paint thinner and scavenging for money in the main bus terminal of Guatemala City. His mother, an alcoholic, begs in the terminal and sends Victor and his sister out to beg for money as well. Whatever they collect they turn over to her; she uses this money to buy more liquor. Victor wants to go to a shelter for street children, but his mother opposes it. Several months ago, other street children doused Victor with gasoline and set him on fire, inflicting first degree burns over his thighs, groin, and genital area.¹⁹
- Juan Alexander, sixteen years old, had been on the streets for five years at the time we interviewed him. His father had died when he was one, and his stepfather was a physically abusive alcoholic. After years of suffering

¹⁷ Lave, "Breaking the Cycle . . .", p. 66, footnote 46, citing a 1991 study of 143 street children in Guatemala City. The study found that 100 percent of the children interviewed had been sexually abused, 53 percent of them by family members.

¹⁸ All children's names have been changed in order to protect their identity.

¹⁹ Human Rights Watch Children's Rights Project interview with Casa Alianza street educators, Guatemala City, August 27, 1996.

from violent attacks and trying, unsuccessfully, to protect his mother, Juan Alexander left home at the age of twelve. Once on the street he began to inhale glue. Soon, he was using other substances as well — marijuana, beer and cheap liquor, barbituates and amphetamines, and cocaine. He supported himself by robbing, begging, singing on buses for donations, and washing trucks.²⁰

Susana, sixteen, was originally propelled onto the street after being raped by a neighbor. After her rape, she lost all interest in studying or going to school. I just wanted to do drugs. Finally my family asked me to leave the house, and I did, and I never went back. And I am not going back to my house. . . . It's so sad. This is why I do drugs. To forget for awhile. To try to forget.

Most street children are there because they've had problems at home. Either they've left because the problems are too bad, or they've been kicked out by their parents. Then they come on to the street and get addicted to drugs. It's difficult to get out from under a drug addiction. It's a road with no exit. Robbing is very risky. The police are dangerous and the people on the street are dangerous. You could get stabbed, you could get raped. Last night, two kids got in a bad fight over some glue. You could get killed over something like that.

²⁰ Human Rights Watch Children's Rights Project interview with Juan Alexander, Guatemala City, September 3, 1996.

Each of us has our own unique problems. I'm going to enter a refuge for street girls. God willing.²¹

Killings and other Violent Assaults: Trends since 1990

²¹ Human Rights Watch Children's Rights Project interview with Susana, Guatemala City, September 10, 1996.

International scrutiny turned to Guatemala in the early 1990s, as National Police officers and other government security force members were implicated in dozens of vicious assaults against street children, including fourteen murders in a single eighteen-month period.²² The worst year for such killings was 1990, beginning with the brutal murder of thirteen-year-old Nahamán Cardona López in March.²³ By the end of the year, several boys had been killed and dozens wounded. Twenty-six National Police officers and four private security guards were implicated in these crimes.²⁴

The attacks included severe beatings, forced ingestion of toxic shoe glue, torture and mutilation, death threats, and point-blank extrajudicial executions. Casa Alianza began publicizing these cases and pushing for police accountability for human rights abuses against street children, an effort unprecedented in Guatemala. These efforts, reinforced by the increasing independence of successive civilian

²² "Since it began documenting abuses against street children in March 1990, Casa Alianza has reported 14 cases of street children murdered by the police, 39 cases of torture or other violent abuse, and four disappearances." Americas Watch and Physicians for Human Rights, *Guatemala: Getting Away with Murder* (New York: Human Rights Watch, 1991), p. 46.

²³ Nahamán died ten days after four National Police officers threw him to the ground and kicked him "for several minutes," breaking six ribs, rupturing his liver, and causing contusions over 60 percent of Nahamán's body. The case made a martyr of Nahamán, and became the focal point of efforts to end impunity for police abuse. After a long legal battle, including a retrial, the attackers were sentenced to twelve years in prison and ordered to pay 10,000 quetzales [approximately \$1,650] each in civil damages to the boy's mother. The conviction and sentencing of National Police officers for crimes against a street child was without precedent. As of March 1997, however, none of the fines had been paid. On March 14, 1997, the seventh anniversary of Nahamán's murder, Casa Alianza filed suit against the Guatemalan government, alleging that the government must pay the unpaid damages award. According to Casa Alianza, "Article 122 of the Guatemalan Constitution states that the government is responsible for damages caused by State employees in the execution of their functions. But this clause has never been implemented in the courts because of the real fear of reprisals by the State's security apparatus." Casa Alianza email, "Guatemala: Civil Suit Against Government," March 12, 1997.

²⁴ Casa Alianza, *Torture of Guatemalan Street Children: Report to the U.N. Committee Against Torture* (Guatemala City: Casa Alianza, 1995), pp. 6-28.

governments,²⁵ led to a decline in the most egregious forms of abuse by government security forces. Nonetheless, the streets remained a dangerous place for children.

²⁵ Following more than three decades of repressive military regimes, Guatemala came under civilian rule in 1986. In the ensuing ten years, civilian control of the state security force apparatus has slowly emerged, easing somewhat one of the longest and most severe human rights crises in the hemisphere. For an overview see Jean-Marie Simon, *Guatemala: Eternal Spring, Eternal Tyranny* (New York: W.W. Norton & Co., 1987).

Nineteen ninety-four was the worst year for homicides of street children since 1990, with thirteen murders recorded.²⁶ Nineteen ninety-six was also a grim year, with at least ten street children and youth murdered, including one who was shot at close range by a uniformed Treasury Police officer. (See "Murders," below.)

In contrast to the killings of the early 1990s, however, when most attackers were police officers, the majority of the perpetrators of 1996 murders were unidentified. They have been off-duty government security force members, security guards for private businesses or individuals, or even private citizens engaged in a particular vendetta against street children because of their imputed criminality. An increasingly pervasive culture of violence in Guatemala City, in which ever-larger numbers of people are bearing arms, and violent crimes are skyrocketing, contributes to this phenomenon. Indeed, independent sources informed us that some of the violence against street children is being perpetrated by organized crime elements. Reportedly, street children are being used as drug couriers and as accomplices to car-theft rings.²⁷ When they learn too much or otherwise become a liability, these children reportedly are killed.

²⁶ Casa Alianza, *Torture of Guatemalan Street Children . . .*, pp. 7-57.

²⁷ "Corrupt police and military personnel and criminals often recruit [street] children into thievery or prostitution rings." U. S. Department of State, *Guatemala Country Report on Human Rights Practices for 1996* (DOS Country Report). Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1997. U. S. Department of State, *Country Reports on Human Rights Practices for 1996* (Washington, D.C.: U.S. Government Printing Office, 1997), p. 460, 455.

Waves of violence against street children have been denominated as “social cleansing” efforts in Guatemala and elsewhere.²⁸ In Guatemala, the “social cleansing” phenomenon has targeted street children as well as other perceived criminal elements of society, and has been denounced repeatedly by the U.N. Human Rights Mission to Guatemala (MINUGUA) and by domestic human rights organizations. “Social-cleansing” murders are rarely investigated by the authorities.

Widespread impunity allows violence against street children to continue. In Guatemala, of the nearly 300 criminal complaints filed by Casa Alianza on behalf of street children, only a handful have resulted in prosecutions. In the vast majority of cases, incidents are not investigated, and perpetrators are not arrested. When they are, convictions may require years of concerted pressure, only to be, not infrequently, overturned on appeal. Sentences are often light, and compensatory fines imposed by the courts have never been collected. (See “Failure of the Government to Arrest, Investigate, Prosecute, and Convict,” below.) Against this background of impunity, it is not surprising that private and governmental security forces continue to target street children for abuse.

Abuses by National Police and Other Government Security Forces

²⁸ See, e.g., Human Rights Watch/Americas, *Final Justice: Police and Death Squad Homicides of Adolescents in Brazil* (New York: Human Rights Watch, 1994); and Human Rights Watch/Americas and Human Rights Watch Children's Rights Project, *Generation under Fire: Children and Violence in Colombia* (New York: Human Rights Watch, 1994).

“Ugly things happen on the street.”²⁹

The Guatemalan Constitution requires that the state “guarantee and protect human life . . . as well as the integrity and security of the person.”³⁰ International law strongly protects these same rights. The International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child all prohibit torture and cruel, inhuman, or degrading treatment.³¹ Guatemala has

²⁹ Susana, sixteen years old, raped in April 1996 by National Police officers. “*Son cosas muy feas, lo que pasa en la calle.*”

³⁰ Political Constitution of the Republic of Guatemala, Article 3.

³¹ International Covenant on Civil and Political Rights (Article 7) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Articles 1, 2, 4, and 16. The Convention on the Rights of the Child, Article 37(a), reads: “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” Guatemala has ratified all of these instruments. Torture is defined by the Convention against Torture as the intentional infliction on a person of “severe pain or suffering, whether physical or mental . . . for such purposes as obtaining . . . information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based

ratified all three of these human rights conventions. Nonetheless, as the following pages illustrate, these laws are flouted on a daily basis by Guatemalan law enforcement agents.

Routine Violence: Theft and Assault

on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of . . . a public official . . .” Convention against Torture, Article 1. “Cruel, inhuman, or degrading treatment or punishment” refers to similar acts, also committed by state agents, which do not rise to the level of torture.” Ibid., Article 16.

Nearly every child we spoke with told us of habitual assaults and thefts by the police. Usually, the officers accused of these crimes belonged to the 2nd and 5th precincts, which work in the downtown area of Zone 1.³² These assaults occurred on busy city streets in broad daylight, on quiet streets in the middle of the night, in alleys and deserted areas, and in police stations. Often, they were witnessed by passersby or other police officers.

Beatings may be used in the course of frequent thefts against street children; at other times, beatings are delivered solely as extrajudicial punishments. Another commonly-reported practice is for the police to extort money from the children by threatening to imprison them (on false charges) if they refuse to pay the police. If the child has committed a crime, the police often solicit bribes in exchange for his or her freedom. Sexual assaults against female children and youth are also common.

Mauricio, a street youth, told us the following:

Two weeks ago I had long hair. But police officers from the 2nd precinct came and picked me up, and took me down to the station. First they poured glue over my head. Then they cut my hair off with two straight razors. They accused me of stealing and inhaling glue, but they didn't charge me with anything, or take me to the tribunals. They just harassed me and shaved my head. That has happened to me many times.

I was wearing two chains [necklace chains] when they picked me up, but I gave them to a friend of mine so the police wouldn't steal them. Yesterday, two different police officers stole these chains from me. I was disoriented [from inhaling glue]. They stole them and then left. It was nighttime, no one was around, just me and my girlfriend. They also took fifty quetzales and my watch.

³² The urban sprawl of Guatemala City is divided into eighteen zones. Zone 1, at the center of the city, comprises the downtown area, with the other zones spiralling off of it. Our researcher spoke primarily with children in Zone 1 and in Zone 4, which abuts Zone 1.

It happens all the time, police stealing jewelry and money from us. You practically can't wear a chain or anything — they'll come up and hit you and take it away. They don't like to see us wearing jewelry. It makes them jealous.³³

Mauricio's girlfriend, Maritza:

Last night two police from the 2nd precinct robbed me. This was when they stole my boyfriend's chains and money; they wanted my money, too. I didn't want to give them anything, but they hit me and took my money — twenty-five quetzales.

It was late at night. I saw the patrol car, but I forget the number of it. We were on our way to a hotel to get some sleep. They caught us alone in a dark street.

They hit me twice in the stomach, hard. Then one of them put his hand in my blouse and between my legs, feeling me. Supposedly he was searching me, but really he was just feeling me. They always do that to us girls, it's very common.

I was also hit by police officers recently near the National Palace. These police who attack us, sometimes they wear jackets over their uniforms, so we can't see their name badges.³⁴

³³ Human Rights Watch Children's Rights Project interview with Mauricio, Guatemala City, September 2, 1996.

³⁴ Human Rights Watch Children's Rights Project interview with Maritza, Guatemala City, September 2, 1996.

Juan Alexander, a sixteen-year-old, had been on the street for five years when we interviewed him. Regarding abuses by the police, he told us that:

The police are always telling me to give them money. They say if I don't, they'll arrest me. . . . Oh, this happens all the time. Probably this has happened to me fifteen times or more.

How can this be, that the agents of justice ask us for money? When we're not doing anything to them? And to think, some poor kids are hauled away and beaten up, just because they don't have any money to give to the police.

Another thing they'll do is take you down to the station and make you clean it — they say they'll arrest you if you don't. And they hit us, sometimes. On the street and also at the station; they'll hit us in front of the other police. Also they step on our hands with the heels of their boots and press down hard and twist. And they sit on our backs and make us do push-ups.³⁵

David, sixteen years old:

When they catch you robbing, they kick you and hit you with their batons, and five or six of them will beat you up right there on the street. First they put the handcuffs on you, then they beat you up. Later they'll take you to the courts. . . . They just want money, the police. If you don't give it to them, they lie to the judge, say they found you doing drugs, or with a knife, or robbing someone. They accuse us of things we didn't do, and the judge believes them.³⁶

³⁵ Human Rights Watch Children's Rights Project interview with Juan Alexander, Guatemala City, September 3, 1996.

³⁶ Human Rights Watch Children's Rights Project interview with David,

Beto, fifteen years old, had been on the street since he was ten years old.
He told us:

The police treat us badly. They hit us. Not for any particular reason . . . just because they feel like it. They've hit me lots of times. They hit with their rifles, or with sticks, on our backs and stomachs. And sometimes they just punch us in the stomach with their hands. They also take our paint thinner and pour it over our heads. They've done that to me five times. It's awful, it hurts really bad. It gets in your eyes and burns; for half an hour you can't see anything.³⁷

Miguel Angel, a youth with nine years of experience on the street:

The police bother us every single day. They hit us and steal our money, our shoes, our jackets. If you don't give them what they want, they'll beat you up or arrest you. . . . We can't say anything, or they'll hit us harder. The 2nd and 5th precincts are the worst; Zone 1 is the worst.³⁸

Dolores, a street youth for more than six years:

The police take us down to the station and make us pay them ten or twenty quetzales so they won't arrest us. If we don't give it to them, they beat us, or put false charges against us; for example, they say they found us smoking marijuana.

Two months ago, I had a bad experience with the police. I was sleeping in the park. Two 2nd precinct police came up and told me to give them my money. I had about twenty quetzales. They

³⁷ Human Rights Watch Children's Rights Project interview with Beto, Guatemala City, September 3, 1996.

³⁸ Human Rights Watch Children's Rights Project interview with Miguel Angel, Guatemala City, September 6, 1996.

said if I didn't give it to them, they'd charge me with possession of marijuana. They said they had the marijuana with them and would put it in my bag. They kicked me in my back to make me move. I gave them my money.

Yesterday the police came up, they put this thing in my mouth that gives a shock. It is the battery from their beeper, the piece they plug in to recharge. It hurts a lot. They did it just to hurt me. . . . There are some good police, but most of them are bad. They get a kick out of hurting us.³⁹

Street educators and others who work with street children confirmed the occurrence of these police practices. Some considered the rate of such abuses to have lessened in the past two years, although others asserted that police behavior was in fact worsening. The children and youth themselves were consistent in their reports of frequent assaults and robberies.

Violence Against Girls: Sexual Assault and Rape

Girls on the street are additionally vulnerable to sexual attacks.⁴⁰ Several told us that they suffered routine sexual assaults at the hands of private and

³⁹ Human Rights Watch Children's Rights Project interview with Dolores, Guatemala City, September 6, 1996.

⁴⁰ Although street boys may suffer similar attacks none were reported to Human Rights Watch Children's Rights Project, either by street boys, street educators, or health

government police officers. Children's rights activists confirmed the common nature of such assaults. Rape by police officers is reportedly on the wane;⁴¹ nonetheless, at least one street girl was raped by uniformed police officers in 1996.

Susana, sixteen years old, talked to Human Rights Watch about the abuses directed toward girls, including sexual assault, abuse of authority, and rape. Susana was raped in April 1996, by two uniformed police officers. A third officer kept watch.

Both the private police and the National Police make us give them money or things, so they won't take us prisoner. Well, if they don't know you're a street kid, they won't do that; but if they know you're a street kid, they'll do it every day. They ask for all you have. If you don't have any money, you have to come up with something else. Or they'll say you have to sleep with them, otherwise they'll put you in prison.

Sometimes they're very aggressive. For instance, they'll say they want to search me, but really they're just touching me — they just want to feel your body. Sometimes if we resist, they won't do it. But some do touch us. They touch us and then they laugh

workers.

⁴¹ Sólo Para Mujeres is an organization dedicated exclusively to working with the street girls of Guatemala City. Its director, Manuel Rueda, told Human Rights Watch that: "The police used to take the girls far away and rape them. They did this all the time — I'd say it was a daily occurrence. Lately, we have not been hearing many reports of rape. Maybe for about a year now, rape by the police is uncommon. It still happens, but less often." Human Rights Watch Children's Rights Project interview, September 10, 1996.

together. They laugh and laugh. . . . As far as I know, they don't have the right to do that.

This happened to me a few months ago. Three police officers from the 2nd precinct took me . . . they said they'd been transferred down from the Petén. They said if I didn't sleep with them, they would plant marijuana on me.

It was at night. I was with my friend Carmen. They said the same thing to her. It was the Day of the Calvary, Easter Week, and Carmen and I were watching a religious procession on 18th Street. These three police came up to us and took us away. It was about 10:00 p.m. They walked us way over to the Mateo Flores stadium. When we got there, they took us behind the stadium, into a dark alley.

They raped me there. Two of them did. The third kept Carmen by him and kept watch for anyone coming by. They said if we made any noise they would take us prisoner, and put us in prison for having marijuana. They kept us there for about an hour.

Afterwards, one of them said to me: If you have any problems and need some help, come look for me at the 2nd precinct station, and I'll help you. He said this in a very sarcastic way. He was humiliating me.

They left us at the train station and gave us two quetzales for bus fare. We went to the Casa Alianza refuge. They took me to the hospital. Later I left, to avoid everyone bothering me.

I saw him once since then, dressed in street clothes. When he saw me, he took off running.
I'm sure this has happened to many other girls. But usually they won't say anything about it. . . . Ugly things happen on the street.⁴²

⁴² Human Rights Watch Children's Rights Project interview, Guatemala City, September 10, 1996.

A teacher with the National Children's Movement, who had himself been on the street for more than ten years, beginning at age eleven, said that girls typically suffer the full range of abuses meted out to boys, plus additional gender-related abuses. "The police will say they want to sleep with a girl. If she refuses, they will arrest her, and charge her with 'clandestine prostitution.'"⁴³

Homicide and Attempted Homicide

At least ten street children fell victim to homicides in 1996; others survived attempts on their lives and were seriously wounded in the process. In most of these cases the perpetrators have not been identified and it is unknown whether they were government agents, private security guards, or citizen "vigilantes".⁴⁴ In at least one case, however, an agent of the Guatemalan government—Treasury Police Officer Armando Ezequiel Ramírez—shot sixteen-year-old Ronald Raúl Ramos, a street youth, in an execution-style killing.

Shortly before he was murdered, Ronald Raúl spoke with our researcher at a Casa Alianza home near Antigua, Guatemala. He told us that he had been on the streets since he was seven, first in his native El Salvador, and then, since 1990, in Guatemala. Ronald Raúl made his living by begging and robbing. He had been imprisoned several times, including a stint in Zone 18, an adult prison, when he was fifteen. He told us he had been harassed and beaten by government and private police repeatedly. At the time of our conversation, he was in a drug rehabilitation program run by Casa Alianza.

⁴³ Human Rights Watch Children's Rights Project interview with Gustavo, Movimiento Nacional de los Niños, Guatemala City, September 6, 1996.

⁴⁴ Weak investigative efforts by the government are at least partially to blame for the failure to identify most killers of street children. See "Failure of the Government to Investigate, Arrest, Prosecute, and Convict," below.

Two weeks later, Ronald Raúl was in Tecún Umán with a friend. Tecún Umán, in the department of San Marcos, is a town on the border with the state of Chiapas, Mexico; presumably, the two boys were planning to cross into Mexico. At midday on September 20th, 1996, on the banks of the Suchiate River, which separates Guatemala from Mexico, Ronald Raúl's body was found. It had a bullet wound in the nasal region and an exit hole in the back of the head.⁴⁵

According to Casa Alianza, the officer had approached the children in a drunken state and demanded that they give him money before shooting Ronald Raúl. A report from the Treasury Police confirmed that the person accused of the murder was Officer Armando Ezequiel Ramírez Ramírez. According to this report, after shooting the boy, Ramírez handed over his rifle and pistol to two other Treasury Police officers and then absconded. To date, the accused has not been apprehended.

Other murders of street children and youth in 1996 included, but were not limited to, the following:

- **Octavio Díaz**, seventeen years old, who was found dead on January 1, 1996. Octavio was killed by a single shot to the head, administered at close range. A bayonet was found nearby. Although no suspects have been named, a source familiar with the murder reported that a National Police officer was implicated.
- **Blanca Azucena Guerra Zetc** and **Armando Valdemar Velázquez Valdez**, both thirteen years old, were killed together with **Clara Luz Guerra Zetc**, seventeen years old, on June 8, 1996.⁴⁶ Their bodies were found near Guatemala City. The three were killed by knives or machetes; their heads were nearly severed in the attack. There were signs of torture

⁴⁵ "Murder of Guatemalan Street Child," Casa Alianza email to Human Rights Watch, October 1, 1996.

⁴⁶ Information on these killings is from two Casa Alianza emails, dated June 13 and July 5, 1996.

on at least one of the bodies (the boy). Notes attached to their bodies described the victims as “thieves” killed by “concerned neighbors.” As of March 1997, no progress has been made in the case, and the victims have not been identified.

- **Marvin Aju Barrientos**, age unknown, was shot in the early morning of August 4, 1996, by the apparent companion of a drunk he was trying to pickpocket.⁴⁷ After shooting him in the chest, the aggressors ran off. Marvin was taken to the emergency room of the hospital, where he was pronounced dead on arrival. The two men were dressed in black sweaters and jeans. No progress has been made in solving this case, despite the availability of three eyewitnesses.
- **Carlos Emir Arriaza Vásquez and Victor Noe Joj Pac**, twelve and fourteen years old, respectively, were found murdered in the early hours of October 6, 1996. Their bodies were discovered in a soccer field in Mixco, an urban area adjoining Guatemala City. The boys “had been beaten, decapitated, and stabbed in different parts of their bodies.”⁴⁸ Reportedly, these murders were gang-related.

Authorities showed a disturbing lack of interest in investigating the killing of these boys. The Public Ministry, responsible for investigating all crimes, reportedly justified its inaction on the grounds that the families of the victims had shown no interest in the case, and that therefore an investigation was unnecessary.

⁴⁷ Information on this shooting is from a Casa Alianza email to Human Rights Watch, dated August 12, 1996.

⁴⁸ Casa Alianza email, “Guatemala: Two Children Decapitated,” October 16, 1996.

The Public Ministry did not even request to see the coroner's reports, nor did it ask for a police investigation.⁴⁹

Attempted murders in 1996 included:

⁴⁹ This source, a lawyer who frequently consults with the Public Ministry regarding case investigations, requested anonymity.

- **Edgar Augusto Pérez, Estuardo de Jesús Pérez, and “Miguelina,”** all street children, were attacked on January 20, 1996.⁵⁰ The two brothers, eleven and ten years old, and the sixteen-year-old girl had been sent to steal hubcaps by three adults. As they finished stealing the hubcaps from a parked car, a red Mercedes Benz that was driving by stopped; three armed men exited and began to shoot at the children. Edgar was struck by three bullets, and Estuardo and Miguelina by two. To date, the assailants have not been identified.
- **Carlos Antonio Mejía Chávez and Juan Pablo Méndez,** twenty and fifteen years old, were shot by an assailant in civilian clothes --later identified as a police officer-- in the pre-dawn hours of January 21, 1996. The two were sleeping with several other street children when a man approached and, without speaking, began firing a pistol at them. Carlos Antonio was hit in the neck and in the chest; Juan Pablo was hit in his right leg. The other children safely escaped.

A number of the children provided a detailed physical description of the attacker, who was nonetheless never apprehended. The National Police reportedly did not investigate this case, nor was it covered by the Guatemalan press.

Human Rights Watch spoke with Juan Pablo, who survived the attack. He said that: “In January of this year [1996], I was sleeping with some other kids when a police officer came over and shot into the group of us. . . . He wasn’t in uniform. But we had seen him before — we knew he was a police officer.”⁵¹ Juan Pablo did not know of any possible motive for the shooting.

Harassment of Street Educators

Several organizations, including Casa Alianza, the Movimiento Nacional de Niños (National Children's Movement), CEDIC (*Centro de Desarrollo Integral Comunitario*) and Sólo Para Mujeres (Just for Women), utilize an outreach system based on “street educators.” Street educators spend several hours each day on the streets and in the parks of Guatemala City, making contact and establishing

⁵⁰ Information on this case is from Casa Alianza email, “Three not two Guatemalan children shot,” January 30, 1996.

⁵¹ Human Rights Watch Children’s Rights Project interview with Juan Pablo Méndez, Guatemala City, September 2, 1996.

relationships of trust with street children. They tend to the children's wounds, help resolve conflicts, and encourage the children to enter shelters, where drug use is prohibited. They are often the only authorities the children trust and respect, and it is to the street educators that children turn when they have problems, including problems with the police.

Harassment of street educators by National Police officers, common in the early nineties, remained a disturbing problem in 1996. CEDIC reported frequent intimidation of its workers by police; "they are always accusing the educators of distributing drugs," said Edgar Alay, one of CEDIC's directors.⁵²

Various Casa Alianza educators also reported incidents of harassment by the police. One such incident occurred on September 14, 1996, when a Casa Alianza worker stepped in to protect a boy who was being beaten by a police officer. As the officer hit the boy, the street educator approached and told him that he had no right to hit the boy, to which the officer responded, "I don't care." The educator then told the police officer that he worked for Casa Alianza. The officer repeated that he didn't care, and the officer's partner offered the same response. The officer who had hit the boy then began hitting the educator lightly and repeatedly on the shoulder. When the man protested, saying "Don't touch me. You have no right to touch me," the officer waved his gun in the educator's face and said that he was the toughest guy in town, and for him bullets were just pills.⁵³

⁵² Children's Rights Project interview, Guatemala City, September 5, 1996.

⁵³ Human Rights Watch Children's Rights Project interview with Ronald Osorio,

On January 6, 1996, Treasury Police officers surrounded a shelter run by the Movimiento Nacional de Niños, and kept it surrounded for three days, during which they prevented anyone from entering or leaving the house.⁵⁴ On January 8, the officers finally left. They never offered a reason for the siege.

September 2, 1996; memo to Casa Alianza Legal Coordinator Hector Dionicio, from Casa Alianza counsel Roberto Marroquín Urbina, August 26, 1996. Another episode occurred near Christmas Day 1995, when a large group of children had gathered near two educators in anticipation of a special holiday event. Alarmed by the congregation of street children, members of the National Police, army, and National Guard converged, pulled their weapons, and pointed them at the group. Eventually the educators were able to defuse the situation, and the weapons were lowered. Human Rights Watch Children's Rights Project interview with Street Coordinator Mario Alvarado, Casa Alianza, August 27, 1996.

⁵⁴ Information on this and the following two incidents was obtained in a Human Rights Watch Children's Rights Project interview with Carlos Toledo, director of the Movimiento Nacional de Niños, Guatemala City, September 1, 1996.

On March 22, 1996, a group of about sixteen National Police officers from the 1st precinct went to the same house, illegally entered it without a warrant or permission, and searched it.⁵⁵ They questioned the staff repeatedly, asking what kind of children lived there, why they lived there, what kinds of drugs they consumed, and what the names were of all people residing there. According to Toledo, the presence of North American volunteers may have ameliorated the situation.

The following morning a SWAT-style police team burst into the house violently, again without a warrant of any kind. Toledo, denominating the assault an "act of intimidation," said that it created ongoing insecurity among workers and the twenty-three children living there.

In late April 1996, a different shelter run by the same organization was visited by approximately five police officers, who wanted to arrest all twenty-two children who lived in the house (none of whom were present, as it was a school day), as well as the workers. The men were dressed in plainclothes and came in a car without license plates. They were armed and carrying radios. One of them displayed a card identifying himself as a National Police officer assigned to the Minors' Section and he claimed to have an order from the Minors' Magistrate, but refused to show it. Organization staff contacted the Minors' Magistrate and the Chief of Police; both denied having approved any such operation. The chief said he would send other officers to investigate the incident, but they never arrived, and no investigation was ever conducted.

Illegal Detention

⁵⁵ Article 23 of the Guatemalan Constitution prohibits the entering of a home without permission or a judge's order, and Article 39 guarantees respect for private property.

Guatemalan law requires that all children detained by the police be taken immediately before a judge.⁵⁶ During regular court hours, the children are to be taken before a minors' judge (there are three); at all other times they are to be taken before a justice of the peace. After this preliminary hearing, the children are to be either released or taken to a juvenile detention center. Under no circumstances is a child to be held, no matter how briefly, at a police station.⁵⁷

⁵⁶ Article 33, Minors' Code (Decree 78-79).

⁵⁷ "If a minor is apprehended, regardless of the reason, he is to be taken immediately before a Minor's Judge . . . or a Justice of the Peace Under no circumstances should a minor be taken to a police station or a detention center for adults." Ibid.

Despite this well-known legal provision, Human Rights Watch learned of numerous instances in which children were taken to police stations. Once there, many were interrogated and subjected to coercion, including in some cases physical abuse. Lengths of detention at police stations ranged from an hour or two up to twelve or more hours.⁵⁸

⁵⁸ This is less than reported in previous years, indicating some improvement in the practice. In 1994, for example, Casa Alianza reported a case in which two boys were held for two days at a Guatemala City police station, during which time they were forced to clean the facility, shine police officers shoes, and steal for the police. Casa Alianza, *Torture of Guatemalan Street Children: Report to the U.N. Committee Against Torture* (Guatemala: Casa Alianza/Covenant House Latin America, 1995), p. 47. On the other hand, the Movimiento Nacional de Niños received allegations in 1996 that there was a clandestine "torture center" in a Zone 18 police station, where police would hold children for several hours and coerce information out of them through beatings, putting glue on testicles, and cutting them with razor blades. Human Rights Watch Children's Rights Project interview with Carlos Toledo, September 1, 1996; Attie, Jessica, "Halados: Street Children and Detention Centers in Guatemala," unpublished manuscript, p. 21. Human Rights Watch was unable to confirm this information.

Daisy, a fifteen-year-old, told us she had been taken with another girl to a 2nd precinct police station, where they were held for three hours before being taken before a judge.⁵⁹ Graciela, sixteen years old, was also held for several hours at a 2nd precinct station. While there, she and her friend asked if they could make a telephone call to Casa Alianza. The police refused, saying, “those Casa people are just jerk-offs.”⁶⁰

Claudia, fifteen years old, was interviewed by Human Rights Watch at a shelter for girls. She had recently escaped from Gorriones, the girls detention center outside Guatemala City. It had been her first detention — she and several other girls were arrested and charged with theft. Claudia told us:

⁵⁹ Human Rights Watch Children's Rights Project interview with Daisy, Observation Center for Girls, Guatemala City, August 29, 1996.

⁶⁰ “*Los de Casa Alianza sólo pelan la verga.*” Literally, this is derogatory slang for masturbation. Human Rights Watch Children's Rights Project interview with Graciela, Observation Center for Girls, Guatemala City, August 29, 1996.

I was arrested by the police at 8:00 a.m. They took us to the station. They told us to give them the things we had stolen—a watch and a chain—and they would let us go free. We turned over the stuff, but they didn't let us go. They kept us there all day, until 6:00 p.m., asking us questions: where we hung out, where we robbed, who sold drugs to us . . . that kind of thing. Finally, they took us to the Observation Center.⁶¹

Outside of Guatemala City, the practice of illegally detaining children may be worse. One boy, fifteen-year-old Beto, told us that the previous year he had been held for five days in a police station at Puerto San José, on Guatemala's Pacific Coast. After five days he was taken to the courts in Guatemala City.⁶²

In addition to violating Guatemalan law, the practice of illegal detention violates international law, including the Convention on the Rights of the Child (“No child shall be deprived of his or her liberty unlawfully or arbitrarily”) and the International Covenant on Civil and Political Rights (“No one shall be subjected to arbitrary arrest or detention”).⁶³

Abuses by Private Security Forces

All private security agencies and their guards—referred to as “private police” in Guatemala—are under the jurisdiction of the Interior Ministry.⁶⁴ The law governing private security agencies requires that such agencies and their guards be approved by the Interior Ministry, in a process that also requires approval by the National Police, the Public Ministry, and the president of Guatemala.⁶⁵ The Private Police Law provides in detail for close government control over private guards, including their licensing, the training and hiring of individual officers, the weapons

⁶¹ Human Rights Watch Children's Rights Project interview with Claudia, Guatemala City, September 10, 1996.

⁶² Human Rights Watch Children's Rights Project interview with Beto, Antigua, September 3, 1996.

⁶³ Convention on the Rights of the Child, Article 37(b); International Covenant on Civil and Political Rights, Article 9.

⁶⁴ Private Police Law (*Ley de Policías Particulares*), Decree 73-70, in its entirety, and especially Article 8: “Private Police will be under the control of the Interior Ministry.”

⁶⁵ *Ibid.*, Article 3.

issued to them, periodic review of their conduct, and sanctions to be applied in the case of misconduct or criminal action.⁶⁶

Unfortunately, this multi-layered system of oversight is not applied in practice, with the result that the actions of private security guards in Guatemala are notoriously unsupervised. They are hired without adequate training, their conduct is not overseen or evaluated, they sometimes carry their own weapons, and, when they do commit serious crimes, they are rarely brought to justice. Street children are frequent victims of abuse at the hands of private security guards.

The private guards from the bank also come and harass us all the time. They pull their pistols out and make us come out of the women's restroom [at the park]. They push us around. They just do it to give us a hard time, to be powerful over us; we're not bothering them at all.

Last week a private police officer grabbed me, threw me to the ground, and stepped hard on my stomach with his boot. Then he called the regular police, and they came and took me away . . . At the station they charged me with "public scandal" [*escándalo en la vía pública*]. But I wasn't doing anything, I wasn't drunk, I wasn't even high. That's just what they charge you with if they don't have any real charge to put against you.

⁶⁶ Ibid., Articles 5, 6, 10, 11, 15, 17, and 18.

—Maritza, nineteen years old⁶⁷

They [private guards] are very aggressive with the kids. I see more injuries from them than from the National Police.

—Dr. René Zamora, Casa Alianza physician⁶⁸

In January [1996], we saw a private guard shoot at a boy who had robbed something. The private police are not adequately controlled. They carry their own guns, unregistered.

—Mario Alvarado, Casa Alianza Street Coordinator⁶⁹

⁶⁷ Human Rights Watch Children's Rights Project interview, Guatemala City, September 2, 1996.

⁶⁸ Human Rights Watch Children's Rights Project interview, Guatemala City, September 20, 1996.

⁶⁹ Human Rights Watch Children's Rights Project interview, Guatemala City, August 27, 1996.

Corruption is one reason why private security guards and their employers so often escape accountability for their crimes and abuses of authority. Many of the private agencies are owned by powerful former military officers, who maintain their ties to government security forces and can be dangerous to cross. For example, several guards from the private security agency “Los Vigilantes” have been implicated in serious crimes, including murder. The founder and, until his death in August 1996, owner of Los Vigilantes was Colonel Manuel de Jesús Valiente Tellez, the feared former head of the Guatemalan National Police Criminal Investigation Unit (Sección de Investigaciones Criminales). In addition to his power as a ranking security force officer, Valiente Tellez reportedly “amassed a small fortune” during his years with the National Police.⁷⁰ The combination of money and influence is a potent one; several Guatemalan commentators told Human Rights Watch that Los Vigilantes guards had escaped accountability for their crimes because of the ability of Valiente Tellez to intimidate or bribe law enforcement officials and judges.

Failure of the Government to Protect Street Children and Prevent Abuses

Despite this longstanding and well-documented pattern of police abuses, the Guatemalan government has done little to protect street children and prevent future abuses. There are no government shelters for street children, nor are there any government employees working with street children or investigating conditions on the street.

A long-promised hotline for street children, funded by a grant from the U. S. Agency for International Development (USAID), was still not functioning as of March 1997. The hotline effort was part of a \$3 million, three year (1995-1997) grant by USAID; \$580,000 of this grant money went to the office of the Children’s Rights Defender of the Human Rights Ombudsman.⁷¹

⁷⁰ *Latin America Weekly Report*, July 24, 1981, p. 7.

⁷¹ Human Rights Watch Children’s Rights Project telephone interview with María Nicté Leal, USAID Project Officer for Guatemala, February 12, 1997. The remaining

portion of the grant was divided among several Guatemalan nongovernmental organizations, as well as the Maternal and Infant Health Support Program (PAMI: Programa de Apoyo para la Salud Materno Infantil).

In addition to the funding, USAID provided technical and material support for setting up the hotline. The European Union also provided assistance, which is ongoing as of March 1997. The emergency hotline number, 155, was publicized beginning in early 1996 and was included in the 1996 telephone directories. Nonetheless, the system was not functioning as of March 1997, allegedly due to technical problems.⁷²

Rigorous human rights training of law enforcement agents is a key element in ending police violence against street children. The Convention against Torture requires each state party to “ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel . . . and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”⁷³ The new Guatemalan Minors’ Code, scheduled to take effect in September 1997, directs the National Police to create a specialized children and youth unit, which will be responsible for training all police officers regarding children’s rights, including those rights protected by the Convention on the Rights of the Child.

Since 1996, the training of new recruits at the National Police Academy has included a section on human rights, taught by personnel from the office of the Human Rights Ombudsman.⁷⁴ Given the ongoing prevalence and severity of police violence against street children, however, it is imperative that such training be repeated at frequent intervals, and that the sanctions for violating children’s rights be severe and applied without exception. Potential sanctions should include transfer to administrative duty, suspension, dismissal, and the lodging of criminal charges against the offending officer. Officers should be reminded that the 1996 Minors’ Code enhances the penalties for crimes committed against children by government and private security force members. (See “Guatemalan Law,” below.)

⁷² According to Leal, the Guatemalan state-owned and operated telephone company (Guatel) and the Office of the Human Rights Ombudsman blame each other for the failure of the system to function. Whatever the cause, a solution does not appear imminent. USAID will not be renewing its funding for the Office of the Human Rights Ombudsman. *Ibid.*

⁷³ Convention against Torture, Article 10.

⁷⁴ Human Rights Watch Children’s Rights Project interview with Jan Perlen, United Nations Mission for the Verification of Human Rights in Guatemala (MINUGUA), Guatemala City, September 11, 1996.

Failure of the Government to Investigate, Arrest, Prosecute, and Sanction
Recent Convictions: A New Trend Toward Accountability?

In a welcome change from the usual impunity enjoyed by security force agents, three recent cases resulted in murder convictions, two in late 1996 and one in early 1997. In November, Oscar Leonel Jiménez Nájera, a former security guard for the “Los Vigilantes” private security company,⁷⁵ was sentenced to eight years in prison for murdering nineteen-year-old Marvin Benjamín Monterroso in 1993. Marvin and several other youths and children had been walking past a downtown restaurant guarded by Jiménez when the security guard opened fire against the group, shooting indiscriminately. Marvin died at the hospital shortly afterward.

A few weeks after this ruling, convictions were handed down in the notorious “Shute Bar” case. On January 6, 1995, in the Shute Bar in downtown Guatemala City, Oscar Rene Marroquín (“Coquín”), a twenty-one-year-old street youth, was pushed into the bar’s restroom by a security guard and shot in the head. The guard, Arnoldo Martínez Gonzales, then called the owner of his security agency, SEPRIGUA, ex-military officer José Antonio Parada. Parada in turn went to the 2nd precinct police station, where he contracted with two police officers to dispose of the body. These three men then went to the Shute Bar, got Coquín’s body, took it away, and dumped it. Parada paid the police officers \$500 quetzales each — roughly one hundred U. S. dollars.

Martínez received a fifteen-year sentence; Parada and the two police officers received sentences of three years each, for concealing a crime. Damages to be paid jointly to Coquín’s family were set at 100,000 quetzales (nearly US\$17,000.00). (Such damages are almost never collected.) In addition, the judge

⁷⁵ Agents of the same security agency are accused of the September 1994 murders of two boys, Rubén García Gonzáles and Daniel Rosales.

ordered that prosecutions be initiated against the then-chief of the 2nd precinct, the owner of the bar, and a waiter at the bar.⁷⁶

⁷⁶ Casa Alianza email, "Policemen Jailed for Murder of Street Children in Guatemala," December 13, 1996.

Finally, on January 22, 1997, a ten-year conviction was handed down against Carlos Morales Sosa for the April 1993 murder of street youth Henry Yubani Alvarez Benítez, eighteen years old. At the time of the murder, Morales Sosa was a military commissioner — a civilian employed by the army in an essentially paramilitary capacity.⁷⁷

These convictions are an encouraging development, but remain exceptions rather than the norm. Most cases involving crimes against street children, particularly when security force members are implicated, are still not vigorously investigated or prosecuted.

Some of the most egregious cases of impunity have been referred by Casa Alianza to the Inter-American Commission on Human Rights.⁷⁸ The commission accepts petitions when all domestic remedies have been exhausted, or when domestic remedies have been interfered with, denied, or subjected to unwarranted

⁷⁷ Military commissioners were licensed by the army and permitted to carry weapons, often supplied by the army, to collect intelligence and carry out force recruitment. The position was abolished in 1995 as part of the Guatemalan peace process.

⁷⁸ Human Rights Watch Children's Rights Project interview with Casa Alianza-Guatemala Legal Coordinator, Hector Dionicio, August 27, 1996.

delay.⁷⁹ A good example of failed domestic remedies is the case of Cecilio Jax and Juan Ramos Cifuentes, who were tortured and killed in July 1994.⁸⁰ The suspect in the case is reportedly a powerful local businessman involved in drug trafficking; government officials are loathe to move against him due to their fear of reprisals. Instead, the case has foundered, and would have died altogether but for the efforts of Casa Alianza. By August 1996, the government was on its sixth prosecutor in the case. The initial investigative reports from the case were “lost,” including findings by the police, the prosecutor, and the judge at the scene of the crime. The ballistics report was also “lost,” as were recovered bullets and bullet casings.⁸¹

⁷⁹ In February 1997, a Guatemalan case involving the murder of five youth by National Police officers in 1990 (the “Bosques de San Nicolas” case) was referred to the Inter-American Court by the Inter-American Commission. Human Rights Watch/Americas and the Center for Justice and International Law, together with Casa Alianza, are the copetitioners in the case.

⁸⁰ For details see Casa Alianza, *Torture of Guatemalan Street Children: Report to the U.N. Committee Against Torture*, p. 49.

⁸¹ Human Rights Watch Children’s Rights Project interview with Casa Alianza-Guatemala Legal Coordinator, Hector Dionicio, August 27, 1996. This case has also been referred to the Inter-American Commission on Human Rights.

There are several reasons for the lack of accountability in cases involving street children. Guatemala's justice system is notoriously slow and ineffective. When the accused are members of or have ties to government security forces, the legal system grinds even slower, and often succumbs to corruption or intimidation. The perpetrators are part of a system that has traditionally protected itself from scrutiny, observing a strong internal code of silence while punishing, through threats and violence, those on the outside who attempt to apply the law. While things have improved greatly over the past few years, intimidation and corruption in law enforcement and the legal system remain common.⁸² Even the successful cases do

⁸² See Human Rights Watch, *World Report 1996*, (New York: Human Rights Watch, 1995), p. 94; Human Rights Watch *World Report 1997* (New York: Human Rights Watch, 1996), pp. 98-99); and U.S. Department of State *Country Reports on Human Rights Practices for 1996*, which states that: "Members of the judiciary, as well as prosecutors, continued to receive threats, either in an attempt to influence current decisions or as reprisals for past decisions. According to the secretary general of the Supreme Court, early in the year, 40 judges had reported receiving threats related to their cases. Public prosecutors, private plaintiffs, and officials from MINUGUA, the ODHAG [Human Rights Office of the Guatemalan Archbishopry], and the PDH's [Human Rights Ombudsman's] office also received threats. . . . With judges and other law enforcement officials subject to intimidation, corruption, and inadequate resources, the judicial system was often unable to

not escape this pressure. After the sentence against Morales Sosa was handed down, for example, Morales publicly threatened the Casa Alianza lawyer in the courtroom, saying "You won, but now you'll see, you bastard..." [*Ganaste, pero ahora vas a ver, hijo de la gran puta.*]⁸³

The low social regard for street children exacerbates the lack of accountability for crimes against them. At best, street children in Guatemala are ignored by the society around them. At worst, they are reviled. A government official told Human Rights Watch that "the Guatemalan society rejects these kids . . . they would even like to see them dead."⁸⁴

ensure fair trials." U. S. Department of State, *Country Reports on Human Rights Practices for 1996* (Washington, D.C.: U.S. Government Printing Office, 1997), p. 460, 455.

⁸³ Human Rights Watch Children's Rights Project telephone interview with Gustavo de Leon Rodas, February 3, 1997.

⁸⁴ Human Rights Watch Children's Rights Project interview with Victoria Monzón, Director of TOM (Treatment and Guidance for Minors), the government agency that oversees all state juvenile facilities, September 4, 1996.

Street children do not have families and resources to press for justice on their behalf. Without such pressure, it is virtually guaranteed that the police and the public prosecutor will not investigate when their rights are violated. This negligence is compounded if the alleged perpetrator is a police officer or a private guard.⁸⁵ Often, the police refuse to carry out arrest warrants against fellow officers or other security force members.⁸⁶

When accountability is obtained, it comes at a high price. Witnesses, family members, advocates, judges, and prosecutors are all subject to intimidation. In the ground-breaking case of Nahamán Cardona, for example, two witnesses were kidnapped and tortured, mothers of the witnesses were intimidated (and one was

⁸⁵ "The authorities often avoid conducting investigations that might lead them into conflict with powerful forces. . . . Security forces personnel are reluctant to investigate cases potentially involving colleagues." U.S. Department of State, *Country Reports on Human Rights Practices for 1996*, pp. 22-23. (Washington, D.C.: U.S. Government Printing Office, 1997), p. 460, 455.

⁸⁶ As of September 1996, for example, there were at least ten outstanding arrest warrants for current and former National Police officers and for private security guards, including two *active duty* National Police officers, both belonging to the 2nd precinct, for violations of the rights of street children. Casa Alianza document, "Ordenes de Captura Pendientes de Ejecutar por parte de la Policía Nacional que Requieren la Colaboración y el Apoyo del Ministerio de Gobernación," September 1996.

killed in a suspicious car accident), and an ex-police officer turned key witness suffered a murder attempt and subsequently went into exile.⁸⁷

⁸⁷ Human Rights Watch Children's Rights Project interview with Hector Dionicio, Casa Alianza Legal Coordinator, Guatemala City, August 27, 1996.

The pattern of impunity for human rights offenders and persecution of witnesses continues. In August 1996, the murder convictions for two private security guards of the *Vigilantes* agency were appealed. The men had shot ten-year-old Daniel Rosales and fourteen-year-old Rubén García in September 1994, shooting them from behind and even pausing to reload — there were a minimum of four bullet wounds in both boys. A third boy, hit by three bullets, survived. The men admitted to killing the boys.⁸⁸ As the appeal process drew near, family members, advocates, and attorneys in the case began receiving death threats. When the appeals court overturned the conviction international and domestic observers were stunned.⁸⁹ It was widely supposed that the three judges of the court had succumbed to either bribery or threats in issuing this decision.

The case of Susana Gómez illustrates the often-weak investigative efforts of the police.⁹⁰ Susana, a sixteen-year-old, was reportedly illegally detained by three uniformed National Police officers in April 1996, taken to a remote area, and raped by two of them while the third kept watch (see “Violence Against Girls,” above). As of April 1997, no suspects had been identified in the case, despite the testimony of both Susana and her friend Carmén Velásquez, who was abducted along with Susana.⁹¹

Our interview with the National Police internal affairs officer charged with investigating the case, Felix Cerón Gonzales, revealed that no meaningful investigation had occurred.⁹² The approximate time of the abduction was known, as

⁸⁸ Human Rights Watch Children's Rights Project interview with attorney Bonerge Mejía, Guatemala City, September 5, 1996. Mr. Mejía worked in conjunction with the government prosecutor assigned to the case.

⁸⁹ “Anulan sentencia de 30 años a policías por la muerte de dos niños de la calle,” *Prensa Libre*, August 27, 1996.

⁹⁰ See also Casa Alianza's report to the U.N. Committee Against Torture: *Torture of Guatemalan Street Children 1990-1995*. The report details dozens of cases in which government security forces have murdered, tortured, or abused street children, as well as the failure of the justice system to investigate, convict, and punish those responsible.

⁹¹ Human Rights Watch Children's Rights Project telephone interview with Hector Dionicio, Casa Alianza Legal Coordinator, February 3, 1997.

⁹² Officer Cerón works for the Office of Professional Responsibility (ORP), the internal affairs investigation unit of the National Police. Human Rights Watch interviewed him on September 12, 1996, at his office at the National Police headquarters in Guatemala

was the exact location. In addition, the girls provided not only physical descriptions of the men, but also the following information: one of the officers claimed to have been transferred from the Petén to Guatemala City, where he was stationed at the 1st precinct; one of the officers had a name tag of “Cruz;” and one had a name tag of “Velásquez.”

Officer Cerón declined to pursue these leads. Of the six police officers stationed in the immediate vicinity of the abduction on the night it occurred, Cerón interviewed only one, whose last name was Cruz, speaking briefly to Cruz’s partner that night as well. When asked why he did not interview all six of the officers—who were not only potential suspects, but potential witnesses as well—he said, “The girls said one was named Cruz and one was named Velásquez — why would I interview anyone with any other name?!”

Nor did Officer Cerón interview any of the six other 2nd precinct police officers named Cruz or Velásquez. “They were working elsewhere that night,” he said. He also declined to interview *any* 1st precinct police officers, despite knowing that the 1st precinct jurisdiction begins a mere three blocks from the scene of the abduction, and that one of the attackers told the girls he belonged to the 1st precinct. Cerón did not even check the 1st precinct duty roster to see if any Cruz or Velásquez was working that night. Finally, Officer Cerón did not look into whether any 1st or 2nd precinct police officers had been transferred down from the Petén recently, saying “He could have been lying about that.”

When asked by our researcher why he had not followed any of these possible leads, Officer Cerón became exasperated and said, “We can’t go bothering half a dozen officers on this, if they aren’t specifically named!”

The most alarming aspect of this non-investigation was Officer Cerón’s apparently genuine belief that he had conducted a proper investigation. This suggests that either the internal affairs unit is incompetent, or that this case was deliberately given low priority and assigned to an officer who would not properly investigate the allegations.

IV. ABUSES IN THE JUVENILE JUSTICE SYSTEM

The judge said that my father wanted to send me away, and that she had to do it.

—Yamileth, fourteen-year-old runaway in detention

Overview

The Guatemalan juvenile courts and detention centers are rife with human rights violations. In the courts, long (and illegal) periods of pretrial detention are tolerated by the minors' judges, due process rights are routinely ignored, and the treatment meted out to offenders varies according to their economic and familial status. Children who are taken into the state's custody for protective care are sent to the same detention facilities as children found to have committed crimes; once there, all the children are mixed together, as the facility directors aren't told by the courts the reason for each child's admission. Children and youths are also mixed together with no regard for age, with the result that a twelve-year-old boy detained for vagrancy may share a bunkbed with a seventeen-year-old convicted of armed assault. In other cases, minor boys and girls may be incarcerated in adult prisons.

In contravention of international standards, children adjudicated as delinquents are frequently sentenced to remain detained "until rehabilitated." Court personnel review these cases infrequently, with the result that many children languish in prison for months or even years, often for minor offenses. Meanwhile, they receive little meaningful education and, in most facilities, no opportunity to engage in vocational training or other productive activities.

The conditions of the detention centers are substandard. Children are crowded into dormitories and sleep on rickety narrow metal bunkbeds; some of them sleep two to a bed. Medical attention is inconsistent. The facilities in Guatemala City are much too small for the number of children committed to them (the two outlying facilities, one for boys and one for girls, are larger). None of the centers have even rudimentary libraries, and recreational opportunities are extremely limited. Schooling is provided to varying degrees at the detention centers, with some centers offering virtually no meaningful education.

At the invitation of the Guatemalan government, the boys' centers are staffed by members of REMAR (Rehabilitación de los Marginados), a Spanish evangelical group that works throughout Latin America. REMAR sets out to rehabilitate Spanish substance abusers and ex-convicts by sending them to work with troubled youth, i.e., substance abusers and children in conflict with the law. Numerous children told us that they were beaten by REMAR staff, some with aluminum baseball bats. Others had been put into isolation cells for disciplinary

reasons. Still others told us that they had been coerced into abandoning their religious beliefs in favor of evangelical Protestantism.

One of the most troublesome aspects of the Guatemalan juvenile judicial system, including the courts and the detention centers, is the lack of independent monitoring and oversight. As far as we were able to learn, there are *no* governmental, nongovernmental, or intergovernmental agencies monitoring the conditions of juvenile justice in Guatemala.⁹³

Much to our surprise, given repeated avowals of “openness” and “reform,” Human Rights Watch was not granted official permission to visit Guatemalan juvenile detention centers. The government agency charged with administering all juvenile detention and protection services is the Office of Treatment and Guidance for Children, Tratamiento y Orientación de Menores (TOM). (This office falls under the jurisdiction of the Office of Social Welfare, headed by the First Lady of Guatemala, Patricia de Arzú.) The director of TOM refused to give us permission to enter the children’s centers when we spoke, saying, “Yes, I have the authority to grant you permission. But if you go in to the centers, you might come up with

⁹³ This lack of independent oversight contravenes Rules 14 and 72 of the U.N. Rules for the Protection of Juveniles Deprived of their Liberty (U.N. Rules), as well as Principle 29 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which states that, “In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.”

things that the government doesn't want made public . . . I don't want to take responsibility for letting you in."⁹⁴

She referred us to her superior, then-Secretary of Social Welfare Salvador Gandara Gaitán (now Vice-Interior Minister for Guatemala). Mr. Gandara refused permission by studiously avoiding our researcher for three weeks: he was always too busy to take our calls, would never return our calls, and when we offered several times to stop by and wait for him at his convenience, his secretary, obviously under orders to ensure we had no contact with Mr. Gandara, said "Oh, no, he could just leave at any time, it's completely unpredictable when he'll be here."

While the government stonewalled our efforts, we did gain very limited unofficial access to two of the five centers: the Observation Center for Girls in downtown Guatemala, and the Observation Center for Boys, better known as "Gaviotas." Interestingly, given the persistent refusal of the Guatemalan government to let us in the centers, we gained access to Gaviotas at the invitation of REMAR. This underscores the power REMAR enjoys in the administration and control of the boys' detention centers. (Access to the Girls' Observation Center was effectuated in the company of members of a local NGO.) Notwithstanding our inability to conduct thorough first-hand investigations of the detention facilities, detailed testimony gathered from dozens of previously-detained children enabled us to assess the basic conditions and prevalent practices of these centers.

Guatemalan Law

⁹⁴ Human Rights Watch Children's Rights Project interview with Victoria Monzón, Director of TOM, Guatemala City, September 4, 1996.

The Guatemalan Constitution and the Guatemalan Minors' Code are the primary sources of applicable domestic law. The Constitution provides that all minors, defined as people under the age of eighteen, are "unimputable."⁹⁵ This means that they lack the capacity to be held criminally accountable for their actions. The constitution further mandates that children who transgress the law be "treated" (rather than punished) by specially-trained personnel, and that their treatment emphasize education.⁹⁶ Other relevant provisions of the Guatemalan Constitution include an absolute prohibition on commingling minors with adult prisoners (Article 20), and an equal protection clause (Article 4).⁹⁷ Equal protection of the law is also guaranteed by both the 1979 and 1996 Minors' Codes;⁹⁸ this is relevant in regard to the discriminatory treatment of juveniles according to economic status, discussed below.

The 1979 and 1996 Minors' Codes

In September 1996, the Guatemalan legislature approved a new and long-awaited Minors' Code. When the new code takes effect in September 1997, it will replace an eighteen-year-old code whose worst defect, among many, is that it lumps together all children in need of government assistance or supervision into an amorphous category of "irregular conduct." Children deemed to be engaging in

⁹⁵ "Minors who transgress the law are unimputable [cannot be criminally accused]. . . ." Political Constitution of the Republic of Guatemala, Article 20. (Translation by Human Rights Watch.)

⁹⁶ "Their treatment should be oriented toward an integrated education appropriate for children and youth. Minors whose conduct violates criminal law will be attended to by specialized institutions and personnel. Under no circumstances may they be held in penal or detention centers for adults. A specific law will regulate this area [the Minors' Code]." Ibid. (Translation by Human Rights Watch.)

⁹⁷ "In Guatemala all human beings are free and equal in dignity and rights. . . ." Political Constitution of the Republic of Guatemala, Article 4. (Translation by Human Rights Watch.)

⁹⁸ The 1996 Minors Code states that "The rights established in this law will be applied . . . without discrimination based on . . . economic position . . ." (Article 10). The 1979 Minors' Code states that "All minors have the right to the protection of the State, independently of their social, economic, or family condition." (Article 2). (Translation by Human Rights Watch.)

“irregular conduct” include street children, children who have committed violent crimes, and children who have been abandoned or abused by their families.⁹⁹ Any child deemed to fall into the “irregular conduct” category may be institutionalized by a minors’ judge; in practice, this occurs frequently.

In addition to abolishing the “irregular conduct” doctrine, the new Minors’ Code makes the following positive changes:

- It provides for the establishment of four new courts, and requires the judges of those courts to be specially trained and experienced in the area of children’s rights. The new courts will be: Children and Youth Courts (*Juzgados de la Niñez y Juventud*), responsible for cases where children’s rights or well-being are threatened, as well as for cases of children under twelve accused of criminal wrongdoing; Youth in Conflict with the Law Courts (*Juzgados de Jovenes en Conflicto con la Ley Penal*), responsible for cases in which children twelve to seventeen years old are accused of criminal wrongdoing; the Oversight Court for the Application of Measures (*Juzgado de Control de Ejecución de Medidas de la Niñez y Juventud*), responsible for ensuring that children’s rights are protected during detention (or during other applicable measures), and responsible also for periodic review of the measures imposed by the trial court; and finally, the Second Instance Tribunal for Children and Youth (*Tribunal de Segunda Instancia de la Niñez y Juventud*), responsible for hearing appeals. (Articles 124-133.)

⁹⁹ “They will be considered minors in an irregular situation, those who suffer or are exposed to suffering abnormalities or disturbances in their physical, moral, or mental condition, and those who are abandoned or at risk.” Article 5, 1979 Minors’ Code (Decree 78-79). (Translation by Human Rights Watch.)

Currently, there are three Minors' Courts in Guatemala City, one of which handles cases of juvenile protection (dependency), while the other two handle cases of alleged juvenile delinquency. Two courts of general jurisdictions, one in Mixco and one in Amatitlán, each handle both types of cases. Under the 1979 Minors' Code, there is no requirement of specialized training for minors' judges or prosecutors, and current officials are not trained in children's law or human rights law.¹⁰⁰

- The 1996 code prohibits the placement of children in protective custody juvenile detention centers. (Articles 140 and 143). This is in marked contrast to current practices. (See "Commingling," below.)
- The new code explicitly demands compliance with all relevant international instruments ratified by Guatemala, including the Convention on the Rights of the Child. It also requires that the Code be interpreted and applied "in harmony with" international standards. (Articles 8, 167, 169.)
- Under the new code, minors accused of criminal transgressions have an explicit right to a defense attorney; if they cannot afford an attorney, the government will provide one. (Articles 181, 182, 194.) Currently, children brought before the courts almost never have an attorney, and the state is under no obligation to provide one. In practice, the absence of a defense attorney means that children's due process rights—such as the right to be present during the proceedings, the right to be heard, and the right to have their legal rights explained to them—are routinely flouted.
- The 1996 code prohibits the imposition of indeterminate sentences. (Article 185.) Currently, indeterminate sentences are permitted, and are used routinely by some of the Minors' Judges, who sentence children to

¹⁰⁰ Human Rights Watch Children's Rights Project interview with Claudia de Carrillo, Chief Minors' Prosecutor (*Fiscal de Menores*), Guatemala City, September 10, 1996.

detention centers "until rehabilitated." Children detained under indeterminate sentences may spend years incarcerated, with little or no monitoring of their "rehabilitation." (A related problem is the failure of Guatemalan detention centers to offer adequate rehabilitative opportunities, including therapy, education, and vocational training. See "Abandoned Twice," below.)

- In a significant but sparsely-worded change, the new code abolishes deprivation of liberty for children in those cases where such a penalty could not be applied to adults; in other words, the code abolishes imprisonment for status offenses or misdemeanors. (Article 275.)¹⁰¹ Although we were unable to obtain statistics from the Guatemalan government, anecdotally, as well as based on our own interviews, it is clear that a large percentage of children currently incarcerated are being deprived of their liberty due to the commission of status offenses, for example, running away from home or living on the street. Given the high use of incarceration for status offenses, as well as the very subtle mention of this provision in the 1996 code, it will be important for Guatemalan and international observers to closely monitor compliance with this provision.
- The new code specifies that incarcerated youth and children have the right to receive information regarding: facility rules and disciplinary measures; their rights in relation to facility staff; the individualized plan for their reinsertion into society; the manner and means of communicating with the outside world; the right to petition authorities and receive a response; the right not to be held in isolation; and the right not to receive corporal punishment. When isolation is necessary to prevent acts of violence, this

¹⁰¹ "Deprivation of liberty may never be applied as a measure if, according to the Penal Code, it may not be used for an adult." It is important to note that, under the Guatemalan Constitution, adults may not be detained for the commission of misdemeanors. (Article 11). Proper application of the 1996 Minors' Code, then, should result in the abolition of detention of minors accused of committing misdemeanors.

is to be communicated to the judge responsible for overseeing the application of sentences, and to the Human Rights Ombudsman. (Article 281.) Each of these guarantees is new and, if implemented, will contribute significantly toward compliance with international law. As described below, the use of corporal punishment and isolation is currently the norm (in the boys' centers), and is one of the most egregious of the many human rights abuses suffered by detained and incarcerated children. (See "Abdication of Government Control," below.)

- With special implications for street children, the code also requires the National Police to form a special "children and youth" unit. This unit will be responsible for training all police officers regarding the rights of children, including rights protected by the Convention on the Rights of the Child and the due process protections of the Guatemalan Minors' Code. (Articles 107-108.)
- Finally, the 1996 Minors' Code strengthens the penalties for crimes committed against children by government and private security force members, including the penalties for assassination, homicide, torture, cruel and inhuman treatment, illegal arbitrary detention, and irregular internment. Penalties are also specified for the superiors of those who commit assassination, homicide, torture, or cruel and inhuman treatment against children. (Transitional Dispositions, Article 17.)

International Law

Guatemala's passage of a new Minors' Code was explicitly intended to bring Guatemalan law into compliance with the United Nations Convention on the Rights of the Child. The convention is a comprehensive children's right document, covering areas as diverse as familial rights, educational and labor rights, and health rights. Many of these protected rights equally apply to detained children. In addition, Article 37 of the convention specifically protects children deprived of their liberty from violations of their due process and personal integrity rights:

State parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. . . .
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in

conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person every child deprived of liberty shall be separated from adults

(d) Every child deprived of liberty shall have the right to prompt access to legal and other appropriate assistance¹⁰²

Guatemala was one of the first countries in the world to adopt the Convention on the Rights of the Child, ratifying it in 1990; the convention entered into force in Guatemala in September 1991. Notwithstanding this presumed interest in complying with the convention, practices in the Guatemalan courts and juvenile detention facilities violate all of the above provisions, as will be described in the following sections.

¹⁰² U.N. Convention on the Rights of the Child, G.A. Res. 44/25, November 20, 1989; entered into force September 2, 1990, Article 37. In addition, Article 40 of the Convention protects children's due process rights should they be accused of infringing the penal laws of their country.

Five other international instruments protect children in confinement: the U.N. Rules for the Protection of Juveniles Deprived of their Liberty (Rules for the Protection of Juveniles);¹⁰³ the U.N. Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules);¹⁰⁴ the U.N. Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines);¹⁰⁵ the Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules);¹⁰⁶ and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Detention Principles).¹⁰⁷ The Rules for the Protection of Juveniles, the Beijing Rules, and the Riyadh Guidelines apply exclusively to children, while the Standard Minimum Rules and the Detention Principles apply to adults and children alike. Some of the rights guaranteed by these documents are likewise protected by the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁰⁸ Compliance with all applicable international norms and conventions is a requirement of Guatemala's 1996 Minors' Code.¹⁰⁹

Contravention of these international standards for due process and confinement (including conditions of confinement, the right to rehabilitation, and protection against inhuman and degrading punishment) will be noted where appropriate in the following pages.

¹⁰³ G.A. Res. 45/113, December 14, 1990.

¹⁰⁴ G.A. Res 40/33, November 29, 1985.

¹⁰⁵ G.A. Res. 45/112, December 14, 1990.

¹⁰⁶ ECOSOC Res. 663 C (XXIV), July 31, 1957, and 2076 (LXII), May 13, 1977.

¹⁰⁷ G.A. Res. 43/173, December 9, 1988.

¹⁰⁸ G.A. Res. 2200 A (XXI), December 16, 1966, entered into force March 23, 1976 (ICCPR), and G.A. Res. 39/146, December 10, 1984, entered into force June 26, 1987 (Convention against Torture).

¹⁰⁹ "The interpretation and application of . . . this law should be done in harmony with . . . international norms and doctrine . . . in the form that best guarantees the rights established in the Constitution, the treaties, conventions, pacts, and other international instruments subscribed and ratified by Guatemala." 1996 Minors' Code, Article 8. See also Articles 167 and 169. (Translation by Human Rights Watch.)

Criminalizing Poverty: Unequal Justice Based on Economic Status

Being poor is the surest indicator that a child who enters the system will end up in jail.

—Claudia de Carrillo, Chief Prosecutor, Minors' Division

International human rights law and Guatemalan law both require that due process guarantees be applied in a non-discriminatory manner.¹¹⁰ In practice, however, the Guatemalan juvenile justice system violates this precept on the basis of economic status, offering less procedural protection and fewer liberty guarantees to poor children than to middle-class children.

Poor children are most likely to be held in lengthy pre-trial detention rather than released pending adjudication. They are most likely to serve time for their transgressions, rather than being afforded the opportunity to “conciliate” with the victim. They are more likely to be imprisoned for status offenses, such as “unruly behavior” [*falta de las buenas costumbres*], or for vague and malleable offenses like “vagrancy.” Finally, poor children are less likely to have their rights explained to them or to have access to an attorney or other assistance in defending themselves; consequently, they are more likely than better-off children to receive an unfavorable outcome at their judicial hearings.

¹¹⁰ See, e.g., the Convention on the Rights of the Child, Article 2, the International Covenant on Civil and Political Rights, Articles 14 and 26, and the Political Constitution of the Republic of Guatemala, Article 4.

This unequal application of justice was made clear to us repeatedly during the course of our investigation. Significantly, some of those most vocal and concerned about this state of affairs were the prosecutors assigned to the Minors' Division at the Public Ministry. (Although technically prosecutors, under the current scheme these officials have a special obligation also to "see that justice is done" in minors' cases, rather than act as traditional prosecutors or defenders.¹¹¹)

Claudia de Carrillo, the Chief Minors' Prosecutor, told us:

Maybe 30 to 35 percent of the cases we see should result in a lock-up. The other 65 to 70 percent of cases involve very minor transgressions, for which measures other than detention would be sufficient and more appropriate. Despite this, internment is always used.

This is especially true when it comes to poor children. The rich boy won't go to jail, even for a serious offense such as voluntary manslaughter. The poor boy, meanwhile, will spend two months in jail for stealing a necklace. They are criminalizing the poor. [The other three prosecutors nod their heads in agreement.]

¹¹¹ Human Rights Watch Children's Rights Project interview with Claudia de Carrillo, Chief Minors' Prosecutor (*Fiscal de Menores*), Guatemala City, September 10, 1996. The Minors' Division has specialized jurisdiction within the Public Ministry; its role, in cases of transgressions allegedly committed by minors, is to ensure the legality of the process. According to Ms. de Carrillo, the current (1979) Minors' Code says that the Public Ministry is to defend accused minors [Article 14(3)], while the constitution says the Public Ministry is to prosecute such cases. These functions conflict, leaving the minors' prosecutors in the odd position of attempting to do both, or neither. *Ibid.*

Being poor is the surest indicator that a child who enters the system will end up in jail.¹¹²

Pre- and Post-Adjudication Detention

¹¹² Ibid.

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention, or imprisonment of a child shall be . . . used only as a measure of last resort and for the shortest appropriate period of time.¹¹³

Juveniles who are detained . . . awaiting trial (“untried”) are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. . . . Untried detainees should be separated from convicted juveniles.¹¹⁴

Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.¹¹⁵

There are two common human rights violations in the pretrial detention practices of the Guatemalan juvenile justice system.¹¹⁶ First, poor children—and above all street children—are almost always held in detention pending their hearings before a judge, while more economically-advantaged children are likely to be released to their parents. This amounts to discriminatory and arbitrary detention, in that street children also should be eligible for release, if not to a parent then to

¹¹³ Convention on the Rights of the Child, Article 37(b).

¹¹⁴ Rules for the Protection of Juveniles, Rule 17.

¹¹⁵ Beijing Rules, Rule 13.2.

¹¹⁶ Although we use the term “pretrial detention,” in fact juvenile cases are adjudicated in the form of hearings rather than trials.

appropriate guardian care. Second, pretrial detentions frequently exceed the statutory limitation of thirty working days. It is not unusual for children to be detained for several months or even a year, pending their adjudicatory hearings.

Under the current (1979) Minors' Code, an initial hearing is to be held immediately following the child's apprehension, as soon as the accused child is brought before the minors' judge.¹¹⁷ Although in theory this hearing is supposed to be attended by the child, the arresting police officer, the victim, and the child's parents or guardians, in practice usually only the child and the police officer are present.¹¹⁸ At this hearing, the arresting officer informs the judge of the child's alleged transgression; the child is then supposed to be allowed to give a statement to the judge. (Several children told us that they were not given an opportunity to speak to the judge — this of itself is a grave violation of procedural due process protections.) If no more information is needed, the judge may decide the case based on the initial hearing alone; options available to the judge at this stage include imposing a fine, a warning, probation, or even ordering the internment of the child in a detention facility. In other words, a child may be ordered detained on the basis of an initial hearing at which only the child and the accusing police officer were

¹¹⁷ Article 35, 1979 Minors' Code (Decree 78-79).

¹¹⁸ Human Rights Watch Children's Rights Project interview with Minors' Judge Mildred de la Roca, Guatemala City, September 12, 1996.

present, and where the child was neither represented by counsel nor accompanied by a parent or guardian.¹¹⁹

It is common for a second hearing to be ordered, often referred to as the “definitive hearing.” The Minors’ Code requires that the second hearing be held within thirty working days of the initial hearing (those within the system, though, generally refer to a forty-five-day period, taking into account the total lapse of time rather than just the working days). A three-day extension is permitted. (The 1996 Code, Article 227, allows for a single forty-five day extension.) In practice, however, much longer delays are the norm.¹²⁰

¹¹⁹ Ibid. Also Article 35, 1979 Minors’ Code (Decree 78-79), which states that “if no further investigation is necessary, the Judge may in the same hearing dictate the appropriate resolution.”

¹²⁰ Lengthy delays were reported to Human Rights Watch by numerous detained children, by the minors’ prosecutors, and by personnel of Doctors Without Borders, all of whom reported seeing cases of children detained for six months or even a year, pending the bio-psycho-social report (see following paragraph in text) or a decision by a judge. Human Rights Watch Children’s Rights Project interview with Arlette García and Dr. Doris Mesilla, Guatemala City, September 4, 1996; Human Rights Watch Children’s Rights Project interview with minors’ prosecutors, September 10, 1996, and Human Rights Watch Children’s Rights Project interviews with numerous children, August - September 1996.

The most common reason for delays between the initial hearing and the definitive hearing is the elaboration of the requisite "bio-psycho-social" report. This report, required by the 1979 Code,¹²¹ is elaborated by a social worker assigned to the court. As the name implies, the report aims to present the judge with a comprehensive overview of the conditions of the child's life; the goal is to assist the judge in determining what measures are appropriate to each individual case. The delays are due to inadequate staffing. In cases of children from outside Guatemala City, production of the reports is usually delayed even further, as the entire juvenile justice apparatus, including courts, prosecutors, investigators, and detention facilities, is located in Guatemala City.¹²² Meanwhile, the accused child remains not only detained, but detained together with adjudicated offenders.

¹²¹ The 1996 Code drops the requirement of such a report for children in conflict with the law, but maintains it in cases of children in need of protection. Article 148, 1996 Minors' Code.

¹²² The centralization of the juvenile justice apparatus works a hardship on

Children with families able to “push” to get them out may be released pending their definitive hearing.¹²³ Several untried children we interviewed told us they were only being detained because their parents had not come to get them out. One girl told us, “If I had a guardian to come claim me, I could leave today!”¹²⁴

children from rural and other outlying areas. These children, many of whom have never left their homes previously, are severely isolated from their families during their hearings and internment in Guatemala City, which can last up to a few years. This failure by the government to decentralize the juvenile justice system, or at a minimum the detention options, contravenes Rule 30 of the Rules for the Protection of Juveniles, which states: “Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. . . .” It also contravenes Rules 59 and 60, which require that detained juveniles be given the opportunity to communicate with family and friends, to visit their family home, and to receive regular visits from their family. Given the transportation difficulties in Guatemala and the poverty of most detained children’s families, this kind of contact is virtually impossible for all families not in the immediate vicinity of Guatemala City.

¹²³ Human Rights Watch Children’s Rights Project interview with Victoria Monzón, Director of TOM, Guatemala City, September 4, 1996.

¹²⁴ Human Rights Watch Children’s Rights Project interview with Yamileth, Girls Observation Center, August 29, 1996.

According to a minors' judge we spoke with, children without a parent or guardian present at the definitive hearing will be interned "even if it is not a serious crime and internment is not warranted. We have to intern the child until a responsible family member is found." Once internment is ordered, according to the judge, children are detained for a minimum of three months. Although usually post-adjudication detention ranges up to one year, she said, it can continue until the child reaches majority, or until the detention facility finds "family resources."¹²⁵ For some children, that day may never come.

In contrast to street and other poor children, who may be interned simply for lacking a responsible parent or guardian, children with "family resources" usually avoid detention even when they are found guilty of the alleged offense. This can happen in three ways. First, the judge may decide that a warning and a fine are sufficient. "As soon as [the parents] pay the fine, the child goes home."¹²⁶ Second, the judge may opt to release the child to his parents under a bail arrangement (*depósito*). This is a likely choice if it is not a serious crime, the child is in school, and there are sufficient family resources to pay the bail and address the child's delinquency.¹²⁷ Finally, a child with family resources may avoid imprisonment by "conciliating" with the victim. This process, involving the offender's family and the victim's family, usually involves not only payment for damages, but also proof of the offending child's good moral character, such as letters from school teacher, priests, or employers.¹²⁸

¹²⁵ Human Rights Watch Children's Rights Project interview with Minors' Judge Mildred de la Roca, Guatemala City, September 12, 1996.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ The option of conciliation, already frequently used, is codified in the 1996

These methods for avoiding detention, all of which require the child to have not only a parent, but economic resources as well, are not available to the vast majority of children incarcerated in Guatemalan juvenile detention facilities. This means that poor children, street children, and orphaned or abandoned children are more likely to be detained than all other categories of children. The answer to such discrimination, of course, is not to incarcerate more children, but to appoint guardians or otherwise ensure equal treatment for the disadvantaged children.

The first time I was picked up I was thirteen. They held me for three months at San José Pinula. Theoretically there was a maximum stay of forty-five days there, but they didn't release me after forty-five days because no one came to get me. Finally they just let me out after ninety days.¹²⁹

I was in Gaviotas for four months and I never saw a judge. I had no idea how long I'd be there.¹³⁰

My friends and I were arrested together and taken before a judge. . . . We all saw her together, at one time. She scolded us severely . . . She said that we were bad-mannered and that we didn't respect society's rules. . . . She said, if our parents didn't come get us, we'd be kept in Gorriones until we turned eighteen.¹³¹ (Testimony from a fifteen-year-old.)

¹²⁹ Human Rights Watch Children's Rights Project interview with William, Guatemala City, September 2, 1996.

¹³⁰ Human Rights Watch Children's Rights Project interview with Rafael, Guatemala City, September 6, 1996.

¹³¹ Human Rights Watch Children's Rights Project interview with Claudia, Guatemala City, September 10, 1996. Note that all three of the minors' judges sitting in Guatemala City are women (i.e., references to a woman judge do not identify a particular judge).

After I was at Gorriones for a week, my mother came to see me. She said she would not take me home. She said I'd have to stay there until I turned eighteen.¹³²

Lack of Counsel

A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after the arrest and shall be provided with reasonable facilities for exercising it.

¹³² Human Rights Watch Children's Rights Project interview with Ruth, Guatemala City, September 10, 1996.

If a detained person does not have a legal counsel of his own choice, he shall be entitled to have [one] assigned to him . . . in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.¹³³

As just described, a child accused of a crime may be ordered into detention by a minors' judge after an initial hearing or after a second hearing. In neither case is the child assisted by legal counsel (unless the child's family is wealthy enough to afford private counsel, which is rare). Nor does the child receive even a basic orientation as to his legal rights.¹³⁴ The failure by the Guatemalan government to provide adequate legal assistance to indigent juvenile defendants is a contravention of international standards.¹³⁵

¹³³ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 17.

¹³⁴ "Children don't know their rights. They don't know that they can contest a finding, or that they can appeal a decision of the judge. They just don't know, and no one else is there to do it for them or advise them." Human Rights Watch Children's Rights Project interview with minors' prosecutor, Guatemala City, September 10, 1996.

¹³⁵ In addition to Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, see also the Convention on the Rights of the Child (Article 40); the Rules for the Protection of Juveniles (Rule 18(a)); the U.N. Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules," Rule 7.1); and the Body of Principles for the Protection of all Persons under Any Form of

The new Guatemalan Minors' Code stipulates that public defenders are to be made available to juvenile defendants. Implementation of this provision, due in the fall of 1997, will be an important step toward securing the rights of accused minors. Human Rights Watch has learned, however, that the initial plan is to provide four or five defenders for juveniles.¹³⁶ With approximately 4,000 children being brought before the courts each year, this means that each defender will have up to 1,000 cases to handle each year. This is an extremely high caseload; implementation of this plan should be closely monitored to ensure that the legal assistance provided to accused children is prompt, thorough, and accurate.

Incarceration for Status Offenses

International standards discourage the incarceration of children for status offenses, which are all offenses that would not be crimes if committed by an

¹³⁶ In an agreement signed in September 1996 between the Supreme Court, the European Union, and the United Nations Latin American Institute for Crime Prevention and the Treatment of Offenders (ILANUD), Guatemala agreed to appoint four or five public defenders for minors. All technical and financial support for the endeavor is to be provided by the European Union and ILANUD. Human Rights Watch Children's Rights Project interview with Ana Garita, MINUGUA, Guatemala City, September 20, 1996.

adult.¹³⁷ As stated, the new code does abolish imprisonment for status offenses. Currently, however, large numbers of those detained in Guatemala's juvenile detention centers are there solely due to the commission of status offenses, including running away, vagrancy, "public disorder" and homelessness.¹³⁸ Because Guatemala has no state programs for street children, runaway children, children with substance addictions, or even abandoned children, these children, when apprehended by the authorities, are sent to detention centers. What happens with these children after the new code takes effect, in September 1997, will reveal Guatemala's seriousness in transforming what is currently an incarceration-response to troubled children.

¹³⁷ "[L]egislation should be enacted to ensure that any conduct not considered an offense or not penalized if committed by an adult is not considered an offense and not penalized if committed by a young person." U.N. Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), G. A. Res. 45/112, annex, 45, U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990).

¹³⁸ According to street educators and children we spoke with, police sometimes conduct "clean-up" sweeps of the parks. Just before Easter Week 1996, for example, police arrested and removed dozens of street children and youth from the parks; minors judges then sent the children to detention centers. They were charged with no offenses other than living on the street ("vagrancy"). Human Rights Watch Children's Rights Project interviews with Casa Alianza street educators, September 2, 1996, and with Dolores, September 6, 1996.

Yamileth is an example of a girl incarcerated for a status offense: she was fourteen at the time we interviewed her at the Girls Observation Center in Guatemala City.¹³⁹ Yamileth had been at the facility for one month when we spoke and did not know how long she would be kept there. She said she could leave immediately if a guardian came for her, but that she had no guardian. Yamileth told us that her father had brought her to the Girls' Center because she had run away from home, and that he also accused her of stealing from him and working in a bar (a euphemism for prostitution). A social worker at the center later told us that Yamileth had been abused by her father and her stepmother.

The same day that her father brought her to the center, Yamileth was taken before a minors' judge. "The judge didn't want to hear what I had to say," the girl told us. "She wouldn't let me give a statement. She said, 'Take her away from here, I don't want to see her anymore.'"¹⁴⁰ Yamileth's father talked to the judge outside the presence of the girl; on the basis of what he told the judge, she was sent away.

Yamileth told us that several other girls were being detained at the center simply for being runaways; one of these girls, she said, had been there for more than a year.

Abandoned Twice: Neglect in Detention Centers, and Other Violations

There are five main detention centers for juveniles, all located in or near Guatemala City. In addition, adolescent boys are sometimes held in the adult male preventive detention center known as "Zone 18," while adolescent girls have reportedly been held in the women's prison, Santa Teresa. The primary juvenile detention facilities are:

- Diagnostic and Placement Center. This boys' facility, located in downtown Guatemala City, is a clearinghouse for boys recently accused of crimes or otherwise brought into the juvenile justice system. In theory,

¹³⁹ Human Rights Watch Children's Rights Project interview, August 29, 1996.

¹⁴⁰ Ibid. According to Yamileth, this was the judge assigned to the Third Minors' Court.

boys are only to be held at the Diagnostic and Placement Center for a few days. In practice, stays are often much longer.

- Observation Center for Girls. This is a girls' facility, also located in downtown Guatemala City. As with the Diagnostic Center for boys, this is supposed to be a facility for temporary stays, just long enough to "stabilize" the girls, according to Guidance and Treatment director Victoria Monzón, who further stated that girls will only be kept at the center if they are likely to be released from the juvenile justice system quickly — otherwise they will be sent to Gorriones.¹⁴¹ In practice, though, girls stay at the Observation Center for months at a time, with some staying more than a year.
- Re-education Center for Boys, San José Pinula. This detention center is located approximately forty-five minutes from Guatemala City, by car. It is several kilometers from the main highway, in a rural setting. Technically, San José Pinula is comprised of two separate facilities: Stage One and Stage Two. In theory, minor offenders are sent to San José Pinula, while repeat offenders and those charged with serious crimes are sent to Gaviotas. This distinction does not always hold true in practice. Many of the boys we spoke with had been incarcerated for minor offenses at Gaviotas, while others had been sent to San José Pinula as repeat or serious offenders.
- Re-education Center for Girls, "Gorriones." This detention center is located in Mixco, near Guatemala City. Its population includes serious and repeat offenders, first-time offenders, pregnant girls, runaways, street girls, and girls in state custody for their own protection.¹⁴²
- Observation Center for Boys, "Gaviotas." Located in Guatemala City, this is the highest security facility for boys, used primarily for repeat offenders or for serious first-time offenders.

¹⁴¹ Human Rights Watch Children's Rights Project interview with Victoria Monzón, September 4, 1996.

¹⁴² Ibid.

Incarceration of Abandoned and Abused or Neglected Children

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. State parties shall . . . ensure alternative care for such a child.¹⁴³

¹⁴³ Convention on the Rights of the Child, Article 20(1) and (2).

Under current Guatemalan practices, children in the protective custody of the state are incarcerated together with adjudicated offenders. They are kept in the same facilities, share the same dormitories, and are treated to the same daily routine (or lack thereof). Indeed, the directors of the facilities aren't told by the courts the reason for any particular child's incarceration, so in truth there is no differential treatment for offenders and dependent children.¹⁴⁴

According to the Guatemalan government, 80 percent of all girls admitted to correctional facilities "are admitted because they are at social risk, and only 20 percent for breaking the law."¹⁴⁵ The category "at social risk" is vague, and probably refers to the "irregular situation" doctrine mentioned earlier. In any case, "at social risk" probably includes, but is not limited to, protective custody. A 1993 study found that 35 percent of all girls deprived of their liberty in Guatemala, and 3 percent of all boys, were in state custody for their own protection.¹⁴⁶ Doctors Without Borders estimated that approximately 50 percent of all detained girls are in

¹⁴⁴ Interview with Victoria Monzón, Doctors Without Borders interview, September 4, 1996.

¹⁴⁵ Guatemala Report to the Committee on the Rights of the Child, CRC/C/3/Add.22, April 20, 1995, p. 59.

¹⁴⁶ Claudia Paz y Paz and Luis Rodolfo Ramírez, *Niños, Niñas y Adolescentes: Privados de Libertad* (Guatemala City: Instituto de Estudios Comparados en Ciencias Penales de Guatemala, 1993), p. 51.

the centers for their own protection.¹⁴⁷ These figures do not include children who are detained for living on the street, "vagrancy," "public disorder," or other "offenses" routinely committed by street children. They do include children in detention because they are malnourished, deaf-mute, or can not communicate in Spanish, in addition to the customary protective reasons of physical abuse, abandonment, or neglect. For example:

- Doctors Without Borders found two girls, aged eleven and twelve, who were in a detention center because they were severely malnourished. They also reported seeing girls held for more than a year, simply because they were foreign nationals and there was no arrangement for their repatriation.¹⁴⁸

¹⁴⁷ Human Rights Watch Children's Rights Project interview with Arlette García and Doris Mesilla, Doctors Without Borders, Guatemala City, September 4, 1996.

¹⁴⁸ Ibid.

- A minors' prosecutor learned of an eight-year-old boy who was being held at the Diagnostic and Placement Center where authorities deposited him after another boy on the street raped him.¹⁴⁹
- A researcher from Columbia University met a deaf-mute boy, approximately seventeen years of age, who was being held indefinitely in the Gaviotas detention center. A psychologist at Gaviotas told the researcher that the boy had not committed any crimes. He had been detained by the police when found "wandering in the streets," and was subsequently brought to Gaviotas, where he spent his days working in the kitchen.¹⁵⁰
- The same researcher met a girl in a similar situation at the Observation Center for Girls:

As the director led me through the center, I noticed a young girl trailing behind us. "She doesn't speak Spanish," the director explained when I tried to speak to the girl. "No one knows what language she speaks."

"Is she pregnant?" I asked, noticing her protruding belly. "No," replied the director . . . "She's just fat. She doesn't have anything else to do but eat."¹⁵¹

¹⁴⁹ Human Rights Watch Children's Rights Project interview with Gloria Escobedo, September 10, 1996.

¹⁵⁰ Attie, "Halados: Street Children and Detention Centers in Guatemala," December 18, 1996.

¹⁵¹ Ibid., pp. 14-15.

The damage done to children who are removed from an abusive or neglectful home situation, only to be placed in a child's prison, can only be guessed at. As discussed later in this report, no meaningful psychological rehabilitation is attempted at these "re-education" centers. The effect of this neglect on abused children is considerable. Doctors Without Borders told Human Rights Watch: "Take a girl who was raped by her father and is in for her own protection. The girl may stay in the centers one year, two years, or even more. This whole time, there is no work done on her post-traumatic stress. Chances are, she'll leave with more trauma than she came in with. And she'll learn from the other girls about drugs and crime."¹⁵²

Guatemala's practice of incarcerating dependent children together with delinquent children is supposed to end when the new Minors' Code takes effect in late 1997.¹⁵³

Commingling

In addition to that just described, other kinds of illegal commingling take place in the Guatemalan justice system. Young children are incarcerated together with older adolescents, and adolescents are incarcerated together with adults. Both practices contravene international standards, and the practice of incarcerating minors with adults is illegal under Guatemalan law as well.

Commingling Young Children with Older Adolescents

The detention of juveniles should only take place under conditions that take full account of their particular needs, status, and special requirements according to their age, personality, sex

¹⁵² Human Rights Watch Children's Rights Project interview, September 4, 1996.

¹⁵³ "Under no circumstances may [a child in protective custody] be interned in institutions for youth in conflict with the law. . . ." 1996 Minors' Code, Article 143.

and type of offense, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations.¹⁵⁴

¹⁵⁴ Rules for the Protection of Juveniles, Rule 28.

Guatemalan juvenile detention facilities accept children from the ages of eight to seventeen. Previously, eight- to eleven-year-olds were housed separately, at a center called Rafael Ayau. This center was closed in August 1996 for unspecified reasons. After that closure, judges continued to send eight- to eleven-year-olds to TOM (Treatment and Guidance of Minors), who in turn sent the young children to the five centers intended for twelve- to eighteen-year-olds. "It's wrong for the judges to send us these children," said the director of TOM. "The older kids teach them how to commit crimes. And they are more at risk there."¹⁵⁵ At the time we spoke with the TOM director, she told us there were approximately four children under the age of twelve at each center.¹⁵⁶

Young adolescents are also exposed to great risks when incarcerated with older adolescents. In addition to the deleterious influence that older, repeat offenders may have on young novices to the system, there is the danger of physical assault and rape. This is exacerbated by the overcrowding of the facilities, which results in double- and sometimes triple-bunking.

According to Doctors Without Borders, facility directors are conscious of the danger of rape and generally try to separate boys by size, age, and aggressiveness. Since the directors often don't know why children are detained, however, it can be difficult to accurately assess the danger posed in a particular arrangement.¹⁵⁷

The risk of commingling young and older adolescents is exacerbated by the unpredictable sentencing imposed by some minors' judges, who may send a young first-time offender to Gaviotas (a high-security center intended for repeat and serious offenders) or a high-risk repeat offender to San José Pinula (intended for minor or first transgressions). During our brief visit to Gaviotas, for example, we interviewed Freddy, a small twelve-year-old boy. Freddy had been in Gaviotas

¹⁵⁵ Human Rights Watch Children's Rights Project interview with Victoria Monzón, September 4, 1996.

¹⁵⁶ Human Rights Watch Children's Rights Project interviewed a fifteen-year-old girl recently released from Gorriones, who told us that she had met a ten-year-old girl there, who said she was in Gorriones because she had been raped by her father, and had been there for five months at that time. Interview with Claudia, September 10, 1996.

¹⁵⁷ Human Rights Watch Children's Rights Project interview with Arlette García and Doris Mesilla, Doctors Without Borders, September 4, 1996.

three months at the time of our interview, for his first offense: pickpocketing a wallet.¹⁵⁸

Commingling Adolescents with Adults

Accused juvenile persons shall be separated from adults . . .

¹⁵⁸ Human Rights Watch Children's Rights Project interview with Freddy, September 19, 1996.

Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.¹⁵⁹

International law strictly forbids the incarceration of minors with adults. So does Guatemalan law.¹⁶⁰ Nonetheless, we spoke with several adolescents who had been held in adult facilities; other researchers told us of similar findings.

- When I was thirteen, I spent six months in Zone 18, by order of the judge. [Zone 18 refers to two adult prisons, one for men and one for women.] There were two or three other minors in there at the time. Then I was in for another five months this year. Yeah, the minors are mixed up with the adults. Maybe it's scary, sometimes. Maybe it's scary because you think the big guys are going to beat you up.
—David, sixteen years old

- When I was fifteen, I spent two and a half months in Zone 18. . . . The police said I was eighteen. I told the judge I was only fifteen, but she didn't believe me. No one believed me. My birth certificate was at home.

Zone 18 was much worse than Gaviotas. The adult prisoners make you take your clothes off, they make you "trade" your clothes. Otherwise they'll beat you up. That happened to me and to another minor, when I was in.

—Ronald Raúl, sixteen years old

- When I was sixteen, I was sent to Zone 18. They didn't want me in the reform system. They said I was a troublemaker. . . . In the adult prisons,

¹⁵⁹ International Covenant on Civil and Political Rights, Article 10(2)(b) and 10(3). See also the Convention on the Rights of the Child, Article 37(c).

¹⁶⁰ "For no reason may [minors] be held in penal or detention centers intended for adults." Political Constitution of the Republic of Guatemala, Article 20.

you have to pay money to get a place to sleep. Otherwise you sleep on the floor, in the garbage. And you have to pay for a mattress and for blankets.

Boys who are put in with the adults are often raped. This is very common. Zone 18 is the adult prison with the most minors, therefore it is the prison with the most rape. The guards don't pay any attention. In jail, money runs everything.

—Vicente, twenty-four years old

Just as boys are sent to men's facilities, so are girls sent to the women's prison at Zone 18, "Santa Teresa." Jessica Attie, a researcher from Columbia University, visited Santa Teresa in June and July 1996. Ms. Attie found girls fifteen-, sixteen-, and seventeen-years-old being held in the prison, and commented that, "Prison authorities are clearly aware of this situation: on several occasions I explicitly asked the prison warden to introduce me to girls under the age of 18, and on every occasion, the warden complied."¹⁶¹

Physical Conditions

According to medical workers, the Guatemalan juvenile detention centers suffer from substandard conditions, including: poor sanitation, insufficient water, drainage problems, and inadequate hygiene. These conditions contribute to high rates of dermatological and intestinal illnesses.¹⁶²

¹⁶¹ Attie, "Halados: Street Children and Guatemalan Detention Centers", p. 20.

¹⁶² Human Rights Watch Children's Rights Project interview with Arlette Garcia and Doris Mesilla, Doctors Without Borders, September 4, 1996.

Gaviotas, the only detention center toured by Human Rights Watch,¹⁶³ is overcrowded and dilapidated. At the time of our visit, there were ninety-six boys held there.¹⁶⁴ Even with the official maximum capacity of eighty boys, the center would be crowded. It is a cramped facility located in a working class section of Guatemala City. The boys sleep in four long rooms, each lined with about ten old and sagging narrow bunkbeds (for twenty beds in total). Some of the boys have to sleep two to a mattress. The rooms are bleak and cold, with concrete floor and walls.

The only place for the boys to play is a concrete basketball court. The few classrooms in Gaviotas are in such a state of disrepair that our guide declined to admit us, but peeking through the windows we were able to see battered chairs, dim light, and a general air of devastation. The place was unrelentingly bleak: closed, confined, and dreary. Some of the boys had no shoes.

¹⁶³ As explained earlier, the Guatemalan government refused to grant Human Rights Watch access to juvenile detention centers.

¹⁶⁴ Human Rights Watch Children's Rights Project interview with REMAR staff member Carlos, Gaviotas, Guatemala City, September 19, 1996.

Although we were unable to visit the dormitories at the Observation Center for Girls, the girls held there told us that they were crowded and slept ten to a room — sometimes even more girls would be admitted, requiring some to sleep on mattresses on the floor. (Sleeping on the floor was also used as a punishment.) According to a staff member, on the day of our visit thirty-three girls were being held at the Observation Center, which has a maximum capacity of twenty to twenty-five — in other words, the facility was operating at 150 percent of capacity.¹⁶⁵

In Gorriones, we were told, there are five dormitories, each measuring about ten by fifteen feet and containing four bunkbeds. Eight girls sleep in each room. The girls are locked into their rooms from 8:00 p.m. until 5:00 a.m., at which time they arise and bathe with cold water. There is no staff present with them during this time. All night, for these nine hours, they are not allowed to leave the room. If they need to relieve themselves, they have to do so in a chamber pot, in front of the other girls. This violates the girls' basic right to privacy.¹⁶⁶

San José Pinula suffers the worst overcrowding of any of the facilities. Designed for a maximum capacity of seventy boys, it had 135 boys in September 1996.¹⁶⁷ Other facilities frequently run at 150 percent of capacity.¹⁶⁸

¹⁶⁵ Human Rights Watch Children's Rights Project interview with social worker Alba Alburez, Observation Center for Girls, Guatemala City, August 29, 1996.

¹⁶⁶ See Rule 34 of the Rules for the Protection of Juveniles: "Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner."

¹⁶⁷ Human Rights Watch Children's Rights Project interview with Victoria Monzón, September 4, 1996.

Many children at various facilities also complained about the food, saying that it was both unappetizing and insufficient to meet their needs.

¹⁶⁸ Human Rights Watch Children's Rights Project interview, Doctors Without Borders, September 4, 1996

The above observations were echoed by the Chief Minors' Prosecutor, who told us that "the conditions of detention are bad. There aren't enough beds, enough teachers, or enough food. Because they're jailing everyone."¹⁶⁹

Failure to Rehabilitate, Educate, and Train

In theory the goal is rehabilitation, but we all know that doesn't really take place.¹⁷⁰

International standards are strict in their requirement that detained children be rehabilitated rather than merely warehoused. It also requires that they be educated and offered vocational training. The Rules for the Protection of Juveniles provide the following:

- Detained juveniles must be offered "meaningful activities and programmes" (Article 12);
- Every school-age juvenile "has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society." (Article 38);
- "Every detention facility should provide access to a library . . ." (Article 41); and
- "Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment." (Article 42).¹⁷¹

¹⁶⁹ Human Rights Watch Children's Rights Project interview with Claudia de Carrillo, September 10, 1996.

¹⁷⁰ Ibid.

¹⁷¹ Rules for the Protection of Juveniles.

The names of Guatemala's juvenile detention centers give a nod to the state's mandated goal of rehabilitation through education, with two of the three main facilities being called "reeducation" centers. In fact, very little meaningful education, rehabilitation, and training goes on. "There are no results here," said Victoria Monzón, Director of TOM. "There is no reeducative process. We can't say we are reintegrating these kids back into society."¹⁷² By the government's own admission, the staff in the juvenile detention facilities are untrained and not qualified to work with troubled children.¹⁷³

Of the five state centers for children, only one—San José Pinula—offers vocational training, primarily in agriculture. This is a new program, funded by the European Union.¹⁷⁴ The administrator of the European Union's Program for Street Children in Guatemala told Human Rights Watch that: "When we went into Pinula in 1994, it was a scary place. Just awful. I don't know if there was another [detention center] in Latin America in worse condition."¹⁷⁵ In addition to its work in San José Pinula, the EU has begun working on improvements to Gaviotas, Gorriones, and the Observation Center for Girls. At the time of Human Rights Watch's visit in September 1996, however, there was still no serious rehabilitative or vocational training taking place at the majority of the facilities.

¹⁷² Human Rights Watch Children's Rights Project interview with Victoria Monzón, September 4, 1996.

¹⁷³ Ibid; see also the Guatemala Report to the Committee on the Rights of the Child, acknowledging the "poor standards of training and specialization of the persons directly responsible for the children . . . [in] public or private institutions; and the general unawareness of the rights of the child." CRC/C/3/Add.33, April 20, 1995, p. 65. The lack of qualified staff violates Article 3 of the Convention on the Rights of the Child and Articles 81-86 of the Rules for the Protection of Juveniles.

¹⁷⁴ The European Union has provided the funds for improvements to the San José Pinula infrastructure and the implementation of vocational training. Other international donors are participating in the training of center personnel. The Guatemalan government is providing labor and materials. Human Rights Watch Children's Rights Project interview with María Nieves, European Union Program for Street Children, Guatemala City, August 28, 1996.

¹⁷⁵ Ibid.

Education offered appears to vary wildly from center to center, with children reporting anywhere from one hour of school each day (at the Diagnostic and Placement Center) to up to five hours a day, four days a week (at the Girls' Observation Center). Classes taught at the two girls' centers include math, social studies, Spanish, home economics, embroidery, knitting, "beauty class," and "self-esteem class."

There are no games [in Gorriones]. There is no library. If you behave well, you get to watch television. On weekends we get to play basketball.

—Claudia, fifteen years old

Yeah, we had some classes [in Gaviotas], but it wasn't worth anything. Everything I learned I learned on the street, the little bit that I know to read and write.

—Nicolás, seventeen years old

A staff psychologist at Gaviotas told a researcher that "there is no re-educative process" there — the classes are "useless," there are no meaningful activities for the detained children to engage in, and there is no stability in their relationships with other children, given the constant ingress and egress of detainees. As a result of this bleak and boring incarceration, the psychologist said, the children become depressed, have bad dreams, and even hallucinate. They become obsessed with escaping.¹⁷⁶

Lack of Adequate Medical Care

¹⁷⁶ Human Rights Watch Children's Rights Project telephone interview with Jessica Attie, November 12, 1996.

International standards require that every detained child receive adequate medical care, including mental health care.¹⁷⁷ In terms of both physical and mental care, Guatemalan juvenile detention facilities fail to meet this basic requirement of protecting and enhancing detained children's health.

¹⁷⁷ "Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated." Rules for the Protection of Juveniles, Rule 49.

Common medical problems of detained children include: post-traumatic disorders as a result of sexual or other violence; drug addiction; hyperactivity; depression; psychosis; severe dental decay; dermatological problems; venereal disease; respiratory disorders; and chronic diarrhea.¹⁷⁸ Despite this array of serious and chronic illnesses, the juvenile centers are marked by a severe lack of trained medical staff and a “woefully inadequate” supply of medicine.¹⁷⁹ Children are not routinely tested for the HIV virus, despite the growing incidence of infection, and there are no government or private centers for the treatment of children with HIV or AIDS.¹⁸⁰

For the most part, the psychological and drug addiction illnesses of detained children are not treated at all. There are no psychiatrists on staff, and only a handful of psychologists are spread out among the centers, where they work four hours a day.¹⁸¹ According to the psychologists themselves, 80 percent of their time is spent doing paperwork required by the courts. “There is no detection of psychological issues, no treatment for drug withdrawal, and no programs for drug addiction. When the children are released in six or twelve months, they haven’t been helped. They get out, and they get back on drugs.”¹⁸²

Treatment of physical illnesses is also deficient. There are only three medical doctors for about 600 children; like the psychologists, they only work four hours a day.¹⁸³ Their access to diagnostic equipment and laboratories is limited. In non-emergency situations, detained children are unlikely to get a needed medical exam or surgery performed, unless their parents have the money to pay for it. “A street child doesn’t have any chance of obtaining medical support.”¹⁸⁴

¹⁷⁸ Human Rights Watch Children’s Rights Project interview with Arlette Garcia and Doris Mesilla, Doctors Without Borders, September 4, 1996.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Human Rights Watch Children’s Rights Project interview with Victoria Monzón, September 4, 1996.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

The failure to meet the medical needs of detained children was demonstrated to us at Gaviotas, where one of the boys we spoke with was covered with acute hives all over the skin of his arms, stomach, back, and sides. It was noticeable even from a distance, and we asked him about it during a confidential interview.

"This happened two weeks ago," he told us, "after I ate some pork, which I'm allergic to. I didn't know it was pork — it was all chopped up, too small to tell what it was." The staff knew he was allergic to pork, but no one had warned him not to eat that dish. Within a day, his stomach and sides were covered with hives. "I told the staff, and they said 'That will go away.' They said the same thing on the second day, when it had gotten worse. By the fourth day it had spread all over my body, and they finally called the doctor, then took me to the hospital. It's a lot better now than it was."¹⁸⁵

Abdication of Government Control: The Role of REMAR in the Juvenile Justice System

REMAR (Rehabilitación de los Marginados) is a Spanish evangelical Christian organization dedicated to the rehabilitation of substance abusers, ex-convicts, and other marginalized members of society. Its rehabilitation program for Spanish adults consists primarily in sending them to Latin American countries, where they work closely with troubled youth.¹⁸⁶

REMAR first came to Guatemala in 1992, at the invitation of then-President Jorge Serrano Elías, himself an activist evangelical. At the request of the then First Lady, REMAR began working in Gaviotas, the boys' detention facility for serious or repeat offenders.¹⁸⁷ Within a short period of time, REMAR had assumed effective control of Gaviotas. Government employees still administered the facility and the teachers, social workers, and psychologists were all government employees. REMAR, though, was in charge of discipline, the daily schedule, and all other aspects of pedagogy except the actual teaching of classes. In addition, every day

¹⁸⁵ Human Rights Watch Children's Rights Project interview with Sergio, sixteen years old, Guatemala City, September 19, 1996.

¹⁸⁶ Human Rights Watch Children's Rights Project interview with José Gómez, Guatemala Director of REMAR, Guatemala City, September 13, 1996. According to Mr. Gómez, REMAR members work in Spain, Portugal, and in every Latin American country except Bolivia, Cuba, and Venezuela.

¹⁸⁷ *Ibid.*

from 4 p.m. until 8 a.m., the entire government staff would leave, and the REMAR staff would be left alone with the boys.

Over and over again, boys told us of the beatings they had suffered at the hands of REMAR staff. We were told of beatings with aluminum baseball bats, broomsticks, and firewood. We were told of broken fingers and broken ribs. We were told repeatedly of the infamous “bartolina” at Gaviotas, an isolation room that government officials assured us did not exist, but that REMAR officials proudly showed us on our tour of Gaviotas.

Over and over again, boys spoke bitterly of the abuses they had suffered at the hands of “the Spaniards.” Government officials simultaneously acknowledged and downplayed the violent tactics of REMAR. “Sometimes they apply disciplinary measures that they shouldn’t,” said Victoria Monzón, the director of TOM, who is responsible for the centers and the safety of the children in them. “But the problems are fewer than the benefits. We don’t have enough people [staff] without them.”¹⁸⁸

Despite this widely-known pattern of abuse, in the summer of 1996 REMAR was asked to enter the other boys’ facilities as well: the Diagnostic and Placement Center, and the Re-education Center for Boys at San José Pinula.

The director of REMAR-Guatemala told our researcher: “In REMAR we believe in the rod. If a child does something bad, we’ll hit him on the behind, just a couple of little taps — that’s for the younger kids. For the older kids, it depends on the nature of their offense. If it’s a minor offense, maybe we’ll tell the judge to make the child stay longer, and make him do exercises or clean the bathrooms. If it’s a serious offense—and that includes showing a lack of respect or trying to escape—then we might have to physically punish the boy. Sometimes it is essential.”¹⁸⁹

At the time we spoke with REMAR, forty staff members were deployed in the three boys’ centers: twelve in Gaviotas, twenty-four in San José Pinula, and four

¹⁸⁸ Human Rights Watch Children’s Rights Project interview with Victoria Monzón, September 4, 1996.

¹⁸⁹ Human Rights Watch Children’s Rights Project interview with José Gómez, September 13, 1996. Researcher Jessica Attie received similar information: “Indeed, almost every child I spoke to recalled being beaten with some form of club [by] REMAR. Even José, one of the Spanish pastors, admitted that it was often necessary to use ‘*paletas de amor*,’ or ‘love paddles,’ to control the children.” Attie, “Halados: Street Children and Guatemalan Detention Centers,” p. 11.

in the Diagnostic and Placement Center. Of these forty REMAR staff, ten were Spanish and thirty were Guatemalan.¹⁹⁰

Physical Abuse and the Use of Isolation

All disciplinary measures constituting cruel, inhuman and degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. . . .

¹⁹⁰ Ibid.

— U.N. Rules for the Protection of Juveniles Deprived of their Liberty, Rule 67.¹⁹¹

They need more disciplinary measures, instead of giving them sweets . . .

—Victoria Monzón, Director of Guatemalan juvenile detention facilities.¹⁹²

Nearly every boy we spoke with who had been detained in Gaviotas complained of beatings and other mistreatment at the hands of REMAR staff. The following are some of the boys' statements:

In Gaviotas, the Spaniards hit you with firewood [*leña*]. . . . About two years ago, I was in Gaviotas and they had me in charge of the room. Of the twenty-two boys in the room, everyone escaped except six of us. Those of us who remained behind were beaten badly by the Spaniards. They broke ten sticks of firewood on us — we were black and blue. One of the sticks they used was about this big around (indicates 6" diameter); that one didn't break on us.

Then they put us in the isolation rooms, behind the bathrooms. They put us in in our underwear only, in these tiny rooms with no air. Just a thin mattress to sleep on. They put us in for one to

¹⁹¹ See also Rule 17.3 of the U.N. Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) ("Juveniles shall not be subject to corporal punishment") and Article 37 of the Convention on the Rights of the Child ("No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment").

¹⁹² Human Rights Watch Children's Rights Project interview, September 4, 1996.

two weeks at a time. This is what they did for punishments, in addition to beatings.

—William, nineteen years old¹⁹³

I've been in Gaviotas twice. They treat one badly there. . . . If you do something wrong the guards will hit everyone. They hit you with aluminum baseball bats. They put you face down on the ground and hit you on the back with the bat. Once I saw them hit a boy so hard they broke his ribs. Then they threw him into isolation. Later, because of his broken ribs, they had to call an ambulance.

I was in isolation once for two weeks, for selling drugs in the center. It's a horrible place: dark, with no windows and no light bulb. There's a thin mattress, infested with fleas. The only time they let you out is to go to the bathroom.

—Juan Alexander, sixteen years old¹⁹⁴

I was in Gaviotas last year. It's an ugly place. They hit you with bats, the Spaniards do. Where do they hit you? Wherever! There's also a little house there where they put you alone. It's like a dog house. Once they put me there for five days with no food — water only.

—Beto, fifteen years old¹⁹⁵

¹⁹³ Human Rights Watch Children's Rights Project interview, Guatemala City, September 2, 1996.

¹⁹⁴ Human Rights Watch Children's Rights Project interview, Guatemala City, September 3, 1996.

Gaviotas is better than Zone 18 . . . except for REMAR. They have some bad people. For punishment, they'll put you outside in your underwear and make you run around until they tell you to stop. Even at night, even in the rain. Once they made me run for two hours.

Also they hit you in the face, like this [demonstrates with fingers curled under, open palm]. They can do whatever they want. The director there brought them in. She knows how they act. She allows it.

¹⁹⁵ Human Rights Watch Children's Rights Project interview, Guatemala City, September 3, 1996.

—Rafael, eighteen years old¹⁹⁶

Some of the guards hit us, some don't. The ones who hit sometimes use a mopstick. Others make us do extra cleaning, or run around the basketball court for an hour or two. I've been hit.

Pedro [a guard] hits me. He gets mad if you ask for an aspirin or anything. He'll hit you for that. He'll hit you wherever, even in public. He's hit me three times, hard, in the behind.

There's an isolation tank behind the dormitories. I've seen it but never been put in it. It's *very dark*. There's no bed in there. Nothing. No blanket, nothing. You can go in for two weeks, even up to a month. The last time I was in here [Gaviotas] there was a boy in there for a month. A Spaniard put him in. And one guy who's here now, he was in for five days.

—Marcos, sixteen years old¹⁹⁷

¹⁹⁶ Human Rights Watch Children's Rights Project interview, Guatemala City, September 6, 1996.

¹⁹⁷ Human Rights Watch Children's Rights Project interview, Guatemala City, September 19, 1996.

Government officials denied the existence of isolation cells at Gaviotas. They also minimized the gravity and breadth of REMAR's abusive practices; the director of all juvenile detention facilities, for example, merely acknowledged that REMAR staff "sometimes apply disciplinary measures that they shouldn't."¹⁹⁸ Particularly troublesome was the apparent nonchalance of the Children's Rights Defender of the Office of the Human Rights Ombudsman, who is responsible for protecting the human rights of detained children and investigating allegations of mistreatment. This official, Marilyns Estrada, was either uninformed as to the extent of abusive practices in the detention centers, or considered this issue one of low priority. She had never conducted a self-initiated or thorough inspection of the facilities, nor had she attempted to interview children so as to ascertain facility practices.

She told us that it was her duty to investigate complaints of wrongdoing at the centers, and that she had received complaints, both from detained children via their friends and families and from teachers in the centers. These complaints alleged abuse and corruption. However, according to the Children's Rights Defender, she received only about two or three complaints a year, implying a limited problem.¹⁹⁹

When asked directly whether her office had received any complaints regarding REMAR staff, the defender answered in the negative. Notwithstanding this information, we subsequently learned of a case against REMAR that had not only been lodged with her office, but in which the state had filed criminal charges as well. When we called Defender Estrada to ask about the case, she admitted to having received a complaint about abusive behavior by REMAR. "We investigated that case. The complaint was made by street children, who alleged that REMAR people hit them and put them in small isolation rooms. But they couldn't prove it. And when we went to investigate, we couldn't find any isolation rooms."²⁰⁰

¹⁹⁸ Ibid. Director Monzón said that REMAR will transfer staff who commit disciplinary "errors." The director of REMAR-Guatemala confirmed this, saying anyone who mistreats a child is transferred to a site "better-suited" for that person. Human Rights Watch Children's Rights Project interview with José Gómez, September 13, 1996. We were unable to learn of any REMAR staff member who had been prohibited from working with children, expelled from the country, criminally-prosecuted, or otherwise seriously sanctioned by the Guatemalan government.

¹⁹⁹ Human Rights Watch Children's Rights Project interview with Marilyns Estrada, Guatemala City, September 6, 1996.

²⁰⁰ Ibid.

In fact, according to Casa Alianza, an official investigator for the Human Rights Ombudsman (to whom the Children's Rights Defender reports) went to Gaviotas three weeks after the complaint was made and spoke with ten boys, all of whom confirmed the pattern of abuse and the existence of "punishment rooms" [*cuartos de castigo*], i.e., isolation rooms. Two social workers also testified that boys were being beaten by a Spanish worker at the center, César López.

Furthermore, although the government claimed it couldn't find them, every boy who had ever been in Gaviotas knew where the isolation rooms were. And when Human Rights Watch visited Gaviotas, REMAR staff made a point of showing us the isolation rooms, which were then being remodeled. "Those are for difficult children," we were told.²⁰¹ Researcher Jessica Attie of Columbia University also saw an isolation room at Gaviotas, which she described as "a windowless, leaky shower, reeking of urine."²⁰²

Beatings were also reported in facilities other than Gaviotas, and alleged perpetrators included government personnel as well as REMAR staff. In particular, two boys reported receiving recent beatings at the Diagnostic and Placement Center, one by a teacher and one by a guard. A third boy told us he was beaten by a group of boys at the Diagnostic and Placement Center:

At P-Grueso [Diagnostic and Placement Center] I was beat-up by a group of about five boys. They hit me with their hands and then with a stick, on my head and arms. I took some hard blows to the head — it affected my brain. It still bothers me.

They beat me because they wanted my shoes. I gave them my shoes so they'd stop hitting me. I was yelling and yelling but the staff didn't come. Finally they came and told me to calm down. I didn't tell them about the shoes because I didn't want to get beat up again. . . . I saw this happen lots of times, for shirts, for shoes. . . . They'll beat you up if you don't give them what they want. They do this to the new boys.
—Guillermo, seventeen years old

²⁰¹ Human Rights Watch Children's Rights Project interview with REMAR staff member Carlos, September 19, 1996.

²⁰² Attie, "Halados: Street Children and Guatemalan Detention Centers," p. 16.

Currently, detained children and juveniles can make complaints on an ad hoc basis only, and at risk to themselves should the alleged offender learn of the complaint and seek retribution. Few children we spoke with had complained about abusive treatment, either because they did not realize that such behavior is illegal and sanctionable, or because they thought that complaining to authorities would be ineffectual or dangerous. Those who did lodge complaints generally did so on an informal basis, through facility social workers or teachers.

International law requires that detained juveniles be provided with a formal avenue of lodging requests or complaints; in addition to their right to complain, they have the right to receive a prompt response to their complaint.²⁰³ International standards further stipulate that, upon admission, “all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints . . .” and “[a]ll juveniles shall be helped to understand the regulations . . . of the facility, . . . the disciplinary requirements and procedures . . . and all other such matters as are necessary to enable them to understand fully their rights . . .”²⁰⁴ These rights are completely disregarded by the Guatemalan government. The new Minors' Code, scheduled to take effect in September 1997, proposes to implement most of these legal requirements. Implementation of this effort should be closely monitored by Guatemalan and international children's rights and human rights organizations, including but not limited to the Children's Rights Defender of the Office of the Human Rights Ombudsman.

Religious Coercion

Several boys who had been or were currently in Gaviotas reported the use of religious coercion by REMAR staff. Such coercion violates the Guatemalan Constitution (Article 36), the Convention on the Rights of the Child (Article 14), and the International Covenant on Civil and Political Rights (Article 18), all of which protect the right to freedom of thought, conscience, and religion.

Coercive practices reported to Human Rights Watch included mandatory evangelical Bible classes at Gaviotas,²⁰⁵ the forcible removal of Catholic children's crosses and, at REMAR centers (see below), beatings linked to religious training.²⁰⁶

²⁰³ Rules for the Protection of Juveniles, Rules 75-78.

²⁰⁴ Ibid., Rules 24-25.

²⁰⁵ Reported to Human Rights Watch Children's Rights Project by two boys

REMAR Centers

during separate confidential interviews at the Gaviotas detention center, September 19, 1996. Both boys reported daily Bible classes from 6:00 a.m. to 7:00 a.m.; a third boy said that these classes are voluntary, and that only about twenty of the detained boys attend. In addition, one boy told us that every Monday morning from 10:00 a.m. to 12:00 p.m. there is mandatory "evangelical school," which all boys were required to attend.

²⁰⁶ Attie, Jessica, "Halados: Street Children and Detention Centers in Guatemala," p. 12.

In addition to its work in state juvenile detention facilities, REMAR-Guatemala runs a network of “centers” or “homes” dedicated to rehabilitating troubled youth. Although privately administered, there is a strong state connection to these centers as well: hundreds of children are sent to them each year by the judicial system. The centers are, in effect, an alternative incarceration option utilized by the minors’ judges. Once sent to a REMAR center, a child is not free to leave until a judge so orders; the judges, in turn, rely on the recommendations of REMAR staff in making this decision.²⁰⁷

According to REMAR, they accept children aged seven to seventeen into their centers for any of the following reasons: by order of the court; abandonment; drug addiction; unfit parents; abuse at home; or poverty. As of September 1996, REMAR had 300 children in its Guatemala centers; 200 of these were there by order of the minors’ court.²⁰⁸

Minors’ Judge Mildred de la Roca confirmed the court’s use of REMAR’s private facilities. According to the judge, about 20 percent of all children ordered interned every year are sent by the judges to REMAR.²⁰⁹ This works out to several

²⁰⁷ Human Rights Watch Children’s Rights Project interview with Minors’ Judge Mildred de la Roca, Guatemala City, September 12, 1996.

²⁰⁸ Human Rights Watch Children’s Rights Project interview with José Gómez, REMAR-Guatemala Director, September 13, 1996.

²⁰⁹ Human Rights Watch Children’s Rights Project interview with Judge Mildred

hundred children each year.²¹⁰ The judge said they are most likely to send children to REMAR facilities if they are drug addicts, alcoholics, or are charged with the misdemeanors of “making a scandal” (*haciendo escándolo*) or “offenses against good manners” (*faltas contra las buenas costumbres*).²¹¹

de la Roca, September 12, 1996.

²¹⁰ According to the minors' prosecutors, approximately 4,200 children pass through the juvenile courts each year. Human Rights Watch Children's Rights Project interview, September 10, 1996.

²¹¹ Human Rights Watch Children's Rights Project interview with Judge Mildred de la Roca, September 12, 1996.

The judge justified the use of REMAR facilities on the grounds that these children should not be sent to the same institutions as are the “delinquents” — i.e., robbers and violent offenders. “So we order that they be sent to REMAR. REMAR has centers for drug addiction problems. We send them there because there are no state programs for these children.”²¹²

The state gives REMAR free rein over these children. First, children sent by the courts into REMAR facilities are there for an indeterminate length of time, rather than with a sentence of fixed duration. Second, there is no regular court or other state oversight of the REMAR programs or of the rehabilitation of individual children sent to REMAR. Instead, REMAR is supposed to make periodic reports back to the court, informing the judge as to the child’s progress. Nor are these reports required to be made at specified times, say, every month or every three months, or to follow a specified format or answer specific questions. Rather, the reports come back to the court “irregularly,” according to the judge.²¹³

Essentially, then, REMAR runs private juvenile detention facilities on behalf of the government of Guatemala, but with no monitoring or control from that government. Given REMAR’s established propensity for violence and coercion in state facilities (where presumably external oversight and control is at least possible), their role in running private facilities is extremely alarming. Two boys interviewed by Human Rights Watch told of suffering abuses in private REMAR centers.²¹⁴

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Researcher Jessica Attie also interviewed boys who had been beaten at REMAR centers, as well as a former REMAR staff member who witnessed a severe beating of a five-year-old boy because he was unable to recite grace before dinner. Attie, “Halados: Street Children and Detention Centers in Guatemala,” pp. 11-12.

I was in a REMAR house in the Petén, in Santa Elena. It's a Christian center. REMAR, well . . . they're a little good and a little bad. If you do something wrong, they'll make you wash the dishes for a month, or they won't feed you for a few meals. They hit us, too. Even the little boys. They hit us with a stick, "to teach us a lesson," they say. Once they put a big heavy log across my shoulders and made me do push-ups with it there. If you didn't do what they said, they'd hit you. . . . They're Christians, but they hit us a lot . . . even the little ones. I wanted to leave, but they wouldn't let me. Finally I ran away.

—Juan Alexander, sixteen years old²¹⁵

I was in a REMAR center in Guatemala City. They got very angry and punished me because I didn't eat my porridge. They broke my finger. Then they took off all my clothes and put me in bed without any food. The next day they made me clean all day.

—Jesús, sixteen years old²¹⁶

Human Rights Watch was unable to determine whether REMAR receives direct government funding from either the Spanish or the Guatemalan governments. It is clear, though, that the organization not only effectively controls state-run juvenile facilities, but benefits from this arrangement, not least by utilizing the

²¹⁵ Human Rights Watch Children's Rights Project interview, Guatemala City, September 3, 1996.

²¹⁶ Human Rights Watch Children's Rights Project interview, Guatemala City, September 6, 1996.

facilities—and the detained children—as tools in the rehabilitative scheme of REMAR members.²¹⁷

²¹⁷ The organization is rumored to have received gifts of houses, buildings, and vehicles from the Serrano government when it first arrived in Guatemala.

APPENDICES

APPENDIX A
Excerpts from the U.N. Convention on the Rights of the Child

U.N. Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989).

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, '

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,"

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall 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.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

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

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without

possibility of release shall be imposed for offenses committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) 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 needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;

- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, in particular:

- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offense.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

APPENDIX B
U.N. Standard Minimum Rules For The Administration of Juvenile
Justice(Beijing Rules)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

PART ONE

General principles

1. Fundamental perspectives

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavor 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 behavior, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

2. Scope of the Rules and definitions used

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, color, sex,

language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

- (a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offense in a manner which is different from an adult;
- (b) An offense is any behavior (act or omission) that is punishable by law under the respective legal system;
- (c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offense.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

- (a) To meet the varying needs of juvenile offenders, while protecting their basic rights;
- (b) To meet the needs of society;
- (c) To implement the following rules thoroughly and fairly.

3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behavior that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

4. Age of criminal responsibility

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offense.

6. Scope of discretion

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

7. Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

9. Saving clause

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

PART TWO

Investigation and prosecution

10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or hi m, with due regard to the circumstances of the case.

11. Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

12. Specialization within the police

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

13. Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

PART THREE**Adjudication and disposition*****14. Competent authority to adjudicate***

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

15. Legal counsel, parents and guardians

15.1 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.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

16. Social inquiry reports

16.1 In all cases except those involving minor offenses, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offense has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offense but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offenses and unless there is no other appropriate response;
- (d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;

- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counseling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

19. Least possible use of institutionalization

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

20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

PART FOUR

Non-institutional treatment

23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

24. Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

25. Mobilization of volunteers and other community services

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

PART FIVE

Institutional treatment

26. Objectives of institutional treatment

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

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development .

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

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

28. Frequent and early recourse to conditional release

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centers and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

PART SIX

Research, planning, policy formulation and evaluation

30. Research as a basis for planning, policy formulation and evaluation

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyze relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

APPENDIX C

U.N. Rules For The Protection of Juveniles Deprived of Their Liberty

U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990).

I. Fundamental perspectives

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.
2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.
3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.
4. The Rules should be applied impartially, without discrimination of any kind as to race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.
5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.
6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.
7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including

compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

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

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. Scope and application of the rules

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the

competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. Juveniles under arrest or awaiting trial

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. The management of juvenile facilities

A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefor;
- (c) The day and hour of admission, transfer and release;
- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offense, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular

needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

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

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile

to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labor and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labor, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offense or to send it to his or her family or other persons outside the detention facility.

F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the

detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counseling or indoctrination.

H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testers in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair

and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defense counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the

inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labor should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offense;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defense, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. Inspection and complaints

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on

a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counselors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. Return to the community

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

V. Personnel

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counselors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favorable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their

knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

APPENDIX D
U.N. Code of Conduct For Law Enforcement Officials

U.N. Code of Conduct for Law Enforcement Officials, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979).

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Commentary:

(a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial

Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary:

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which:

"[Such an act is] an offense to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows:

". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or

suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary:

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

APPENDIX E
U.N. Basic Principles on The Use of Force
And Firearms by Law Enforcement Officials

U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).

Whereas the work of law enforcement officials* is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council, Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offense and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offense under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defense or in the defense of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counseling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behavior, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law

enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counseling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defense if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

* In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.