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# DEVELOPING AND IMPLEMENTING A SYSTEM OF RESTORATIVE JUSTICE IN HONDURAS

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## EXECUTIVE SUMMARY

Although many factors contribute to Honduras' high rates of crime and violence, a significant amount of responsibility has been laid arbitrarily at the feet of youth. Even a cursory analysis of crime data reveals the fundamental flaws in this perception, but the perception is nonetheless widely accepted and largely unquestioned by government officials, the media, and the general public. This stigmatization of youth contributes to widespread acceptance of juvenile justice policies and practices that ignore the personal, family and community variables that underlie juvenile crime and violence; fail to reflect youths' actual contributions to the problem; systematically violate Honduran law and international standards; and invalidate children and youths' most fundamental legal and human rights.

Given the current lack of fiscal resources, infrastructure, institutional capacity, public support, and interdisciplinary collaboration, enacting sweeping juvenile justice reforms in this climate will be difficult. However, there are opportunities to develop alternative measures, including restorative justice, to compliment to the current system.

Internationally, the restorative justice model has been widely accepted in recent decades. Unlike the punitive model, which measures success largely by the number of arrests and sentences, restorative justice measures success in reparation of harm, achievement of rehabilitation, and prevention of future harm. The restorative approach prioritizes the needs of victims and holds offenders accountable, while promoting their rehabilitation and attempting to change the community-level conditions that give rise to crime.

Development and implementation of a restorative justice model in Honduras requires a comprehensive strategy to address the country's systemic obstacles, leverage existing organizational and human resources, and scale up the model incrementally over time. Buy-in from stakeholders, capacity building, and interdisciplinary collaboration will be essential. Some members of Congress are open to restorative justice; securing support from the Honduran Congress will be especially important. At the local level, there are NGOs capable of implementing restorative justice. These organizations could be recognized as an official part of the judicial process. Given all of these facts, there is an opportunity to promote small-scale changes that will better serve youth and may set the stage for more substantial juvenile justice reforms in the future.

## SECTION I. COUNTRY FACTS AND SOCIAL CONTEXT

### A. Honduras: A Country of Inequality

Honduras is characterized by high levels of poverty and social exclusion, perpetuated by inadequate public welfare systems, developmental programs, and education and health-care services. The resulting situation places a large portion in a continual search for better living conditions and means of survival. Some are even leaving Honduras.

Violence has a significant impact, being both a cause and effect of poverty and an underpinning factor for organized crime. Honduras has the world's highest murder rate — 86.5 per 100,000 for 2011. According to the Observatorio de la Violencia de la Universidad Nacional Autónoma de Honduras, 9,977 people died as a result of external causes in 2011. Some 72 percent of those deaths were homicides.

#### The Honduran Population

*Total population:* 8,215,313

- Female: 50.7%
- Male: 49.3%

*Children and youth (0-18 years)*

- 44% (3,659,424) of the total population
- Girls: 49.3%
- Boys: 50.7%

*Youth population, by age:*

- 0-4 years: 25.2%
- 5-9 years: 24.7%
- 10-14 years: 31.5%
- 15-17 years: 18.6%

Source: World Vision International, "Estudio de los Sistemas Formales e Informales de Protección a la Niñez," Tegucigalpa, Honduras, 2012.

### B. Risks to Children and Youth

A significant number of Honduran youth are at risk for a host of physical, psychological and social problems — poverty, education, health, drug and alcohol use, early pregnancy, victimization in the home and the community — that have a direct impact on the trajectory of a young person's life. Children and youth at greatest risk include those who are exposed to violence and discrimination, poor, migrants, members of indigenous groups, outside their family environments, out of school and living on the street, disabled, incarcerated, and victims of the child labor.

According to the 2008/2009 United Nations Human Development Report for Honduras, 25.4 percent of Honduran adolescents are neither working nor in school, reflecting the state's inability to generate sufficient educational and employment opportunities for youth. Roughly 700,000 Honduran youths are outside the education and employment sector, a situation that traps them in a cycle of poverty and contributes directly to their risk for involvement in crime and violence.

### C. The Honduran Response

In confronting these challenges, the government of Honduras also faces its own challenges, with weak institutional capacity, severe budgetary constraints, and lack of coordination among government actors, civil society groups, NGOs, and international organizations.

Exhibit 1 lists the institutions that have a stake in child protection and juvenile justice in Honduras.

**Exhibit 1. Governmental and Nongovernmental Institutions Involved in Juvenile Justice**

Government Institutions	Nongovernmental Groups
<ul style="list-style-type: none"> <li>• Instituto Hondureño de la Niñez y la Familia (IHNFA)</li> <li>• Defensoría de la Niñez (still in developmental stage)</li> <li>• Fiscalía de la Niñez del Ministerio Público</li> <li>• Instituto Nacional de la Juventud</li> <li>• Instituto Nacional de la Mujer</li> <li>• Secretaría de Justicia y Derechos Humanos</li> <li>• Comisionado Nacional de Protección de los Derechos Humanos</li> <li>• Defensa Pública del Poder Judicial</li> <li>• Juzgados de la Niñez a nivel nacional</li> <li>• Defensorías Municipales de la Niñez</li> </ul>	<ul style="list-style-type: none"> <li>• Honduran children’s rights organizations and networks</li> <li>• The private sector</li> <li>• Religious organizations</li> <li>• Municipalities</li> <li>• The private sector</li> <li>• International donors</li> <li>• Government development organizations</li> <li>• NGOs</li> </ul>

Coordination among these groups is minimal. Section V of this report details the need to significantly enhance their ability to collaborate with one another.

## SECTION II. THE LEGAL FRAMEWORK FOR JUVENILE JUSTICE

Honduras' juvenile justice framework operates at two levels — national and municipal.

### A. National Juvenile Justice Framework

In 1990, Honduras ratified the Convention for the Rights of the Child, which initiated institutional reforms geared toward the protection of children and youth, including a judicial framework for specialized juvenile courts, the *Sistema Nacional de Justicia Especial para Adolescentes en Conflicto con la Ley*.

Six years later, in 1996, the Honduran Congress approved the *Código de la Niñez y la Adolescencia* (Decree 73-96). Title III of the code relates directly to children in conflict with the law.”

According to the *Código de la Niñez y Adolescencia* and other applicable Honduran laws, the range of responsibility for children and adolescents who commit infractions of the law is as follows:

- *Children (younger than 12)* are not considered delinquent and are not criminally responsible. If they violate the law, they are subject to state protection measures (Article 180).
- *Adolescents (aged 12 to 18 years)* are considered responsible for their acts and subject to a specialized system of juvenile justice — separate from the adult system — that is oriented toward reinsertion and rehabilitation (Article 180).
- *Individuals older than 18* are no longer considered adolescents; they are considered to be criminally responsible and are judged as adults under the law.

The following articles from the code are intended to guide the process of adjudicating and responding to adolescent offenders:

- *Article 189.* Measures applied to children should be proportional to the infraction, reflect the aggravating and mitigating circumstances, and address the needs of the child and society. Based on professional study and analysis, measures prescribed by the courts may be suspended, revoked, or substituted and applied simultaneously, successively, and in an alternate manner. During this process, relations between the child and the family shall be maintained.
- *Article 200.* Less serious measures imposed on youths should be suspended if there are reasons to believe that a youth in question has not committed new infractions of the law. This disposition will apply particularly to youths whose cases do not involve violence against persons.

- *Article 202.* For minor offenses, a competent judge may consider the child’s perceptions and input, if the child has reached sufficient maturity. Additionally, a judge may choose to accept evidence from the victim and arresting officers during a private hearing. Upon conclusion of the hearing, the judge will determine whether to process the matter or release the child without charges.
- *Article 203.* Keeping in mind the seriousness of the crime, youths involved in minor offenses may be sanctioned with one of the following:
  - Verbal or written reprimand
  - Imposition of behavior rules for a maximum of 30 days
  - An order to repair the harm done

Judgments rendered in procedures related to misconduct are appealable only if, according to the *Código de la Niñez y Adolescencia*, they violate any of the rights of the child.

Under the jurisdiction of the juvenile court, adolescents between the ages of 12 and 18 may be subject to the following measures:

- Orientation and family support
- Written or verbal reprimand
- Imposition of rules of conduct
- Community service
- Obligation to repair or address harm or damage
- House arrest in a determined location
- Conditional release (in the community, but with obligations to the court)
- *Régimen de semilibertad* (serving the sentence by reporting to jail at prescribed times)
- Incarceration

In addition to the *Código de la Niñez y Adolescencia*, the following documents and legislation relate to the juvenile justice system and processes:

- *Constitución de la República*
- *Código Penal*
- *Ley del Ministerio Público*
- *Código Procesal Penal*
- *Ley del Instituto Hondureño de la Niñez y la Familia*
- *Ley contra la Violencia Doméstica*
- *Ley para la Prevención, Rehabilitación y Reinserción Social de Personas Integrantes de Pandillas o Maras*
- *Ley Marco para el Desarrollo Integral de la Juventud*
- *Ley de Policía y Convivencia Social*

Exhibit 2 depicts the location and size of specialized juvenile courts.

## Exhibit 2. Specialized Juvenile Courts in Honduras

Department and Number of Judges	Locations
Francisco Morazán (5 judges)	Tegucigalpa and Comayagüela
Olancho (1 judge)	Juticalpa
Choluteca (1 judge)	Choluteca
Cortés (4 judges)	San Pedro Sula
Copán (2 judges)	Santa Rosa de Copán
Yoro (1 judge)	El Progreso
Atlántida (2 judges)	La Ceiba and Tela
Comayagua (1 judge)	Comayagua

### B. Municipal Juvenile Justice Framework

Municipal involvement in the protection of children and adolescents occurs at two levels. First, the *Código de la Niñez y la Adolescencia* promotes the creation of local councils to address child protection. This framework, developed to create local councils in each municipality, began with the *Defensor Municipal de la Niñez* during the 1990s. Second, the *Pacto por la Infancia*, signed in 1994, calls for municipalities to dedicate 1 percent of local resources to programs related to the protection of children and youth. Often lacking implementation or enforcement at the municipal level, however, these legislative reforms for children’s rights have not resulted in stronger local councils and are in need of substantial support.

### C. Supervision and Treatment of Juvenile Offenders

The Instituto Hondureño de la Niñez y la Familia (IHNFA) has been the state institution responsible for supervision and treatment of adolescent offenders, but on September 10, 2012, the government announced plans to dissolve the IHNFA and replace it with a new state organization, the Defensoría de la Niñez. It is not certain when the Defensoría will be operational. While the Defensoría’s organizational framework, policies, and practices are developed, the IHNFA retains responsibility for matters related to child protection and adjudicated youth.

The IHNFA has six offices to cover Honduras’ 18 departments, and is responsible for enforcing court orders. Its operational structure and practices are guided by the *Código de la Niñez y la Adolescencia*. Its programs include detention and a non-detention alternatives program.

The two IHNFA programs are designed to support the psychosocial education of youth who enter the juvenile justice system at early stages, before they have committed serious infractions of the law. The goal is to achieve changes in the personalities and behaviors of youths who are in conflict with the law by developing an ongoing, systematic educational process linked to alternatives and detention centers, includes connections to the family-social network, and emphasizes education and gradual, socially progressive reinsertion.

## C1. Detention Program

The detention program once consisted of four detention centers — two centers for boys in Tegucigalpa; one center for girls, Sagrado Corazón, in San Pedro Sula; and a co-ed facility, El Carmen, also in San Pedro Sula. Renaciendo, one of the centers in Tegucigalpa, was recently destroyed by detainees and has not re-opened.

In addition, a semi-open facility called Jalteva lies near the community of Minas de Oro, offering programs for youth who do not pose a flight risk, including educational and vocational options and home visits.

### Detention of Youth

Article 237 of the *Código de la Niñez y la Adolescencia* requires the immediate implementation of preventive protection measures (such as pre-trial detention) when proceedings begin. The state then has 30 days to investigate and establish the facts, although the Ministerio Pública may request an additional 30-day extension. Information gathered for this report indicated that these extensions are typically granted, meaning that youths are likely to be detained for at least 60 days before their initial court hearings.

## C2. Non-detention Alternatives Program

The Honduran government's Non-detention Alternative Measures program includes reception and diagnostics, treatment, and social reinsertion. In Tegucigalpa, the program has organized the following options instead of detention for youth:

- Orientation and family support
- Rules of conduct
- Community service
- House arrest
- Supervised release with obligations to the court

Although San Pedro Sula has a Non-detention Alternatives Program office, fewer alternatives are available there than in Tegucigalpa, and availability is even more restricted in other IHNFA regional offices.

The IHNFA's Re-education and Social Reinsertion Program is implemented by social workers, psychologists, legal assistants, and other technical staff members. When judges order youth into this program, the IHNFA coordinates with the NGOs, private sector groups, and churches with which it has agreements to allow youth to fulfill their obligations to the court by performing community service, engaging in vocational training, continuing their education, and seeking employment.

The principal challenges for this program are resource shortages and a lack of specialists and logistical support necessary to operate and provide alternative non-detention alternatives at the national level.

## D. Strengths and Weaknesses of the Current System

In Honduras' 18 departments, 15 juvenile court judges provide services on a national level. The IHNFA maintains a registry of alternative resources that allow youths to fulfill their sentences through non-detention measures such as community service, art and vocational training, substance abuse treatment, and probation programs. However, logistical and ancillary support to manage the program are lacking. Judges seldom employ these measures; for those that do, there is no system for monitoring use or outcomes.

There are structures in place that could be used to support development of formative family and social programs, but this infrastructure cannot be leveraged effectively until the juvenile justice model is replaced or, at a minimum, amended to accommodate alternative measures. Numerous public and private organizations are willing and able to support the development of a new juvenile justice model, but the current judicial framework must change before any such support could be put into operation.

The following organizations, as well as churches and NGOs, are willing to support the development of a new juvenile justice model:

- Casa Alianza
- Proyecto Victoria
- Casa Domingo
- Centro Jalteva

The government's decision to replace the IHNFA with the Defensoría de la Niñez signals an intention to promote change and provide a platform for legal experts, juvenile justice specialists, and children's rights advocates to formalize recommendations for a new model and to work with government officials to institutionalize these changes.

### Exhibit 3. Governmental and Nongovernmental Actors and Roles

Institution	Role
Juvenile court judges	Impart justice in a manner that reflects the <i>Código de la Niñez</i> .
Attorney General's Office	Exercise prosecution of criminal matters.
Public Defender's Office (Defensa Pública)	Ensure that children's constitutional rights are guaranteed through appropriate defense.
IHNFA and Defensoría de la Niñez	IHNFA retains responsibility for adjudicated adolescents, but will eventually be replaced by the Defensoría de la Niñez.
Human rights commissioner and secretary of justice and human rights	Ensure the rights of youth in the juvenile justice system.
NGOs, private sector, universities	Contribute to the development and implementation of alternative family-community programs.

## **E. Defensoría de la Niñez**

When the IHNFA is eventually dissolved, its role will be assumed by a new state institution, the Defensoría de la Niñez, which will be charged with supervision and treatment of adolescent offenders. The Defensoría's mandate is as follows:

To organize and administer, through regional offices of the Defensoría, specialized programs and services to support the rehabilitation and social reinsertion of child and adolescent offenders, prioritizing the use of non-detention practices and restorative justice; to be achieved through the use of multi-disciplinary teams and specialized services that ensure adequate attention for each child.

Many details remain uncertain with regard to the Defensoría's organizational structure, operating procedures, and relationships to other government institutions and NGOs. Perhaps the most critical question is how the Defensoría will differ from the IHNFA. It is still not clear what structures and practices will ensure more favorable outcomes than were experienced under the IHNFA.

## **F. Recommended National-Level Improvements in the Juvenile Justice System**

- Develop and adopt a new strategic plan and policies related to children and youths in conflict with the law.
- Support specialization and capacity building in the police related to children and youths in conflict with the law
- Ensure a system in which detained adolescents are referred immediately to the Ministerio Público, and in which arrests are made only for violations of laws currently defined as crimes.
- Include legislation that specifies that arrests (except for arrests for crimes in progress) must be approved by the Ministerio Pública.
- Ensure free legal representation for all detained adolescents.
- Establish juvenile justice processes, including pretrial detention, that are consistent with the adult criminal justice system.
- Ensure the participation of the National Human Rights Commission and the Public Defender (*Defensa Pública*) at arrest and processing phases.
- Ensure that all parties participate in the initial hearing, so judges can make decisions about the continuation or dismissal at this stage.
- Ensure that pretrial detention measures are necessary, based on available evidence.

- Ensure the right to appeal in a manner guaranteed by the Constitution.
- Enact national-level projects and programs that include alternatives to detention and incarceration in the juvenile justice system.
- Invest in detention centers' physical infrastructure and ensure the development of regional facilities to facilitate detainees' contact with family and community
- Review current juvenile justice practices and ensure that they adhere to international standards.
- Enable formal and non-formal educational systems for children in conflict with the law that fulfill educational requirements.
- Prioritize the selection of professionals with skills and training in the treatment of adolescents.
- Provide ongoing capacity building for professionals charged with responsibility for children in conflict with the law, including the police and other juvenile justice personnel.
- Formulate a system of individualized attention and treatment for every youth.
- Implement changes to the legal framework to encourage the court's involvement in resolving nonviolent offenses.

#### **G. Recommended Municipal Improvements in the Juvenile Justice System**

- Focus on implementing promises and commitments made at the municipal level, including the *Pacto por la Infancia*, which calls for municipalities to dedicate 1 percent of local resources to programs related to the protection of children and youth.
- Incorporate themes related to protecting youth and adolescents from violence and crime into reforms to the *Código de la Niñez y la Adolescencia*.
- Strengthen the roles of municipal coalitions in dealing with juvenile justice issues, especially for minor violations.
- Strengthen local programs and projects that give youths who have committed minor violations an opportunity to serve alternative sentences (such as community service in their communities). Such a change will help prevent isolation and encourage reinsertion into the young person's home community.
- Strengthen existing local restorative justice programs, and build partnerships between IHNFA and municipalities to help municipalities implement restorative justice and non-detention alternatives.

## SECTION III. JUVENILES AS PERPETRATORS AND VICTIMS OF VIOLENCE

### A. Profile of a Juvenile Offender

According to the results of visits, interviews, and focus groups conducted as part of the *Estudio Local de el Sistema de Justicia Juvenil*<sup>1</sup> in 2010, the typical profile of a youth in conflict with the law is highly specific, almost invariably involving adolescent boys. In addition, juvenile offenders typically:

- Are several years delayed in their schooling.
- Are unemployed or in retail sales and the informal economy.
- Are from low-income households; the fruits of their economic activities go toward supporting their households.
- Are from broken homes (or live with distant relatives) without a father figure. In some cases, they live alone or with girlfriends with whom, at a young age, they already have one or two children.

Belonging to a gang is not the norm, although a large number of children in conflict with the law are involved with these groups. Many are repeat offenders who are involved with the specialized police and judicial systems. Many experience violence in their homes and communities and frequently use drugs and alcohol. The typical juvenile offender commits property offenses with greater frequency than offenses against persons.

Although they have legal assistance, cases for youths in conflict with the law are often delayed, and youths are often detained for extended periods without a final decision about their procedural status or precise deadlines for resolution.

This profile does not mean that middle-class or upper-class adolescents do not come into conflict with the law; however, because they tend to have greater access to resources, they generally avoid the judicial process or are released soon after being arrested.

### B. Juveniles as Perpetrators of Crime and Violence

A combination of poor policing practices, limited resources, and widespread distrust of the police means that only a small fraction of crimes, even serious crimes, are reported to police or other government agents. For crimes that are reported, data limitations and other factors preclude a detailed review of the statistics to gain a nuanced understanding of the facts about individual cases or to draw conclusions about overall trends in crime. One respondent advised this research team that only 10 percent of homicides are investigated.<sup>2</sup>

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<sup>1</sup> *Análisis del Modelo de Atención a Adolescentes en Conflicto con la Ley Honduras*. IHNFA and UNICEF. 2010.

<sup>2</sup> Interview with José Manuel Capellin, National Director, Casa Alianza, September 2012.

According to the Violence Observatory at the Honduran National Autonomous University Institute of Democracy, Peace, and Security (UNAH-IUDPAS), there is insufficient data to speculate about the motives in 57.5 percent of the 7,104 homicides registered in 2011.<sup>3</sup> This lack of data and statistical understanding of relevant case facts and trends is true across the majority of crime categories in Honduras.

The absence of empirical evidence about youth involvement in delinquency presents a significant challenge for the development and implementation of a restorative justice model. This gap makes it difficult to identify the characteristics of individuals who would be most responsive to the restorative justice approach and are, therefore, appropriate for referral to this type of intervention. (See Section V for more detail.)

### **C. Historical Indicators of Juvenile Involvement in Delinquency**

Between 1996 and 2002, the Ministerio Público and the Honduran courts handled 12,320 criminal complaints involving juveniles:

- Robbery and theft: 22.9 percent
- Assaults resulting in injury: 11.4 percent
- Homicide: 10 percent
- Property damage: 6.5 percent
- Threats: 4.8 percent
- Drug trafficking: 1.7 percent
- Other offenses: 42.7 percent

According to the Honduran Human Rights Commission's 2003 report, juvenile crime accounted for just 6 percent of the national total between 1996 and 2002.<sup>4</sup> Adult offenders (older than 18) accounted for 94 percent of the total — the vast majority of crime in Honduras during the period.

### **D. Juvenile Involvement in Serious Crime**

The lack of data-driven understanding leads to conjecture about the actual nature and scope of adolescent contributions to crime and violence. Although the Honduran government has done some effective crime mapping, there are significant gaps in its understanding of a number of basic, but fundamentally important, questions:

- What percentage of the total youth population is involved in delinquency?
- Of that total, what percentage is made up of low-level, early-career offenders versus recidivist offenders involved in serious offenses?

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<sup>3</sup> *Observatorio de la Violencia, Mortalidad y Otros, Edición No. 24, March 2012.* UNAH-IUDPAS Instituto Universitario de Democracia, Paz y Seguridad.

<sup>4</sup> *Honduras: Hacia Una Política Integral de Seguridad.* Centro de Documentación de Honduras (CEDOH). June 2004.

- Of the youth population involved in delinquency what percentage is peripherally or centrally involved with gangs?
- Of the country's gang population, how many are youths?
- Of all criminal behavior in Honduras, how much is gang-related?

The answers to these questions would help shaping the government's response to delinquency (prevention and intervention), yet they remain unanswered, and often unasked. As such, perceptions about the nature and scope of juvenile crime are based largely on uninformed analysis and speculation, a situation that limits police and policy makers' responses to "best guess" strategies.

A significant result of the lack of data is the widespread societal perception — promoted by the police, the media, and the government — that youth, especially gang-involved youth, are primary actors in crime and violence. When respondents were asked to comment on their experiences and observations about the nature and scope of the gang problem and gang members' contributions to crime and violence, their statements were largely in direct conflict with this perception.

While fully acknowledging the gravity of the gang problem and the harm it causes to individuals and communities, stakeholders agreed that the portrayal of the problem is highly inaccurate and grossly exaggerated. When a range of stakeholders were asked to estimate how many of Honduras' total youth population is directly involved with gangs (i.e., are gang members), their estimates did not exceed 1 percent of the total youth population.

These estimates appear to be far more realistic than government and media portrayals of the same issues. Governmental and nongovernmental sources commonly cite a figure of 36,000 gang members in the country. Based on this figure and the country's youth population of 3.7 million, if stakeholders estimate — that 1 percent of youth are involved with gangs — were correct, it would mean that youth account for the country's entire gang population. This figure is completely implausible — it would mean more than 37,000 gang-involved youth.

If youth make up half of the gang population (using the accepted estimate of 36,000 total gang members), this would mean that roughly 0.5 percent of youth (18,000) are gang members. Although this estimate does not take into account the number of youth who are peripherally associated with gangs, it is clear that the percentage of young people involved with gangs is a fraction of the 1 percent estimate. This is a national figure; in gang-affected areas, estimates of youth involvement with gangs ranged from 5 percent to 30 percent, depending on the gang presence in each neighborhood.

Although it has long been known that gang members contribute disproportionately to crime, particularly violent crime, the consensus was that gangs probably account for around 10 percent of all crime in Honduras. Gangs' contributions to certain types of crime (such as extortion) is arguably high, but capacity to determine their contributions to

other categories of crime (e.g., burglary, robbery, auto theft, and drug trafficking) is extremely limited. However, given the tendency to attribute crime and violence to youth and youth gangs, it is reasonable to conclude that estimates of their involvement in all crime categories are exaggerated.

## E. Children and Adolescents as Victims

More is known about children and adolescents as victims, particularly in cases of violent death and other crimes against persons. Between 1998 and August 2012, Casa Alianza reports 7,529 youths 23 years and younger died violently or extrajudicially.<sup>5</sup> Of that total, 30 percent (2,238) were younger than 17, and the

majority of these were known or suspected to be gang members and street children. The escalating pattern of extrajudicial killing of youth is disconcerting: 31 percent (2,306) of all recorded killings between 1998 and 2012 occurred between February 2010 and June 2012. The vast majority of cases are never investigated; meanwhile, Casa Alianza staff stated that 30 percent of cases that have been investigated revealed evidence of police involvement. On average, three young people per day are killed extrajudicially.

### The Highest Murder Rate in the World

Since 2004, the homicide rate in Honduras has increased every year, from 30.7/100,000 in 2004 to 86.5/100,000 in 2011 — the world's highest murder rate. In this seven-year period, the Honduran government recorded 33,933 homicides.

*Sexual violence and trafficking.* Children and adolescents are also frequent victims of sexual violence. In 2011, the Honduran Fiscalía received 3,146 reports of sexual crimes (17.6 percent of the incidents handled by the Legal Medicine and Forensics Clinic that year). Of this total, some 80 percent of victims (2,553) were between the ages of 5 and 19, and 90 percent (2,338) were female. In 33.7 percent of reported cases, the aggressor was known to the victim. In 20.6 percent the offender was a parent.

One manifestation of sexual violence involves the commercial sex industry and associated human trafficking. According to the U.S. State Department's 2012 Trafficking in Persons Report for Honduras, the country is a source, transit point, and destination for trafficked boys and girls. In 2010, the Fiscalía de la Niñez received 58 complaints (resulting in six convictions and one absolution). Casa Alianza provides shelter and services to 30 victims of child and adolescent trafficking each month; these victims are referred from juvenile courts or the IHNFA.

The majority of trafficking and sex trade activities are orchestrated by organized crime, often with the involvement of gangs. The most common victims are girls from rural areas who are trafficked and compelled to engage in the sex trade after being lured by promises of employment. Inside Honduras, the majority of this type of activity occurs in urban areas — Tegucigalpa, San Pedro Sula, and tourist centers such as the Islas de la Bahía. Hondurans are also trafficked into Guatemala and Mexico and in rare cases Europe. Some children are sold into the commercial sex industry by their families.

<sup>5</sup> *Informe Mensual, Junio 2012.* Casa Alianza.

Despite Honduras' efforts to improve prevention, investigation, and prosecution, the U.S. State Department reports that the Honduran government is not in compliance with international treaties related to sex trafficking, but is making efforts to improve.

*Intra-familial violence.* Children and youth are frequent victims of intra-familial violence and maltreatment; in 2011, there were 1,114 reports of child and youth maltreatment processed. Of these, 57 percent of victims (639) were female:

- Girls between the ages of 10 and 14 represented 20 percent of the total, making this the highest-risk age group.
- Girls between 15 and 18 were at next highest risk, at 17.8 percent (199) of cases.
- Girls between 5 and 9 were the victims in 12.8 percent (143) of cases.

Statistics for boys were essentially uniform across the age groups:

- Ages 5 to 9: 126 cases
- Ages 10 to 14: 137 cases
- Ages 15 to 18: 132 cases

In a country with 3.7 million youths, however, the relatively low number of reported instances certainly represents a gross under-reporting.

*Serious injuries from violence.* Of the 9,514 reports of injuries sustained in violent incidents processed by the Legal Medicine and Forensics Clinic in 2011, children and youth ages 10 to 19 represented 18 percent. The difference in the rates of violence-related injuries between males and females was not strikingly significant: 54.6 percent versus 45.4 percent respectively. In homicide, gender differences are far more powerful: 8.8 percent for males versus 1.1 percent for females. Stated differently, males aged 10 to 19 are eight times more likely to die a violent death than females of the same age, but they are only slightly more likely to sustain serious injuries in violent incidents.

*Suicide* is another form of violence that must be included in assessing the victimization of youth. In 2011, the Honduran government recorded 316 suicides, 78.2 percent of which involved males.<sup>6</sup> Children and youth between the ages of 10 and 19 represented about 20 percent of suicide victims, whereas people aged 20 to 34 accounted for 42 percent. The critical lesson from these statistics is that youth between 20 and 34 are at much higher risk for suicide, so prevention efforts must begin at early ages.

## **F. Particular Risk to Females**

Despite efforts to do so, the research team for this report was unable to obtain statistics on girls' involvement in delinquency or rates of victimization (beyond sexual and intra-familial violence). Absence of data notwithstanding, it is commonly recognized that girls are at particularly high risk for a host of negative and violent outcomes in the patriarchal

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<sup>6</sup> *Informe Mensual, Junio 2012.* Casa Alianza.

culture of Honduras. This is especially true for young girls who lack a protective male presence in the home or male dominated family-social network. These girls are often victims of psychological, physical, and sexual violence. Girls in detention may be subjected to offers of release in exchange for sexual favors, in addition to other forms of psychological, physical and sexual abuse.<sup>7</sup>

Forced recruitment is of particular concern for young, unprotected girls in gang-affected areas, because they are perceived as physically, psychologically, emotionally, and financially vulnerable. Girls are highly valued in gang culture and targeted for four main reasons:

- They provide companionship and sex.
- They are not monitored by police to the same degree as males, so they can be used to hide or transport weapons, drugs, and stolen property.
- They are effective at setting up male victims for extortion, robbery, and kidnapping
- They can recruit other females more easily than their male counterparts.

It is generally agreed that girls make up a small percentage of the total gang population (generally, not more than 10 percent). With an estimated of 18,000 gang members aged 18 and younger, the female youth gang population would be about 1,800. Girls who become involved in gang culture tend to follow one of two paths:

- They play an ancillary role in which they are not are criminally active; if they are criminally active, it is in a secondary manner described above.
- They become very criminally active, including violent criminal offenses in which they are seen as nearly equivalent to their male counterparts.

In part, girls' responses after entering into gangs may be related to the fact that failure to respond to the expectations and demands placed on them by male gang members puts them at high risk for physical and sexual violence. In addition to criminality and intra-gang violence, they may also be targeted by rival gangs as a means of retaliation against male gang members.

In addition to recruitment and the dangers associated with joining gangs, this segment of the female population is also at high risk for other forms of victimization. Gang members often approach unprotected young girls with demands for romantic or sexual relationships. Girls may also be confronted with demands to engage in criminal activity on behalf of their gangs, such as prostitution, transporting lower-value drugs such as marijuana, or trafficking. When girls rebuff advances by male gang members, they are often assaulted or raped or, in certain instances, killed.

It is clear that girls are exposed to different risk factors than boys and require different prevention and intervention responses. This is particularly true for girls who get pregnant at young ages and are raising young children.

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<sup>7</sup> *Análisis del Modelo de Atención a Adolescentes en Conflicto con la Ley*. IHNFA and UNICEF. 2010

## SECTION IV. OVERVIEW OF RESTORATIVE JUSTICE

In the past three decades, largely as a result of well-documented limitations, failings, and cost burdens associated with traditional juvenile justice systems, which are structured primarily around punitive measures, a restorative justice model has been increasingly embraced throughout much of the United States, Canada, Europe, Australia, and New Zealand. Restorative justice models are seen not as replacing, but as complementing, traditional approaches. Like the traditional juvenile justice system, restorative justice emphasizes offender accountability and does not seek to undermine or minimize the punitive aspects of incarceration.<sup>8</sup> Unlike traditional systems, however, restorative justice promotes the development of a continuum of alternatives to incarceration, implemented on a case-by-case basis or used in conjunction with incarceration.

### A. Definitions of Restorative Justice

A restorative approach views criminal acts more comprehensively than traditional approaches, and as inseparable from the social context. The traditional juvenile justice system tends to ask what laws have been broken and who broke them, and seeks an appropriate punishment, whereas restorative justice asks who has been harmed by the offense, what is needed to facilitate healing, and whose obligation it is to address those needs.<sup>9</sup> Restorative justice offers a radically different framework for conceptualizing and responding to crime that instead of punitive measures prioritizes:

- Reparation of the victim and community
- Accountability and rehabilitation of the offender
- Prevention of future harm by changing the social context that gives rise to unlawful behavior

Rather than viewing criminality as an act against the state, restorative justice views crime as an affront to the victim, the community, and the offender. Instead of consigning authority exclusively to the state in the aftermath of an offense, a restorative justice approach affords significant influence and responsibility to the victim and the offender and, often, to affected members of their family and social circles and the community. Finally, whereas punitive models measure success by the number of arrests, convictions, and sentences, a restorative justice approach measures success based on the repair of past damage and prevention of future harm. As Paul McCold writes in an article at Restorative Justice Online:

Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future. Parties with a stake in an offence include the victim and the offender, but they also include the families of each, and any other members of their

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<sup>8</sup> *Restorative Justice: Transforming Corrections*. Corrections.com. November 7, 2011.  
<http://www.corrections.com/news/article/29594-restorative-justice-transforming-corrections>

<sup>9</sup> Zehr, H. *The Little Book of Restorative Justice*, Intercourse, PA: Good Books, 2002

respective communities who may be affected, or who may be able to contribute to prevention of a recurrence.<sup>10</sup>

Restorative justice seeks to:

- Promote victims' healing by addressing material, financial, emotional, and social needs associated with the offense
- Hold offenders accountable, require them to take responsibility for their actions, and encourage the development of empathy for their victims
- Reintegrate offenders — and, when necessary, victims — into the community
- Develop collaborative efforts between the community and governmental counterparts to address the root causes of crime
- Reduce the involvement of the judicial system and the associated financial burdens

At the most fundamental level restorative justice approaches require that victims, offenders, affected members of their family and social circles and the community willingly participate in the restorative process, understand and embrace the principles and processes that define restorative justice, and — because personal contact between the victim and the offender is a critical component of the restorative process — assess and address security needs before and during the entire process.

Systems of restorative justice are characterized by the following features:

- *Flexible* — an individualized approach that takes into account the circumstances of the crime, the offender, and the victim; is suitable for a range of offenders and offenses; and offers a continuum of responses.
- *Comprehensive* — addresses harm to and needs of victims, the community, and the underlying causes of the offense.
- *Complementary* — can be used in conjunction with traditional juvenile justice processes and sanctions.
- *Educational and transformative* — promotes offenders' insight into the causes, affects their behavior, and encourages tangible evidence of accountability and sense of responsibility.
- *Adaptable* — can be adapted to the principles, legal traditions and underlying philosophies reflected in any country's existing juvenile justice systems.
- *Ecologically valid* — recognizes the community as a contributor to crime and a primary context for prevention and response.

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<sup>10</sup> "Working Definition of the Working Party on Restorative Justice." Restorative Justice Online. [www.restorativejustice.org/university-classroom/01introduction/tutorial-introduction-to-restorative-justice/lesson-1-definition/wpdef](http://www.restorativejustice.org/university-classroom/01introduction/tutorial-introduction-to-restorative-justice/lesson-1-definition/wpdef)

- *Healing* — respects the dignity and equality of each party and promotes healing for victims, offenders, and communities.
- *Cost-effective* — Restorative justice programs may reduce expenses by diverting youths into alternative, community-based programs with substantially lower costs than traditional juvenile justice models.<sup>11</sup>

In the appropriate context, restorative justice programs may be employed in a range of cases involving both nonviolent, early-career delinquents and recidivist offenders who have been convicted of serious crimes (involving significant financial damage and physical injury). This includes offenders in the community and those who are incarcerated.

## **B. Elements of Restorative Justice**

The hallmarks of restorative justice include voluntary and facilitated personal contact between victims, offenders, family circles, and members of the community. The objective of each of the following elements is to support the victims; hold offenders accountable in a way that encourages learning, rehabilitation, and reparation of harm; engage members of the victims' and offenders' family and social circles; and promote the prevention of delinquency and community improvement through the participation of the members of the public.

*Victim-offender mediation (VOM).* With the assistance of a trained mediator, VOM offers the opportunity for:

- Victims to be supported, heard, compensated for their losses and healed
- Offenders to take responsibility for their actions, learn about the impact of their behavior on the victims, and participate in the development of a plan to address the harms caused.<sup>12</sup>

According to the Center for Justice and Reconciliation, there are more than 300 VOM programs in North America and more than 500 in Europe. Research on those programs has documented higher satisfaction among participating victims and offenders, reduced levels of fear for victims, increased probability that offenders will fulfill their restitution obligations, and reduced recidivism, as compared to peers who went through traditional juvenile justice systems.

*Family-community group conferencing.* This facilitated process brings together the victim, offender, their family circles, friends, and members of the community together in the aftermath of a crime to determine collectively how to address its effects and facilitate reparations. In addition to the goals of VOM, conferencing engages the social circles of

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<sup>11</sup> Adapted from the Council of Europe. Recommendation No. RR (99) 19 of the Committee of Ministers to Member States Concerning Mediation in Penal Matters. 1999.

<sup>12</sup> For a comprehensive review, see: *Restorative Justice Briefing Paper*. Center for Justice and Reconciliation, Prison Fellowship International. Washington, D.C. November 2008.

both the victim and the offender to encourage and support the process of making and shaping the offender's future behavior. The process also connects the victim and the offender to the larger community and the support available through that community.

As with other elements of restorative justice, family-community conferencing was adapted from indigenous cultures, in this case, from the Maori tradition in New Zealand. This type of intervention is popular in New Zealand, where the majority of juvenile and adult cases include family-community conferencing. The approach has been modified and implemented in Australia, North America, Europe, and southern Africa. Research demonstrates high levels of satisfaction among victims and offenders.

*Peacemaking or sentencing circles* incorporates input from victims, offenders, family and community members, and representatives of the legal system (defense attorneys, prosecutors and judges) into sentencing decisions, to address the concerns of all parties. This practice was adopted and adapted from Native American tribes; beyond the objectives of VOM and family-community conferencing, peacemaking/sentencing circles facilitate community engagement, problem-solving, and trust-building.

### **C. Reparation of Harm**

The intent of each of the restorative justice processes described above is to promote reparation of harm. Typically, three types of reparation practices are employed and included in reparation agreements:

- *Apology* (spoken or written) has three components:
  - Acknowledgement. The offender admits to wrongdoing, accepting responsibility for the harm experienced by the victim and recognizing that the victim did not deserve it.
  - Affect takes the acknowledgement of guilt to the next level with expressions of remorse and regret. These expressions are intended to facilitate healing in both the victim and offender, because both are harmed by the crime.
  - Vulnerability contributes to a power shift between the offender and the victim. During a crime, the offender asserts power and control over the victim. Through apology, the offender relinquishes control to the victim, who has complete freedom to accept or reject the apology. The victim has the opportunity to experience power in the face of the offender, and the offender has the experience of succumbing to that power. The process is intended to balance the scales.
- *Restitution* is form of payment (monetary or otherwise) from the offender to compensate for or offset the victim's financial losses from the crime. In restorative justice models, restitution is an important means of holding offenders accountable and offering victims partial repair of the harm they experienced. Restitution may be determined through VOM, family-community conferencing, peacemaking or sentencing circles, or juvenile court judges. Restitution is a critical element in harm

reparation, accountability, and amends-making that can be done through restorative justice approaches alone or in conjunction with traditional models.

- *Community service.* Because communities are also harmed by crime and because offenders need to understand and accept responsibility for the effects of their behavior on others, community service can be an important part of the restorative justice process. Community service programs typically require cooperative agreements between government and the private sector to create opportunities for offenders to fulfill community service requirements. For example, an offender's sentence requires a certain number of service hours, and those hours are often fulfilled in community service agencies. The range of community service options and the nature of the service are determined according to what resources exist in the community (what organizations are able and willing to accept placements) and the community's needs.

#### **D. Restorative Justice System Requirements**

A functional restorative justice system requires:

- Memoranda of understanding that define the roles and responsibilities of community counterparts (police, courts, juvenile justice, social service providers, schools, churches, community organizations and the private sector)
- A rubric for identifying youths who are appropriate for restorative justice interventions
- A referral and case management system able to coordinate, monitor, evaluate, and report on the outcomes of restorative intervention
- Structures and protocols that facilitate victims' and community members' participation in the restorative process and promote rehabilitation for offenders
- Clearly designated roles for parents and families

In addition to these structural and procedural requirements, it is also critical to develop a platform for facilitating effective communication and cooperation among community counterparts. In the best of situations, this represents a significant challenge.

Joy Dryfoos, a renowned education reformer, defined collaboration as “an unnatural act between non-consenting adults.” This definition underscores one of the most fundamental challenges to restorative justice: the ability and willingness of counterparts from different disciplines to collaborate. Professionals are often bound by their disciplines and organizations' culture, mission, vernacular, objectives, and practices. Additionally, potential counterparts often find themselves in competition for scarce resources and may be reluctant to collaborate for fear of compromising their organizations' financial viability. Finally, there is often a significant disconnect between professionals and community members, reflecting both a pervasive belief that “professionals know best”

and a state of distrust between the community and the organizations involved in restorative process.

Parental and family involvement in the restorative process warrants particular mention. Despite the fact that parents and families may be able to provide essential input into the restorative process — and the fact that they are seriously affected by youth delinquency — they are often marginalized or excluded during legal proceedings. This may also reflect a “professionals know best” attitude and a negative judgment by professionals about families of delinquent youth. In addition, many parents have negative histories with “the system” and may be unwilling to participate, or they may be uneducated or mentally low-functioning and unable to participate. In some cases, the parents themselves are criminally involved and therefore unwilling to engage in the process. Regardless of these factors and challenges, parents and families should be part of the process to the fullest extent possible, and made to feel that they are essential participants whose opinions and input are valued.

### **E. International Support for Restorative Justice Models**

The restorative model has gained widespread international support. In the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century (January 2001), the parties encouraged “the development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties.” In 2005, the declaration of the Eleventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders urged member states to recognize the importance of further developing restorative justice policies, procedures, and programs that include alternatives to prosecution.<sup>13</sup> Beyond merely encouraging the development of restorative justice models, in August 2002 a United Nations Economic and Social Council resolution called on member states to use a set of principles developed by a United Nations expert group.<sup>14</sup> These principles are intended as guidance for policy makers, justice officials, and community organizations involved in the development and implementation of restorative justice approaches to crime and violence.

The restorative justice model and the recommendations described above may have particular relevance in countries where the public’s dissatisfaction and frustration with existing juvenile justice systems manifests in harsh and inflexible “zero tolerance” policies, militarized approaches to security, calls for a return to authoritarian government, and, in the most extreme case, extrajudicial execution of children and youths in conflict with the law. These harsh policies and practices have had little success, and there is a need for alternative approaches to juvenile justice, including restorative justice.

Given current legislation in Honduras and the juvenile justice system’s limited flexibility to recognize alternatives to the punitive model, promoting the restorative justice approach

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<sup>13</sup> *Handbook on Restorative Justice Programmes*. United Nations Office on Drugs and Crime, 2006.

<sup>14</sup> *Basic Principles on the Use of Restorative Justice Programs in Criminal Matters*. ECOSOC Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2 at 35 (2000).

as a crime prevention strategy and an alternative to unnecessary and costly detention carries the greatest likelihood of success. As a crime prevention strategy, the restorative justice approach offers a vehicle for addressing acts of low-level delinquency at the community level, as opposed to referrals of such cases to the juvenile courts. When the restorative approach is employed successfully, the approach eliminates the need for high-cost, extended detention and conserves scarce resources for cases in which detention is genuinely necessary.

In addition to promoting the model in the most effective manner, it is critical to build on the current momentum in the legislature to enact changes to the legal framework that will facilitate fundamental juvenile justice reforms in the long term.

## SECTION V. EXISTING CAPACITY AND COLLABORATION

Honduran society believes that the juvenile justice system must change, that adolescents involved in delinquency cannot be allowed to operate with impunity, and that alternative measures must be employed to promote rehabilitation and reinsertion into society. The prison system is in crisis, and the country's second largest detention center, Centro Renaciendo, was completely destroyed by incarcerated adolescent offenders during a riot. People are calling for a system that protects the public while addressing the need for prevention and rehabilitation of children and youths who are in conflict with the law.

Although restorative justice models are not well-known in Honduras, NGOs and churches are implementing programs that show signs of success. To make these and other restorative justice programs truly successful as viable options, they require legislative recognition. Without legal recognition, the system will continue to function largely as it does now, with incarceration as the primary option for dealing with young offenders.

### A. Challenges to a More Effective Juvenile Justice System

To address the public's demands for a more effective and more humane juvenile justice system, three challenges must be addressed:

- Current Honduran law does not define acts committed by children younger than 12 as delinquent, so they are not under the purview of the juvenile courts.
- There is an absence of reliable data and empirical understanding of youth involvement in delinquency.
- There is a relative lack of infrastructure and experience necessary to support prevention, rehabilitation and social reinsertion programs.

*Addressing legislation.* Young offenders are the most viable target population for a restorative approach. In countries where the restorative model has been successful, the courts are directly involved by providing referral into restorative justice programs. But, because the target population does not fall under the jurisdiction of the juvenile courts under the current legal framework, referrals originate with the IHNFA (soon to be replaced by the Defensoría) and other youth-serving organizations (such as community groups, neighborhood based prevention programs, schools, and churches). Establishing a user-friendly referral system will be critical. Because the Defensoría de la Niñez will make referrals into the program and be responsible for managing, monitoring, and evaluating it, developing the Defensoría's own internal system will be another essential change.

#### Involving the Courts

Under the current legal framework, most program participants will most likely not be under court jurisdiction. However, this does not mean that the courts do not have a compelling interest in the program and its outcomes. Some judges may choose to participate in restorative justice programs, but it may still be necessary to change the existing legal framework.

*Addressing the lack of data.* In an ideal scenario, referrals to restorative justice programs would be evidence-based, using offender profiles informed by an empirical understanding of program participants and their involvement in delinquency. Lacking this type of understanding, the referral process will be less data-driven and more subjective, reflecting the organizations and individuals making referrals. This subjectivity will create inconsistency in the profiles of those who are referred to restorative justice programs. Developing a uniform approach to assessing youth and making referrals must be a priority to systematize the process to the greatest degree possible.

*Addressing the need for infrastructure and experience.* Because prevention, rehabilitation, and reinsertion responses have historically been downplayed, capacity for developing and implementing a restorative justice model is extremely limited. Professionals have little or no experience with its foundational principles, and there is limited infrastructure to support the model. Despite these limitations, there are professionals in the youth-serving arena whose significant experience could be leveraged, and representatives from every stakeholder group the researchers interviewed expressed enthusiastic support for alternative measures, including restorative justice.

## **B. Communication, Coordination, and Collaboration**

The restorative justice approach requires counterparts in different disciplines to communicate, collaborate, and coordinate efficiently. The Honduran juvenile justice system operates primarily within its “silo,” with minimal interaction with other youth-serving disciplines. The limited (sometimes nonexistent) experience and structures for facilitating a collaborative approach present a significant challenge for the development and implementation of a restorative justice system. In its 2011 report, “Crime and Violence in Central America: A Development Challenge,” the World Bank emphasized the need to promote stakeholder communication.<sup>15</sup> Fortunately, organizations such as Casa Alianza, La Red de Instituciones por los Derechos de la Niñez (known as COIPRODEN), Plan Honduras, and the Central American Coalition for the Prevention of Violence, and other potential counterparts have proven experience building coalitions that can be leveraged to support the development of similar mechanisms.

In addition to the lack of real-world experience with collaboration and the structures to support it, there is a lack of trust between professionals in the youth-serving field, particularly between governmental and nongovernmental actors. For many in the nongovernmental field, the struggle for better systems of care are framed as human rights struggles, and they see government officials and institutions — especially the police — as sources of the problem, not as essential partners.

Facilitation of cross-disciplinary communication, cooperation, and collaboration requires a shift in mindset among many potential restorative justice counterparts. It would also be beneficial — indeed, it will be necessary — to develop a Web-based community of practice to promote collaboration. An exhaustive discussion of communities of practice is

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<sup>15</sup> *Crime and Violence in Central America: A Development Challenge*. The World Bank, 2011.

beyond the scope of this report, but they can be much more powerful than working groups or e-mail lists in providing a forum for community members to:

- Build relationships
- Share information on best practices and lessons learned
- Showcase successes
- Solve problems
- Conduct research and disseminate new knowledge
- Plan and participate in activities of mutual interest
- Improve collaboration by establishing professional networks
- Facilitate face-to-face interactions, particularly during meetings and conferences

### **C. Technical Assistance and Capacity Building**

Because the restorative justice approach represents a different way of doing business, ongoing technical assistance and capacity building will be critical to support the effective development, implementation, monitoring, evaluation, and replication of the restorative justice model, including the development of information systems. Beyond the basic principles of the restorative justice approach, key program contacts and implementation personnel will need training in the following areas:

- Intervention design, implementation, monitoring, and evaluation
- Group process and mediation
- Developing referral and case management systems

With the Defensoría de la Niñez set to replace the IHNFA as the agency responsible for the supervision and treatment of adjudicated youth, it will be especially important to ensure that Defensoría directors and staff are targeted for training and are centrally involved in all aspects of program development and implementation.

## SECTION VI. RECOMMENDATIONS FOR DEVELOPMENT AND IMPLEMENTATION

Development of a contextually appropriate restorative justice model in Honduras must be implemented in multiple stages, to account for the underdevelopment (or lack) of political, organizational and cultural frameworks to support such a system. Initially, work to develop a restorative justice system should focus on cultivating the necessary organizational capacity, programmatic frameworks, and political support.

### A. Stage 1: The Framework

*Prepare a primer.* Before engaging in outreach to government officials and potential program counterparts and before marketing the restorative justice model, it may be advantageous to prepare a primer outlining the basic principles of restorative justice and promoting the potential benefits to youth and cost-savings. This primer could be distributed to government officials and potential counterparts to introduce, reintroduce, and promote the concept, and get stakeholders thinking about the developmental process, appropriate models for Honduras' socio-political context, and how to garner support for the process.

*Identify program counterparts.* At a minimum, counterparts will include the Defensoría de la Niñez, juvenile courts, NGOs, community organizations, churches, and donors. Organizations such as Casa Alianza, COIPRODEN, and the United Nations Children's Fund may also prove to be important, although not necessarily as direct service providers. It may not be viable for some community prevention-intervention programs to participate because of the nature of their work. Given the policing context in Honduras, it may not be prudent to involve police in the early stages of development or implementation.

The private sector could be encouraged to play a future role, even if that role is not well-defined in the initial stages. Given the importance of community service to the restorative justice model, it will be critical to establish private sector partnerships to ensure that restorative justice program participants have opportunities to fulfill their community service obligations.

*Provide education and training to key contacts.* The conceptual framework for restorative justice is poorly understood; generally speaking, practitioners have no experience with the model, so education and training in the following elements will be crucial:

- Emphasize the principles of restorative justice
- Describe the basic structural elements of a restorative justice model
- Offer examples of successful programs from countries with significant experience
- Review the contextual factors that will affect development and implementation stages
- Introduce a basic framework to serve as a starting point (see the annex).

If these areas have already been covered in training, they should be reiterated and expanded upon as appropriate. At this stage, training should target persons in key positions in relevant government institutions and NGOs.

*Create the programmatic framework.* Program counterparts will develop the initial framework for a restorative justice model, ensuring its appropriateness for the Honduran context and borrowing (as appropriate and valuable) from the framework in the annex. As part of developing the restorative justice model, it is critical for counterparts to do the following:

- Create a logic model or another scheme that depicts how and where the program fits into the existing juvenile justice system
- Identify program objectives and measurable goals
- Articulate the overall benefits and, to the extent possible, project cost-savings
- Determine the portion of the larger youth demographic to be targeted for restorative justice intervention
- Create a framework for referral and case management systems
- Develop monitoring and evaluation plans

An initial restorative justice model in Honduras should focus exclusively at the base of the pyramid: nonviolent first and second-time offenders with no history in the juvenile justice system and family members willing to engage with them in the restorative process. At present, Honduras lacks the expertise and infrastructure to deal with second- and third-tier offenders in a restorative justice setting; to apply the restorative justice model to this population of offenders at this point would result in predictable security concerns for victims and program staff, and create the potential for program failure.

*Determine roles and responsibilities.* It is critical to determine program counterparts' roles, responsibilities, and inputs; how will they connect during development and implementation stages; and how best to facilitate communication, cooperation, and collaboration among counterparts. The lack of existing mechanisms for supporting communication, cooperation and collaboration in the youth service and juvenile justice fields is of critical concern. It may be necessary to engage in specific activities to support the development of those structures, including an information management system.

*Mobilize political support.* Parallel to the other activities in this Stage, it will be critical to identify and mobilize government supporters. Implementing an effort of this nature will require active and ongoing support from the Casa Presidencial and the Honduran Congress, to garner broad-based political support and to promote budget allocations.

## **B. Stage 2: Programming and Piloting**

*Internal programming decisions.* Key contacts will facilitate decision-making around the development and implementation of the restorative justice model in their organizations and programs. Participation in the restorative justice model will necessitate the following elements (or changes):

- Changes to internal policy and practice
- Identification of personnel who will be involved in the restorative justice process
- Clarifying the roles and responsibilities of involved personnel
- Creation of a process for making or receiving referrals (depending on the nature of the organization or program)
- Tracking participants and data collection
- Communicating with other restorative justice program counterparts

*Staff training.* Program staff will need training on the restorative justice model, on their roles and responsibilities, and how their involvement fits into the bigger picture.

*Program implementation.* Initiate small-scale restorative justice interventions, such as pilot programs and beta testing. Support from key organizational and program contacts, monitoring, and technical assistance will be critical during this stage.

*Scale-up.* Following pilot testing, evaluation, and modification, scale-up begins with the expansion of the intervention to more youths and more sites. Data collection and analysis also continue, with relevant ongoing modifications based on the results of the analyses. In addition to monitoring specific outcomes, it will also be important to monitor organizational and staff capacity and interest in using this model. Organizational and staff training and mentorship should be provided on an as-needed basis. Communication among counterparts will be critical through this effort.

### **C. Stage 3: Evaluation and Scale-Up**

*First-year evaluation.* Conduct a summative first-year evaluation to assess the following:

- Number of youth served
- Program participant demographics
- Type of offenses committed
- Number and type of intervention components implemented
- Youth's level of engagement and compliance with program requirements (using to-be-developed scales)
- Rates of recidivism or re-offending
- Victims' involvement, outcomes, and satisfaction
- Family involvement, outcomes, and satisfaction
- Community involvement, outcomes, and satisfaction

*Information campaign.* Disseminate information on the program's first-year outcomes to government officials, organizational representatives, and the media.

*Scale-up.* Continue data-driven scale-up through the replication of successful activities.

## CHAPTER VII. POLITICAL, INSTITUTIONAL, AND CULTURAL OBSTACLES TO THE RESTORATIVE JUSTICE MODEL

The intricately intertwined nature of politics, institutional policy and practice, and culture have implications for Honduran children and youth, especially for those in conflict with the law. Each of these elements reflects, informs, and reinforces the others in a continual cycle, and efforts to develop and implement a restorative justice model must be guided by an understanding of this context and the associated challenges.

### A. Obstacles to an Enabling Environment

Since the mid-1990s, when crime and violence began to increase in Honduras, there has not been a meaningful analysis of the underlying historical, political, economic, social and cultural factors that influence this crisis. Rather than critical analysis and prioritization of comprehensive strategies to respond to the broad range of factors that account for crime and violence, the focus has been on suppressing gangs — in particular, youth gangs — as the drivers of the problem. In this context, the Honduran government has implemented, and remains wedded to, the “*mano dura*” (“strong hand”) approach. This approach is motivated in part by the perceived advantages of “get tough on crime” rhetoric; it also reflects attempts to satisfy the public’s demands for action to contain crime and violence.

The result is that Honduran juvenile justice sector does not always operate within a framework of children’s rights, despite the principles and requirements of the country’s laws and the international treaties to which Honduras is a signatory. The legislative framework has been researched extensively and determined to have merit, but there is a significant gap between law and practice.<sup>16</sup> Given this background, there are several remaining challenges to juvenile justice reform, including the restorative justice model:

- Political officials’ investment in the status quo
- Inadequate understanding of the basic principles of juvenile justice in general and restorative justice in particular
- Lack of a legal framework that requires consistency between law and actual practice

### B. Obstacles in Juvenile Courts

As with any country, the Honduran judiciary and its juvenile courts reflect and are affected by dynamics in the larger political arena. The negative effect of politics on the court is sufficiently problematic that the International Commission of Jurists has expressed grave concerns over the Honduran judiciary’s ability to fulfill its mandate, a situation the commission argues has worsened since the 2009 *coup*.<sup>17</sup>

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<sup>16</sup> Harvey, R. “From Paper to Practice: An Analysis of the Juvenile Justice System in Honduras.” Children’s Legal Centre, in collaboration with Save the Children – UK and Casa Alianza Honduras. 2005.

<sup>17</sup> *Pronunciamiento de la Comisión Internacional de Juristas en ocasión de finalizar su visita a Honduras*. International Commission of Jurists, December 10, 2010. Geneva, Switzerland.

In addition to these larger contextual problems, juvenile court judges are unfamiliar with and constrained by the lack of alternatives. The juvenile justice system will need increased specialization and professionalism to help it evolve from its current state — a system geared toward deprivation of liberty as a primary response to delinquency — and become a system that is oriented toward an array of rehabilitative measures, including the restorative approach.

The IHNFA also needs a transformation to give it the necessary technical and financial capacity to complete its mission. The IHNFA's lack of capacity to fulfill its role could change, however, with creation of the Defensoría de la Niñez (see Section II, page 12).

### **C. Institutional Obstacles**

This report has already described many of the institutional obstacles to be addressed in the development and implementation of a restorative justice model:

- Resource scarcity
- Shortage of trained professionals and weak systems capacity
- Lack of understanding of and experience with alternative measures
- Absence of inter-disciplinary communication, coordination, and collaboration
- Indifference, ineptitude, and corruption

Of these challenges, those most responsive to intervention are training, capacity building, and improved collaboration among counterparts. In fact, training and capacity building are closely linked with efforts to improve collaboration. As described in Section VI, effective collaboration is a key feature of successful prevention and rehabilitation programs such as the restorative justice model. Currently, Honduran capacity and willingness to collaborate is severely limited by lack of experience with this approach, lack of trust in other organizations and agencies, and the absence of mechanisms to support collaboration. Until a collaborative approach is mandated and supported with a platform that facilitates and reinforces it, there is little reason to conclude that a collaborative approach will gain traction.

To most support training, capacity building, and collaboration it would be advisable to include language requiring cross-disciplinary cooperation in the proposed changes to the legal framework. It would also be valuable to consider the development of viable mechanisms for promoting communication, coordination and collaboration, such as a Web-based community of practice, which could be developed in tandem with the restorative justice model. Fortunately, there are models to guide the development of such a communities that are applicable to juvenile justice in similar socio-political contexts. Beyond the immediate advantage to this project, such a system could be designed to also leveraged other prevention, rehabilitation, and reinsertion initiatives in Central America.

## **D. Cultural Factors**

Domestic and international groups supporting children's and human rights in Honduras have labored for years to change the cultural paradigms that shape political process and institutional practices, especially those related to young people in conflict with the law in particular. Tragically, these extensive efforts have made minimal tangible gains, and the internationally accepted rights of children in conflict with the law continue to be violated.

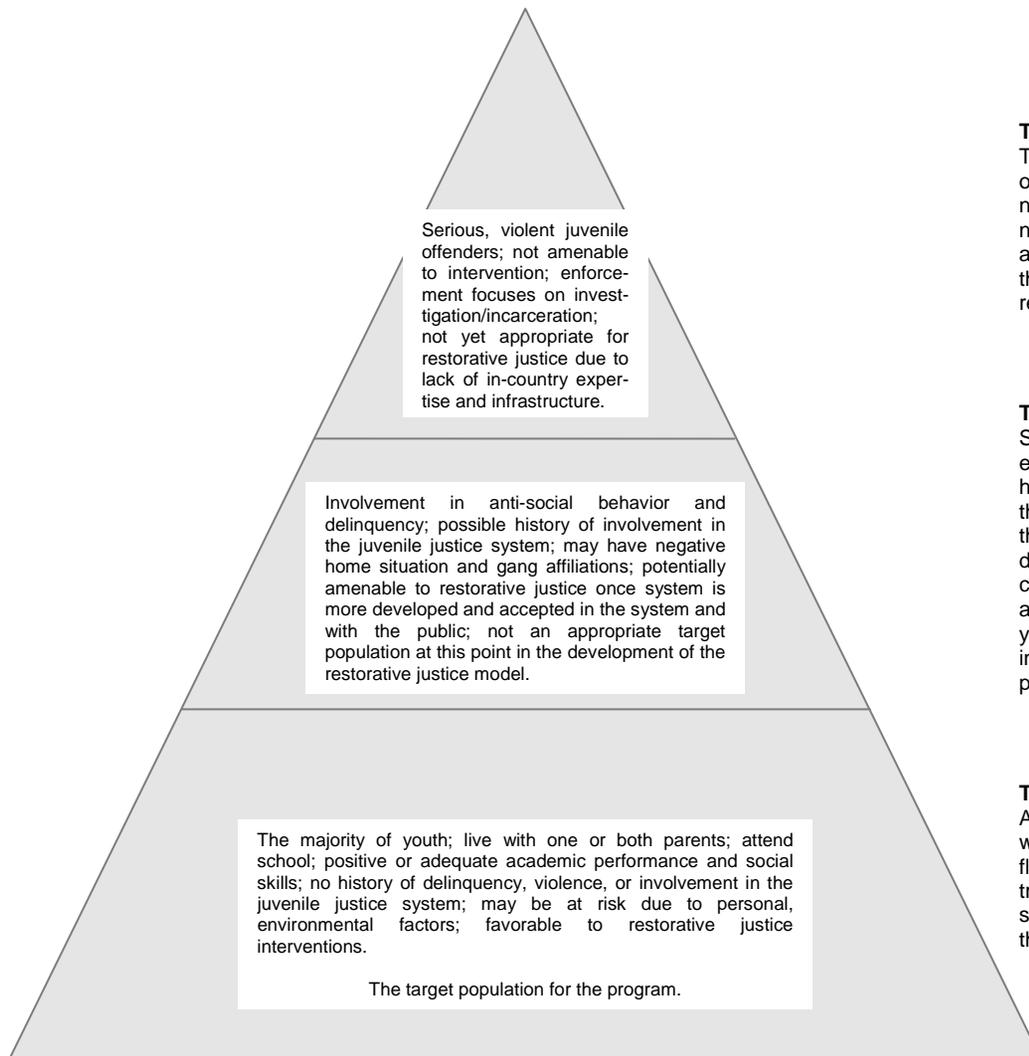
This assessment team found it striking that although the adult criminal justice system in Honduras is recognized as being in a state of crisis, stakeholders from virtually all groups regarded it as far more functional and humane than the juvenile justice system. The systematic devaluing of youth and minimization of the fundamental rights of those in conflict with the law is most clearly demonstrated by three factors:

- Institutionalized practices of illegal and extended pretrial detention
- The virtual absence of rehabilitative programs in detention facilities
- Widespread extrajudicial killing of young people and the ambivalent governmental and societal response

Each of these factors reflects prevailing cultural attitudes toward youth who are in conflict with the law, or perceived to be. These attitudes are also reflected in the larger political arena related to legislation and government support for juvenile justice reform and implementation of alternative measures, and in the policies and practices of youth-serving institutions.

Given these issues, developing and implementing a restorative justice component for the current Honduran juvenile justice system would represent a step forward in a socio-political climate in which small successes must be viewed as major victories. Such an achievement will require support from organizations that have worked persistently on behalf of children for many years, most importantly in leveraging their contacts and experience.

## ANNEX. A FRAMEWORK FOR RESTORATIVE JUSTICE



### Tier 1

The "tip of the pyramid" represents serious, violent, and recidivist juvenile offenders. Their home environments and neighborhoods are more likely to be noxious. They are much more apt to be actively involved with gangs. They are not likely to be willing participants in any type of restorative process, and they and their delinquent peers would potentially constitute a significant security threat to victims and program staff. This population is wholly inappropriate for restorative justice interventions at this time.

### Tier 2

Second-tier youths are those who are involved in antisocial behavior and escalating patterns of delinquency, measured in frequency and severity. Their home environments tend to be less structured and secure, and in many cases their homes and neighborhoods are toxic and dangerous. If they are in school, they are less likely to be engaged and performing well. They may not be directly involved with gangs, but given gang prevalence, it is reasonable to conclude that many are at least peripherally associated or have friends who are gang members. It is also reasonable to conclude that a portion of these youths will be amenable to restorative justice interventions, but the existing infrastructure and levels of expertise may not allow for their inclusion in the program at this point.

### Tier 2

At the base of the pyramid, the majority of Honduran youth live in reasonably well-protected and supportive home environments, are attending and flourishing, or at least performing adequately, in school, and are essentially "on track" in their lives. Like all youth, they may be at some level of risk for situational antisocial behavior or low levels of delinquency. These youths are the target population for the emerging restorative justice model.